



INFORMATION NOTE No 01/2018

[Revised August 2019]

FOR PARTIES, REPRESENTATIVES, WITNESSES AND SUPPORTERS

Purpose of this Information Note

1. This information note is to assist those who attend an Additional Support Needs tribunal hearing to understand what the proceedings will be likely to involve.

Parties

2. Where a reference is made under the *Education (Additional Support for Learning) (Scotland) Act 2004*, a 'party' means either the **appellant** (the person who makes the application to the tribunal) or the **education authority** (also referred to as 'the respondent'). The education authority is responsible for providing school education to the child or young person.
3. Where a claim is made under the *Equality Act 2010*, a 'party' means the claimant (the person who makes the application to the tribunal) or responsible body. The responsible body is either the education authority, the grant-aided or independent school.
4. A child (up to the age of 15 years) or young person (16 years and above and still receiving school education) can make an application to the tribunal and become a party in certain types of cases.
5. Parties and their representatives will normally remain in the hearing room for the whole hearing but the hearing process is flexible. In some cases the child, young person or parent may wish to leave the hearing room for a period while the process continues during their absence.

The child or young person

6. The child or young person (if not a party) may be present for some or all of the proceedings and may give their own evidence or present their own views to the tribunal or ask that these be given by someone else.
7. The child or young person may be supported during the hearing by their independent advocate.

8. Where the child or young person is a party, they can have a supporter as well as their independent advocate with them during the hearing (see section on supporters below).

Witnesses

9. In references each party can bring up to 2 witnesses.
10. In claims each party can bring up to 5 witnesses.

Lay and skilled witnesses

11. There are two types of witnesses: lay and skilled (expert).
12. A lay witness simply gives an account of an event(s) which is relevant to the issues in the case. A skilled witness may do that too, but will also give an opinion(s) based on their professional knowledge.
13. All witnesses must be open and honest in giving evidence and should avoid speculation.
14. A skilled witness must, in addition, assist the tribunal by providing independent, unbiased opinions, even where that witness is employed by one of the parties.

Oral and written evidence

15. A witness can give oral (verbal) evidence by attending the hearing in person or by using another means of communication.
16. A witness may be asked to provide a written statement in addition to (or instead of) attending to give oral evidence.
17. In certain circumstances, an additional witness or witnesses may be permitted by the tribunal, where this is considered to be essential.
18. It may be possible for witnesses to give evidence by telephone conference call or video link, if there are difficulties in attending in person. A party or representative should request this as far in advance of the hearing as possible by contacting the case officer who will forward the request to the legal member to decide.

The order of witnesses

19. The education authority/responsible body's witnesses will normally be heard first at the hearing.
20. The order of witnesses will have been agreed with the legal member in advance of the hearing so that parties can give their witnesses a better estimate of when their evidence is likely to be heard; however, it can be difficult to estimate how long each witness will take on the day of the hearing.

21. Witnesses will only be admitted to the hearing room for the purpose of giving their evidence and will be asked to leave once their evidence has been heard. An exception to this is where there is a skilled (expert) witness. They may be permitted to remain to hear all the evidence of the party who requests permission for them to do so.
22. A separate waiting room is available for the witnesses for each party. Witnesses may have to wait some time before giving evidence and may wish to bring a book to read or something to do to help pass this time.
23. A witness may be taken out of turn if there are pressing reasons. Please let the case officer know if this is the situation and the legal member will be consulted about how to accommodate this.
24. Where possible, the case officer will keep witnesses informed of the likely time when they will give evidence. If their home or workplace is very near the hearing venue, witnesses may arrange with the party or representative that they will be telephoned shortly before they are due to give evidence, to minimise inconvenience.

Giving evidence

25. When entering the hearing room, the case officer will direct the witness where to sit and the legal member will ask the witness to state their name. The legal member will explain how questions will be asked.
26. It is helpful to remember that witnesses should direct their answers to the tribunal.
27. Usually the party who called the witness will ask the witness questions first. The other party will then have an opportunity to question the witness. Where a party is represented, their representative will ask the questions. The tribunal may also have questions for the witness.
28. Professionals who give evidence may be assisted by taking their case file with them to the hearing. However, a witness may not, during oral evidence, consult with any notes or papers which they bring with them, unless the tribunal gives its permission.
29. Where a break is taken while a witness is giving oral evidence, the witness must not discuss the evidence given, or likely to be given, with anyone, including any representative.
30. Where the person giving evidence is doing so as a professional person, the tribunal will wish to know their qualifications, background and experience. A brief note or CV of the professional qualifications can be lodged with the tribunal before the hearing or at the hearing. Alternatively, this information may be supplied at the start of a written witness statement.

31. Some witnesses may be asked to refer to documents which form part of the case papers. A folder of the case papers will be provided at the hearing. The person questioning will advise the witness which page number to turn to.
32. If the witness is the author of a document which is part of the tribunal papers, that witness should refresh their memory about the terms of that document before giving evidence.
33. The legal member will take a written note of the evidence and witnesses may be asked to stop or to speak more slowly so that the legal member can complete accurate notes.
34. Tribunal proceedings are normally digitally recorded. A copy of the recording is only issued to a party following a written application to the President, setting out the reasons for the request, and at the discretion of the President. The recording remains with the file and is destroyed after 6 months.

Dignity and mutual respect

35. The tribunal will expect proceedings to be conducted in an atmosphere of dignity and mutual respect. The legal member will ensure that any questions are not unreasonable, hostile or inappropriate. Representatives may also object to certain questions being asked. It may be necessary to press witnesses on certain points of importance or to revisit aspects of evidence to understand inconsistencies. This is part of the process of ensuring a fair hearing.

Cited to attend

36. If a person has been *cited* to attend (has received a formal written witness citation) the hearing as a witness they must do so; failure to attend can lead to criminal proceedings.
37. Where a witness has not been cited and is attending by agreement, they should attend the hearing venue on the day and time notified.

Supporters

38. A party who is an individual may be accompanied at a hearing by another person who will act as a supporter.
39. A supporter may only be present at the hearing where there is a party to support.
40. A supporter will normally sit to the rear of the party being supported and not at the hearing table.
41. Where a party is represented, the role of the supporter is to support the party and not to assist the representative.

42. A supporter is not a:

- party
- representative
- witness
- person providing necessary assistance to a person entitled to attend a hearing (such as an interpreter or nursing assistant)

43. A supporter has no right to address the tribunal.

44. A supporter may assist the party by:

- quietly speaking to them about relevant tribunal matters
- providing moral support
- helping to manage tribunal papers
- taking notes of the proceedings

45. A party may disclose any document or communicate any information about the proceedings to their supporter.

46. Where a document or information is disclosed, the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

47. It is a matter for the tribunal to determine if the person attending as a supporter is properly attending in that role, and if the tribunal is not satisfied about this then that person may be asked to leave the hearing.

Education Authority/Responsible Body

48. The education authority/responsible body may have any person they chose to be present as the person instructing their representative.

May Dunsmuir

President

First issued January 2018

Revised August 2019