

Health and Education Chamber  
First-tier Tribunal for Scotland

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Additional Support Needs



# **Tribunal (Additional Support Needs) Forum**

Glasgow Tribunals Centre  
Wednesday 23 April 2025

Health and Education Chamber  
First-tier Tribunal for Scotland

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Additional Support Needs

**Mrs May Dunsmuir**  
**Chamber President**

**FtT Health and Education Chamber**

# President's Update

- **Sensory hearing venues**
- **President's Guidance**
- **UNCRC (Incorporation)(Scotland) Act 2024**
- **Children and Young People**
- **Structure of Future Forums**



[Contact Us](#)

## Our decision about your school



**SCHOOL TIMETABLE**

Monday			X	
Tuesday	X	X		
Wednesday				X
Thursday		X		
Friday			X	

You wanted a full time timetable. You were given a part time timetable. You felt this was unfair. We agree with you.



We enjoyed meeting you. We wish you the very best.

Health and Education Chamber  
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Additional Support Needs

**Hazel McKay**  
**Head of Tribunals Operations**

**Casework Update 2024/2025**

# Casework Overview

Total Applications received:

	References	Claims	Total
2018/19	96	17	113
2019/20	122	24	146
2020/21	71	12	83
2021/22	117	16	133
2022/23	185	17	202
2023/24	229	15	244
2024/25	<b>220</b>	<b>29</b>	<b>249</b>

# References received by type

Type	18/19	19/20	20/21	21/22	22/23	23/24	24/25
Placing Requests	71	96	59	98	160	204	189
Contents of CSP	8	5	1	5	6	3	11
CSP Required	7	8	4	3	10	7	7
Implementation of CSP	0	4	2	3	2	2	0
Deemed Refusal of CSP	5	4	4	0	4	7	6
Timescales (Issue CSP)	2	1	0	3	0	0	5
Failure to Review CSP	2	3	1	2	0	2	0
Transitions	1	1	0	3	3	4	2
Totals	96	122	71	117	185	229	220

# Claims received

Type	18/19	19/20	20/21	21/22	22/23	23/24	24/25
Admission	0	3	0	0	1	2	2
Other	9	13	7	9	7	6	17
Admission, Exclusion	0	0	2	1	0	0	0
Exclusion	0	4	2	2	4	0	1
Admission, other	0	0	1	1	1	1	2
Exclusion, other	7	4	0	3	2	4	7
Admission, Exclusion, other	1	0	0	0	2	2	0
Totals	17	24	12	16	17	15	29



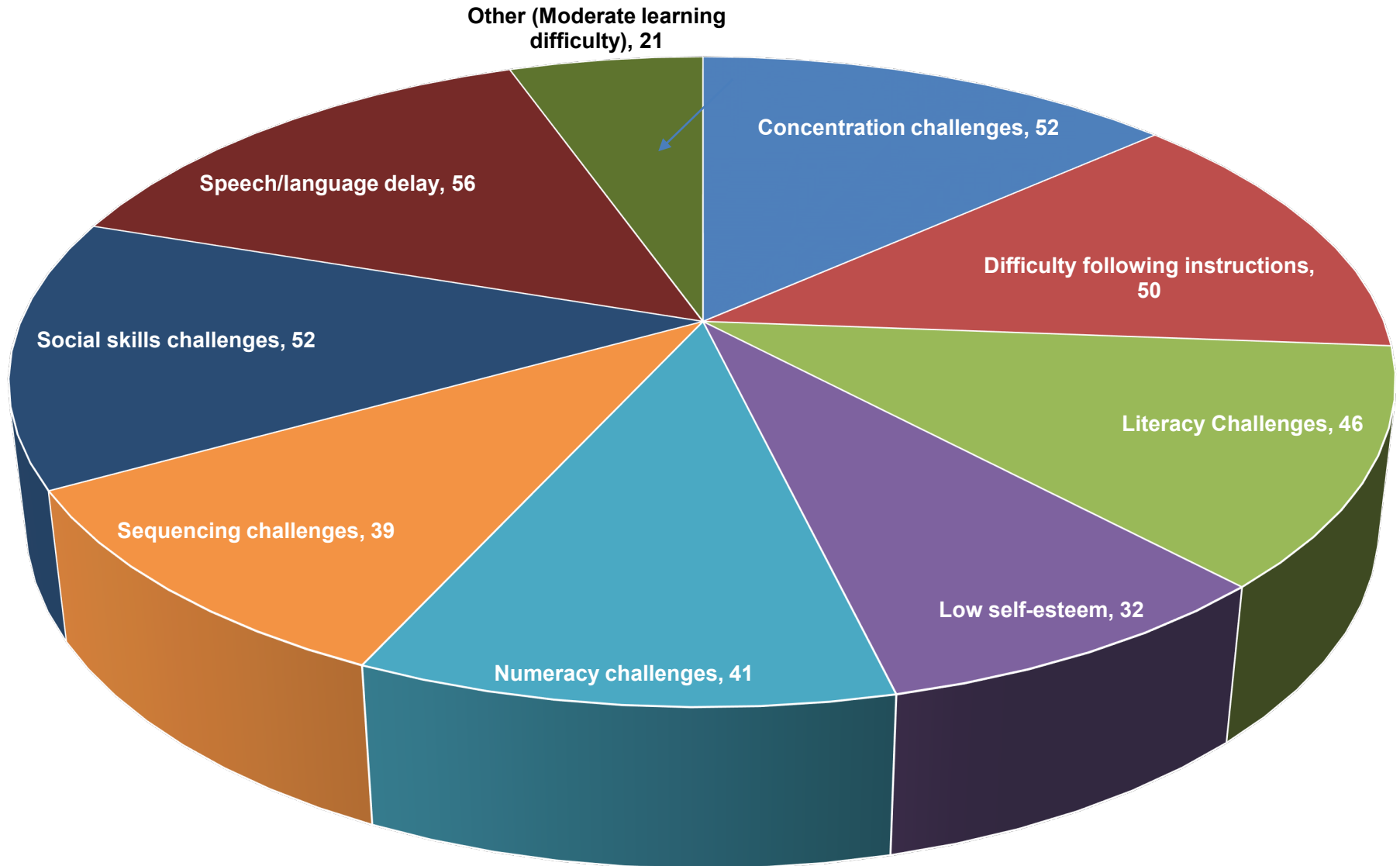
## Highest volume references and claims 2024/2025

Education Authority	Claim	Reference	Total
Glasgow City Council	2	57	59
North Lanarkshire Council	2	37	39
City of Edinburgh Council	2	23	25
West Lothian Council	2	16	18
Perth & Kinross Council	1	12	13
Aberdeen City Council	1	11	12
South Lanarkshire Council	1	9	10
Aberdeenshire Council	1	7	8
Midlothian Council	1	6	7
East Ayrshire Council	5	1	6
East Dunbartonshire	3	3	6
East Lothian	1	5	6
Falkirk	0	6	6
Others	5	27	32
<b>Total cases</b>	<b>27</b>	<b>220</b>	<b>247</b>

## Nature of Additional Support Needs 2024/2025

Additional Support Need	Claim	Reference	Total
Autistic Spectrum Disorder (ASD)	19	155	174
Social, emotional or behavioural difficulty	15	69	84
Other (Social, emotional or behavioural difficulty)	4	20	24
Mental Health Problem	3	36	39
English as an additional language	0	3	3
Hearing impairment	3	9	12
Interrupted learning	0	21	21
Language or speech disorder	1	28	29
Looked after	0	10	10
More able pupil	0	0	0
Physical health problem	2	25	27
Physical or motor impairment	2	16	18
Visual impairment	0	9	9
Specific Learning Difficulty	1	46	47
Other (Specific learning difficulty)	11	46	57
Moderate Learning Difficulty	0	368	368
Other (Moderate learning difficulty)	3	18	21
<b>Totals</b>	<b>64</b>	<b>879</b>	<b>943</b>

# Moderate Learning Difficulty



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Additional Support Needs

**Mr Craig Barr**  
**Casework Team Leader**  
**HEC Animations –**  
**Makaton Videos**

# HEC Animations – Makaton Videos

**Video 1 – Who are we?**

**Video 2 – Coming to a video hearing**

**Video 3 – Coming to an in-person hearing**

**Video 4 – Talking at a tribunal**

[Animations in Makaton | First-tier Tribunal for Scotland \(Health and Education Chamber\)](#)



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**Additional Support Needs**

**Professor Derek Auchie**  
**In-house Legal Member**

**Judicial Update**

# A. HEC Case Law Update (1)

## Test for Permission to Appeal

*TE v City of Edinburgh Council* 2024 UT 25

- Lady Poole confirmed that the ‘arguability’ test for permission to appeal is not high.
- But any such error must have been material to the outcome of the case, before permission to appeal will be granted (para 4); a reference to what might happen to certain pupils in the future was an error, but it wasn’t material since it was only a small part of reasoning and on only one refusal ground (paras 14-16).
- The reasoning on only the ‘substantial questions in issue’ need be adequate (paragraph 8).

# A. HEC Case Law Update (1)

## Test for Permission to Appeal

*TE v City of Edinburgh Council 2024 UT 25*

- The factual observations noted in a non-instructed advocacy report should be considered by the tribunal (para 11).
- Reasons need not address every single issue or piece of evidence to be adequate (para 11).



# A. HEC Case Law Update (2)

## Responsible authority and placing request refusal

*JC v South Lanarkshire Council 2024 UT 27*

- Lady Carmichael decided that s.18(1) had not been amended when s.18(3)(da) was, and that the upshot was that s.18 applies to the refusal of a placing request where it relates to a child/young person for whose education the education authority is not responsible.
- In other words, the statutory wording is defective, and this case interpreted it such that it is resolved.

# A. HEC Case Law Update (2)

## Responsible authority and placing request refusal

*JC v South Lanarkshire Council 2024 UT 27*

- The definition of a child/young person for whose school education an education authority are responsible (s.29(3)) is still relevant, for example on CSPs.
- The original appeal was around the words 'about to be' in s.29(3), but a decision on this was not necessary.

# A. HEC Case Law Update (3)

## **Decision reasons and pupil profile comparison**

*JH v Scottish Borders Council 2024 UT 50*

- Lord Young overturned the HEC decision in this case, and considered the ‘suitability of education for age, ability or aptitude’ ground of refusal of a placing request (2004 Act, Schedule 2, para 3(1)(b)).
- Evidence from someone from the specified school is, in such cases, to be expected (para 14), but where they are not called, the reasons for accepting indirect evidence of the provision in the specified school should be fully explained in the decision reasons (para 15).

# A. HEC Case Law Update (3)

## **Decision reasons and pupil profile comparison**

*JH v Scottish Borders Council 2024 UT 50*

- Relying on a comparison of pupil profiles while useful, may not be sufficient on its own to demonstrate lack of suitability. The follow up question needs to be addressed: what (if anything) does that comparison say about the suitability of the school for the child/young person? (para 21).
- There is a need to consider in what respect(s) the child would not benefit from or may suffer actual detriment from being educated in the specified school (para 21).

## B. Language

C & C, [2018] UKUT 269 (AAC), an Upper Tribunal case in England, Judge Rowley:

“Mr. Lever’s evidence (backed-up by academic literature) [CEO of NAS] is that an autism meltdown is not the same as a temper tantrum. It is not ‘bad’ or ‘naughty’ behaviour and should not be considered as such. Rather, such challenging behaviour is increasingly being described as ‘distressed behaviour.’ An autistic child who feels very anxious and stressed - for example, because they are experiencing sensory overload, or are overwhelmed by social demands and interactions - may behave in a way that cannot reasonably be described as a choice. They may not understand the effect of their behaviour and any prospect of punishment is unlikely to have any deterrent effect upon them.” (para 79)

## B. Language

- Reference to 'aggressive', 'violent', 'disorderly' 'disruptive' or 'challenging' behaviour should be avoided.
- 'Distress' or 'distressed' are more accurate terms. See [Meeting the Needs of Autistic Learners: A professional guide for teachers](#)

# C. Placing request refusal letters

Statutory obligation in s.28(2) of 2004 Act

- To inform of the decision on the placing request.
- Provide reasons.
- Provide information on mediation service and any dispute resolution service.
- If request for a CSP or a review of one is refused, must inform of the right to refer to FTT.
- If placing request refused, must inform of right to refer to FTT.

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**Additional Support Needs**



**Enquires and Questions**



# **Children & Young People's Commissioner Scotland**

**Q.1** What has been the impact of UNCRC incorporation on the Tribunal's work?

# East Dunbartonshire Council

**Q.2** Keen to learn more about UNCRC implementation and children's rights in relation to ASN tribunal.

# **Harmeny Education Trust Ltd**

**Q.3** How do independent schools support parents through the tribunal process when seeking local authority funded places?

What are the limitations and barriers and what is expected from the schools by the tribunal?

# Deaf Blind Scotland

## Q.4

- a. Inclusive Communication
- b. Recognition and Support
- c. Accessibility and Inclusion

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Additional Support Needs



# Question and Answer Session

# Contact Us

[HEChamberPresident@scotcourtsribunals.gov.uk](mailto:HEChamberPresident@scotcourtsribunals.gov.uk)

0141 302 5863

[www.healthandeducationchamber.scot](http://www.healthandeducationchamber.scot)

## Additional Support Needs

We consider two types of appeals – references, regarding the provision of educational support under the 2004 Act; and claims, in respect of disability discrimination in school education, under the 2010 Act.

Additional Support Needs

## Needs to Learn

If you're **12 to 15**, have **additional support needs** and want to make a change to your school education, then **yes** you are.

Needs to Learn

[www.needstolearn.scot](http://www.needstolearn.scot)

All children in Scotland should benefit from a school education. When this isn't happening we look at each child's individual circumstances and their unique **needs to learn**.

