



GUIDANCE TO TRIBUNAL ADMINISTRATION AND PARTIES

No 01/2022

DOCUMENTARY EVIDENCE

Purpose of this Guidance

1. The purpose of this guidance is to explain what is permissible in terms of documentary evidence and how the bundle of tribunal papers will be prepared and lodged with the Tribunal.

Guidance to Tribunal Administration and Parties, No 01/2019

2. Guidance to Tribunal Administration and Parties, Numbers: 01/2019 Documentary Evidence and 01/2020 Documentary Evidence and the COVID 19 Outbreak, are revoked. Earlier guidance on PDF Readers/Editors is included in this Guidance.

Implementation date

3. The date of implementation of this guidance is 31 January 2022.

Word meanings

4. In this guidance these words or abbreviations have the following meanings:

document	includes all or part of a document, or any other item on which information has been recorded or is stored; such as (but not limited to) a video clip, film, tape, audio file or secure electronic storage device
the bundle	all of the documents lodged by all parties, as prepared and collated by the Tribunal
the Tribunal	the Additional Support Needs jurisdiction of the Health and Education Chamber of the First-tier Tribunal for Scotland
the Chamber	the Health and Education Chamber of the First-tier Tribunal for Scotland
a tribunal	the three people 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 members with specialist expertise in education, social work or health a tribunal can also be made up of one legal member in certain circumstances

legal member	the legal member appointed in the reference/claim
reference	an appeal about a decision or failure to do with a co-ordinated support plan, or placing request; or 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
appellant	the person who makes the <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 the <u>claim</u> to the Tribunal
responsible body	the education authority, grant-aided or independent school in a <u>claim</u>
parties	in a reference this is the appellant and the respondent in a claim this is the claimant and the responsible body
rule(s)	all rule references are from The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366) a copy of this can be found on the Health and Education Chamber website www.healthandeducationchamber.scot
CSP	co-ordinated support plan
SCTS	Scottish Courts and Tribunals Service, who provide administrative support to the Tribunal
Caseworker	staff of SCTS who provide casework support to the Tribunal

Documents which may be lodged

Relevance of documents

5. Only documents which are directly relevant to an issue(s) in the reference or claim should be lodged by a party.
6. A document is directly relevant to an issue only where it is anticipated that:

- a) a witness will refer to that document in their oral evidence or witness statement; and/or
 - b) a party will refer to that document during submissions.
7. A legal member may, either on their own initiative or on the written and reasoned application of any party, and in either case, after considering any representations from both parties, decide to exclude a document from a hearing bundle on account of its irrelevance.¹

Example 1

An appellant in a CSP reference is considering lodging a number of medical reports as evidence of the child's additional support needs. However, both parties have agreed the existence and nature of those needs. The documents are not relevant since the facts are not in dispute; the medical reports will not be referred to and so should not be lodged.

Example 2

A respondent in a placing request reference is considering lodging all of the primary school reports for the child who is now aged 14. Reference will only be made to the reports from primary 7 onwards. The others are not relevant to the reference and so should not be lodged.

Partial documents (more than 10 pages)

8. Where a party is considering lodging a document that consists of more than 10 pages, careful thought must be given to whether only part of the document should be lodged. Where a partial document is lodged, the whole document may be shared between parties to assist with context.
9. Where a document is substantial in length, a legal member may ask for an explanation from the lodging party explaining why the full version of the document has been lodged.

Example 3

In a claim, the responsible body is considering lodging its 50-page Equality Act school policy. It intends to refer to only three paragraphs from that Policy, on two pages. Only those pages in addition to the document cover and contents table needs to be lodged (unless other pages are required to give the relevant parts context and meaning). The whole document should not be lodged.

¹ rule 25 (references); rule 71 (claims)

Example 4

In a CSP reference, the appellant is considering lodging the child's homework diary for the whole of the previous academic year. Direct reference will be made to only five entries to illustrate a particular point. Only the pages relating to those five entries should be lodged, and not the whole homework diary for the year.

10. Where a legal member is not satisfied with the explanation provided under paragraph 9, the legal member may direct that the document is removed from the bundle and replaced with a shorter version.²

Lodging and distribution of documents

11. Parties must submit all written evidence to be relied upon before the end of the case statement period.³

Electronic lodging

12. **Documents can only be lodged electronically where the party uses a secure server recognised by the SCTS.** Parties can contact the SCTS for advice on what will be accepted as a secure server.

13. All documents lodged electronically must be sent to the following e-mail address: ASNtribunal@scotcourtribunals.gov.uk

Naming and numbering the documents

14. The pages of each document file will be numbered by the caseworker when they are creating the electronic case file. Each document file should be given an appropriate electronic file name by the lodging party so that it can be easily identified when the caseworker is creating the bundle inventories. For example (see also Appendix A):

Page No	Document Title and Date
6 to 7	School report (1 June 2019)

The electronic folders

15. The caseworker will create an electronic folder for each party in the case. All documents lodged by each party will be stored in the relevant folder. In the event that a document(s) is not, on good cause shown, lodged electronically, the casework team shall, on receipt, scan the hardcopy and upload it into the electronic folder.

16. The legal member assigned to the case will receive, at the appropriate time, all electronic document files.

² rule 25 (references); rule 71 (claims)

³ rules 17(3) and 19(3) (references); rules 64(3) and 66(3) (claims)

Late lodging of documents

17. Where a party proposes to lodge a document after the end of the case statement period, the document should be sent to the caseworker with an explanation of:
- a) the reason(s) for the document being submitted late; and
 - b) an explanation of the importance of the document to the issue(s) in the case.
18. If no explanation is provided, the caseworker will request one.
19. The caseworker shall send the request and proposed document to the other party, inviting comments within 7 days (or a shorter or longer period as a legal member may direct) on whether the document should be permitted to be lodged late.
20. After receiving any comments (or no comments), the caseworker shall send the proposed document, any explanation and the other party's response to the legal member. The legal member will decide if there is good cause to allow the document to be submitted late.⁴
21. If the legal member decides that good cause exists, the document will be added to the bundle. If not, the document will be excluded from the bundle and no reference may be made to it by any witness, party or representative.

Preparation of the Bundle by the Caseworker

(see also Appendix B)

Preparing the electronic bundle

22. Following the end of the respondent/responsible body's case statement period, the caseworker shall create an electronic case file by using the electronic document folders referred to in paragraph 15 above.
23. The caseworker shall prepare an electronic bundle ('the bundle') within 7 days of receipt of the respondent/responsible body's case statement.

Duplication – one copy only

24. Where the same document has been lodged by both parties, the caseworker will contact the parties to identify which copy of the duplicated document is to be retained in the bundle. The legal member may also direct that duplicated documents are removed.

Example 5

In a CSP reference, both parties have lodged a copy of the same current CSP. There are no differences between the copies. One of the copies will not be included in the bundle as one CSP is sufficient. The parties agree which version should be removed and the caseworker updates the relevant inventory, in accordance with paragraph 29 below.

⁴ rule 25 (references); rule 71 (claims)

Numbering and sections

25. The caseworker shall number the pages sequentially within each section.
26. The bundle will be set out in three sections: a 'T' section for tribunal papers; an 'A' or 'C' section for papers lodged by the appellant or claimant; and an 'R' or 'RB' section for papers lodged by the respondent or responsible body.
27. Bundle numbering will run in each of these sections so that the numbering in each section would begin as follows: 'T1'; 'A1'/'C1' and 'R1'/'RB1'.
28. The documents within each section will be arranged in the same numerical order as the electronic folders prepared by the case officer (see paragraph 15).
29. Where a duplicate document is removed from the existing bundle the inventory shall specify the document name, with the prefix: DUPLICATE [REMOVED]. The numbering of the bundle will not be altered by removal of the duplicate document. For example:

Page No	Document Title and Date
6 to 7	School report (1 June 2019)
9 to 15	DUPLICATE [REMOVED] CSP (30 May 2019)
16 to 30	OT report (19 April 2019)

Inventory of documents

30. The caseworker shall prepare an inventory of documents and place this at the front of each section of the bundle (T; A or C; R or RB), indexing the document titles and page numbers (see appendix A).

The e-bundle

31. Once the bundle has been prepared, the caseworker shall send each party a copy of the e-bundle via a secure email platform. All three tribunal members will be forwarded a copy of the e-bundle at the appropriate time, namely, for the legal member, as soon as it is prepared and for the other members, as soon as they are appointed to the case.
32. The caseworker will store a copy of the e-bundle within the electronic case management system. The clerk can access the e-bundle at the hearing. It will be retained on the case management system after the hearing is over for a specified period of time consistent with the Chamber's retention and destruction of documents policy.

Paper bundles

33. An unrepresented party may request a paper copy of the bundle where this is preferred.
34. Representatives shall provide witnesses with an electronic or paper form of the

bundle, or relevant sections of this, if they are to be referred to this at the hearing. **Representatives should consider whether it is appropriate for witnesses to have access to the whole bundle (including, in particular, witness statements) in advance of giving oral evidence.** The representative remains responsible for the return of the bundle or relevant sections of this, and its secure retention and destruction.

Remote hearings – documents on screen

35. During remote hearings, witnesses may still prefer to read from a paper bundle. Where this is not possible, documents from the bundle may be uploaded to the screen at the request of the legal member, a party or representative.
36. Where a party or representative anticipates that this will be necessary, the caseworker should be informed and given details of the relevant sections of the bundle. This will assist the clerk at the hearing.

Disagreement on bundle content

37. In the event of any disagreement over the content of the bundle, a legal member will decide on the content of the final version.

Reference to documents in case statements

38. Parties and representatives should be aware of this guidance when preparing case statements. Any reference to lodged documents in the case statement should be referred to by name. No local numbering should be used as this will not be consistent with the numbering protocol employed by the caseworker. Where this has occurred, the party or representative may be invited to update their case statement to use the e-bundle numbering references.

May Dunsmuir
President
31 January 2022

Appendix A

Example of an Inventory of Documents

T Section

Page Number(s)	Document Name and Date
T001 – T020	Reference form (20 March 2021)
T021 –T025	Reference form supporting documentation
T026 – T034	Attendance Form (appellant) (21 April 2021)
T35	Attendance Form (respondent) (06 May 2021)
T036 – T038	Case Management Call Note (14 May 2021)
T039 – T048	Advocacy report (views of child) (20 June 2021)
T049 – T050	Joint minute of agreed facts (21 June 2021)

A section

Page Number(s)	Document Name and Date
A001 - A005	Case statement (21 April 2021)
A006 – A007	School report (1 December 2020)
A008 – A009	Letter to Ms A from Headteacher, Mr G (20 February 2021)
A010 – A020	Educational Psychologist report (2 March 2021)
A021 - A025	Statement of witness B (19 June 2021)

R section

Page Number(s)	Document Name and Date
R001- R009	Case statement (06 May 2021)
R010 – R012	CSP dated 10 (January 2020)
R013-R022	Child's/Young Person's Plan and Minute of Meeting (March 2021)
R023-R023	Child's/Young Person's Plan and Minute of Meeting (April 2021)
R024 - R031	Statement of witness D (18 June 2021)
R032 –R040	Statement of witness E (20 June 2021)
R041-R042	DUPLICATE [REMOVED] School report (1 December 2020)
R043-R057	School Inspection Report (April 2021)

Electronic Bundles: Information on PDF Readers and Editors

1. The documents in the e-bundle will be bookmarked to assist with navigation and page numbering will be added throughout to ensure that specific pages/documents can be referred to during the hearing.
2. The caseworker will create the e-bundle using Adobe Acrobat Pro DC. This software allows the caseworker to convert any documentary evidence received electronically (including, but not limited to, word documents, emails, and images) into PDF files. They are then able to convert these files into a single document before it is circulated to the tribunal members and parties.
3. Almost all computers now have a default PDF reader build in as standard. This includes PCs, laptops, tablets, and smartphones. For example, newer Windows PCs and laptops use Microsoft Edge to open PDF files; Apple iPhones automatically open PDF files in iBooks; and Google Chromebooks open PDF files in either Chrome or Google Drive.
4. Some default PDF readers may have limited functionality. For example, not showing bookmarks or not allowing for any annotations or comments to be made.
5. If your PDF reader does not show the list of bookmarks, you may need to check the settings of the reader to see if this can be turned on. Some PDF readers will refer to the bookmarks as a 'table of contents' instead.
6. One of the most well-known PDF readers is Adobe Acrobat Reader DC. This software is free to download from the Adobe website, though many devices already have this installed automatically. It is compatible with Microsoft Windows, Apple, and Google Chromebook devices. It can also be downloaded as an app for smartphones and tablets. As well as being a PDF reader, it also allows for some limited editing to be made, by way of highlighting text or adding comments.
7. Bookmarks in Adobe Acrobat Reader DC will often automatically display, but if this does not happen, it is easy to show these by clicking the bookmarks icon. This can be found on the left side of the screen when using a desktop PC or laptop. If you cannot see this, you may need to click a long thin grey button with an arrow to show this. Once the bookmarks are showing, these can be used to quickly navigate to a certain section of the bundle. 

8. While preparing for a hearing, you may wish to annotate the document by highlighting sections of text. This can be done by clicking on the 'Highlight Text' button at the top of the screen and then clicking and dragging the cursor over the text you wish to highlight. This works best when the document is submitted 

electronically as a word document or email, but it is still possible to highlight sections when documents have been received by post and scanned, or when these have been received as photographs.

9. If you wish to add comments to the document, then this can be done using the 'sticky notes' function in Adobe Acrobat Reader DC, by clicking the 'Add Sticky Note' button at the top of the screen (next to the 'Highlight Text' button) and clicking on the document wherever you would like to add a comment. This will bring up a text box where you can add your comment. Once you have added the required text, click post. You will see a small yellow icon similar to the 'Add Sticky Note' button on the document. If you hover over this with your cursor, your comment will come up on screen. If your comment is particularly long, you may need to click on the icon to bring the full comment up.



10. If any documentary evidence is lodged after the initial e-bundle has been issued, the caseworker will need to create and circulate a new bundle to incorporate this. Any text highlighted or comments added will not be carried over to your new version of the e-bundle. If this happens, you may wish to keep the new documents in a separate file and use them alongside the previous (annotated) version of the bundle.
11. There are some free PDF readers and editors online which provide additional functionality to that found in Adobe Acrobat Reader DC. However, the majority of these are online editors that require you to upload a document from your device to the website in order to read or edit this. Given the sensitive nature of references and claims, these websites should not be used to read or edit PDFs for data security reasons.