



GUIDANCE TO MEMBERS No 03/2018

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 now revoked.

UNCRC Article 12

3. 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.

Section 12 of the 2004 Act

4. Section 12(2)(b)(i) of the 2004 Act places a duty on the education authority to seek and take account of the views of the child or young person (unless the authority are satisfied that the child or young person lacks capacity to express a view).
5. Except where there are good reasons for not doing so, where the education authority, in execution of its section 12(2)(b)(i) duty, expresses the opinion that the child or young person lacks capacity to state his/her views to the tribunal, the legal member should, at the case conference call, seek from the education authority full reasons for this opinion. In doing so, the legal member should make enquiries with the education authority (and the appellant/claimant, where appropriate) as to the range and appropriateness of communication methods potentially available for the taking of views, bearing in mind the abilities and needs of the child or young person.

Independent advocacy

6. An independent advocate will support the child or young person to express their views, opinions and feelings. Independent advocates may write statements which set out the views of the child or young person. The independent advocate should not form or express an opinion of his or her own.
7. Independent advocates may support the child or young person before, during and after a tribunal.

Instructing a report from an independent advocate

8. A legal member or a tribunal may instruct a report from an independent advocate, setting out the child or young person's views in relation to the matters which are the subject of the reference or claim. Unless good reason exists, the legal member should, at the case conference call, consider if and how the views of the child or young person will be considered.
9. The legal member or tribunal shall, when instructing such a report, set this out in the form of a rule 15 direction, specifying the matters which the independent advocate should explore with the child or young person and directing when the report should be lodged with the Tribunal.
10. The report will form part of the tribunal papers.

The independent advocate and the tribunal

11. A child or a young person may engage with an independent advocate for a range of reasons. Where this relates to a tribunal hearing and the child or young person wishes to attend the hearing, he or she may find it of assistance to have their independent advocate present to support them to express their views.
12. Where a child or young person cannot or does not wish to attend the hearing, they may wish their independent advocate to attend for the purpose of expressing their views.

The independent advocate in the hearing

13. Where an independent advocate is permitted to attend the tribunal hearing (and the child or young person is not present) they are entitled to present the views of the child or young person and to remain through the hearing to allow them to report back to the child or young person. The independent advocate may not ask questions or submit any views beyond those of the child or young person.

May Dunsmuir
President
January 2018