



GUIDANCE TO TRIBUNAL MEMBERS No 01/2026

POWER TO DECIDE A REFERENCE OR CLAIM WITHOUT A HEARING

Purpose of this Guidance

1. This Guidance is to assist Tribunal judiciary with their application of rules 37 and 83 of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366). Rule 37 makes provision for a reference to be decided without an evidential hearing. Rule 83 makes provision for a claim to be decided without an evidential hearing (referred to in this Guidance as a hearing).
2. For the purpose of this Guidance, the term 'child', means everyone below the age of eighteen years, consistent with Article 1 of the United Nations Convention on the Rights of the Child (**UNCRC**).
3. There may be occasions where an application is made to this Tribunal for someone who is 18 years or above who remains in school education. This Guidance applies equally to those who fall within this category.
4. The provisions which are set out in this Guidance for references and claims apply equally to freestanding UNCRC applications made under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024.

The overriding objective (rules 2 and 3)

5. This Guidance should be applied in conjunction with the overriding objective (in rule 2) of enabling the Tribunal with the assistance of the parties to deal with references and claims fairly, which includes:
 - a) Dealing with the reference or claim in ways which are proportionate to the complexity of the issues and to the resources of the parties.
 - b) Using the Tribunal's special expertise effectively.
 - c) Avoiding delay.

References (rule 37)

6. A legal member may decide the reference without a hearing in any of the following circumstances:
- a) Where no case statement response is submitted by the respondent within the statutory timescale or any extension of time granted to this. ¹
 - b) Where the respondent states in writing that they do not resist the reference.
 - c) Where the respondent withdraws their opposition to the reference.
 - d) Where both parties agree in writing to dispense with a hearing.
 - e) Where it has been established that the child requires a co-ordinated support plan (**CSP**) and the respondent fails to provide such a plan within the time limit provided.
 - f) Where a capacity or wellbeing reference is made by a child or their parent. ²

Claims (rule 83)

7. A legal member may decide the claim without a hearing in any of the following circumstances:
- a) Where no case statement response is submitted by the responsible body within the statutory timescale or any extension of time granted to this. ³
 - b) Where the responsible body states in writing that they do not resist the claim.
 - c) Where the responsible body withdraws their opposition to the claim.
 - d) Where both parties agree in writing to dispense with a hearing.

Where both parties agree to dispense with a hearing

8. Parties may agree to dispense with a hearing where the material facts are not in dispute and the dispute centres only on the law. Facts need not be formally agreed to show that they are not in dispute. Some facts may be evidenced by one party (for example in one of their witness statements) and the other party may not be in a position to agree or dispute those facts. In such cases, the tribunal may, if satisfied on the evidence, find these facts established, even where the other party takes a neutral position on them.
9. Unrepresented parties may have a particular interest in this type of decision if they do not wish to attend a hearing.

¹ See rule 19 for details of the case statement period; and rule 29 for the provision on extension of time.

² See 2004 Act, section 18(3)(ea) for capacity and section 18(3)(eb) for wellbeing.

³ See rule 66 for details of the case statement period; and rule 75 for the provision on extension of time.

10. Where a legal member considers a case may fall into this category, they shall raise the question of whether it can be decided without a hearing at the case management hearing and record this in the case management hearing note.

Failure to provide a CSP within the statutory time limit

11. In this category of case, there is usually no factual dispute that the respondent has failed to provide the CSP within the statutory time limit.⁴ If this is the sole nature of the reference it may be suitable for a decision without a hearing.
12. The statutory time limits are found in the 2004 Act and in CSP regulations. Where an education authority proposes to establish whether a child requires a CSP, they must inform the young person's parent.⁵ The education authority then has a time limit of 16 weeks to give a copy of the CSP to the child's parent. This time limit begins from the date they informed the parent of their proposal.⁶ There are exceptions to the time limit.⁷

Deciding a case without a hearing

13. In deciding a reference, claim or freestanding UNCRC case without a hearing, the legal member shall do so on the basis of the reference, claim or freestanding UNCRC form, any case statements and any written evidence, including any written witness statements.
14. The legal member may direct that a joint minute of agreed facts is prepared and lodged by the parties or their representatives.
15. Once a decision has been made that the case may be decided without a hearing, the legal member shall direct the caseworker to send a copy of this Guidance Note to the parties with an indication of when the legal member expects to produce the decision.

Decision in terms agreed in writing by the parties

16. There is provision⁸ for parties to invite the legal member to make a decision in terms agreed in writing by them. Where this arises, the terms of the written

⁴ See HEC decisions for an examination of the statutory time limits, e.g. ASN D 20 07 2020 (this case is unpublished. Circulated by the Chamber President to HEC judiciary in December 2025).

⁵ 2004 Act, section 11(3).

⁶ Additional Support for Learning (Co-ordinated Support Plan)(Scotland) Amendment Regulations 2005, regulation 4.

⁷ Additional Support for Learning (Co-ordinated Support Plan)(Scotland) Amendment Regulations 2005, regulation 7.

⁸ Rule 50(2) for references; rule 96 (2) for claims.

decision may be a condition of the parties' agreement to proceed without a hearing.

17. The legal member must decide whether they think it fit to write the decision in the proposed terms after considering the various documents lodged. Where they agree to do so this shall be recorded in the 'Process' section of the decision (see example). Where they do not think it fit to do so, the legal member may advise the parties of the reasons for this and invite views on whether or not the proposed terms may be adjusted.

Process

5. This decision is made in the terms proposed by the parties. Having considered these terms, and the documents lodged by both parties, which includes the bundle of documents numbered T001-049, C001-041 and RB001-010, I am satisfied that it is appropriate to make the decision in the terms proposed.

18. Irrespective of how the proposed terms are offered, the legal member shall draft the decision in the Chamber style, consistent with the Chamber's Judicial Decision Writing Toolkit, under the following headings:

Reference/Claim/Freestanding UNCRC

Decision

Process

Findings in Fact

Reasons for the Decision

May Dunsmuir
Chamber President
01 March 2026