



Additional Support Needs

**INFORMATION NOTE No 01/2021**

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

*Purpose of this Information Note*

1. This information note is to help those who attend a tribunal hearing to understand what the proceedings will be likely to involve.
2. The former version of this information note [01/2018: revision 1 August 2019] is no longer in force.

*Word meanings*

3. There is a section on the Health and Education Chamber website which provides more word meanings. This can be found at:  
<https://www.healthandeducationchamber.scot/additional-support-needs/71>
4. For the purpose of this information note the following word meanings apply:

child	means children up to and including 15 years who receive nursery or school education
young person	means young people aged 16 years and above who remain in school education
reference	an appeal about a decision or failure to do with a co-ordinated support plan, or placing request; or a failure to provide or seek information at transition by the education authority responsible for the school education of the child; or an appeal against the education authority's decision about the child's capacity or wellbeing
claim	an argument that an education authority who is responsible for the school education of the child or the grant-aided or independent school, has discriminated against a person who is receiving school education because of a disability
appellant	the person who makes the <u>reference</u> to the Tribunal
respondent	the education authority responsible for the child's education in a <u>reference</u>

claimant	the person who makes the <u>claim</u> to the Tribunal
responsible body	the education authority, grant-aided or independent school in a <u>claim</u>
Party/parties	In a reference this is the appellant and the respondent. In a claim this is the claimant and the responsible body.
caseworker	a member of Tribunal staff who processes the reference or claim and corresponds with the parties
clerk	a member of Tribunal staff who attends the hearing and helps with the attendance of witnesses and the use of documents
discrimination	treat someone unfavourably or put them at a disadvantage; and unlawfully
the Tribunal	a capital 'T' means the Additional Support Needs Tribunal as an organisation - this is part of the Health and Education Chamber of the First-tier Tribunal for Scotland
tribunal	a small 't' means the three Tribunal members who will consider a claim or reference and make a decision – one will be a legal member who is an experienced lawyer and the other two are specialist members, with expertise in education, social work or health  sometimes a tribunal only has a legal member
hearing	a legal meeting where a tribunal listens to evidence from witnesses and hears legal arguments from representatives before it comes to a legal decision  a tribunal is not a court and a tribunal hearing does not take place in a court building
evidence	the written and oral (verbal) material a party will use to support their case
lodge	sending a document to the Tribunal which is to be included in the written evidence for a party
bundle	the collection of all of the documents which have been lodged with the Tribunal by both parties
remote hearing	a hearing which takes place by video conference (on screen) or telephone

physical hearing	a hearing which takes place in person at a specified hearing venue
the 2004 Act	Education (Additional Support for Learning) (Scotland) Act 2004 – the law which deals with references
the 2010 Act	Equality Act 2010 – the law which deals with claims
rules	rules are from the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 – the law which governs the practice and procedure of tribunals

## Parties

5. There are two parties in Tribunal proceedings. Parties have a right to lodge written evidence, to attend the hearing, to bring witnesses, to question witnesses and to speak at the hearing.
6. Where a reference is made under the 2004 Act, the parties are the appellant and the respondent. A child's parent and a young person can make any type of reference.
7. A child aged between 12 and 15 years can make certain types of CSP references, provided they have the capacity (ability) to do this and their wellbeing will not be adversely affected by doing so.
8. Where a claim is made under the 2010 Act, the parties are the claimant and responsible body. The child's parent, a young person or a child (provided they have the capacity to do so) can make a claim.

### *Flexibility in the hearing*

9. 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*

10. The child or young person (if not a party) may be present for some or all of the hearing and may give their own evidence or present their own views to the tribunal or ask that these be given by someone else.
11. The child or young person may be supported during the hearing by their independent advocate.
12. 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).

## Coming to the tribunal hearing

13. A hearing may be conducted remotely or physically at a specified location. Parties will be given details in advance which specify the date, time and location or type (if it is to be conducted remotely) of hearing.
14. Hearings usually start at 10 am and finish by 4 pm. Some hearings might last for more than one day. There will be regular breaks throughout the day and there will be a lunch break.
15. When the hearing starts, the three tribunal members will usually be present in the physical or remote hearing room. The two parties will enter, along with any representatives and supporters.
16. The legal member chairs the hearing. At the beginning of the hearing, the members will each introduce themselves, then the legal member will ask the others present to say their name and their reason for being at the hearing.
17. The legal member will explain what is happening during the hearing and introduce regular breaks. If a party has a question about what is happening during the hearing, they can ask the legal member to explain.
18. There is a guide for attending the Glasgow Tribunals Centre. This can be found on the Health and Education Chamber website here:  
<https://www.healthandeducationchamber.scot/sites/default/files/publications/add/Going%20to%20the%20Glasgow%20Tribunals%20Centre%20%28side%20entrance%29.pdf>
19. There is also a guide for attending the sensory hearing suite on the 6<sup>th</sup> floor of the Glasgow Tribunals Centre. This can be found on the Health and Education Chamber website here:  
<https://www.healthandeducationchamber.scot/sites/default/files/publications/add/What%20Happens%20on%20the%206th%20floor.pdf>

### *Representatives*

20. Both parties have a right to bring a representative to the hearing. When this happens, the representative acts on behalf of the party. The representative asks questions of any witnesses and makes any oral (verbal) points.
21. The representative does not need to be a lawyer.
22. The respondent/responsible body may have a person present as the person instructing their representative.

### *Unrepresented parties*

23. When a party is unrepresented, support may be given by the legal member during the hearing to help them to present their case (without supporting a particular course of action). There is a rule (rule 2) which sets out the ways in

which a party may be supported. The rules can be found in a document here: <https://www.legislation.gov.uk/ssi/2017/366/schedule/paragraph/2/made>

## Witnesses

24. In references, each party can bring up to 2 witnesses.

25. In claims, each party can bring up to 5 witnesses.

### *Lay and skilled (expert) witnesses*

26. There are two types of witnesses: lay and skilled. A lay witness simply gives a factual account of an event which is relevant to the issues in the case. A skilled witness may do that too, but will also give an opinion based on their professional knowledge, expertise and experience.

27. All witnesses must be open and honest in giving their evidence and should avoid speculation.

28. A skilled witness must, in addition, help the tribunal by providing independent, unbiased opinions, even when that witness is employed by one of the parties.

### *Oral (verbal) and written evidence*

29. A witness can give oral evidence by attending the hearing in person or by using another type of communication. A witness may also give evidence by telephone or video conference.

30. A witness may be asked to provide a written statement in addition to (or instead of) attending to give oral evidence.

31. In certain circumstances, an additional witness or witnesses may be permitted by the tribunal, where this is considered to be essential.

### *The order of witnesses*

32. The respondent/responsible body's witnesses will normally be heard first at the hearing.

33. 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 reasonable 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.

34. 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 may be when 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. The tribunal will decide whether this is allowed.

35. A separate waiting room is available (in physical hearings) 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. In remote hearings, a witness will wait in a virtual waiting room (where they cannot hear or see the hearing) until the clerk allows entry to the remote hearing.
36. A witness may be taken out of turn if there are pressing reasons. Please let the clerk know if this is the situation and the legal member will be consulted about how to accommodate this.
37. Where possible, the clerk will keep witnesses informed of the likely time when they will give evidence. If it is a physical hearing and 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.

#### *Preparing to give evidence*

38. When entering a physical hearing room, the clerk will direct the witness where to sit. In a remote hearing, the witness will appear on the hearing screen. The legal member will ask the witness to state their name and then explain how questions will be asked.
39. It is helpful to remember that witnesses should direct their answers to the tribunal and not to a party. Witnesses are there to help the tribunal make a decision.
40. Professionals who give evidence can take their case file with them to the hearing; however, a witness may not, during oral evidence, consult any notes or papers which they bring, unless the tribunal gives them permission.
41. When a break is taken while a witness is giving oral evidence, the witness must not discuss their evidence given, or likely to be given, with anyone, including any representative.
42. When 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.
43. Some witnesses may be asked to refer to documents which form part of the case papers (the bundle). A folder of the case papers will be provided at the physical hearing.
44. When the hearing takes place remotely, the party asking the witness to attend will send the necessary documents to the witness. In remote hearings, the witness may be sent the bundle by e-mail by the clerk shortly before they are to give evidence, so that they can refer to it during their evidence if asked to do so. The witness will be asked to delete their electronic copy of the bundle immediately after their evidence is over.

45. The clerk can also show documents on the screen when necessary. The person questioning will tell the witness which page number to look at.
46. If the witness is the author of a document which is part of the tribunal papers, that witness should refresh their memory about the content of that document before giving evidence.
47. Hearings 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 case file and is destroyed after 6 months.

#### *Asking questions of witnesses*

48. When a party is represented, their representative will ask the witness questions.
49. The tribunal members will take notes of the evidence and witnesses may be asked to stop or to speak more slowly so that they can take accurate notes.

#### *The order of questions*

50. Questions for witnesses will usually follow a certain order. This is set out here:
  - (a) The party who has brought the witness will ask any questions they have first. If the witness has provided a written statement, they will be asked to confirm that they accept the terms of this. When there is a written statement this often means that there are fewer questions.
  - (b) The other party (or their representative) then has an opportunity to ask the witness questions.
  - (c) The party who has brought the witness will be given a further and final opportunity to ask any questions.
  - (d) After the parties have asked their questions the tribunal may ask questions.

#### *Answering questions*

51. Witnesses should answer questions as concisely as possible. It may be tempting to give an explanation before giving an answer; however, this is not necessary or helpful. The tribunal and parties will have read the bundle of documents before the hearing and will be familiar with the case background. Unless a witness is asked to provide a context, they should simply answer the question asked of them.
52. If a witness does not understand the question, they should state this and the questioner will re-phrase the question.

### *Cited to attend*

53. If a person has been *cited* to attend the hearing as a witness (has received a formal written instruction to attend from the Tribunal) they must do so; failure to attend can lead to criminal proceedings.
54. When a witness has not been cited and is attending by agreement, they should attend the hearing venue or be available for the remote hearing on the day and time notified.

### **Oral and written submissions**

55. Submissions are final arguments presented after all of the witnesses have given their evidence.
56. Written submissions are often prepared by both parties, exchanged between them and then lodged. Alternatively, there may be an opportunity to present oral (verbal) submissions. It is possible to have both forms of submission (written followed by oral). The tribunal will choose which course to follow.
57. When oral submissions are given, usually the respondent/responsible body will speak first, followed by the appellant/claimant.

### **Dignity and mutual respect**

58. The tribunal will expect proceedings to be conducted in an atmosphere of dignity and mutual respect.
59. The legal member will ensure that any questions for witnesses are not unreasonable, hostile or inappropriate. Parties or 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.

### **Supporters**

60. A party who is an individual may be accompanied at a hearing by another person who will act as a supporter.
61. A supporter may only be present at the hearing when there is a party to support.
62. When there is a physical hearing, a supporter will normally sit to the back of the party being supported and not at the hearing table.
63. When a party is represented, the role of the supporter is to support the party and not to help the representative.
64. A supporter is not a:
- party
  - representative



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

65. A supporter has no right to speak to the tribunal, unless given permission to do so.

66. A supporter may help the party by:

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

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

68. When 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.

69. 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.

**May Dunsmuir**  
**President**  
September 2021