



Tribunal (Additional Support Needs) Forum

08 May 2019, The White Box, Glasgow

Each year the Tribunal hosts a forum which provides an opportunity to meet the President and her staff and to discuss topical matters in relation to the Tribunal. The Forum is a valuable information sharing event.

The second Tribunal Forum was held on Wednesday 08 May 2019 in Glasgow. This year we had representatives in attendance from agencies who work for and support children's rights, Equality and Human Rights Commission, advocacy, Scottish Government, education authorities, disability and ASL information agencies, legal agencies and Tribunal members. The next Forum will be held in the Glasgow Tribunals Centre, 20 York Street, Glasgow and will include a tour of the new hearing facilities. The date will be advertised on our Website in due course.

The President provided an update on the capacity and wellbeing tests and the Tribunal's innovations to improve children and young people's access to justice. The President will continue to sit on any child party references to set the tone and demonstrate the straightforward approach to be taken. The President referred to the new practice of writing a letter to the child where the child is a party, or where they have a prominent role in the hearing. The letter will be succinct and will not form part of the tribunal decision. The President also plans to introduce new guidance in 2019 on 'The Child and the Hearing'.

The President provided an update on the plans to transfer the NHS Appeal Panel, the NHS Tribunal for Scotland and the current 32 Education Appeal Committees into the Chamber by April 2021.

The Operations Manager, Paul Stewart, provided statistics over the last reporting year when the Tribunal received the highest number of applications since its inception. The trends remain with placing requests as the highest type of reference and applications from children having autism as their main additional support need.

The In-House Convener, Derek Auchie, explained the appeal and review procedures, which have been in force since 12 January 2018. He gave a presentation on co-ordinated support plans and the law; and an update on the documentary evidence pilot - a new process for documentary evidence lodging and collation which will be commenced in September 2019.

Below is a flavour of some of the questions and topics discussed at the event.

The Glasgow Tribunals Centre (GTC) – hearing suites

The Glasgow Tribunals Centre (GTC) opened in March 2018; within this there are 3 dedicated rooms for hearings involving children. These have been designed by children, for children and are the first of their kind in Scotland. The GTC hearing rooms have three distinct areas:

1. An area with a round table and equal height chairs which look the same, where the tribunal members, parties and their representatives, the child and the witness will sit while evidence is being heard.
2. An area with two small sofas and a rug where the child and the tribunal members and any appropriate others can sit, if the child would prefer to give their views or evidence there.
3. A break out area, with a screen, a beanbag and small fridge, where the child can take a break from the hearing, but still remain in the room.

The hearing and waiting rooms and the reception areas have autism friendly colours (subdued rather than primary colours) and there are no fixed wall images, which reduce the potential for distraction. The hearing room has a sensory wall, which the child can personalise with an image or colour of their own. There is also a separate sensory room, where a child could go to relax or de-stress.

The GTC hearing rooms can be used by any child who would benefit from using the facility.

Co-ordinated Support Plans (CSPs)

The CSP is a statutory education plan, which specifies the child's additional support needs, their educational objectives and how, when and who will provide the additional support in order to meet those objectives. The statutory provisions are complex and there appears to be a lack of clarity and understanding around these.

Some education authorities use local non-statutory plans in preference to CSPs; however, where the statutory tests are met, an education authority has an obligation to provide a CSP. Failure to provide an adequate CSP could amount to a failure to make reasonable adjustments in respect of a child's education, which amounts to discrimination on the grounds of disability.

A co-ordinated support plan is not optional if the statutory tests are met. It is unlawful to create any other type of plan in its place, if the tests are met.

You will find more information on co-ordinated support plans at Chapter 5 of the [Supporting Children's Learning: Statutory Guidance on the Education \(Additional Support for Learning\) Scotland Act 2004 \(as amended\) Code of Practice \(Third Edition\) 2017.](#)

Role of a Witness

The Forum heard from the President on the definition of 'witness', the role of a witness, the difference between a lay witness and a skilled (expert) witness and how the evidence of a witness is assessed (see attached presentation).

Enquires to the Tribunal

The Tribunal received a number of enquiries at the Forum, and in advance, which were discussed. The President's position is set out in red.

1. *The topic of appeals and reviews prompted a question regarding the release of audio recordings by the Tribunal, as this is important for parties to be able to review when considering making an appeal or review application.*

The Scottish Courts and Tribunals Service currently have no secure provision to make copies of the audio recordings but are investigating various options. The current option, if approved by the President, is for a party to attend at a Tribunal location where they can securely listen to the audio recording.

2. *The CSP presentation raised debate regarding appropriate agency refusal to quantify support over a 12 month period or refusing to specify support time within a CSP. One attendee remarked 'remember the question in a CSP – what is required, not what is being offered by other agencies.' Another remarked that agencies 'won't buy-into' the CSP. Although education authorities will review the contents of a CSP, this does not assist the refusal of agencies to be specific and quantify support/input to be provided by them.*

The Tribunal will consider the particular facts and circumstances in relation to the particular child at the particular time and make a determination in law, regardless of agency availability. Agencies should be aware of the duty imposed upon the education authority and the specific language used in the legislation. The education authority should be specific and quantify the support or input required.

As the overall responsibility lies with the education authority, where they specify or quantify appropriate agency support/input and this isn't met; it is the education authority who becomes a party in the application and not the agency failing to provide the support/input.

Another attendee commented on the trend of rising numbers of children with additional support needs in comparison to the low amount of CSPs – this may be due to a complicated and onerous criteria process. He also commented that if a lot of organisations are involved in a child's care, parents automatically assume that the criteria for a CSP are met, but this may not be the case. He acknowledged the lack of support from organisations and agencies to education authorities.

The President clarified that where the statutory tests are met, education authorities must provide a CSP and other types of local plans cannot be favoured over a CSP. The legislation is clear (see the attached note).

A comment was made regarding the length of time taken to put a CSP in place, once agreed. From a young person's perspective they can feel discouraged because to them, it takes too long.

The President commented that everyone must remember that this is about a particular child at a particular time. The child should remain at the centre of everyone's attention at all times. The processes and procedures which are being applied may prove to be very confusing for a child.

3. An education authority raised the question of mediation in placing request situations. If a placing request is refused and mediation is requested, is this a valuable process?

A tribunal cannot advise if parties should or should not engage in mediation. Tribunals recognise the value of mediation and may suspend the proceedings to allow this to continue.

A mediation organisation commented that in her experience mediation can bring new information or facts to light during a face-to-face exchange. An example was given of mediation bringing new information to light which ultimately resulted in a change of decision.

4. Findings from the Documentary Evidence pilot were shared. An attendee asked if adjustments would be made for a child or would the expectation be for a child to meet this process.

The Tribunal will make adjustments or allowances for an unrepresented child, young person or adult party.

5. An attendee sought clarification on the definition of a placing request.

A decision on competency is presently being considered on whether a particular style of request to place a child in an education authority 'special school' (as defined in the legislation) might qualify as a placing request.

The competency decision has since been made and the note attached summarises the decision.

The President brought the Forum to a close summing up a few points raised during the course of the event;

Publication of Decisions

It is the President's practice to publish the anonymised and/or edited decision of the tribunal. There may be occasions where a decision will not be published because a child could be identified or if the child or parent requests that the decision not be published.

Education Appeal Committees

The plan remains that the 32 local education appeal committees will transfer into the Health and Education Chamber in April 2021.

Inverness Justice Centre

The hearing model in the GTC will be replicated in the new Inverness Justice Centre, with a view to similar rooms being built across the country.

The President thanked the speakers, enquirers and those in attendance today, for their valuable input.