



GUIDANCE TO TRIBUNAL MEMBERS No 03/2018
[Revised May 2026]

INDEPENDENT ADVOCACY

Purpose of this Guidance

1. The purpose of this Guidance is to clarify the role of independent advocacy in the Tribunal process.
2. The *Direction to Tribunal Members No 05/2010: the views of the child* is revoked.
3. For the purpose of this Guidance the term ‘child’, means everyone below the age of eighteen years, consistent with Article 1 of the United Nations Convention on the Rights of the Child (**UNCRC**).
4. There may be occasions where an application is made to this Tribunal for someone who is 18 years or above who remains in school education. This Guidance applies equally to those who fall within this category.
5. This Guidance is intended to assist Tribunal judiciary to act in a way which is compatible with the Articles of the UNCRC, consistent with section 6 of the United Nations Rights of the Child (Incorporation)(Scotland)(Act) 2024 (**the 2024 Act**).

UNCRC, Article 12

6. Article 12 of the UNCRC states:
 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, rules 44 (reference) and 90 (claim)

7. Where a parent of a child makes a reference or claim, a tribunal is obliged to seek the views of that child.

Education (Additional Support for Learning)(Scotland) Act 2004, section 12

8. Section 12 of the 2004 Act places a duty on the education authority to seek and take account of the views of the child for specific purposes (unless the authority is satisfied that the child lacks capacity to express a view).
9. Where the education authority forms the opinion that the child lacks capacity to state their views, the legal member shall, at the case management hearing, ask the education authority to specify their reasons for this opinion. The legal member shall also make enquiries with the education authority and the appellant or claimant on the range and appropriateness of communication methods potentially available for the taking of views, bearing in mind the abilities and needs of the child.

Independent advocacy

10. For the purpose of tribunal proceedings, an independent advocate is someone who is skilled and employed in advocacy who is independent of both parties.
11. An independent advocate will support the child to express their views, opinions and feelings. Independent advocates may write statements which set out the views of the child. The independent advocate should not form or express an opinion of their own.
12. Independent advocates may support the child or young person before, during and after a tribunal.
13. Children need to be confident that their views are being heard and taken seriously. They need to know what will happen with their views. ¹ The independent advocate will engage with the child in a respectful manner and explain that the report they will prepare is for the Tribunal. Each individual tribunal will make reference to the report and how this has assisted them in their decision making.
14. It is important that the child is given enough time to engage with the independent advocate and to share their views without being interrupted. The independent advocate needs sufficient time to listen to the child, so that they feel heard and important. ²
15. Appendix A shows the list of skills expected of a good advocate. This was prepared by the *My Rights, My Say* Young Advisors.

¹ This is consistent with Article 12, General Comment 12 and the Lundy Model in terms of 'influence'.

² The *My Rights, My Say* Young Advisors emphasise the importance of this. They say it is important that children are spoken to with the same respect that is shown to adults. Patience is an important part of this. "Adults should do more than telling you what to do." The Young Advisors suggest that adults need education about children's rights. (Young Advisors, 29 April 2026)

Non-instructed or Non-directed Advocacy

16. Where a child lacks the capacity to form or express a view, the legal member may instruct or accept a non-instructed or non-directed ³ advocacy report.
17. Before producing such a report, the independent advocate will first consider whether the child will be able to express their views either fully or partly through the use of communication aids such as Talking Mats, assistive technology, or other person-centred tools.
18. The independent advocate will presume capacity, consistent with UNCRC General Comment 12. ⁴ The non-instructed or non-directed approach will only be used where other attempts of instructed, directed or partly/semi-directed views gathering has been exhausted.
19. For the purpose of the report, the independent advocate will also speak with key people in the child's life, including the child's parent(s) and the school. Observation of the child in different settings can be key to understanding what they want or feel about their situation. This will often include observations in the child's education setting or, if not applicable, in the child's home or at another location where the child feels safe and comfortable.
20. The independent advocate will often use this information to present questions for the tribunal to consider, using the *SHANARRI* ⁵ wellbeing indicators. ⁶

Instructing a report from an independent advocate

21. A legal member or a tribunal may instruct a report from an independent advocate, setting out the child's views in relation to the matters which are the subject of the reference, claim or freestanding UNCRC application. The legal member shall consider this at the case management hearing stage.
22. The legal member or tribunal shall, when instructing a report, set this out in the form of a direction, specifying the matters which the independent advocate should explore with the child and directing when the report shall be lodged with the Tribunal.
23. The case officer will then send the instruction to one of agencies approved for this purpose. Where the child is aged between 12 and 15 years, this will be the national children's agency, *My Rights, My Say*. ⁷

³ The term 'non-directed advocacy' is used by the Children's Views Service, which is part of *My Rights, My Say*.

⁴ General Comment No.12 (2009) The Right of the child to be heard, paragraph 20: '.....States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.'

⁵ Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Involved.

⁶ See The Scottish Independent Advocacy Alliance (SIAA), *Non-instructed Advocacy Guidelines*, 2009 www.siaa.org.uk/information-hub/non-instructed-advocacy-guidelines/ Independent advocacy groups who are members of the SIAA will follow the guidance from the SIAA on non-instructed advocacy.

⁷ *My Rights, My Say* may also be instructed to prepare a report for children who fall outside of this age range. *My Rights, My Say* is a collaboration of the following agencies: Partners in Advocacy, Children

24. An independent advocate will ordinarily need two months to engage with the child and to prepare and lodge the report. In exceptional circumstances, where it is not possible to provide two months, the legal member shall provide a short explanation to the independent advocate of the urgency in the case.
25. The report should preferably be lodged a week in advance of the date the witness statements are due, so that parties have time to update their witness statements, if necessary.
26. The report will form part of the tribunal papers and be placed in the 'T' section of the bundle. Font sizing technology should be able to be applied to the report, for readers who require to view it in a larger font.

If the child already has an advocate

27. Where a child is already engaging with an independent advocate the legal member may consider instructing the same advocate to produce the report, provided the advocate is not contracted by one of the parties, as is the case in the following example.

Example 1

Ash is enrolled in an independent special school. They are supported in expressing their views by an advocate who is contracted by the school to provide regular advocacy to their pupils.

28. Where the advocate is contracted by one of the parties (as in example 1):
 - a) the legal member shall instruct another advocate and make them aware of the advocacy arrangements which already exist.
 - b) the parent who has made the reference, claim or freestanding UNCRC application may lodge a report from the child's current advocate to form part of their evidence. Where this arises, the report will be placed in the 'A' or 'C' section of the bundle. It then becomes a matter for the tribunal to determine the weight to be attached to this.

Questions for the independent advocate

29. The instruction of an independent advocacy report is not the same as the 'agreed list of questions' used in a hearing.⁸ The independent advocate should not be overburdened with too many questions. Ideally, questions should be limited to no more than five. A description of the subject areas for the independent advocate to explore with the child works well, as in Example 2.

in Scotland, Cairn Legal and Enquire. *My Rights, My Say* also has Young Advisors – a group of children with experience of education as learners with additional support needs.

⁸ See PGN 01/2021, *The Child, Young Person and the Tribunal*.

Example 2

1. What is school like?
2. What works well and what could be better?
3. What helps the child to feel comfortable and included at school and what causes or adds to any worry or distress?
4. What relationships matter in school (including peers, teachers and support staff)?
5. What would the child like the tribunal to know about them?

30. Alternatively, the legal member may instruct that the Tribunal's own 'My Voice' form be used as the basis for the questions. A copy of this is attached at Appendix B.

Child's views on remedies, 2024 Act, section 9

31. The tribunal has an obligation to consider the views of the child on the remedies sought in any freestanding UNCRC application or in any reference or claim where the UNCRC is relied upon, unless the tribunal is satisfied that the child is not capable of forming a view.⁹

32. Where an independent advocacy report is instructed (provided this is not a non-instructed report) the legal member may include a question on the remedies. The following example illustrates how this should be set out.

Example 3

Two remedies are sought in this claim, and these are: a) that the education authority prepare a written apology for excluding the child from school; and b) that the education authority is ordered to allow the child to return to school immediately and that the record of expulsion be removed from the child's school record. The independent advocate shall ask the child for their views on these two remedies.

33. The child may have a view on a different remedy to the one(s) sought. Where this happens, the independent advocate may provide details of this in the report.

The independent advocate and the hearing

34. A child who attends a hearing may be supported by their independent advocate to express their views.

35. A child who does not attend a hearing may ask for their independent advocate to attend for the purpose of expressing their views.

36. Where an independent advocate is permitted to attend the tribunal hearing (and the child is not present) they are entitled to present the views of the child and to

⁹ 2024 Act, section 9(2).

remain in the hearing to allow them to report back to the child. The independent advocate may not ask questions or submit any views beyond those of the child.

May Dunsmuir
Chamber President
January 2018
[revised May 2026]

Appendix A A good advocate



My Rights, My Say Young Advisors

A good advocate

Kind

Friendly

Brave

Determined

Nice

Prepared

Understanding

Listens

Treats me with respect

Knows I have the right to be heard

Helps make change happen

Asks questions

Keeps me updated

Working together

The My Rights, My Say Young Advisors are a group of young people with additional support needs aged 12-21 who share their views about support at school. Their work shapes the My Rights, My Say service and aims to ensure that all children in Scotland are heard in decisions about their education.

Find out more at myrightsmysay.scot

This poster was created in collaboration with Partners in Advocacy, a My Rights, My Say partner.

**Partners in
Advocacy**

My Voice

An application has been made to the Additional Support Needs Tribunal (we call this **the Tribunal** in this form). The Tribunal will make a decision about what happens at school. You can find out more about the Tribunal here: www.needstolearn.scot

You are the most important person in the case.

The tribunal wants to know what you think. There are lots of different ways you can tell the tribunal what you think. You can use this form to write what you think. You can ask someone to help you to fill out the form.

You can use different ways to speak to us including writing, drawing, speaking in person or sending a video message. You can speak to the Tribunal about this.

This form is available in larger font and in other languages. If you don't have access to the internet a copy of the relevant information can be posted to you.

If you have any questions or need more information to complete this form, please call us on **0141 302 5860**.

Are you in the
right place?





Your details

If you complete the form yourself, you can give us your name and details here.

My name:

Date the form is being filled out:

Date of my tribunal hearing (if known):

My case reference number:

If someone has helped you to complete the form, they should give us their name here and their relationship to you.

Name of person filling in the form:

Relationship to child:



The tribunal hearing

A **hearing** is a legal meeting where three independent tribunal members listen to evidence from witnesses and hear legal arguments before it comes to a decision – a tribunal hearing **does not take place in a court**.

Do you know why a tribunal hearing is happening?

If you would you like more information about the hearing, tell us what you would like to know.



Your school education

Do you like your school? Yes No I don't know

If you answered 'yes', tell us what are the best things about your school.

If you answered 'no', tell us why you don't like it.

Continued on the next page >

Do you want anything to change at school? Yes No I don't know

If you answered, 'yes', what would you like to change at school?

Do you have friends at school? Yes No I don't know

Is having friends at school important to you?

Tell us about the help you get at school.

Continued on the next page >

Do you think you get enough help? Yes No I don't know

If you answered 'no', tell us about what kind of help you would like?

Are you worried about anything to do with your school?

Yes No I don't know

If you answered 'yes', tell us about this.

If you want to tell the tribunal anything else, please add it here.



What to expect

A tribunal

A tribunal is made up of 3 adults, who have special knowledge and experience of children who need extra help at school. One of the 3 adults is a lawyer and she or he will chair the hearing. They are called the tribunal members.

The hearing

You can come to your hearing. Some hearings last for more than one day – you don't have to stay in the hearing all the time unless you want to. You can come along at the start, the middle or at the end.



You can tell the tribunal members what you think. There are lots of different ways you can do this. We will do our best to make sure you feel comfortable.

You can bring an independent advocate with you, if you have one. They can speak on your behalf and help you when you are at the hearing.

If it would help you to have a pet with you at the hearing, you can speak to the Tribunal about this.

You can watch our animation videos to learn more about the hearing using this link: <https://healthandeducationchamber.scot/needstolearn/animations>



A bit more information

Sensory hearings

Our hearings are legal proceedings, but they don't take place in a court. We use rooms that have been designed by children to be more relaxing and less stressful. The tribunal members sit at a round table. You can sit here too, or you can choose to sit on a sofa.

Before the hearing you wait in a waiting room with others you have brought with you. The education authority and the people they bring with them do not sit in your waiting room. There are sensory toys in the waiting and hearing room for you to fidget with or to play with. If you need a break, there is a break-out space in the hearing room and a sensory room near to the hearing room, if you feel you need a quieter space to settle.

You can find out more about our sensory hearings using this link:

<https://healthandeducationchamber.scot/additional-support-needs/publications/291>

You as a party

When you are the one who has sent the application to the Tribunal you are called a 'party'. You have a right to be at the hearing, to ask questions and to speak at the hearing. **You have the exact same rights as an adult party.**

You can bring your representative if you have one (who might be a lawyer) and you can have another person there to support you at the hearing too (called a supporter). This could be an adult you trust or someone else like an independent advocate.

More information:

If you want to know more before the hearing, you can go to our website www.needstolearn.scot or you can phone the case officer on 0141 302 5860.

You can also contact **My Rights, My Say** who are the national children's agency, on 0345 123 2303 or on their website: <https://myrightsmysay.scot/>