



Representatives' Forum 05 March 2026, Online

The second Health and Education Chamber (Additional Support Needs) (HEC) Representatives' Forum was held on Thursday 05 March 2026 online. This Forum will be run annually.

The next Representatives' Forum will take place on Thursday 04 March 2027.

1. Chamber President Update

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2025 (UNCRC)

1. The Tribunal has seen a rise in the number of applications across the reporting year (to date). This includes a rise in UNCRC arguments in references and claims. One freestanding UNCRC application has been brought to the Tribunal, under section 7(1)(a) of the 2024 Ac. At the time of the Forum, a decision was awaited from the Upper Tribunal for Scotland (UTS) on this application. The decision has now been published and is available on the UTS website at [Decision \(Appeal\) \[AP\]](#).
2. The Scottish Parliament has amended a number of Tribunal Rules of Procedure, including the Health and Education Chamber Rules. These are minimal rule changes made under *The First-tier Tribunal for Scotland (Procedure Rules) (Miscellaneous Amendment) Regulations 2026* which come into force on 01 April 2026. This introduces a new rule 3A, which addresses compatibility questions, how these are raised and intimated and notice provisions. There is also a new rule 10A which deals with the First-tier Tribunal making a reference to the Inner House.
3. Under these rule changes, the term 'child' has been tidied up (in rules 44 and 90 views of the child) to include 'or young person'. A child for the purposes of a UNCRC argument is anyone under the age of 18. A child for the purpose of a reference is anyone up to and including the age of 15 years. A young person for the purpose of a reference is anyone over 16 years and still receiving school education. In a disability discrimination claim a child or young person is referred to as the 'pupil'.

Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026

4. This Bill was passed on 18 February 2026 and is awaiting Royal Assent. Under the Education (Scotland) Act 1980 parents may withdraw a child from religious education and religious observance in school. Religious education can also be known as religious and moral education. Part 1 of the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026 requires schools to inform a child if their parent asks for them to be withdrawn from either or both. It also gives the child the chance to express their views. Where the child's views are different from the parent's views, the school must follow the child's wishes.
5. Part 2 of the 2026 Act makes changes to the 2024 Act and introduces an exemption to the compatibility duty.

UNCRC - child's views on the remedies

6. The President is updating guidance on the use of Independent Advocacy. This will include provision for information on the child's views on the remedies to be included in the advocacy report.

Revision to the Code of Practice

7. A fourth edition of the Code has been prepared and is now available for consultation. The consultation period ends on 07 May 2026. The Code is a statutory code and used regularly in HEC proceedings. You will find the consultation [here](#).

Use of the bundle and witnesses

8. A reminder to all that a representative should not send the full bundle to any witness. Only the bundle documents or parts of those documents relevant to the evidence of the witness should be shared. A witness should not be sent or have access to the written witness statement of another witness, except parts of a written witness statement in which the witness expresses an opinion. Witnesses may have access to the report of a skilled witness, where relevant
9. It is critical that tribunal participants remain up to date with the [Information Note 01/2023 on Parties, Representatives, Witnesses and Supporters](#). The relevant paragraphs on access to the bundle are found at paras 28-30.

2. Topical Matters

Co-ordinated support plans (CSPs)

Duration of additional support needs

10. A key element of the test for a CSP is whether the child or young person's additional support needs are likely to continue for more than one year (Education (Additional Support for Learning) (Scotland) Act 2004, section 2(1)(c)). This part of the test relates to the continuation of needs rather than the continuation of support. Accordingly, section 2(1)(c) may be satisfied even where no support is currently being provided.

Statutory timescales

11. The statutory framework governing CSP consideration and preparation involves a two-stage process.

12. Once a request is made to consider whether a CSP is required (under section 6(2)(b) of the 2004 Act), the education authority has **eight weeks** to decide whether one should be prepared. If the authority decides that a CSP is required, it then has **sixteen weeks** to prepare it.

13. If the authority decides not to prepare a CSP, the person requesting consideration may make a reference to the Tribunal. If no decision is issued within the eight-week period, a deemed refusal arises, which also gives rise to a right of reference.

Evidence relating to the statutory tests

14. The tests for a CSP set out in section 2 of the 2004 Act are legal tests. It is therefore not appropriate for skilled witnesses to give an opinion on whether a particular statutory test is met in a specific case, and such evidence is not admissible. This applies to both written witness statements and oral evidence.

15. Skilled witnesses may instead give evidence regarding the level and nature of additional support required by the child or young person, whether or not that support is currently being provided. This evidence forms the factual basis upon which parties make submissions regarding the application of the statutory tests, and upon which the Tribunal reaches its decision.

CSP content references

16. In cases concerning the content of a CSP, careful consideration should be given to where particular wording should appear within the document. The Schedule to the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 provides a template CSP and prescriptive descriptions of each part of a CSP.

17. Where a reference concerns the content of a CSP, it will usually assist the Tribunal if the appellant provides a draft of their proposed amendments to the CSP wording.

Overriding Objective

18. The Tribunal Rules are designed to provide a procedural framework that enables the First-tier Tribunal for Scotland, with the assistance of parties, to deal with references and claims fairly and justly. Rule 2 is pivotal to how all of the rules are interpreted and applied.
19. In practice, this means that proceedings should be conducted in a way that is proportionate to the complexity of the issues and the resources available to the parties. Rule 2 also encourages an approach that is flexible and relatively informal, while ensuring that all parties are placed on an equal procedural footing and are able to participate fully in the process.
20. In supporting participation, the Tribunal may assist parties in presenting their case where necessary, particularly where a party is unrepresented. However, the Tribunal does not advocate for any party or advise on the course they should take.
21. Rule 2 refers to the Tribunal's special expertise, which should be used effectively in determining cases. At the same time, proceedings should be managed in a way that avoids unnecessary delay while still allowing proper consideration of the issues.

Unrepresented Parties

22. The Tribunal has seen a rise year-on-year of unrepresented party cases. A reminder that the overriding objective of the Tribunal is discharged with the assistance of the parties. Parties who are represented may be asked to assist the unrepresented party when it comes to preparing for the hearing.
23. The Tribunal has a duty to assist an unrepresented party to present their case without advocating the course they should follow.

Joint minute of agreed facts

24. The Tribunal has previously directed the preparation of a Joint Minute of Agreed Facts. In practice, these documents have often included agreement on both factual matters and aspects of the applicable law. Where this occurs, it may be more appropriate for the document to be titled a 'Joint Minute of Agreement', with separate sections for 'Agreed Facts' and 'Agreed Law'.
25. Facts are matters that have occurred or that is the case. Agreeing as many facts as possible assists both the parties and the Tribunal by narrowing the issues in dispute and reducing the extent of oral evidence required at the hearing.

26. It can also be helpful for parties to agree aspects of the relevant legal framework that are not in contention. For example, parties may be able to agree that a child or young person has additional support needs, that they have a disability, or that a particular school is a special school. Where elements of the relevant legal tests are capable of agreement, parties are encouraged to identify these in advance in order to narrow the issues and focus the hearing.

Outline written submissions

27. Outline written submissions provide an opportunity for parties to set out their respective positions at an early stage. This assists both the parties and the tribunal in identifying and focusing on the key issues for determination at the hearing.

28. Providing clear and sufficiently detailed outline submissions may also reduce the time required for the tribunal to reach a decision, as only supplementary ‘top-up’ submissions, whether oral or written, may be required following the evidence. The more comprehensive the outline submissions, the less additional work is generally required after the evidence has concluded.

Witness statements

29. Witness statements should be carefully prepared and presented in a clear and structured manner, preferably in chronological order. They should be signed and dated. Well-prepared statements can reduce the amount of oral evidence required at the hearing.

30. When preparing witness statements, parties should remain mindful of the scope of the reference or claim. The Tribunal is not a review body and may only consider the legal tests relevant to the matter before it. Parties and their representatives should therefore avoid including material that is not directly relevant, such as details of complaints processes, unless these are material to the case.

31. At the hearing, parties and their representatives are encouraged to focus questioning of their witnesses on matters not already addressed in the witness statements, such as issues arising from another witness’s evidence or events that have occurred since the statements were lodged. This approach can further assist in reducing the time required for the examination of witnesses.

Cancellation of hearings

32. Over the past two reporting years there has been a notable increase in the number of hearings being cancelled close to the hearing date. Hearings should be fixed without delay, and parties are expected to be in a position to proceed when

requesting hearing dates. Hearings should not be scheduled unnecessarily far in advance, as it is important that disputes are determined without undue delay.

33. Where a case settles and a hearing is no longer required, the Tribunal should be notified and the hearing cancelled at the earliest possible opportunity. This helps minimise inconvenience and avoid unnecessary costs for the Tribunal, the parties, children and young people and witnesses.

Late lodging of documents

34. The expectation is that all documentation on which a party intends to rely is lodged with the case statement. Any document submitted after that stage requires a request to lodge the document late.

New President's Guidance

[PGN 01 2026 Power to decide a reference or claim without a hearing](#)

35. Parties are encouraged to familiarise themselves with this guidance note. The Tribunal rules provide a power to determine a reference or claim without a hearing where appropriate.
36. This option may be particularly suitable where the central issue concerns the application of the law and where the material facts are not in dispute. It has also been of interest to some unrepresented parties, including young people. In suitable cases, this approach may allow a decision to be reached more quickly and efficiently.

3. Question and Answer Session

37. The following questions were raised in advance of the Representatives' Forum.

Q1: Paragraph 65 of *Information Note 01/2023 for Parties, Representatives, Witnesses and Supporters*, sets out the usual order for questioning witnesses. It was suggested that where this order is not followed, or where changes are made without prior agreement, the process can become disrupted.

A1: The order of questioning is set out in line with established case law and should normally be followed unless there is a clear reason to depart from it.

Q2: Witnesses appearing remotely can sometimes seem to have access to documents that are not in the bundle.

A2: Witnesses should not have access to the full bundle (see paras 8 and 9 above), copies of other witnesses' statements, or documents not included in the agreed bundle. Parties are responsible for ensuring that their witnesses understand what materials they may properly refer to during their evidence.

38. The following questions were raised at the Representatives' Forum.

Q3. The two-witness limit in placing request references can present difficulties for education authorities where multiple refusal grounds are relied upon. Greater consistency was sought on how this issue is addressed under Rule 33.

A3: Witness limits are set out in the Rules and are intended to focus the issues to be addressed at the hearing. Proceedings are civil in nature and hearsay evidence may be admitted, meaning it is not always necessary for a witness to give direct evidence on every point.

Each tribunal exercises judicial independence and decisions on witness numbers are a matter for the legal member at the case management hearing. The President's view is that requests for additional witnesses should be resisted unless clearly necessary. Where additional witnesses are sought, parties should provide clear justification for each request.

Written reports may be lodged without the author appearing as a witness. Parties are encouraged to consider the range of available options before requesting additional witnesses and to ensure that the witnesses called will assist the Tribunal in determining the key issues.

Q4. A concern was raised regarding the scheduling of case management hearings during school or public holidays, particularly during July, when it may be difficult to obtain information from witnesses who are on leave.

A4: The President has previously corresponded on this matter.

While July is excluded from certain time limits, this does not prevent case management hearings from being scheduled during that period. Case management hearings are procedural in nature and are intended to prepare the case for hearing rather than determine substantive issues.

Parties will normally have advance notice of the case management hearing, the full bundle will have been lodged, and preliminary work undertaken, including identifying witnesses and their general availability. Excluding school holidays or July from case management hearings would be likely to result in significant unnecessary delays.

Q5. Seeking an understanding of what factors the Tribunal may take into account when determining cases, including issues such as the presumption of mainstream education, protection of the public purse, best value

considerations, and situations where parents accept a second-choice option, but nevertheless pursue a reference in respect of their preferred option.

A5: The Tribunal is a judicial decision-making body and not a review body. It determines only those matters within its jurisdiction and applies the relevant statutory legal tests. Decisions made by the Tribunal place legal duties on the relevant education authority or responsible body unless successfully appealed or reviewed.

Parties may rely only on the placing request refusal grounds set out in their original refusal letter (unless these are added to later, with the Tribunal's permission). If a particular ground of refusal is to be relied upon, it must be identified at that stage. Some of the grounds of refusal are resource orientated, others are not. The mainstream requirement ground is one of these grounds of refusal.

The Tribunal must focus only on evidence and submissions that are directly relevant to the applicable legal tests. The Education (Additional Support for Learning) (Scotland) Act 2004 provides parents and young people with a legal right to make a reference or claim, regardless of whether an alternative placement offered by the education authority has been accepted.

Separately, the President has a power to monitor the implementation of a decision under Rule 12 which provides various referral powers.

4. Closing remarks

39. The President thanked all those who attended the Forum and for their continued engagement with the Tribunal. It was particularly helpful to hear the questions raised and the perspectives shared by those involved in preparing and participating in hearings.

40. The President recognises the significant work undertaken by representatives and others in preparing cases. The time and care taken in advance of hearings contributes greatly to the effective running of proceedings and helps ensure that hearings are focused and constructive.

41. Tribunal proceedings can be a daunting experience for everyone involved, including children and young people, parents, witnesses, education and health professionals and family members. The Tribunal is mindful of this and aims to ensure that the process is concluded in a way that is as clear, fair efficient and supportive as possible.

42. The continued efforts of all those involved in preparing and participating in proceedings play an important role in helping to create a positive and respectful Tribunal experience for those who come before it.