



GUIDANCE TO TRIBUNAL MEMBERS No 02/2019

THE CHILD AND THE HEARING

Purpose of this Guidance

1. The purpose of this guidance is to assist members when preparing for a hearing when a child will attend as a party, as a witness, or for the purpose of expressing their views.

Meanings

2. In this guidance these words have the following meanings:

child	aged up to 15 years
the Tribunal	the Additional Support Needs jurisdiction of the Health and Education Chamber of the First-tier Tribunal for Scotland
2004 Act	Education (Additional Support for Learning) (Scotland) Act 2004, as amended
2010 Act	Equality Act 2010
rules	all rule references are to The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)

A. Status of the child

Child party

3. A child who is a party¹ has the same rights as an adult or young person² who is a party and the same rights as the respondent/responsible body.
4. This includes the right to attend the whole of the hearing, lodge written evidence, make representations, make submissions and ask questions of the witnesses.
5. In the majority of cases, it is likely that the child will be represented. Where the child is not, s/he may be assisted by the tribunal in the presentation of her/his case without advocating the course s/he should take; consistent with the overriding objective³.

Child witness

6. A child witness will give evidence for a party. The same rules of procedure apply to child and adult witnesses and shall be read alongside relevant President's Guidance.
7. There is a clear distinction between a child's evidence and a child's views.
8. A witness provides a specific, factual account of events and questions may be asked of them. A tribunal will assess the evidence of each witness before deciding how much weight (if any) is to be attached.
9. A child may present their evidence in person by attending the tribunal, or by using other means, for example by telephone or video link, by giving a written statement⁴ or using a document in any form, for example, a talking mat or a drawing. The same means of communication can be used when a child wishes to express a view.

Questions for a child witness

10. The tribunal shall decide the procedure for asking the child questions in advance of the hearing and will continue to assess this during the course of the hearing, as necessary.
11. The usual processes of hearing witness evidence using techniques of examination-in-chief and cross-examination shall not apply to a child witness.

¹ A child can be an appellant in certain cases under the 2004 Act or a claimant under the 2010 Act

² A young person is someone aged 16 years and above who is still receiving school education

³ rule 2, see rule 2(2)(c)

⁴ rule 40(2) (references), rule 86(2) (claims)

12. The following principles shall apply to questions for a child witness:

Principle 1

One person, identified by the tribunal, shall ask the child questions from an agreed list. The list of questions shall be prepared by the parties and agreed by the tribunal.

Principle 2

The person asking the child questions will normally be the child's independent advocate or, where none exists, someone appointed by the tribunal in this capacity.

Principle 3

Parties, the questioner and the tribunal shall have regard to [PGN 01/2019 Asking the child questions](#) when preparing/asking questions.

Principle 4

Where possible, a child should be able to give their evidence without interruption. When interruption is necessary, the reasons for this shall be explained clearly to the child and gently brought to a close. The child should then be reoriented back to the list of agreed questions.

13. The legal member shall instruct at the case conference call that a draft list of questions be prepared by the parties in advance of the hearing. The tribunal will agree the final list of questions.
14. Each question will be strictly formulated to ask one thing at a time – using the principle of “one for one” i.e. one question for one answer.

Child witness under 12 years

15. A child under 12 years may only give evidence where the tribunal considers that this is necessary and that the welfare, wellbeing and interests of the child will not be prejudiced by so doing⁵.
16. A person with appropriate skills or experience may facilitate the giving of evidence by a child⁶ in complex cases, for example an independent advocate with specific communication skills, or a registered intermediary.

⁵ rule 43 (references), rule 89 (claims)

⁶ rule 43(2), rule 89(2)

Child's views

17. Parties and the tribunal shall have regard to [PGN 01/2018 *The Views of the child*](#).
18. Where a child gives their views, this is the equivalent of submissions by a party urging a general course of action; it is not evidence.
19. The child's views will be noted by the tribunal and considered as equivalent to the parent/carer's general views.
20. The child's views may be taken by the tribunal in the presence of the parties or while the parties are out of the hearing room. The child's views should normally be taken in the absence of the parties where they agree to this. In exceptional circumstances, where the parties do not agree, and where the tribunal reaches the view that this would be appropriate, the child's evidence may be taken in the parties' absence. The three tribunal members and the case officer must always remain present.
21. Where the parties are absent, the child shall be informed at the outset that their views will be shared with the parties when they return to the hearing.
22. PGN 01/2018 *The Views of the Child*, states:

'Where the child is not a party to the proceedings and a tribunal decides to take the views of the child outwith the presence of the parties, with their consent, the case officer shall remain within the room where the child's views are to be heard for the duration of the view taking session. The proceedings during such a session shall (unless the tribunal considers that good cause exists not to) be audio recorded in the usual way.

The tribunal will usually identify one of the members who will ask the child questions. The legal member will share the child's views with the parties on their return to the hearing'. (paras 24 and 25)

B. Before the hearing

The case conference call

22. Discussions on practical arrangements for the child's attendance at the hearing or their participation in other ways shall be discussed and agreed at the case conference call stage.
23. In some cases these arrangements may require to be very specific in order to meet the needs of the child.

24. The case conference call (CCC) note shall record the practical arrangements, to ensure that the parties and the case officer are clear on what will occur.

Example of a CCC Note

1. I advised that hearing room 2 at the GTC has been booked. Images of hearing room 2 are attached to assist the child. The child will visit hearing room 2 a week before the hearing. Mr A will make the arrangements for this with the case officer. The hearing room has 3 component areas.
2. **An area with a round table with equal height chairs which look the same**, where the three tribunal members, the child, Mr A, Mrs B and a witness will sit during the hearing of evidence. The child's supporter, Ms C, will sit apart from the table and close to the child. The child's mum will attend the hearing and be seated apart from the table in the sofa area. The child's mum will give evidence and will join the table at the appropriate time, for that purpose.
3. **An area with two sofas**, where the child and the tribunal members can sit, if the child would prefer to give her evidence there.
4. **A break out area, with a screen and a beanbag**, where the child can take a break from the hearing, whilst still remaining in the room, with access to fresh water and snacks.
5. **Hearing room 2 has a small room attached to it for 1:1 evidence**, where the child has asked to give her evidence to Ms C, who will have an agreed list of questions, prepared by Mr A and Mrs B, with the approval of the tribunal. During this experience Ms C and I will have a live hearing link. The tribunal members, Mr A, Mrs B and the child's mum will be able to see and hear the child's evidence.
6. The child wishes her own image to be projected on the sensory wall, which will be supplied to the case officer before the hearing.
7. The child will be in the hearing room and seated comfortably on the day of the hearing before the tribunal members arrive.
8. The child will bring a therapeutic pet with her, a cocker spaniel named, Frew.

Visiting the hearing room

20. The child will be given the opportunity to visit the hearing room beforehand. This can take place on the day of the hearing before proceedings begin, or on an earlier date.
21. The arrangements for this shall be decided by the legal member following consultation with the child's representative or parent/carer during the CCC.
22. The legal member shall inform the case officer of the necessary arrangements, using the CCC note for this purpose.
23. Guidance for coming to a tribunal, including the specialist hearing suites at the Glasgow Tribunals Centre (GTC), is available on the Chamber's website. This can be adapted by a party or representative to create a personalised 'social story' for the child. The legal member shall direct the child's representative to this during the case conference call.

C. The hearing

Support for the child

24. If the child is a party s/he may bring a supporter to the hearing⁷. This could be one of the child's parents. Where this occurs, the legal member shall explain the role of the supporter⁸ at the start of the hearing.
28. The child may be supported by an independent advocate, whether a party or not. The tribunal shall have regard to [PGN 03/2018 Independent Advocacy](#).
25. A parent of the child may attend where the child is the party⁹. When a parent attends in this capacity, care shall be taken by the tribunal to avoid the impression of deference to the parent.
26. If the child would like both parents to attend the hearing this is a matter for the legal member to decide at the CCC, taking into account the facts and circumstances of the case. Where there would be no prejudice to either party to have both parents attend, this ought to be permissible. The practical arrangements for the hearing may need to be clearly specified in this case.

⁷ rule 5

⁸ See [Information Note 01/2018 \[revised 2019\] Parties, Witnesses, Representatives and Supporters](#)

⁹ rule 38(7)(b) (references), rule 84(7)(b) (claims)

Example of a CCC Note

1. The child's mum and dad will attend the hearing and be seated apart from the table during most of the course of the hearing.
2. The child's dad will give evidence and will join the hearing table at the appropriate time, for that purpose.

Practicalities at the hearing

27. The legal member shall introduce her/himself to the child in the waiting area before the hearing starts.
28. The child may meet the remainder of the tribunal members before the hearing starts if s/he wishes. The legal member or the case officer will bring the child into the hearing room to meet the other members.
29. The child, whether a party or not, may attend the whole or part of the hearing.
30. The child will be given a notebook and pen at the hearing to make notes or to use as a doodle pad.

Using specialist hearing rooms

31. The Glasgow Tribunals Centre offers bespoke hearing rooms¹⁰, which will eventually be replicated in other areas. These include the following:

1. Autism sensory colour palate
2. Three component hearing room (round table, break out area and soft sofa area)
3. Sensory wall to personal the room with an image/colour of the child's choice
4. The 1:2:1 room
5. Sensory room¹¹ to rest and de-stress

32. These facilities can be used for any hearing, irrespective of the locality of the child.

¹⁰ As does the Inverness Justice Centre

¹¹ A sensory room is not available in Inverness.

Use of the 1-2-1 evidence room

33. The 1-2-1 evidence room will only be used when the child requests this or when the child agrees to its use.

34. The 1-2-1 evidence room offers the following features:

1. The child can give her/his evidence to one person in a small room softly furnished with two armchairs, a rug, coffee table and sensory toys.
2. A one way mirror and recording facilities are in place which allows the tribunal and parties to see and hear the child. A blind is in place to allow the size of the mirror to be reduced should the child prefer.
3. The questioner will usually be an independent advocate familiar to the child.
4. The questioner will have an ear bud, which connects to a mic which the legal member will use to clarify a response or to suspend the process.

35. The legal member will remind the child that they will be observed throughout their time in the 1-2-1 room.

36. The legal member shall explain that proceedings will not normally be interrupted unless there is good reason to do so, for example, where the child is becoming unsettled or upset, or where the answer to a question needs to be teased out further.

Conflict between the child and the parent

37. Care should be taken where it becomes apparent that there is a conflict between the child and the parent who is present at the hearing. The legal member shall intervene when necessary to defuse any rising emotions.

Example of a legal member intervention

“The tribunal needs to know what your mum thinks. Don’t worry if this is different to what you think. It is important that we hear what your mum has to say and it is better if she can do this without being stopped. I promise that you won’t be stopped when you speak to the tribunal.

You can write down notes to make sure you don’t forget anything and I will come back to you after your mum has finished to hear if you want to say anything.”

38. Regular breaks may be helpful to settle any stress or discomfort the child may be experiencing.

Ending the hearing

39. After evidence and submissions have been concluded, the legal member shall explain what happens next.
40. The tribunal can provide an oral decision at the hearing, or, as happens in most cases, it can reserve its decision. The legal member shall explain whichever route is taken and advise how long the tribunal will take to issue its written decision.

D. The decision of the tribunal

41. Where the child is a party, the content of the decision shall be age appropriate to the level of understanding of the child so that they have the opportunity to consider it fully.
42. The decision shall be no more than ten A4 pages.
43. The decision shall comply with the *Judicial Decision Writing Toolkit*.

E. Letter to the child

44. If the child is a party, or the child has played a prominent part in the hearing, the tribunal shall consider whether it is appropriate to write a letter to the child, briefly explaining the decision.
45. The legal member shall consult with the parties before deciding whether to issue a letter. This can be done during a CCC or at the end of the hearing.
46. The legal member shall clarify where the letter should be sent. If the child has an independent advocate it may be helpful to send it to the advocate who will support the child to read the content.
47. The letter shall be issued in the format which is most accessible for the child.
48. The letter will be issued to the respondent/responsible body, unless there is good reason not to do so.
49. The letter to the child does not form part of the decision. The party representatives shall be informed by the legal member accordingly.
50. The letter shall be no more than one and a half sides of A4. The legal member shall consult with the other members on its content.
51. It shall include the following:

- 1. An acknowledgment of the child's input.**

Examples:

“Thank you for making your reference. You told us very clearly what you thought about your application when you attended the hearing.”

“We found your drawings really helpful. They helped us to understand what you think about your school.”

“Thank you for explaining what you thought about the two schools. It was very helpful.”

2. A short statement setting out the decision,

Examples:

“We decided that you should have a co-ordinated support plan (CSP).”

“We decided that Anywhere Council was wrong to refuse your mum’s request that you attend A School and we have told the Council that you should attend A school, starting from 1 September.”

“We decided that you should stay in B school. We did not think that it was a good idea for you to change schools.”

“We decided that you had been unfairly treated and that your exclusion should not have taken place. We have ordered that this be removed from your school record and that you re-start school right away.”

3. A short summary explaining why the tribunal made the decision

Examples:

“We thought that you needed support from the CAMHS, SLT and the Genius Project to help you to do well in school. This support needs be organised and you need to know who, when and how you will be helped. The CSP will do this.”

“We thought that A school would be better suited to meet your additional support needs. We didn’t think B school would help you as much.”

4. A short ending.

Example:

“We wish you well in your school education. You told us you want to be a teacher when you leave school and we hope you are able to do that.”

May Dunsmuir
President
December 2019

Suite of Guidance

This guidance note is part of a suite of guidance notes on the child. The others include:

[PGN 01 2018 The Views of the Child](#)

[PGN 02 2018 Capacity and Wellbeing](#)

[PGN 01 2019 Asking the Child Questions](#)