



Tribunal (Additional Support Needs) Forum

22 April 2026, Online

Forum Note

The ninth Health and Education Chamber (HEC) Tribunal Forum was held online on Wednesday 22 April 2026.

The 2027 Forum will take place on Wednesday 21 April 2027 at the Glasgow Tribunal Centre.

As in previous years, the Forum brought together a wide range of stakeholders from across Scotland. Attendees included representatives of children, young people and parents, parent groups, advocacy and mediation services, education authorities, independent schools, health agencies, the Scottish Government, the Children and Young Peoples Commissioner, and the Scottish Courts and Tribunal Service.

Chamber President Update (slides 3 – 5)

1. The reporting year has been particularly busy within the Additional Support Needs jurisdiction, with application volumes exceeding all previous records. Further details are available in the 2026 statistical presentation.

A. United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (2024 Act)

2. The President outlined the two statutory routes available where it is alleged that a public authority has acted, or proposes to act, in a way which is incompatible with the UNCRC requirements. A party may:

a) Bring proceedings against a public authority in a court or tribunal which has jurisdiction to grant the remedy sought in terms of section 7(1)(a) of the 2024 Act. The HEC calls these 'freestanding' UNCRC cases.

b) Rely on the UNCRC requirements concerned in any legal proceedings in terms of section 7(1)(b) of the 2024 Act.

3. Since commencement of the 2024 Act in July 2024, UNCRC arguments under section 7(1)(b) have been raised in 51 cases to date. One freestanding UNCRC case has been brought in that time under section 7(1)(a).

Upper Tribunal for Scotland decision on HEC jurisdiction to decide UNCRC cases
[City of Edinburgh v SP](#) 2026 UT 34 (**SP**)

4. The Upper Tribunal has recently determined that the HEC does not have jurisdiction to hear freestanding UNCRC applications under section 7(1)(a), and that our jurisdiction under section 7(1)(b) is limited.
5. In response to this decision, the President has made three references to the Inner House of the Court of Session to obtain a higher authority on questions related to the jurisdiction of the HEC.
6. New rule 3A(8) of the 2018 Tribunal rules allows a tribunal to fix a hearing to consider a UNCRC compatibility question as a separate hearing from any other hearings in the proceedings. Until the Inner House decides the references, future tribunals may take this approach to allow a decision to be taken without delay in references or claims while postponing a decision on the UNCRC compatibility question.
7. Until the Inner House decides the references, the Upper Tribunal decision in *SP* remains binding on the Tribunal.

B. Unrepresented Parties

8. There continues to be a relatively high number of unrepresented parties, with figures only slightly below last year's record level.
9. The [Information Note for Parties, Representatives, Witnesses and Supporters No 1/2023](#), revised on 2 May 2025, has been developed to explain tribunal processes, particularly for those without representation.
10. Tribunals apply the overriding objective carefully to ensure fairness and equality of arms where there are unrepresented parties. They do so with the assistance of parties, including a represented party.
11. The President will shortly introduce a new internal judicial case management process where there are unrepresented parties, to assist in clarifying key issues early and prior to allocation to a legal judicial office holder.

C. Sensory Hearing Venues

12. Mobile sensory hearing venues are now operational, with initial locations in Stirling, Dundee and Aberdeen. A dedicated sensory hearing venue in Edinburgh is now nearing completion, with final snagging being completed. Further improvements are planned at the Glasgow Tribunals Centre, including reconfiguration works to increase the floor space in hearing room 2.
13. Updates on all sensory hearing venues will be published on the HEC website.

D. New Application Forms and Documents

14. A new suite of application forms will be launched shortly. These include separate forms for parents and young people across the following areas:
- Placing requests
 - Co-ordinated support plans
 - Transitions
 - Capacity and Wellbeing references
 - Disability Discrimination claims
15. Improvements have also been made to child party forms in relation to:
- Claims
 - References
16. The 'My Voice' form and attendance forms have also been updated.
17. These changes are intended to improve UNCRC compatibility, accessibility and clarity.

Judicial Appointments Board for Scotland (JABS) (slides 7 – 11)

18. JABS is an independent advisory non-departmental body responsible for identifying and recommending individuals for judicial appointment. Recruitment is currently underway for HEC specialist judicial office holders (in education, health and social work).

A. Recruitment Process

19. JABS operates a structured, merit-based selection process, ensuring candidates are assessed fairly and consistently. Each panel is chaired by a lay member and typically comprises lay, judicial and specialist members. Diversity within the candidate pool is actively encouraged. All competitions follow a standard framework tailored to the specific role. Key stages include:

- Planning (role profile, information pack, outreach and advert)
- Application and eligibility checks
- Anonymous shortlisting against defined criteria
- Interview
- Recommendation and post-process review

B. Assessment Approach

20. The process is evidence-based, with candidates required to demonstrate relevant skills, experience and suitability through their application. Shortlisting is conducted independently and anonymously, with HEC specialist judicial officers supporting the assessment of technical expertise.

21. Candidates selected for interview will be assessed on their knowledge, judgement, communication skills and readiness for judicial office. Interviews are scheduled for July – August 2026.

C. Selection and Appointment

22. Recommendations are submitted to the JABS Board and then to the Scottish Ministers. It is anticipated that up to eight candidates will be recommended, with HEC induction training planned for February 2027.

Casework Update (slides 12 – 19)

A. Statistics

23. Mr Craig Barr, Operations Manager SCTS, provided an overview of patterns and statistics over the last reporting year. See the PowerPoint slides for statistics, which show that a record number of applications were received by the HEC. Placing requests remain the HEC's highest application type.

B. Secure Email Addresses

24. The HEC will no longer issue case sensitive information to any unsecure email address. Any paperwork to be issued to appellants/claimants without a secure email address will be sent by post. Only Criminal Justice Secure Mail (**CJSM**) and '.gov' email addresses are considered secure.

HEC Judicial Update (slides 20 – 30)

A. Case Law Update (slides 21-27)

25. Professor Auchie, legal judicial office holder, provided an update on recent Upper Tribunal for Scotland (UTS) decisions relevant to the work of the Chamber.

Comparator for reasonable adjustments [**Fife Council v AB 2024 UT 72**](#)

26. This decision confirmed that a class-based approach should be adopted when identifying the appropriate comparator under the Equality Act 2010 (**2010 Act**), rather than focusing solely on the individual circumstances of the child. The UTS emphasised the need to consider Schedule 13 of the 2010 Act where a comparator is relevant (a point repeated in the *East Lothian* case, below).

Test for Permission to Appeal [**EM v North Lanarkshire Council 2025 UT 76**](#)

27. The UTS re-affirmed that, to be adequate, decision reasons must ‘deal with the substantial questions in an intelligible way’, and not every argument and piece of material evidence needs to be dealt with in the reasons. See also [*South Lanarkshire Council v EH 2025 UT 73*](#)

Meaning of ‘special school’ [**A Scottish Council v LM 2025 UT 21**](#)

28. The UTS held that the definition of a special school carries both a *purpose test* (the school’s sole or main purpose) and a *selection test* (pupils selected by reason of additional support needs).

Equality Act 2010 discrimination tests [**East Lothian Council v SH 2026 UT 14**](#)

29. This case provides guidance on the correct analytical approach across the different types of discrimination in the 2010 Act, under sections 13, 15, 19 and 20.

30. The UTS’s reasoning on the remedy powers of the HEC are not considered in this update given that this is the subject of one of the compatibility questions raised in the 2024 Act references to the Inner House, discussed above.

Public interest appeals [**AT v Argyll and Bute Council 2026 UT 36**](#)

31. In this decision, the UTS held that while it has the power to determine a question of general public interest even if it would not change the outcome of the case, this would only happen where there is good reason to do so. Different approaches by HEC tribunals to the same legal question (whether a school exclusion is unfavourable) was not a good reason to determine such a question.

B. Use of the Bundle in Hearings (slide 28)

32. The bundle should contain all documents that may be referred to during the hearing. Witnesses are not permitted to consult documents outwith the bundle when giving evidence. The tribunal may intervene where it appears that a witness

is consulting material not contained within the bundle, particularly in remote hearings.

33. Where a witness wishes to refer to a document not included in the bundle, prior permission from the tribunal is required. Any such request will be considered following consultation with the parties.

C. Physical Intervention (slides 29-30)

34. Attendees were signposted to [Scottish Government guidance – Included, Engaged and Involved Part 3](#), which sets out a relationships and rights-based approach. While non-statutory, it is expected to inform the review and development of local policies and includes key definitions such as of the terms ‘physical intervention’, ‘restraint’ and ‘seclusion’.

35. It was also noted that the [Restraint and Seclusion in Schools \(Scotland\) Bill](#), passed on 24 March 2026 and awaiting Royal Assent, will introduce statutory duties. These include requirements to notify parents following incidents of restraint or seclusion within specific timescales, and to record and report such incidents. The provisions will apply across education authority, independent and grant-aided schools.

Participant Questions

Q1. Our helpline is taking a growing number of calls from parents of children with ASN who are excluded from school due to a lack of appropriate resources to support their children – many of these are autistic children. I am keen to learn anything from the Forum which will help me to signpost to them better and provide appropriate information.

A1. As an independent judicial body, the Tribunal cannot provide advice to individuals or organisations. Attendees were directed to sources of information and support, including the [Tribunal website](#), the child section called [needs to learn](#), [Enquire](#) (the national advice service for additional support for learning), [My Rights, My Say](#), (for children aged 12-15), [Scottish Government guidance on exclusions](#), and [sector reports](#) on the experiences of autistic children missing school.

Q2. Consideration of the whole child and what is best for them alongside the legal terms. Sometimes what is best seems to get lost amongst this.

A2. The Tribunal is required to apply the relevant legal tests when determining cases. Some of these tests expressly require consideration of the child’s best interests. In addition, as a public authority under the [UNCRC \(Incorporation\) \(Scotland\) Act 2024](#)

(2024 Act), the Tribunal must act compatibly with UNCRC requirements, including Article 3.

A child-centred approach underpins Tribunal practice. This includes flexible procedures, sensory hearing environments, and adapting hearings to suit individual needs. [Guidance](#) and practice emphasise taking children's views in a trauma-informed and accessible way, with the aim of ensuring the system adapts to the child, rather than the child to the system.

Q3. UNCRC and Compensation

A3. The Tribunal does not have the power to award compensation under the Equality Act 2010, and there is no express power to do so under the Education (Additional Support for Learning) (Scotland) Act 2004 (**2004 Act**). Compensation under the 2024 Act is only available where the court or tribunal has the power to award damages in civil proceedings.

Q4. Realistic expectations of reasonable adjustments for EBSNA (Emotionally Based School Non-Attendance) pupils

A4. The Tribunal cannot provide general guidance on the application of legal tests. Attendees were signposted to the 2023 [Equality and Human Rights Commission's Technical Guidance for Schools in Scotland](#), as well as the [Tribunal's published decisions database](#), which includes cases considering reasonable adjustments.

Q5. Interested to know what the processes are for reviewing decision making and the implications of tribunal outcomes at LA level. Is there any process for this?

A5. A tribunal decision may be reviewed ([Tribunal rules, rule 11](#)) where it is in the interests of justice, or appealed on a point of law (rules [9](#) and [10](#)). The President may monitor implementation of a tribunal's decision; and where she is not satisfied that the authority is complying with the decision she may refer the matter to the Scottish Ministers ([rule 12](#)). There are otherwise no other statutory review powers available.

Q6. We wish to ask a question to clarify the required standard of evidence

A6. Tribunal proceedings apply the civil standard of proof – on the 'balance of probabilities', which is a lower standard than the criminal standard 'beyond a reasonable doubt'. This means facts can be established without corroboration and, in some cases, on the basis of hearsay evidence.

Q7. On the child giving evidence point does the Tribunal continue to treat a young person as a child after the age of 16?

A7. There are different definitions of a child in Scotland, depending on the legislation involved. For example, under the 2024 Act a 'child' is a person who has not yet reached 18 years of age, whereas a 'child' for the purpose of the 2004 Act is someone

who is aged between 5 and 15 years inclusive. A 'young person' under the 2004 Act is someone who has reached the age of 16 years or above and remains in school education.

Q8. We wish to ask a question around the tribunal's expectations in relation to SNCT staffing ratios agreements

A8. The Tribunal has no predetermined expectations regarding staffing ratios. Where relevant, such matters are considered as part of the evidence in individual cases. The SNCT (Scottish Negotiating Committee for Teachers) does not have the status of primary or secondary legislation. This means it is not binding on the Tribunal, but may be a relevant factor, particularly in understanding how education authorities operate in practice.

Q9. It would be good to know how the tribunal consider SNCT class ratios?

A9. The tribunal recognises the practical implications of SNCT arrangements and their impact on staffing. However, as these do not form part of primary or secondary legislation, each case is determined on its own facts and circumstances. Where relevant, the Tribunal may consider the consequences of a decision, including where it would require the employment of an additional teacher.

Q10. Are recommendations given to local authorities after tribunals if appropriate to help the process for future parents?

A10. The Tribunal is a judicial body and determines cases within its statutory powers. It makes orders, not recommendations, although optional additional observations are occasionally included in written decisions. Decisions are legally binding unless successfully appealed.

Q11. Follow-up data on impact of decisions on children, young people and families

A11. The Tribunal does not collect data or analyse data on the wider impact of its decisions on children, families or authorities. This reflects its statutory role and the importance of maintaining judicial independence.

Q12. Attendance of witnesses and use of witness statements in evidence

A12. Witnesses may give evidence either in person or remotely (this usually means online). It is standard practice for written witness statements to be lodged in advance of hearings to support preparation and efficiency. Where a witness does not attend, the tribunal will determine the weight to be given to their statement.

The President has published an Information Note for Parties, Representatives, Witnesses and Supporters, which provides more detail on the role of witnesses: [Information Note 01/2023](#).

Q13. Priorities of the Tribunal in exclusions and use of interim orders

A13. The Tribunal has no power to make interim orders and does not prioritise particular case types. Cases involving exclusion may be considered where relevant, either as the central issue or as part of the broader factual context.

Q14. The provisions for the voice of the child; Advocacy and Safeguarders

A14. The Tribunal is legally required to seek the views of the child in all cases and must comply with Article 12 of the UNCRC. A flexible, child-centred approach is taken, with a range of methods available to capture views, including the use of independent advocacy. This is captured in President [guidance](#) and [information notes](#). There is no statutory provision for Safeguarders within the HEC.

Q15. The scope of the Tribunals powers in making final orders - what the parties can expect

A15. A tribunal's powers vary depending on the type of case and the statutory powers available to them. These include granting or refusing placing requests, requiring actions in relation to CSPs and transitions, and making orders in discrimination cases (excluding compensation).

Q16. Review of Co-ordinated Support Plans (CSPs)

A16. The review of CSPs is governed by the statutory provisions contained within the Education (Additional Support for Learning) (Scotland) Act 2004, sections 10, 11, 18 and 19.

Q17. Implications for local authorities of the UNCRC Incorporation Act

A17. The Tribunal cannot provide general commentary on the impact of legislation on organisations. Local authorities should be aware that they are public authorities for the purposes of the 2024 Act.

Q18. The Tribunal allowing a period of assessment for child rather than placing them right away. This would ensure the correct placement is allocated and that decisions round the placement are child centred and based on assessment evidence

A18. Cases are managed in accordance with the Tribunal rules and the overriding objective, which includes avoiding unnecessary delay. Any delay to allow for assessment would require agreement or to be justified by exceptional circumstances.

Q19. (JABS Recruitment for HEC Specialist Judicial Office Holders) Is there any additional input provided to successful applicants who have not come from an education background in terms of the induction around inclusion, staged intervention, and the code of practice?

A19. The HECs delivers a comprehensive induction programme. Ongoing specialist training is provided throughout a judicial office holder's tenure. Core areas such as inclusion, staged intervention and the Code of Practice are covered as part of this programme.

Q20. Is it possible to hear how many of the references and claims made that ended up going to hearing stage and how many were resolved before hearing stage?

A20. This was not captured in the statistical reports provided at the Forum. It was highlighted that a higher proportion of cases proceed to case management hearings than to full evidential hearings. Additional data on this may be shared at future Forums.

Q21. If a child is placed in an independent school as outcome of tribunal and there is evidence that this is not meeting the child's needs, can / how can the local authority ask for a review of the decision?

A21. The circumstances described would not generally fall within the scope of the Tribunal's review provisions. Rule 11 provides for review within a 14-day timeframe and would not typically apply in this context. Where an educational placement is no longer suitable, a fresh placing request may be made, subject to statutory timescales. Alternatively, matters may be resolved collaboratively between the parent and the local authority without the need for further formal proceedings.

Q22. Following on from question 5 and the answer to it, how far in the process could the President's monitoring powers extend?

A22. Under rule 12, the President has the power to monitor the implementation of Tribunal decisions. Where concerns arise regarding compliance, the President may seek information from the relevant authority. If not satisfied that a decision is being implemented, the matter may be referred to Scottish Ministers.

The President concluded the event and thanked enquirers and those in attendance today, for their helpful and valuable engagement and input.