



## GUIDANCE TO TRIBUNAL MEMBERS No 01/2019

### ASKING THE CHILD QUESTIONS

#### *Purpose of this Guidance*

1. The purpose of this guidance is to outline considerations to be made when asking a child questions during proceedings and to give all Tribunal members access to a model of the hierarchy of question types.

#### *Meanings*

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

child	the word 'child' is used for ease; for the purpose of this guidance, this includes a child of any age up to 15 years <sup>1</sup> and a young person aged 16 years and over who remains in school education
the Tribunal	the Additional Support Needs jurisdiction of 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 specialist members, with expertise in education, social work or health. Occasionally a tribunal will be made up of one legal member, sitting alone
PGN 01/2018	President's Guidance to Tribunal Members No 01/2018 <i>The Views of the Child</i>
rule(s)	all rules are from The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)
7 Golden Rules	7 Golden Rules for Participation, Children and Young People's Commissioner, Scotland

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<sup>1</sup> s. 29(1) 2004 Act and s.135(1) Education (Scotland) Act 1980

### Context

3. Where a parent of a child makes a reference<sup>2</sup> or a claim<sup>3</sup> the Tribunal is required to seek the views of that child.
4. President's Guidance No. 01/2018 states that:

*A tribunal shall take all necessary steps to ensure that the views of the child are obtained in a way appropriate to the age, maturity, understanding, welfare, choice and needs of the child.* (para 5)
5. This is underpinned by the 7 Golden Rules. In particular, the following Golden Rules apply:

Rule 2: *A chance to be involved*  
Rule 5: *Support me*  
Rule 6: *Work together*

### Asking a child questions

6. It is the responsibility of a tribunal when deciding on procedure, to agree the type of questions to be asked and who will ask these.

(PGN 01/2018 paras 25 and 26)
7. The Young Ambassadors for Inclusion have told us that "*being prepared for questions*" and "*having someone to explain questions*" works well and that "*misunderstanding*" does not work well.

(PGN 01/2018 Appendix A, which is appended to this guidance)
8. It is the responsibility of all members to use questions at a level the child can understand.
9. It is helpful for members to be mindful of a number of strategies which support children to understand questions and therefore fully and meaningfully participate.
10. These strategies are summarised below and should be referred to alongside the Blank Model of Questions<sup>4</sup> outlined here.

### Blank model of questions

11. There are four levels of questions, starting with the most basic and becoming increasingly complex to understand and reply to.
12. If members are unsure of the level of understanding of the child, start with Level 1 questions.

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<sup>2</sup> rule 44

<sup>3</sup> rule 90

<sup>4</sup> Blank, Rose and Berlin (1978) and Elks and McLachlan (2008)

## *Blank model of questions*

### **1. Level One**

The child matches his/her immediate perceptions to language. These are questions about what the child can see and hear or what he/she saw or did in the immediate past.

#### **Examples:**

“Who is here with you today?”

“Is this a photograph of your school?” (showing photograph).

### **2. Level Two**

The child needs to focus on a situation in more detail. Questions at this level can include concrete and abstract concepts.

#### **Examples:**

“Who is in your class at school?”

“What do you need help with in school?”

“What do you like about school?”

### **3. Level Three**

The child is required to reorder perception beyond the here and now and to make links. A child or young person who is able to understand questions at Level 3 is able to describe a sequence of events and to make deductions about a situation.

#### **Examples:**

“How do you feel when...?”

“Tell me what happens when...”

“Tell me something that might make school better for you.”

### **4. Level Four**

A child who understands questions at this level is able to analyse, explain and reason. This most complex level includes ‘why?’ questions.

#### **Examples:**

“What will happen if....?”

“How are the two schools different?”

“Which school do you prefer?” (subsequent question would be “why?”)

“What could teachers do to make things better for you?”

“Why do you think you should have a CSP?”

*Considerations and strategies for questioning*

13. The tribunal will have information on the child's strengths and needs to support the level of language to be used.
14. Give the child plenty of time to respond to a question.
15. Ensure you have the child's attention before asking a question.
16. Repeat questions if needed. Do not re-word your original question immediately. It is more helpful to repeat it, as this reduces the processing load on the child.
17. Keep questions directed to the child as short and simple as possible.
18. Do not ask the child multiple questions. Always wait for the child to process and answer one question before moving on to another.
19. Be mindful of the reason for your questions. It is likely that you will start with some to which the tribunal already know the answer, such as those at level 1.
20. Regularly ask the child if they are able to understand what is being asked and ask whoever is with them. Monitor how the child responds to checking understanding to identify if the child is becoming irritated.
21. Look for signs that the child has not understood a question. Obvious ones are where the child gives an answer that is not related to the question, or the child says that she/he does not understand. More subtle signs include withdrawal of eye contact, an increase in fidgeting and a change in physical posture.
22. Be aware that the child is likely to be in a heightened state of anxiety in the tribunal setting. This can make listening, maintaining focus, processing language and putting together replies difficult. A slow pace and plenty of time for the child to think are important.

**May Dunsmuir**  
**President**  
**July 2019**

## Appendix A

### Inclusion Ambassadors

In 2015, Education Scotland established Inclusion Ambassadors in local authorities across Scotland. These young people represent their authority in a range of events and discussions on inclusion. The President met with the Inclusion Ambassadors in October 2017, to ask them about the best way to hear their views in our proceedings. Their responses are set out below.

*What works well/ doesn't work when seeking the views of young people with additional support needs?*

<b>What works?/Good</b>	<b>What doesn't/Bad</b>
Friendly speaking, less formal and comfortable sitting, colourful	Don't like to talk to people unknown
Ask for views/receive information before meetings	People patronising
Options: giving of views before the meeting	Formal speaking, boring colour
Prefer talking to people they know	Timing
Photos, videos or visiting the room beforehand	Too much talk
Good advice-easy to follow	Fair settings
Do not have to attend the whole time-can I attend as much as I want to	Not really being included - adults can take over the meeting
Choice	Do not always understand why we are meeting
It is important we are able to attend	Only attend the last 10 minutes
If our views are written down or captured, if we don't want to be there at the meeting	Feel pressurised to attend
Time out space	Mixed experience of views gathered before the meeting

<b>What works?/Good</b>	<b>What doesn't/Bad</b>
Feel like we are treated like an age appropriate person	The rooms we meet in are not always good - not child centred or friendly
When kids get to get their own point across	When there is a lot of talking
Knowing what is going to happen - preparation for questions	Too many people there
1 to 1 interview	Adults don't always listen
When confidence is built up	Misunderstanding
Understanding views	
Knowing who is going to be there	
Someone who can help explain the questions	
If someone could come with you to meetings	
Tranquillity	
Staff try and support us	