GUIDANCE TO MEMBERS No 06/2018
[REVISION 3: MAY 2025]

CASE MANAGEMENT HEARING

Purpose of this Guidance

1. This Guidance is to clarify the purpose of the case management hearing (formerly known as the case management call), which takes place in advance of the substantive hearing (the hearing on the merits of the case); and the procedures to be employed by the legal member.

Terminology

2. In this Guidance, any rule references are references to The First-tier Tribunal for Scotland Health and Education Rules of Procedure 2018.

3. In this Guidance 'the Tribunal' refers to the Additional Support Needs jurisdiction of the First-tier Tribunal for Scotland Health and Education Chamber.

Judicial case management

4. The case management hearing is a process of judicial case management which is employed by the legal member before the substantive hearing. Specialist members are not allocated until the hearing date has been fixed. Specialist members are not involved in the case management hearing, unless exceptional circumstances exist.

Exceptional circumstances

5. Where the legal member forms the view that there are exceptional circumstances and it is necessary to involve a specialist member in the case management hearing, the legal member shall make a written request to the President, setting out the reasons for this request. The President will consider and decide each request on its merits, taking account of the exceptional circumstances that exist.

Fixing a date for the case management hearing

6. A case management hearing is fixed before the bundle is issued in child party cases where a decision must be made on the child's capacity and wellbeing (child parties aged 12 to 15 years). This type of case management hearing is

fixed promptly on receipt of the reference as the decision on capacity and wellbeing is one of competency.

7. Some legal members may decide to hold more than one case management hearing. When a further case management hearing is to be fixed, the date and time for this shall be agreed at the case management hearing by the legal member and the parties or their representatives. The legal member shall then inform the case officer within 24 hours of the outcome of each case management hearing.

Attendance at the case management hearing

8. Representatives may have the party present during the case management hearing for the purpose of taking instructions, but communication will be restricted to one person for each party. This also applies where a party has instructed counsel (an advocate). In these circumstances the solicitor instructing counsel will be present and the party may also be present. Communication here will be with counsel.

Process

9. The case management hearing is usually conducted using the BT WebEx dial-in process. The case officer will issue the legal member and parties with the dial-in details prior to the date of the case management hearing.

10. If the legal member decides there is a need to conduct the case management hearing using a different method (online or in-person) they will inform the case officer who will make the necessary arrangements.

Matters to be addressed

11. The matters which the case management hearing will address include those specified in the checklist at **Appendix A**.

Joint minutes of agreed facts

12. Where both parties are legally represented, the legal member is encouraged to direct that a joint minute of agreed facts be lodged in advance of the substantive hearing. This will focus the minds of the parties on the matters which remain in dispute. Where parties wish to identify the areas of law which are not in dispute they may do so, using the heading 'Agreed law'.

13. Unrepresented parties may also wish to engage in the development of a joint minute. The legal member will explore this at the case management hearing. If the unrepresented party wishes to do so and the other party is represented, the represented party will be given responsibility for preparing the draft with the input of the unrepresented party and lodging this. Where both parties are unrepresented, the legal member may explore the concept of the joint minute with them and make directions about how this should be developed.

14. The joint minute assists the tribunal in their preparations when deciding how the substantive hearing should be conducted and what enquiries the tribunal may wish to make.

Directions

15. Where directions are made, these should be completed by the legal member on the day of the case management hearing and issued to the case officer, within 24 hours, for onward transmission to the parties. These will then be placed in the 'T' section of the bundle.

Case management hearing note

16. A note on the outcome of the case management hearing should be prepared by the legal member. A template for this purpose is set out at **Appendix B**. This can include any directions. The note should be sent to the case officer, within 24 hours of the case management hearing, for transmission to parties and the specialist tribunal members in advance of the hearing. This will then be placed in the 'T' section of the bundle.

May Dunsmuir
Chamber President
(Revised May 2025)

Appendix A

Case management hearing checklist

Subject matter	✓
Introduction	
Identify who has joined the case management hearing.	
Questions on competency.	
Preliminary and procedural matters.	
Child/Young Person – attendance and independent advocacy	
Arrangements for hearing evidence or views from the child or young person (if appropriate). Consider what preparation is needed to ensure the child or young person is able to fully participate in the hearing. *See UNCRC Article 12 (respect for children's views) and General Comment 12.* PGN 01/2021 The Child, Young Person and the Tribunal PGN 01/2025 United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024	
Direct that an independent advocate obtain the views of the child or young person (if necessary) and provide information on what the independent advocate shall explore with the child or young person after considering the views of the parties present at the case management hearing. The ideal time to engage with the child or young person and to prepare and complete an advocacy report is no earlier or later than 2 to 3 months in advance of the substantive hearing. If a report is instructed earlier than this, inform the independent advocate that they are not expected to begin work any earlier than the period of 2 to 3 months in advance of the substantive hearing. **An independent advocacy report is not necessary where the child or young person is a party.** PGN 03 2018 Independent advocacy.	
Address communication needs and any barriers, e.g. the need for translation, BSL, talking mats, etc. *See UNCRC Articles 2 (no discrimination), 12 (respect for children's views) and 30 (minority culture, language and religion)*	

Will a social story be used? See **Appendix C** for a sample social story which can be adapted for a tribunal to use.	
Witnesses	
Clarification on the names, title and details of the party's witnesses.	
Who will lead in questioning the witnesses (in practice, this will ordinarily be the respondent/responsible body)?	
The day and order in which witnesses will be heard.	
The estimated time at which witnesses should be called to attend the hearing venue (or be available on the day of the remote hearing).	
Whether a witness's evidence will be taken online or by telephone. [1]	
Direct that a written summary/biography/CV of witnesses be lodged, setting out the witnesses' credentials/qualifications.	
Ensure that no party, representative or witness has any childcare or other commitments that the tribunal should be aware of which will impact on the timing of the hearing.	
Consider and decide any requests for additional witnesses (to the maximum listed in the 2018 Rules). [2]	
A decision on whether a witness is a 'skilled witness' (able to give opinion evidence) may be taken by the legal member at the case management hearing or left until the substantive hearing.	
Joint minutes	
Direct a joint minute of agreed facts (and law, where appropriate) in writing, which reduces the need for oral evidence.	
In some cases, particularly where there is an unrepresented appellant/claimant, it may be helpful to consider a joint minute of the areas which are in dispute.	
Where a joint minute is directed, the date to lodge with the Tribunal and parties.	

[1] The 2018 Rules, rule 40 (3) for references and rule 86 (3) for claims.
[2] The 2018 Rules, rule 33(6) limits the number of witnesses to two in references and Rule 85(2) limits the number of witnesses to five in claims.

Supporters	
Identify if either party has a supporter and record their details. [3]	
Documentary evidence and late evidence	
Review bundle content and identify if there is any missing documentary evidence.	
Consider and decide requests for the admissibility of late documentary evidence and the reasons for this.	
Make directions for reports etc. to be lodged and the date to lodge with the Tribunal.	
Check compliance with the Guidance on Documentary Evidence (avoid duplication, only lodge the relevant pages of a lengthy document, page limits etc.).	
Authorities	
Specify the date when authorities are to be lodged, confirming three copies to be lodged for the Tribunal members and one for the other party. These will usually be lodged together with the outline written submissions.	
Written submissions (outline and final)	
Make directions for the lodging of outline written submissions in advance of the substantive hearing, confirming that these are to be exchanged between the parties in advance. Confirm with parties that final submissions may be lodged at the end of the hearing by updating the outline submissions or by making final oral submissions at the hearing.	
Duration, date and time for the substantive hearing and any further case management hearing	
Consider and decide the type of substantive hearing to be scheduled (in-person, remote or hybrid) and specify this in the directions section of the case management hearing note. PGN 01/2023 Hearings in the HEC	

[3] The 2018 Rules, rule 38 (7)(c) for references and rule 84(7)(c) for claims.

Explore how long the substantive hearing is likely to last with regard to the HEC convention on the allocation of days. [4]	
Fix a date and time for a further case management hearing where one is necessary.	
Fix date(s) for the substantive hearing, confirming the start time (usually 10.00 am) and end time (usually 4.00pm).	
Timetable	
Working back from the first day of the substantive hearing agree a timetable of dates with parties/representatives for lodging of various documents, see **Appendix D**.	
Overriding objective (rule 2)	
Check that all decisions and directions at the case management hearing are consistent with the overriding objective.	

[4] CSP hearings are usually fixed for a day. Placing Requests and Claims are usually fixed for 2 days, unless there are additional complexities in the case.

Appendix B

Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

Case Management Hearing Note

[*Reference/Claim Number]: FTS/HEC/

[*Child/Young Person]: name (date of birth: day/month/year)

[*Appellant/Claimant]:

[*Respondent/Responsible Body]:

Date of Case Management Hearing:

The following persons attended at a case management hearing (**CMH**) on the above date:

1.

2.

The following matters were discussed:

3.

4.

I DIRECT as follows:

5.

6.

Legal Member
Date:

[please remove this note before issuing this document] The ideal time for the advocate to engage with the child or young person for an advocacy report (where directed) is no earlier or later than 2 to 3 months in advance of the substantive hearing. If a report is directed earlier than this, inform the independent advocate in your direction that they must not begin work any earlier than 2 to 3 months in advance of the substantive hearing, unless good reason exists and with your prior approval.

Appendix C
Style Social Story (for an online hearing)

My tribunal hearing

My tribunal hearing will take place on **Monday 5 April and Tuesday 6 April 2025.**



How will it happen?

- The tribunal hearing will take place online with everyone using computers to communicate and see each other.

- There will be 3 tribunal members – a legal member and two other members who are experienced in education, health or social work. They are independent. This means that they have nothing to do with my school or anyone else I know.

- You will know who the tribunal members are because they will have the same screen backdrop (like the image above). They will also tell you their names on the day.



Speaking at the tribunal - the witness

- During the tribunal hearing, only one person speaks at a time. Everyone else listens to what they have to say.

- The person giving evidence is called **the witness**. Other people will take it in turns to ask that person questions. The legal member will tell me who will be asking the questions.

- I can't interrupt even if I don't agree with what they are saying. The reason for this is so that everyone has their say.



My turn

- After the other witnesses have spoken, on day 2, I will get my chance to be the witness and say what I think and feel and everyone will concentrate and listen to me.

- When it's my turn to be the witness, I will be asked some questions. The tribunal members just want to know what I think and feel. The questions are not meant to be hard or to trick me.



Breaks

- Throughout the day there will be breaks. The hearing will stop no later than 4 o'clock each day.

- I can ask for a break. My supporter will be with me to help.



Remember

- The people at the tribunal hearing won't be smiling a lot.

- This doesn't mean they are angry, annoyed or unfriendly. It means they are concentrating and listening.

- The people won't be looking at the screen all the time. They will be looking down a lot of the time.

- This doesn't mean they aren't concentrating or listening. It is because they are writing down notes so that they remember everything clearly afterwards.



What will people say?

- I will hear a lot of things being said about me and my education. I will probably agree with a lot of it. The witnesses might also say things I disagree with. They might say things that annoy me or upset me.

- **Remember**... I can't interrupt at that point but I know I will get my chance to have my say and put across my point of view later on.



Don't be anxious or stressed

- I can attend my tribunal hearing without feeling too anxious or stressed now that I know what it will be like.

Appendix D
Timetable and Sequence

The number of documents and dates due will usually follow the undernoted sequence and pattern.

	Ideal timeframe	Date directed
Date of hearing		**22 June**
Independent advocacy report	**3 weeks before hearing**	**01 June**
Written witness statements	**2 weeks before hearing**	**08 June**
Joint Minute of agreed facts	**1 week before hearing**	**15 June**
Outline written submissions and authorities	**1 week before hearing**	**15 June**
Additional document		
Additional document		