



**INFORMATION NOTE
No 01/2018**

**FOR PARTIES, REPRESENTATIVES, WITNESSES AND
SUPPORTERS**

Purpose of this Information Note

1. This information note is to assist those who attend an ASN tribunal hearing in providing an impression of 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*, as amended, a “party” means either the appellant or the education authority.
3. Where a **claim** is made under the *Equality Act 2010*, a “party” means the claimant or responsible body.
4. Parties will normally remain in the hearing room throughout the proceedings, together with their respective representatives. The child or young person may also be present for some or all of the proceedings and may be heard by the ASN tribunal or through an intermediary.

Witnesses

5. Normally each party is restricted to calling two witnesses. In certain circumstances, at the discretion of the legal member or the ASN tribunal, an additional witness or witnesses may be permitted, where this is considered to be essential.
6. The education authority/responsible body’s witnesses will normally be heard first at the ASN tribunal hearing.
7. The order of witnesses and the general nature of their evidence 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.

8. 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 an expert witness. They will usually be permitted to remain to hear all the evidence of the party which requests permission for them to do so.
9. 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. 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.
10. 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.
11. It may be possible for witnesses to give evidence by telephone conference call, if there are difficulties in attending in person. A party or representative should request this as soon in advance of the hearing as possible by contacting the case officer who will forward the request to the legal member to decide.
12. 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. It is helpful to remember that witnesses should direct their answers to the ASN tribunal.
13. 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. The ASN tribunal may also have questions for the witness.
14. Professionals who give evidence as a witness may be assisted by taking their case file with them.
15. The ASN tribunal proceedings are digitally recorded. Copies of the recording are only issued to the parties on a written application, at the discretion of the Chamber President. The recording remains with the file and is destroyed after six months.
16. 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.
17. Where the person giving evidence has a relevant professional qualification, it is appropriate for the ASN tribunal to be made aware of the background and experience of the witness who appears before them. A brief note of the professional qualifications held can be lodged with the ASN tribunal before the hearing or at the hearing, so that this can be dealt with expeditiously.

18. Some witnesses may be asked to refer to documents which form part of the case papers. The person questioning will advise the witness which page number should be turned to.
19. The ASN tribunal will expect the proceedings to be conducted in an atmosphere of dignity and mutual respect. The legal member will endeavour to ensure that any questions put to parties 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.
20. If a person has been cited by the ASN Tribunal to attend the hearing as a witness they must do so, subject to notified penalties which may be imposed for failure to attend.
21. Where a witness has not been cited and is attending by agreement they should attend the hearing on the day and time notified.
22. If the witness is the author of a document which is part of the ASN tribunal papers, that witness should refresh their memory about the terms of that document before preparing to give evidence.

Supporters

23. The ASN Tribunal's Rules permit a person to attend the hearing to support a party. A supporter may only be present where there is a party to support. A supporter is not a party, a representative, a person giving necessary assistance to a person entitled to attend a hearing (such as an interpreter or nursing assistant) or a witness.
24. It is a matter for the ASN tribunal on the day of the hearing to determine if the person attending as a supporter is properly attending in that role, and if the ASN Tribunal is not satisfied that that person is properly present as a supporter, that person may be excluded.
25. A supporter will have no right to address the ASN tribunal.
26. Where a party is represented, the role of the supporter is to support the party and not to assist the representative.

Education Authority/Responsible Body

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

May Dunsmuir
President
January 2018