



Additional Support Needs

GUIDANCE TO MEMBERS No 06/2018
[REVISION 2: OCTOBER 2021]

CASE MANAGEMENT CALL

Purpose of this Guidance

1. This guidance is to clarify the purpose of the pre-hearing case management call (formerly known as the case conference call) and the procedures to be employed by the legal member.

Terminology

2. In this Guidance, 'the 2018 Rules' and any rule references are references to The First-tier Tribunal for Scotland Health and Education Rules of Procedure 2018.
3. In this Guidance 'the Tribunal' refers to the Additional Support Needs jurisdiction of the Health and Education Chamber of the First-tier Tribunal for Scotland.

Judicial case management

4. The case management call is a process of judicial case management which is employed by the legal member before the hearing. Ordinary members are not allocated to the case until the hearing date has been fixed. Ordinary members are not involved in the case management call process, unless exceptional circumstances exist.

Exceptional circumstances

5. Where the legal member forms the view that there are exceptional circumstances and it is necessary to involve an ordinary member in the case management call, the legal member shall make a written request to the President, setting out the reasons for this request. The President will consider and decide each request on its merits, taking account of the exceptional circumstances that exist.

Fixing a date for the case management call

6. After the close of the case statement period and once the tribunal papers have been issued, the caseworker will contact the legal member and parties (or their representatives) to agree a date and time for the case management call, unless the legal member has instructed an earlier date for this.
7. Some legal members may wish to hold more than one case management call. When a further case management call is to be fixed, the date and time for this

shall be agreed at the case management call by the legal member and the parties (or their representatives). The legal member shall then inform the caseworker within 24 hours of the outcome of each case management call.

Attendance at the case management call

8. Representatives may have the party present during the call for the purpose of taking instructions, but communication will be restricted to one person for each party.

Process

9. The case management call is usually conducted using the *BT Meet Me* dial-in process. The caseworker will issue the legal member and parties with the dial-in details prior to the date of the case management call.
10. Occasionally the case management call may be conducted using the remote hearings video link system. Where this is preferable or necessary, the caseworker shall be informed, to make the necessary arrangements.

Matters to be addressed

11. The matters which the case management call may address include those specified in the draft checklist at **Appendix A**.

Joint minutes of agreed facts

12. Where both parties are legally represented, the legal member is encouraged to direct that a joint minute of agreed facts be lodged in advance of the hearing. This will focus the minds of the parties on the matters which remain in dispute. Where parties wish to identify the areas of law which are not in dispute they may do so, using the heading 'Agreed law'.
13. This will assist the tribunal in their pre-hearing preparations when deciding how the hearing should be conducted and what enquiries the tribunal may wish to make.

Interlocutors

(An order made containing a decision that is not the final decision)

14. Where interlocutors are issued, these should be completed by the legal member on the day of the case management call and issued to the case officer, within 24 hours, for onward transmission to the parties. Interlocutors will then be placed in the 'T' section of the bundle of productions.

Case management call note

15. A brief note on the outcome of the case management call should be prepared by the legal member. A template for this purpose is set out at **Appendix B**. This is particularly helpful where there are no interlocutors arising from the case management call. The note should be sent to the caseworker, within 24 hours of the case management call, for transmission to parties and the tribunal members in

advance of the hearing. This will then be placed in the 'T' section of the bundle of productions.


May Dunsmuir

President

REVISION 1: JANUARY 2021

REVISION 2: OCTOBER 2021

Case management call checklist

Subject matter	
Introduction	
Identify who has joined the case management call.	
Questions on competency.	
Preliminary and procedural matters.	
Child/Young Person	
Arrangements for hearing from the child or young person (if appropriate).	
Direct that an independent advocate obtain the views of the child or young person (if necessary), see PGN 03 2018 Independent advocacy .	
Address communication barriers, e.g. the need for translation, BSL, talking mats, etc.	
Will a social story be used? See Appendix C	
Witnesses	
Who will lead in questioning the witnesses (in practice, this will ordinarily be the education authority/responsible body)?	
The order in which witnesses will be heard.	
The estimated time at which witnesses should be called to attend the hearing venue (or be available on the day of the remote hearing).	
Whether evidence may be taken by telephone or other means at the hearing ¹ . Evidence by video link (at physical hearings) can only be heard using secure SCTS systems, which <u>excludes</u> the use of Skype and similar programmes. Cisco WebEx is the secure platform for remote hearings.	
Direct that a written summary/biography of witnesses be lodged and set the timescale for this, setting out the witnesses' credentials/qualifications.	
Ensure that no party, representative or witness has any child care or other commitments that the tribunal should be aware of which will impact on the hearing.	
Requests for additional witnesses. ²	
Joint minutes	
Direct a joint minute of agreed facts (and law, where appropriate) in writing, which reduces the need for oral evidence (see Joint minutes of agreement above).	
In some cases, particularly where there is an unrepresented appellant/claimant, it may be helpful to consider a joint minute of the areas	

¹ The 2018 Rules, rule 40 (3) for references and rule 86 (3) for claims.

² The 2018 Rules, rule 33(6) limits the number of witnesses to two in references and Rule 85(2) limits the number of witnesses to five in claims.

which are in dispute.	
Where a joint minute is directed, the date to lodge with the Tribunal and parties.	
Late evidence	
Requests for admissibility of late evidence and the reasons for this; and the views of the other party.	
Supporters	
Does either party have a supporter? ³	
Documentary evidence	
Review of productions and any absent evidence.	
Directions for reports etc. to be lodged and the date to lodge with the Tribunal.	
Check compliance with the Guidance on Documentary Evidence (page limits etc.)	
Authorities	
Specify the date when authorities are to be lodged, confirming three copies to be lodged for the Tribunal members and one for the other party.	
Written submissions	
Specify if written submissions are to be lodged, confirming when draft submissions are to be exchanged between the parties and the date when final submissions will be lodged with the Tribunal.	
Duration, date and time for the hearing and any further case management call	
Consider the type of hearing to be scheduled (remote or physical)? See Guidance on Remote Hearings and COVID-19 .	
Explore how long the hearing is likely to last ⁴ .	
Fix a date and time for a further case management call where one is necessary.	
Fix a date or dates for the hearing, confirming the start time (ordinarily 10.00 am) and end time (ordinarily around 4.00pm).	

³ The 2018 Rules, rule 38 (7)(c) for references and rule 84(7)(c) for claims.

⁴ CSP hearings are usually fixed for a day and placing requests for 2 days, unless there are particular complexities in the case. Claims can be fixed for up to 2 days.

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

Case Management Call Note

Reference No: **FTS/HEC/AX/XX/XXXX**

Appellant/Claimant: ** (for **name of child**)

Respondent/Responsible Body: ** (“the education authority”)

Date of case management call: **

The following parties or their representatives attended at a case management call on the above date/s:

1. **
2. **

The following matters were discussed and agreed:

1. **
2. **

I thereafter issued the following interlocutors / made the following directions:

1. **
2. **

**

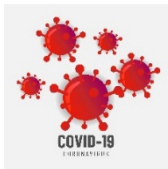
Legal member
**day/month/year

Appendix C Style Social Story



My tribunal hearing

My tribunal hearing will take place on **Monday 5 April and Tuesday 6 April 2021**.



Because of the virus, the tribunal hearing will be *virtual* with everyone using computers to communicate and see each other.



- During the tribunal hearing, only one person speaks at a time. Everyone else listens to what they have to say.
- The person giving evidence is called the witness. Other people will take it in turns to ask that person questions.
- I can't interrupt even if I don't agree with what they are saying. The reason for this is so that everyone has their say.



- After the other witnesses have spoken, on day 2, I will get my chance to be the witness and say what I think and feel and everyone will concentrate and listen to me.



- When it's my turn to be the witness, I will be asked some questions. The tribunal members just want to know what I think and feel. The questions are not meant to be hard or to trick me.
- Throughout the day there will be several breaks. The hearing will stop no later than 4 o'clock each day.



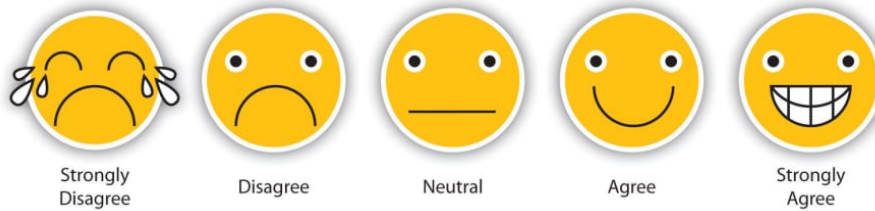
It's important for me to remember:



- The people at the tribunal hearing won't be smiling a lot.
- This doesn't mean they are angry, annoyed or unfriendly. It means they are concentrating and listening.
- The people won't be looking at the screen all the time. They will be looking down a lot of the time.
- This doesn't mean they aren't concentrating or listening. It is because they are writing down notes so that they remember everything clearly afterwards.



- I will hear a lot of things being said about me and my education. I will probably agree with a lot of it. The witnesses might also say things I disagree with. They might say things that annoy me or upset me.



Remember... I can't interrupt at that point but I know I will get my chance to have my say and put across my point of view later on.

- I can ask for a break. My supporter will be with me to help.
- I can attend my tribunal hearing without feeling too stressed now that I know what it will be like.

