



## Additional Support Needs

### INFORMATION NOTE No 01/2023

## FOR PARTIES, REPRESENTATIVES, WITNESSES AND SUPPORTERS

#### *Purpose of this Information Note*

1. This information note is to help those who attend a tribunal hearing to understand what the proceedings will be likely to involve.
2. The former versions of this information note [01/2018 and 01/2021] are no longer in force.

#### *Word meanings*

3. There is a section on the Health and Education Chamber website which provides more word meanings. This can be found at:  
<https://www.healthandeducationchamber.scot/additional-support-needs/71>
4. For the purpose of this information note the following word meanings apply:

child	person up to and including 15 years who receives nursery or school education
young person	person aged 16 years and above who remains in school education
reference	an appeal about a decision or failure to do with a co-ordinated support plan, or placing request; or  an appeal about a failure to provide or seek information at transition by the education authority responsible for the school education of the child; or  an appeal against the education authority's decision about the child's capacity or wellbeing
claim	an argument that an education authority who is responsible for the school education of the child or the grant-aided or independent school, has discriminated against a person who is receiving school education because of a disability
discrimination	to treat someone unfavourably or put them at a disadvantage; and unlawfully

appellant	the person who makes a <u>reference</u> to the Tribunal
respondent	the education authority responsible for the child's education in a <u>reference</u>
claimant	the person who makes a <u>claim</u> to the Tribunal
responsible body	the education authority, grant-aided or independent school in a <u>claim</u>
party/parties	in a reference, this is the appellant and the respondent.  in a claim, this is the claimant and the responsible body.
case officer	a member of Tribunal staff who processes the reference or claim and corresponds with the parties
clerk	a member of Tribunal staff who attends the hearing and helps with the attendance of witnesses and the use of documents
the Tribunal	where you see this with a capital 'T' it means the Additional Support Needs jurisdiction – which sits in the Health and Education Chamber of the First-tier Tribunal for Scotland
tribunal	where you see this with a small 't' it means the three Tribunal members who will consider a claim or reference and make a decision – one will be a legal member who is an experienced lawyer and the other two are specialist members, with expertise in education, social work or health  sometimes (although not often) a tribunal only has a legal member
hearing	a legal meeting where a tribunal listens to evidence from witnesses and hears legal arguments from representatives before it comes to a legal decision  a tribunal is not a court and a tribunal hearing does not take place in a court building  a tribunal hearing will follow rules of evidence
evidence	the written and oral (verbal) material a party will use to support their case
lodge	sending a document to the Tribunal that is to be included in the written evidence for a party or that contains a party's written arguments

bundle and e-bundle	the collection of all of the documents which have been lodged with the Tribunal by both parties  a bundle is usually placed into an electronic pdf file, sometimes referred to as an 'e-bundle'
remote hearing	a hearing that takes place by video conference (online) or by telephone (although full telephone hearings are rare)
in-person hearing	a hearing that takes place in-person at a specified hearing venue
the 2004 Act	Education (Additional Support for Learning) (Scotland) Act 2004 – the law that deals with references
the 2010 Act	Equality Act 2010 – the law that deals with claims
rules	the rules are the law which governs the practice and procedure of tribunals – these are found in the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, which may be viewed here: <a href="https://www.legislation.gov.uk/ssi/2017/366/contents/made">https://www.legislation.gov.uk/ssi/2017/366/contents/made</a>

## **Parties**

5. There are two parties in Tribunal proceedings. Parties have a right to lodge written evidence, to attend the hearing, to bring witnesses, to question witnesses and to speak at the hearing.

### *References*

6. Where a reference is made under the 2004 Act, the parties are the appellant and the respondent. A child's parent and a young person can make any type of reference.
7. A child aged between 12 and 15 years may make certain types of CSP references, provided they have the capacity (ability) to do this and that their wellbeing will not be adversely affected by doing so.

### *Claims*

8. Where a claim is made under the 2010 Act, the parties are the claimant and responsible body. The child's parent, a young person or a child (provided they have the capacity to do so) may make a claim.

### *Flexibility in the hearing*

9. Parties and their representatives will normally remain in the hearing room for the whole hearing but the hearing process is flexible. In some cases the child, young

person or parent may wish to leave the hearing room for a period while the process continues during their absence. They can do this.

### *The child or young person*

10. The child or young person may be present for some or all of the hearing and may give their own evidence or present their own views to the tribunal or ask that these be given by their independent advocate.
11. The child or young person may be supported during the hearing by their independent advocate.
12. Where the child or young person is a party, they can have someone they chose to be their supporter with them during the hearing (see section on 'Supporters' at page 10).
13. There is a break out area in the sensory hearing room in the Glasgow Tribunals Centre, which is a safe space for children and young people to use during the hearing. This has soft screens and a beanbag to rest on.

## **Coming to the tribunal hearing**

14. A hearing may be conducted remotely (usually online), in-person (at a specified location) or a hybrid version of these (part online and part in-person). Parties will be given details in advance of the date, time and location (if it is an in-person hearing) of the hearing.
15. Hearings usually start at 10 am and finish by 4 pm. If the tribunal is considering starting a hearing day earlier or finishing it later, the parties will be consulted. Some hearings might last for more than one day. There will be regular breaks throughout the day and there will be a lunch break.
16. When the hearing starts, the three tribunal members will usually be present in the in-person or remote hearing room. The two parties will enter, along with any representatives, independent advocate and supporters. If the child or young person would prefer to enter the hearing room before the tribunal members, this can be arranged.
17. The legal member chairs the hearing. At the beginning of the hearing, the members will each introduce themselves, then the legal member will ask the other people present to say their name and their reason for being at the hearing.
18. The legal member will explain what is happening during the hearing and introduce regular breaks. If a party has a question about what is happening during the hearing, they should ask the legal member to explain.
19. There is a guide for attending the sensory hearing suite at the Glasgow Tribunals Centre. This can be found on the Health and Education Chamber website here: [Visual Guide: Going to the Glasgow Tribunals Centre | First-tier Tribunal for Scotland \(Health and Education Chamber\)](#)

## Representatives

20. Both parties have a right to bring a representative to the hearing. When this happens, the representative acts on behalf of the party. The representative asks questions of any witnesses and makes any oral (verbal) points.
21. The representative does not need to be a lawyer.
22. The respondent/responsible body may, in addition to a representative, have a person present as the person instructing their representative.
23. Representatives should prepare their witnesses for a hearing by explaining the tribunal process. A copy of this information note is provided to witnesses. Representatives may wish to refer a witness to relevant points from this.

### *Late requests*

*(Made within 5 working days of the date of a hearing)*

24. The Tribunal's Rules permit the withdrawal of a reference (rule 20) or claim (rule 67) by the sending of a withdrawal notice at any time before the hearing. Where such a notice is received, the legal member or a tribunal (at a hearing) shall make an order dismissing the reference or claim. Where a request to withdraw is made within 5 working days of the date of the hearing parties may be required to attend before a legal member at a case management call or at the hearing to explain the reasons for the proposed withdrawal of the reference or claim.
25. The Tribunal's Rules permit the suspension of proceedings in a reference (rule 24) or claim (rule 70); and the postponement of a hearing for a reference (rule 41) or a claim (rule 87). Where a request to suspend or postpone is made within 5 working days of the date of the hearing parties may be required to attend before a legal member at a case management call or at the hearing to explain the reasons for the proposed suspension or postponement of the reference or claim.

### *The bundle*

26. A representative should not send the full bundle to any witness. Instead, only the bundle documents relevant to the evidence that witness is expected to give should be sent, to enable the witness to prepare to give evidence. In particular, a witness should not be sent, or otherwise have access to, the written witness statement of another witness.
27. A witness may, however, and where relevant to their evidence, have access to the report of a skilled witness, or to those parts of a written witness statement in which a skilled witness expresses an opinion.

### *Addressing witnesses and language*

28. During the hearing, witnesses will be addressed by their title and surname and not by their first name.

29. During the hearing, court language and legal jargon should be avoided, for example, questions from the respondent, rather than cross examination.

#### *The ultimate issue*

30. Witnesses should not be asked to address the *ultimate issue*, which is a point of law the tribunal decides.

### **Unrepresented parties**

31. When a party is unrepresented, support may be given by the legal member during the hearing to help them to present their case (without supporting a particular course of action). There is a rule (rule 2) which sets out the ways in which a party may be supported – the rule can be found here: <https://www.legislation.gov.uk/ssi/2017/366/schedule/paragraph/2/made>

### **Witnesses**

32. In references, each party may (unless special permission is given by the tribunal) bring up to 2 witnesses.

33. In claims, each party may (unless special permission is given by the tribunal) bring up to 5 witnesses.

#### *Lay and skilled (expert) witnesses*

34. There are two types of witnesses: lay and skilled. A lay witness simply gives a factual account of an event which is relevant to the issues in the case. A skilled witness may do that too, but will also give an opinion based on their professional knowledge, expertise and experience.

35. All witnesses must be open and honest in giving their evidence and should avoid speculation. The witness is at the hearing to provide assistance to the tribunal and not to promote the position of a party or their employer.

36. A skilled (expert) witness must, in addition, help the tribunal by providing independent, unbiased opinions, even when that witness is employed by one of the parties.

#### *Oral (verbal) and written evidence*

37. A witness may give oral evidence by attending the hearing in person or by using another type of communication. A witness may also give evidence by telephone or video conference (online).

38. A witness may be asked to provide a written statement in addition to (or instead of) attending to give oral evidence.

### *Taking oral evidence from persons located overseas*

39. If a party wishes to lead oral evidence (by telephone or video) from a witness located in a country outside the UK and that witness is unable to give evidence from within the UK, they should make the Tribunal's Administration aware of this as soon as possible. The party should clarify whether the proposed witness is a citizen or a resident in that country or not, so that the Tribunal is informed of the reason why the party requests that oral evidence if given from that country.

### *The order of witnesses*

40. The respondent/responsible body's witnesses will often be heard first at the hearing.
41. The order of witnesses will have been agreed with the legal member in advance of the hearing so that parties can give their witnesses a reasonable estimate of when their evidence is likely to be heard; however, it can be difficult to estimate how long each witness will take on the day of the hearing.
42. Witnesses will only be admitted to the hearing room for the purpose of giving their evidence and will be asked to leave once their evidence has been heard. An exception to this may be when there is a skilled (expert) witness. They may be permitted to remain to hear all the evidence of the party who requests permission for them to do so. The tribunal will decide whether this is allowed.
43. A separate waiting room is available (in-person hearings) for the witnesses for each party. Witnesses may have to wait some time before giving evidence and may wish to bring a book to read or something to do to help pass this time. In remote hearings, a witness will wait in a remote waiting room (where they cannot hear or see the hearing) until the clerk allows entry to the remote hearing.
44. A witness may be taken out of turn if there are pressing reasons. The clerk should be informed of this as soon as possible and the legal member will be consulted about how to accommodate this.
45. Where possible, the clerk will keep witnesses informed of the likely time when they will give evidence. If it is an in-person hearing and their home or workplace is very near the hearing venue, witnesses may arrange with the party or representative that they will be telephoned shortly before they are due to give evidence, to minimise inconvenience.

### *Preparing to give evidence*

46. When entering an in-person hearing room, the clerk will direct the witness where to sit. In a remote hearing, the witness will appear on the hearing screen. The legal member will ask the witness to state their name and then explain how questions will be asked.
47. Where a witness is to give evidence remotely, they should (a) dress appropriately, in the same way as they would for an in-person hearing; (b) make

sure that the risk of being interrupted during their evidence is minimised; (c) make sure that they are in a quiet place, with no background noise; and (d) that their background seen on screen is as uncluttered as possible, to reduce sensory overload, which is one of the HEC sensory hearing principles.

Points (a) and (d) do not apply where evidence is to be given by telephone.

48. It is helpful to remember that witnesses should direct their answers to the tribunal and not to a party.
49. Professionals who give evidence can take their case file with them to the hearing; however, a witness may not, during oral evidence, consult any of their notes or papers, unless the tribunal gives them permission.
50. Witnesses must not discuss the evidence they expect to give with any other witness in advance of the hearing, during the hearing or after they have given their evidence, until the tribunal has issued its decision.
51. When a break is taken while a witness is giving oral evidence, the witness must not discuss their evidence with anyone, including any representative. This rule applies to other witnesses, whether or not they have already given their evidence.
52. When the person giving evidence is doing so as a professional person, the tribunal will wish to know their qualifications, background and experience. A brief note or CV of the professional qualifications of the witness may be lodged with the tribunal before the hearing or at the hearing. Alternatively, this information may be supplied at the start of a written witness statement.
53. Some witnesses may be asked to refer to documents which form part of the bundle (see paragraphs 27 and 28 about what witnesses will be given). A copy of relevant documents from the bundle will be provided at the hearing.
54. When the hearing takes place remotely, the party asking the witness to attend will send the necessary documents to the witness.
55. In remote hearings, the witness may be sent these by e-mail by the clerk shortly before they are to give evidence, so that they can refer to it during their evidence if asked to do so. The witness will be asked to delete these documents immediately after their evidence is over.
56. Where a witness receives an electronic copy of documents from the clerk on the day of the hearing, the witness should not read these prior to giving evidence.
57. In a remote hearing, the clerk may be asked to show documents on the screen during the evidence of a witness. The person questioning will tell the witness which page number or paragraph to look at.
58. If the witness is the author of a document, that witness should refresh their memory about the content of that document before giving evidence.



59. Hearings are normally digitally recorded. A copy of the recording may only be issued to a party following a written application to the Chamber President, setting out the reasons for the request, and at the discretion of the Chamber President. The recording remains with the case file and is destroyed after 6 months.

#### *Asking questions of witnesses*

60. When a party is represented, their representative will ask the witness questions. The general rule is that one question should be asked for one answer. It can be confusing for witnesses if they are asked more than one question at a time. If this happens, the legal member may interject to clarify the question being asked.

61. The tribunal members will take notes of the evidence and witnesses may be asked to stop or to speak more slowly so that they can take accurate notes. Representatives should pace their questions and pause before beginning another question to allow tribunal members time to complete their notes.

62. Questions for witnesses will usually follow a certain order.

(a) The party who has brought the witness will ask questions first. If the witness has provided a written statement, they will be asked to confirm that they agree the terms of this. When there is a written statement from the witness, this should mean that there are fewer questions.

(b) The other party (or their representative) then has an opportunity to ask the witness questions.

(c) The party who has brought the witness will be given a further and final opportunity to ask any questions.

(d) After the parties have asked their questions, the tribunal may ask questions. Sometimes the legal member will have asked questions during stages (a) to (c).

#### *Answering questions*

63. Witnesses should answer questions as concisely as possible. It may be tempting to give an explanation before giving an answer; however, this is not necessary or helpful. The tribunal and parties will have read the bundle of documents before the hearing and will be familiar with them. Unless a witness is asked to provide a context, they should simply answer the question asked of them.

64. If a witness does not understand the question, they should say this and the questioner will re-phrase the question.

#### *Cited to attend*

65. If a person has been cited to attend the hearing as a witness (has received a formal written instruction to attend from the Tribunal) they must do so; failure to attend can lead to criminal proceedings.

66. When a witness has not been cited and is attending by agreement, they should attend the hearing venue or be available for the remote hearing on the day and time notified.

## Oral and written submissions

67. Submissions are final arguments presented after all of the witnesses have given their evidence.

68. Where both parties are represented, the legal member may instruct that written submissions are to be prepared, exchanged between them and then lodged before the hearing begins. Where this happens there is an opportunity for these to be added to after all the witnesses have given their evidence.

69. There is also an opportunity to present oral (verbal) submissions at the hearing after all the witnesses have given their evidence.

70. It is possible to have both forms of submission (written followed by oral). The tribunal will choose which course to follow.

71. When oral submissions are given, usually the respondent/responsible body will speak first, followed by the appellant/claimant.

## Dignity and mutual respect

72. The tribunal expects proceedings to be conducted in an atmosphere of dignity and mutual respect.

73. The legal member will make sure that any questions for witnesses are not unreasonable, hostile or inappropriate. Parties or representatives may also object to certain questions being asked.

74. It may be necessary to press witnesses on certain points of importance or to revisit aspects of evidence. This is part of the process of ensuring a fair hearing.

## Supporters

75. A party who is an individual may be accompanied at a hearing by another person who will act as a supporter. A supporter may only be present at the hearing when the party they are supporting is also present.

76. When there is an in-person hearing, a supporter will normally sit to the back of the party being supported and not at the hearing table.

77. When a party is represented, the role of the supporter is to support the party and not to help the representative.

78. A supporter is not a:

- party
- representative

- witness
- person providing necessary help to a person entitled to attend a hearing (such as an interpreter or nursing assistant)

79. A supporter has no right to speak to the tribunal during the hearing, unless given permission to do so.

80. A supporter may help the party by:

- quietly speaking to them about relevant tribunal matters
- providing moral support
- helping to manage tribunal papers
- taking notes of the proceedings

81. A party may disclose any document or communicate any information about the proceedings to their supporter.

82. When a document or information is disclosed, the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

83. It is a matter for the tribunal to determine if the person attending as a supporter should be allowed to continue in that role, and if the tribunal is not satisfied about this, then that person may be asked to leave the hearing.

**May Dunsmuir**  
**Chamber President**  
May 2023