



Tribunal (Additional Support Needs) Forum

18 April 2024, Online
Forum Note

The seventh Health and Education Chamber (**HEC**) Tribunal Forum was held on Thursday 18 April 2024 online. Each year we will conduct every alternate Forum online.

The 2025 Forum will take place in-person, in the Glasgow Tribunals Centre, on Wednesday 23 April 2025.

Attendance at this year's Forum was high and varied, as always, with representatives from child and parent groups, legal and education, special schools, university students, the Scottish Government, the Children and Young Person's Commissioner for Scotland (**CYPCS**), the Equality and Human Rights Commission (**EHRC**), Judicial Members and the Scottish Courts and Tribunal Service (**SCTS**).

Summary of Topics

1. Chamber President's Update

Attendees heard how the Health and Education Chamber (**HEC**) are continuing with the three hearing types and about a scoping study to identify other hearing venues across rural, urban and the Island areas of Scotland. With any type of hearing the HEC sensory principles will be maintained. The President reminded us of the importance of advocacy providing the Tribunal with the views of the child or young person at hearings. She referred to the recent incorporation into Scots Law of the UNCRC (Incorporation) (Scotland) Act 2024 (**2024 Act**) and the steps the President is taking to ensure UNCRC compliance in the HEC.

2. Scottish Government (Update on Education Appeal Committees)

Mr Jerry O'Connell (Scottish Government) provided a brief update on the outcome of the [consultation](#) of the proposed transfer of the Education Appeal Committees (**EAC**)

to the Scottish Tribunals (which ran from October 2022 – February 2023) and the current position. The Scottish Ministers do not intend to proceed with the transfer at this point in time.

3. Casework Update

Miss Elaine Forbes, Operations Manager, SCTS, provided an overview on patterns and statistics over the last reporting year.

Miss Sarah Tracey, HEC Casework Team Leader, SCTS, provided information on the recent scoping study to expand sensory hearing venues and an overview of the electronic bundle (**e-bundle**).

4. Judicial Update

The HEC In-House Legal Member provided a judicial update on topical matters which have arisen in the HEC since the last Forum.

1. Chamber President's Update

Hearing types and venues

We received the highest volume of applications recorded in the last reporting year (2023/2024), with a total of 244. With a rise in cases comes a rise in hearings, again the highest recorded. Of these, the majority continue to be conducted remotely (online), although we are seeing a rise in hybrid hearings (mixture of online and in-person), as confidence with a return to an in-person environment grows.

We continue to endeavour to fit hearings into a 1, 2 or 3 day schedule, although we saw a growth in the number of hearing days beyond 2 days in this reporting year. Some of the reasons for the increase in days arise when there is an interpreter present (which naturally slows the hearing process down) and when more than the maximum witness number is exceeded.

Parties are asked to work with us in keeping the total number of hearing days to the minimum possible. We can do that with the procedural efficiencies available through:

- Written witness statements

- Joint minutes of agreed facts
- Written submissions
- Maintaining witness maximum numbers

We are also seeing a rise in the number of documents being lodged as part of the case statement and in requests for late lodging. These late requests will be managed very carefully by the legal member and parties are asked to do all they can to reduce the potential for late requests. Where these are made and documents are permitted it is crucial that documents for one case only are sent with each email.

As we move through this reporting year, we will continue to offer the three hearing types: in-person, hybrid and online. In-person and hybrid hearings have been conducted principally in the Glasgow Tribunals Centre. The Inverness Justice Centre also provides a sensory hearing venue. To add to those venues a Scoping Study has been undertaken to identify potential venues across Scotland which we can use.

Advocacy – including non-instructed advocacy (NIA)

Advocacy continues to be used in almost every case which proceeds to a hearing. It is proving to be a very valuable tool in providing us with the views of the child or young person. The advocates are very skilled in taking views. This includes the use of non-instructed advocacy (**NAI**), which presents an objective picture of the child or young person, where they cannot express a view themselves. NIA includes observation by the advocate in the school setting as well as consultation with key adults.

The UNCRC (Incorporation) (Scotland) Act 2024

The United Nations Convention on the Rights of the Child (**UNCRC**) was incorporated into Scots law on 16 January 2024. The majority of the provisions will come into effect in July 2024. 42 of the 54 Articles and the majority of their content have been incorporated. These include the 4 General Principles:

- non-discrimination (Article 2)
- best interest of the child (Article 3)
- right to life, survival, and development (Article 6)
- right to be heard (Article 12)

The 2024 Act applies only to **Acts of the Scottish Parliament** and any subordinate legislation which flow from enabling provisions – and not to legislation originating from the UK Parliament.

Where a **‘public authority’** acts or fails to act in connection with a ‘relevant function’ in a way that is incompatible with the UNCRC requirements, that act (or failure) is unlawful (section 6(1)). The HEC Tribunal and every education authority are public bodies. This also includes public, third and independent sectors where they meet the definition of public body.

The 2024 Act, as it stands, **does not create any new remedies**, just another way to access remedies that already exist.

There is **no requirement that the person relying on the 2024 Act is the ‘victim’** of the unlawful act; they need only have the status of a party to proceedings to entitle them to seek a remedy within the 2024 Act.

Steps the President is taking in the HEC:

- (a) Creating a new President’s Guidance Note on the 2024 Act which will be published on our website. Two *Expert Child Consultants* (supported by Children in Scotland) will work with the President on points which flow from this, including how to best take the child’s views and the new provision on the child’s view on the effectiveness of remedies (section 9). The President also has the support of Partners in Advocacy for this work.
- (b) HEC Tribunal members will be given training on the 2024 Act.
- (c) Following a request by Let’s Talk ASN at the 2023 Forum, a visual decision letter to the child will be introduced soon.
- (d) Following a suggestion by My Rights, My Say, a visual invitation letter for children and young people giving evidence or views at a hearing will shortly be developed.

Accessing the Glasgow Tribunals Centre / Sensory Hearing Suite

By way of reminder, any child who attends the GTC may use the separate entrance. This avoids entering with general traffic and the need for airport style security checks. There is another entrance for a physically disabled child to use which is through the car park. A space will be given on request. We hope to improve the external visuals to the car park entrance.

The presentation shows images of both of these entrances.

Hearing Efficiencies

The President is going to introduce a Representatives Forum in this reporting year. The aim is to keep this small enough to allow for a conversational environment, focusing on legal issues and to discuss Tribunal procedure. The attendees will be capped to 12, with around half of these places being given to education authority representatives and the remainder to child, young person and parent representatives. This will mainly include legal representatives but lay representatives who appear regularly in our proceedings may request to join.

Anyone with an interest in attending this new Forum may contact the President at HEChamberPresident@scotcourtribunals.gov.uk.

2. Visual Decision Letter to the Child and Animations

The presentation shows an example letter.

Visual decision letter

The letter was designed to be accessible and succinct and was designed with the input of an HEC specialist member, Ms Hazel McKellar, who is a speech and language therapist. Ms McKellar highlighted that there were already very good examples of letters to the child or young person, some of which are now being published on our decisions database, and it was important to keep the intention and compassionate tone of our letters. Using our existing *needs to learn* visuals we only required a handful of additional visuals for the decision letter, which include the 'school' and 'timetable' images. This visual scaffolding will be used consistently across all Tribunal communication.

The President will issue a guidance note to members which will explain the requirements, including the format, before this is launched.

Animations

Our animation videos were launched last year in spoken English and British Sign Language. We will shortly launch a Makaton version of our videos.

3. The Scottish Government (Education Appeal Committees (EACs))

Consultation Questions on the proposed transfer of the EACs to the Scottish Tribunals

1. Do you agree that appeal committees should transfer to the Scottish Tribunals? If so, why? 68% No, 17% Yes, 15% no response.
2. Do you consider that appeal committees should remain with local authorities but with improvements to how they operate? If so, what changes would you like to see? 27% No, 50% Yes, 23% no response.
3. Do you consider that no changes should be made to how appeal committees operate? If so, why? 32% No, 45% yes.

75 responses (45 from organisations and 30 from individuals) were received and a [consultation analysis report](#) was published in July 2023.

The Scottish Ministers have considered the responses and are minded not to proceed with the transfer at this time. They have asked the Scottish Government to identify improvements to the current system.

The Scottish Ministers have not ruled out the possibility of a transfer at some point in the future and consideration would take into account if any improvements to the current system are successful and if they address concerns raised in the consultation. No formal announcement has been made.

Chamber President comments from the Tribunal perspective:

1. The locality argument (local delivery) does not raise any difficulties for the HEC as we are a national jurisdiction and we can sit across all of urban, rural and island areas of Scotland. The only interruption to this was during the pandemic where we heard cases online.

2. The issue about travelling to Tribunal venues is not well understood because if there is a need for parties to attend a local venue that can be arranged. We are currently expanding our sensory hearing venues. Our Tribunal membership are also based across the country. We also have access to 3 hearing types: in-person, remote (online) or hybrid (online and in-person), which broadens choice.
3. The question of the HEC having the appropriate skills and knowledge does not present any difficulties because we are immersed in the very nature of the kind of work currently being carried out by EACs. The majority of our cases are placing requests and we also deal with exclusions on far more complex matters, in the context of the Equality Act 2010.

Question from [Iain Nisbet \(Legal representative, Cairn Legal/My Rights, My Say\)](#)

Iain commented that he has a long history of appearing at both HEC Tribunals and EACs.

Q1. One of the long standing concerns that led to the review and proposed transfer was a lack of independence of how the EACs operate and I wondered if consideration was given in weighing the responses was that taken into account. A lack of independence would be seen to benefit local authorities so if local authorities are saying they should retain this function arguably this should not carry as much weight as those who would not benefit directly from that.

A1. Two aspects:

1. A strong view from local authorities is that it is possible to establish committees who can look at issues in an independent way and other aspects of the way local authorities operate.
2. Unsure if the independence issue is around the composition of appeal committees and councilors who can sit on these. This would require a change to primary legislation and this is not being considered as part of any improvements.

Q2. Has any consideration been given to a jurisdiction transfer, separate from the wider question of transfer, specifically on exclusion cases because that is a much lower volume jurisdiction which could be treated as a trial and in particular related to

the question of independence as this has a more direct bearing in terms of the child's rights and the incorporation of the UNCRC.

A2. The intention is to keep responsibilities of EACs as they are at the moment. We are not considering separating any functions at the moment but this can be considered in the future.

Question from Marie Harrison (Senior Policy Officer, My Rights, My Say)

Q3. I work closely with Tribunal and the majority of referrals are requests from the Tribunal, as a legal jurisdiction, to ensure that the voice of the child is represented at hearings. As an organisation we were excited about the consultation because we do not get requests from EACs despite the fact children have a right to be heard in these processes and professionals have a right to request, from My Rights, My Say, that children's views are taken in formal processes. In almost every tribunal hearing a referral is made to our organisation. If the status quo is to remain with EACs and the views of children are not being sought in these appeals will consideration, as part of the improvements, include the importance of taking views from children and would there be scope to discuss how that can be improved upon, especially in light of the incorporation of the UNCRC Act 2024?

A3. One of the ideas around improvements is to look at guidance for EACs. The only existing guidance is from early 2001. We would be open to including this type of issue within the guidance especially in light of the UNCRC incorporation.

Question from May Dunsmuir (Chamber President of the Health and Education Chamber)

Q4. In relation to the incorporation of the UNCRC Act 2024: did this change anything, following the consultation response, of the position of Scottish Ministers? Are they alert to the impact of the 2024 Act, given criticisms of the EACs? To what extent was incorporation considered how ready are EACs?

A4. In terms of how ready they are, that is something we are looking at presently. We are looking at how the Scottish Government can work with local authorities. The Scottish Ministers would have had incorporation in their minds when reaching a decision.

4. Casework Update

See 2024 PowerPoint Forum Presentation for statistics, which highlights a record number of applications received since the Tribunal's inception; and that placing requests remain the highest application type to the HEC (Additional Support Needs).

E-Bundle

There are 4 main processes about the electronic case file, known as the 'Bundle' -

1. Duplicate documents

Parties should not submit documents which have already been submitted and included in the bundle. If there is a small difference in the version you wish to submit please highlight this to the case officer.

2. Large documents

Parties should not submit large documents such as lengthy policies, unless every page of this is to be referred to in the hearing. Please only submit the front cover and pages which are relevant to the case.

3. Late lodging of documents

Please always provide your reasons for requesting a document be lodged late and copy in the other party so that the other party can provide their views as soon as possible. The best case scenario is where the two parties have discussed the request and the position of both parties is clearly set out in the request. This allows the case officer to make the legal member aware of the request and parties views as soon as possible and prevents any delays. Occasionally, if documents are lodged close to the hearing date the legal member will make a decision at the start of the hearing to allow or disallow the documents, rather than decide before the hearing.

4. Removal of documents

If for whatever reason any documents are to be removed from the bundle the case officer will simply delete those pages. They will make a clear marking on the relevant sections inventory but will not renumber the rest of the bundle.

The case officer will always refer any of the above matters to the legal member.

Please see the [documentary evidence guidance](#) note on our website.

Expansion of Sensory Hearing Venues

We are currently working within the chamber to expand our sensory hearing venues. A working group has been created to identify and source suitable venues throughout Scotland. This is in addition to our sensory hearing rooms within the Glasgow Tribunal Centre and the Inverness Justice Centre.

An exercise has been carried out to identify our requirements in relation to location, venue style and set up. The group have visited a number of venues across Scotland from the Scottish Borders to the Islands and identified those which we hope may be able to be used for HEC hearings. A stakeholder update will be provided on venue availability as this arises.

5. HEC Judicial Update

See attached presentation for further details.

HEC Case Law

A. Co-ordinated Support Plans (CSPs) (Slide – HEC Case Law Update (1))

Two recent decisions have been published on CSPs. Both arise from the same reference.

The first is an Upper Tribunal (appeal court) decision by Lady Poole on a preliminary matter, namely on the meaning of ‘significant additional support’ in section 2 of the 2004 Act. Lady Poole ruled that the correct interpretation is a non-cumulative one.

This decision is about a technical interpretation point. Lady Poole overturned the HEC decision and indicated that the *status quo* continues, meaning that the support required from each type of organisation (for example education and health) needs to be ‘significant’ before the CSP test is met (meaning that a CSP must be prepared).

The case is useful also for the additional comments Lady Poole made at the end of the judgement, in paragraphs 26 and 27 on the number of CSPs that exist. Lady Poole goes on further to make three general points about the CSP test:

1. On the meaning of the word ‘require’ in s.2(1)(d), one shouldn’t look only at the support being provided since the test is about the support which requires to be provided.
2. Parliamentary intention is that significant additional support need has to be required before the CSP test is met. ‘Significant’ is not intended as an impossibly high standard. Ultimately CSPs are intended to facilitate co-ordination where there are multiple support sources.

3. In determining whether the significant additional support is from sources external to education authorities and where there is more than one appropriate agency providing the support, the Code of Practice indicates that a cumulative approach is taken to the question of whether that support is 'significant'.

Turning from the Upper Tribunal decision, a few additional points emerge from the HEC's decision on the merits of the case, also published (2nd link on the slide):

1. The 'co-ordinated' part of the definition of a CSP arises purely out of the involvement from more than one agency type, for example education and social work or education and health. There is no minimum level of co-ordination.
2. For the purposes of the CSP test, it is only 'additional' support that counts and not all support that is provided,
3. The Tribunal goes through each of the four factors set out in the *JT* case and the Code of Practice on 'significant', namely frequency, nature, intensity and duration and concludes on each in connection with both the education and the health support that was required in this case.

B. Disadvantage under the Equality Act 2010 (Slide - HEC Case Law Update (2-4))

The main trigger concepts for the four HEC-applicable forms of discrimination under the 2010 Act are different, depending on the type of discrimination:

Direct discrimination (section 13): 'less favourably'.

Discrimination arising from disability (section 15): 'unfavourably'.

Indirect discrimination (section 19): 'particular disadvantage'.

Breach of duty to make reasonable adjustments (sections 20 -21): 'substantial disadvantage'.

However, in the *Williams* case, the Supreme Court decided that these tests mean approximately the same thing. The court also states that the threshold for meeting these tests is 'relatively low' (paragraph 27). The meaning of these tests is taken from the meaning of 'disadvantage' as set out in the Code of Practice (duplicated on slide (3)). This applies in the Scottish school context since a similar passage appears in the ECHR's *Technical Guidance* (updated last in 2023) at paragraph 5.21.

Slide (4) of the Case Law Update provides some examples of HEC cases in which 'disadvantage' is discussed. Commonly, this concept applies where there is said to be an omission or failure to do something.

C. Trauma (Slide – HEC Case Law Update (5))

This is becoming a feature of HEC cases more and more often, as demonstrated by the linked published cases. The HEC trauma informed principles are listed at the top of the slide.

D. Unrepresented Parties (Slide – Unrepresented Parties (1-2))

The overriding objective in rule 2 of the HEC Tribunal rules applies:

- rule 2(2)(c) (assisting in presentation to ensure procedural parity);
- rule 2(2)(a) (proportionality according to resources of the parties, 'resources' including knowledge of the law and procedure); and
- rule 2(1) (parties to assist the Tribunal to deliver on the overriding objective).

Areas of difficulty for an unrepresented party can exist around:

1. Scope of the case

What the case is about. The Tribunal has limited powers and may only make decisions on certain points, but sometimes unrepresented parties think it is a review body and that the Tribunal is going to review what is and has been happening in the school, for example, which we cannot do.

2. Relevancy (as a concept and in practice)

Unrepresented parties often say, 'I think this is relevant', but the point being made may not be legally relevant. The normal meaning of relevancy is quite different from the legal meaning. This may require explanation from the Tribunal.

3. Legal points

Unrepresented parties may not have the knowledge or experience to be able to deal with complex legal points, unlike the other party which is legally represented. This can create an imbalance, which the tribunal has a duty (under rule 2) to try to correct. This can mean the tribunal taking the lead in probing the legal points with the lawyer for the respondent/responsible body more strongly than it may where both parties are legally represented.

4. Jargon (legal and other)

The Tribunal will try to cut down or eliminate jargon in any event, but where a party is unrepresented that duty is stronger to avoid confusion and uncertainty.

5. Importance of process concepts (such as fair notice)

The lodging of late documents can give rise to fair notice issues, as can making points in hearings which have not been mentioned in the case statement or in the bundle. This is an important legal concept but may be difficult for a non-legally trained and unrepresented party to understand.

6. Questioning technique

There are limits around the kinds of questions that may be asked. Are questions leading or non-leading, for example? Even the formulation of a question (as opposed to a statement) or keeping a question to one concept/proposition can be challenging.

7. Controlling emotions

It is important to remember that unrepresented parties are usually parents or carers for children or young people who are going to be affected by the decision. There is not, therefore, a buffer in place in the shape of a representative for that individual. Nor is there an independent influence from a representative to help the parent/carer to control their emotions and understand what is happening as the case unfolds.

All of this means that the fare of an unrepresented party is a challenging one. The distinctive role of the tribunal (and the respondent/responsible body) in approaching such cases needs to be remembered.

6. Enquires to the Tribunal

The following advance enquiries were received for the Forum (HEC response in blue):

Question 1 – Partner in Advocacy

Q. UNCRC and Tribunals.

A. This has been discussed by both the President and In-House Legal Member in their presentations earlier today. The position on the practical application of the UNCRC will become clearer as the year wears on. We refer to the answer to the next question too.

Question 2 – Cairn Legal

Q. Section 7(5) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Is it anticipated that regulations will be brought forward with a view to extend powers to grant appropriate remedies / reliefs to:

The First-tier Tribunal for Scotland (Health and Education Chamber)? and/or education appeal committees?

This would allow those bodies to award damages where appropriate (section 8) and to respond appropriately to the full breadth of views which children so affected may provide on the issue of relief (section 9).

It would also avoid a situation where placing request appeals and challenges to exclusions which can end up in the Sheriff Court as well as these other bodies, would have different potential remedies depending on the route the appeal or challenge happened to take.

Does the Tribunal have a view on this?

A. The President is consulting with Scottish Ministers on whether or not any regulations under the 2024 Act will be required for the HEC. It would not be appropriate to comment further at this stage. The President will keep the public advised as and when she can.

Question 3 – East Ayrshire Council

Q. ASN Tribunal trends – from a content/outcome perspective.

A. The HEC is an independent judicial body. Statistical trends on case outcomes are not relevant to judicial decision making. Each case is decided individually on its own facts, arguments and the applicable law. If the HEC were to start to pay attention to outcome statistics, this would endanger its independence and duty to act fairly, both of which are protected by statute.

See the Tribunals (Scotland) Act 2014, sections 3 and 12 and rule 2 of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)). This independence is also governed by the relevant common law.

Question 4 – Children and Young Peoples Commissioner Scotland

Q. We are concerned at the high number of placing requests for special schools which are granted following referral to the tribunal, particularly where children have very complex needs. Decisions should be made in the best interests of the child – particularly given the imminent commencement on the UNCRC Incorporation Act.

What do you think the high number of referrals of this type tells us about decision making?

A. Please see the answer to the previous question: we cannot comment on any statistical trends for the reasons outlined above. It is clear from our experience of managing cases that disagreements usually evolve over a period of time. The Tribunal is committed to encouraging settlement of cases, including through mediation. Our case management process is designed to allow space for this to happen.

We are sometimes referred to as the ‘last resort’ for resolution of a case, but a reference or claim may be made at any time in the journey of a disagreement about school provision, including as a ‘first resort’.

Statement 5 – Fife Council

S. Reviewing timescales for lodging responses to case statements (10 working days) is not enough time to get all of the detailed information available as well as lodge all of the documents required in a case.

A. The case statement timeframe is set out in the statutory rules of procedure. The timeframe may be extended where the statutory tests in rule 17(8) are met. In addition, the rules allow a flexible approach to be taken when there is good reason for being unable to lodge documents with the case statement.

Further, and importantly, the purpose of the case statements is to provide an outline of the position of each party. The legal member will usually fix deadlines for lodging witness statements, any joint minute of agreed facts and outline submissions. These

deadlines will come much closer to the hearing and will allow the parties to conduct the main hearing preparation well after the end of the case statement period.

Most references will be unlikely to come as a surprise to the education authority, for example, a range of documents will have been considered before a placing request is decided. These same documents may form part of the information attached to the respondent's case statement.

Question 6 – Fife Council

Q. Case management hearings – can these be fixed at the date a claim/reference is received similar to those in Employment Tribunals? This would remove the uncertainty about dates.

A. This would mean fixing dates in diaries well in advance of the case statement period being completed and may give rise to some concerns amongst other parties. This will be considered by the President.

Question 7 – Fife Council

Q. In-person hearings and having local resources as currently travelling to Glasgow for all in-person hearings is taking up a lot of time and resources. There used to be local provision for hearings before COVID-19, can this be reintroduced again?

A. The President has conducted a Scoping Study to identify potential sensory hearing venues across the country. The former use of hotel rooms is not considered to be suitable. There will be an announcement about the availability of these venues soon.

Question 8 – Stirling Council

Q. Co-ordinated Support Plans (CSPs).

Recourse if appropriate agencies do not respond to requests for information (after numerous attempts and when this could affect adherence to statutory timescales) to support the CSP process or if they disagree that their input should be included in a CSP.

A. As an independent judicial body, we cannot give advice or guidance to parties on steps to be taken in any particular situation. If the order of a tribunal in relation to a CSP is not being implemented either party can make a request to the President to monitor the implementation of a decision (rule 12).

Question 9 – South Lanarkshire Council

Q. The Council being allowed to be present throughout whole tribunal.

A. Parties are permitted to be present throughout the tribunal hearing. Sometimes, a question arises where the education officer (or equivalent person) who will be providing ongoing instructions will also be a witness. Where this happens, the

education officer will usually give evidence first, so that they may then instruct for the rest of the hearing. This is a matter to be considered at the case management call stage and the views of parties will be taken into account in considering the logistics of the hearing.

Question 10 – North Ayrshire Council

Q. Examples of reasons that tribunals are upheld or not upheld.

A. The Tribunal publishes most of its decisions online on the decisions database. The reasons employed for reaching its decisions can be viewed there. As a statutory body, the basis on which we make our decisions are outlined in the relevant legislation.

For placing request references, we may only confirm or overturn the decision of the respondent to refuse the request depending on whether or not at least one of the statutory grounds for refusal exist(s) and whether or not it is appropriate to do so in all of the circumstances.

For co-ordinated support plan (CSP) references we need to apply the test for a CSP, consider whether it is being implemented or consider the appropriateness of its content (depending on the reference type).

For transition references, we may only consider whether the statutory duties have been complied with, and if not, what we should do to remedy this.

For claims under the Equality Act 2010, we have a broad remedy power, but only where we are satisfied that unlawful conduct under the Act has happened.

All decisions are taken in the context of the evidence, argument and law applicable in the particular circumstances of each case.

Question 11 – Midlothian Council

Q. ASN (2016) legislation effectively raising the age for young people to remain in education if they have additional support needs into S7, S8 and S9. We have seen an increase in young people requesting out of authority placement and in some incidents out of the country for further education at college due to local colleges not being able to meet the need. As an authority this is only going to increase due to the complexity of need coming through.

Is this something that is being looked at nationally and the financial impact this has on authorities?

A. As an independent judicial body, we may only deal with cases that are brought to us. It would be inappropriate for us to comment on more general issues within the sector, whether those are around, for example, trends (current or prospective) or public resources (except insofar as resource issues may affect certain individual cases, notably some placing request grounds of refusal).

7. Question and Answer

The following question was raised at the Forum:

Question 12 – Education Scotland

Q. When you mention that the test for a CSP is based on the level of input a child/young person requires, not what is agreed to be in place. Who deems what is required? Often an agency, following assessment (if applicable) deems that input is not required. If a local authority or school, parents/carers disagree or feel that input is required, how can a CSP be drafted? It was my understanding that the input must be agreed within the document... any clarity would be helpful please.

A: A CSP is an education authority (**EA**) document. It is a document prepared by the EA. It is for the EA to decide what should be in that document. If the EA take the view that certain provision is required and it should be part of the CSP for the child or young person, the EA is under a statutory duty to include that provision. The EA can be required to amend the document or prepare one (section 9, 2004 Act).

A further point on CSPs from the Tribunal – a reminder to everyone that looked after children are deemed to have additional support needs (unless section 1(1B) of the 2004 Act applies) and education authorities must consider whether they require a CSP (section 6, 2004 Act).

Question 13 – South Lanarkshire Council

Q. The introduction of the representatives' forum mentioned earlier – would there be scope for inclusion officers to be part of this forum?

A: The Forum is to discuss Tribunal law, procedure and processes and if the inclusion officer is largely the person who represents the EA at Tribunal proceedings they would be welcome to join.

The President concluded the event and thanked speakers, enquirers and those in attendance today, for their helpful and valuable engagement and input.