

Health and Education Chamber  
First-tier Tribunal for Scotland

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Additional Support Needs



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

Thursday 18 April 2024

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

- **Hearing types and venues**
- **Advocacy**
- **UNCRC (Incorporation)(Scotland) Act 2024**
- **Accessing the GTC/sensory hearing suite**
- **Hearing Efficiencies**
  - **New** Representatives' Forum

# Glasgow Tribunals Centre Dedicated Entrances

## Side entrance

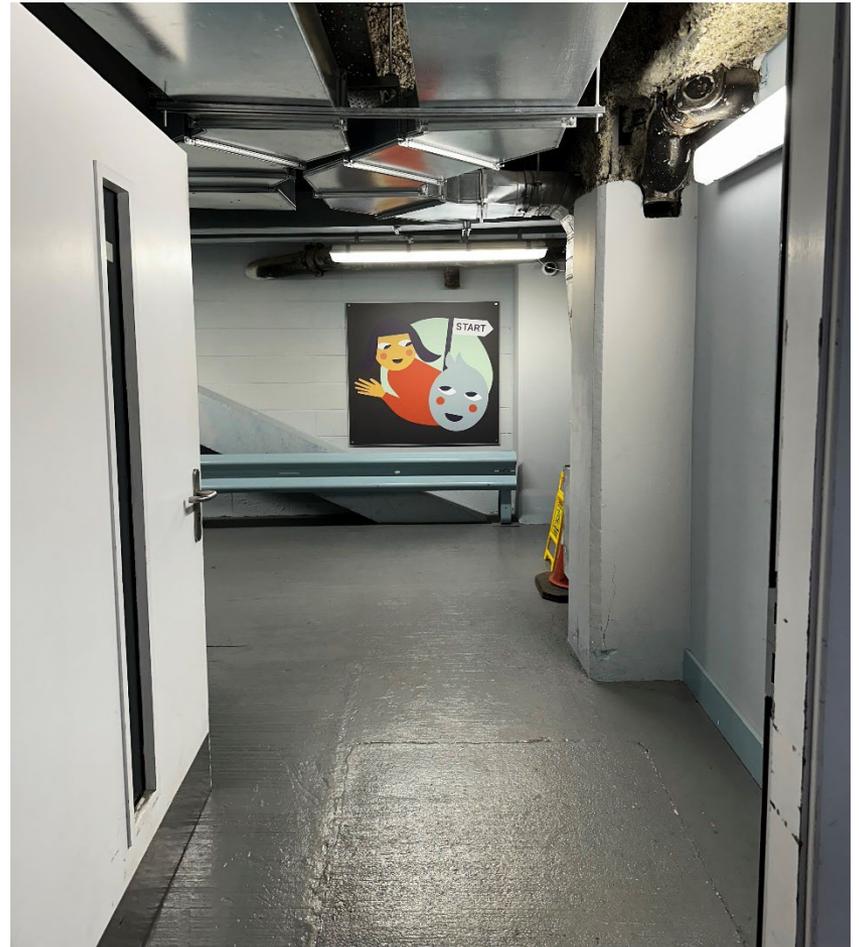


Side Entrance

Main Entrance

# Glasgow Tribunals Centre Dedicated Entrances

## Carpark entrance



# Visual Decision Letter to the Child

Health and Education Chamber  
First-tier Tribunal for Scotland



Contact Us



You asked us to tell the school to do certain things. We have done this.



We found it really helpful to hear what you had to say. Thank you for talking to us. Thank you also for your written statement.

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

Dear

## Our decision about your school



Thank you for your application to the Tribunal about your school. This letter explains our decision.



We read all of the papers that were sent to us. We also listened carefully to what everyone said at the hearing.



You have Developmental Language Disorder. The law says that this is a disability.



We had to decide if you had been treated unfairly because of the disability.



You were excluded from school in September 2020. The school didn't talk to you or listen to you before making this decision. You felt this was unfair. We agree with you.

|           |   |   |   |  |   |
|-----------|---|---|---|--|---|
| 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.

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Additional Support Needs

**Mr Jerry O'Connell**  
**Team Leader - School Organisation Team**

**Scottish Government**  
**Proposed Transfer of Education Appeal**  
**Committees to First-tier Tribunal for Scotland**  
**Consultation Update**

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Additional Support Needs

**Miss Elaine Forbes**  
**Operations Manager**

**Casework Update 2023/2024**



# Casework Overview

Total Applications received:

|         | References | Claims    | Total      |
|---------|------------|-----------|------------|
| 2017/18 | 89         | 11        | 100        |
| 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 | <b>229</b> | <b>15</b> | <b>244</b> |

# References received by type

| Type                   | 17/18     | 18/19     | 19/20      | 20/21     | 21/22      | 22/23      | 23/24      |
|------------------------|-----------|-----------|------------|-----------|------------|------------|------------|
| Placing Requests       | 74        | 71        | 96         | 59        | 98         | 160        | 204        |
| Contents of CSP        | 1         | 8         | 5          | 1         | 5          | 6          | 3          |
| CSP Required           | 7         | 7         | 8          | 4         | 3          | 10         | 7          |
| Implementation of CSP  | 0         | 0         | 4          | 2         | 3          | 2          | 2          |
| Deemed Refusal of CSP  | 2         | 5         | 4          | 4         | 0          | 4          | 7          |
| Timescales (Issue CSP) | 2         | 2         | 1          | 0         | 3          | 0          | 0          |
| Failure to Review CSP  | 1         | 2         | 3          | 1         | 2          | 0          | 2          |
| Transitions            | 2         | 1         | 1          | 0         | 3          | 3          | 4          |
| <b>Totals</b>          | <b>89</b> | <b>96</b> | <b>122</b> | <b>71</b> | <b>117</b> | <b>185</b> | <b>229</b> |

# Claims received

| Type                           | 17/18     | 18/19     | 19/20     | 20/21     | 21/22     | 22/23     | 23/24     |
|--------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Admission                      | 0         | 0         | 3         | 0         | 0         | 1         | <b>2</b>  |
| Other                          | 8         | 9         | 13        | 7         | 9         | 7         | <b>6</b>  |
| Admission,<br>Exclusion        | 0         | 0         | 0         | 2         | 1         | 0         | <b>0</b>  |
| Exclusion                      | 1         | 0         | 4         | 2         | 2         | 4         | <b>0</b>  |
| Admission, other               | 0         | 0         | 0         | 1         | 1         | 1         | <b>1</b>  |
| Exclusion, other               | 1         | 7         | 4         | 0         | 3         | 2         | <b>4</b>  |
| Admission,<br>Exclusion, other | 1         | 1         | 0         | 0         | 0         | 2         | <b>2</b>  |
| <b>Totals</b>                  | <b>11</b> | <b>17</b> | <b>24</b> | <b>12</b> | <b>16</b> | <b>17</b> | <b>15</b> |

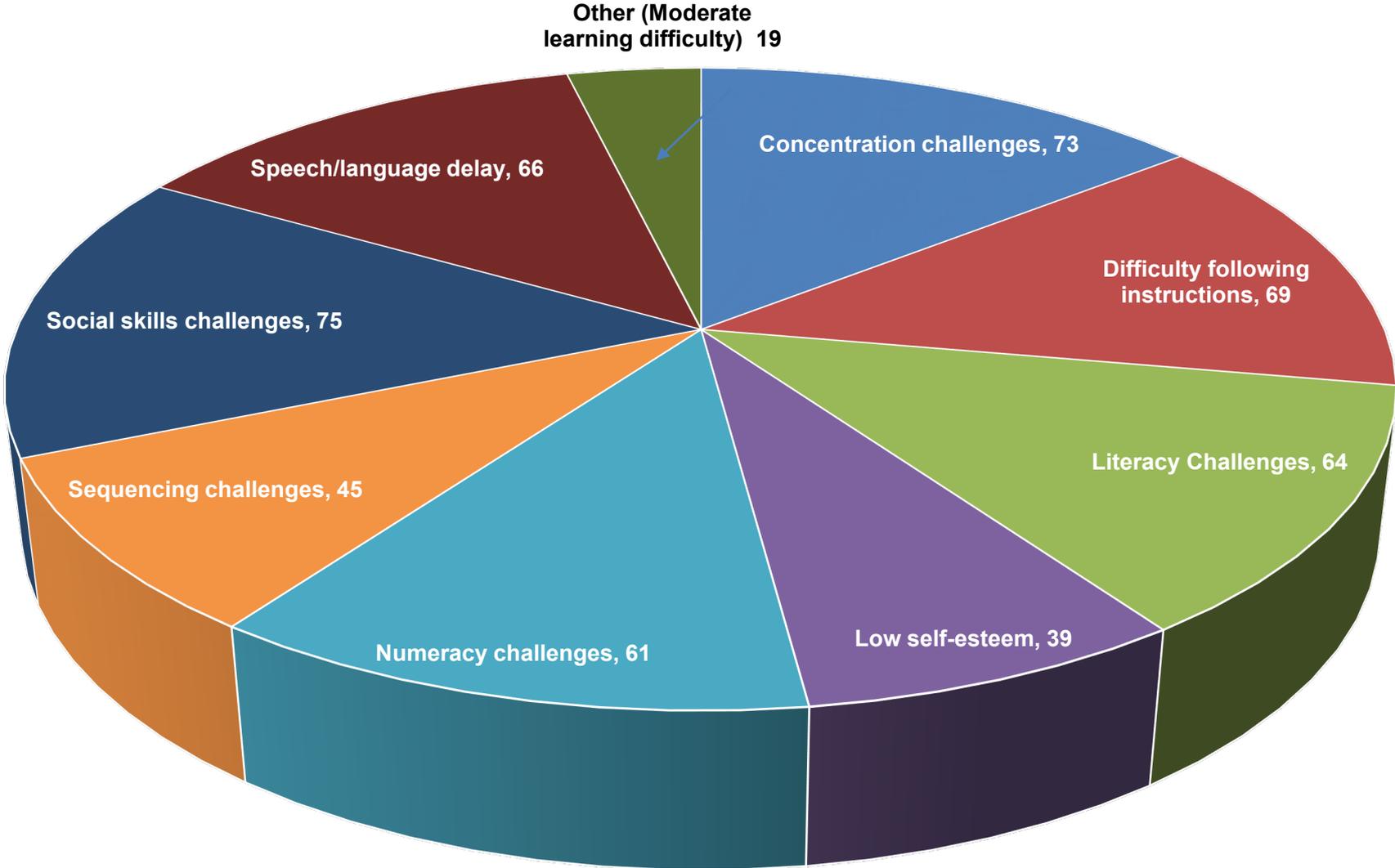
## Highest volume references and claims 2023/2024

| Education Authority       | Claim     | Reference  | Total      |
|---------------------------|-----------|------------|------------|
| City of Edinburgh Council | 2         | 63         | 65         |
| Glasgow City Council      | 1         | 43         | 44         |
| West Lothian Council      | 0         | 21         | 21         |
| North Lanarkshire Council | 0         | 18         | 18         |
| Aberdeen City Council     | 0         | 12         | 12         |
| Perth & Kinross Council   | 0         | 12         | 12         |
| Fife Council              | 2         | 8          | 10         |
| Renfrewshire Council      | 0         | 7          | 7          |
| South Lanarkshire Council | 1         | 6          | 7          |
| Aberdeenshire Council     | 3         | 4          | 7          |
| Others                    | 6         | 35         | 41         |
| <b>Total cases</b>        | <b>15</b> | <b>229</b> | <b>244</b> |

## Nature of Additional Support Needs 2023/2024

| Additional Support Need                             | Claim     | Reference   | Total       |
|---|-----------|-------------|-------------|
| Autistic Spectrum Disorder (ASD)                    | 9         | 175         | 184         |
| Social, emotional or behavioural difficulty         | 8         | 91          | 99          |
| Other (Social, emotional or behavioural difficulty) | 1         | 19          | 20          |
| Mental Health Problem                               | 0         | 54          | 54          |
| English as an additional language                   | 0         | 8           | 8           |
| Hearing impairment                                  | 2         | 8           | 10          |
| Interrupted learning                                | 0         | 30          | 30          |
| Language or speech disorder                         | 0         | 37          | 37          |
| Looked after  | 0         | 8           | 8           |
| More able pupil                                     | 0         | 2           | 2           |
| Physical health problem                             | 0         | 24          | 24          |
| Physical or motor impairment                        | 1         | 13          | 14          |
| Visual impairment                                   | 0         | 8           | 8           |
| Specific Learning Difficulty                        | 2         | 31          | 33          |
| Other (Specific learning difficulty)                | 5         | 45          | 50          |
| Moderate Learning Difficulty                        | 0         | 492         | 492         |
| Other (Moderate learning difficulty)                | 1         | 18          | 19          |
| <b>Totals</b>                                       | <b>29</b> | <b>1063</b> | <b>1092</b> |

# Moderate Learning Difficulty



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Additional Support Needs

**Miss Sarah-Anne Tracey**

**Casework Team Leader**

**E-bundle**

**Expansion of Sensory Hearing  
Venues**

# The E-Bundle

- Duplicate documents
- Large documents
- Late lodging of documents
- Removal of documents

President Guidance Note - 01 2022 DOCUMENTARY EVIDENCE

[PGN 01 2022 DOCUMENTARY EVIDENCE.pdf \(healthandeducationchamber.scot\)](https://www.healthandeducationchamber.scot.nhs.uk/~/media/Healthandeducationchamber/2022/01/PGN_01_2022_DOCUMENTARY_EVIDENCE.pdf)



# Expansion of Sensory Hearing Venues

## Current Sensory Hearing Venues



**Glasgow Tribunal Centre**



**Inverness Justice Centre**

## Future Sensory Hearing Venues

To be confirmed within a number of locations throughout Scotland.



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Additional Support Needs

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

**Judicial Update**

# HEC Case Law Update (1)

## Co-ordinated Support Plans

[Aberdeenshire Council v CD 2023 UT 28](#) (on preliminary point) on the meaning of 'significant additional support' in s.2(1)(d) of the 2004 Act: the correct interpretation is a non-cumulative one.

- Lady Poole went onto make additional comments on the number of CSPs in Scotland (paragraph 26).
- Lady Poole then makes three general points about the test for a CSP relating to the word 'require', 'significant' and 'by one or more appropriate agencies', all in s.2(1)(d) of the 2004 Act .
- A CSP was ordered in that case, and the decision is published [here](#).  
(*merits decision in this case*)

# HEC Case Law Update (2)

## Disadvantage under the Equality Act 2010

The concept of 'unfavourable treatment' (section 15), 'less favourable treatment' (section 13) and 'disadvantage' (sections 19 and 20-21) are linked concepts across the four types of discrimination that can be relied upon in HEC claims.

The Supreme Court has made it clear that the Code of Practice provides helpful advice as to the relatively low threshold of disadvantage which is sufficient under the relevant provisions of the Act: *Trustees of Swansea University Pension and Assurance Scheme and another v Williams* [2019] 1 WLR 93, paragraph 27, per Lord Carnwath, delivering the unanimous opinion of the court.

# HEC Case Law Update (3)

## Disadvantage under Equality Act 2010

‘Disadvantage’ is not defined by the Act. It could include denial of an opportunity or choice, deterrence, rejection or exclusion. The courts have found that ‘detriment’, a similar concept, is something that a reasonable person would complain about—so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable and the [pupil] does not have to experience actual loss...It is enough that the [pupil] can reasonably say that they would have preferred to be treated differently.

*(The Code of Practice, paragraph 4.9)*

A similar passage appears in the ECHR’s *Technical guidance for schools in Scotland, 2023*, paragraph 5.21.

# HEC Case Law Update (4)

## Disadvantage under Equality Act 2010

Some examples of 'disadvantage' argued in HEC cases, all relating to alleged failures:

- [FTS/HEC/AC/20/0088](#): Failure to take the views of parents on the child's education into account (inapplicable in this case (paragraph 97)).
- [FTS/HEC/21/AC/0072/MERITS](#):
  - Unreliable approach to attributing the cause of the child's distress (paragraphs 72-85).
  - Denied the benefit of a proper system for recording of incidents of distress (paragraphs 91-101).
  - Denied the benefit of access to staff with adequate physical restraint training (paragraphs 102-120).
- [ASN D 20 09 2021](#): Failure to take steps in relation to the transition process (inapplicable in this case).
- [ASN D 22 01 2021](#): Failure to provide full-time education.

# HEC Case Law Update (5)

## Trauma

*HEC trauma informed principles: safety, trustworthiness, choice, collaboration and empowerment + kindness*

- Trauma as a factor featuring more often and more prominently. Can be obvious or more subtle and may include alleged educational neglect.

[FTS/HEC/AR/22/0152](#), [FTS/HEC/AR/22/0192](#), [FTS/HEC/AR/22/0173](#),  
[FTS/HEC/AR/22/0034](#), [FTS/HEC/AR/21/0094](#), [FTS/HEC/AR/21/0096](#)  
[FTS/HEC/AR/21/0086](#), [ASN D 06 05 2021](#), [ASN D 14 01 2021](#),  
[ASN D 30 11 2020](#), [ASN D 24 09 2020](#), [ASN D 14 08 2020](#)  
[ASNTS D 01 2015 04.08.14](#)

# Unrepresented Parties (1)

**Numbers of unrepresented parties increasing:** 30 and 33 for the last two reporting years respectively, the first time this number has been in the 30s.

Tribunals have a duty to ensure that parties are on an equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of his or her case without advocating the course he or she should take (**rule 2(2)(c)**).

Dividing line between assistance to present and suggesting what to present.

Parties must assist Tribunal to enable it to decide references and claims fairly and justly (**rule 2(1)**).

# Unrepresented Parties (2)

**Duty to deal with references and claims in ways which are proportionate to the resources of the parties (rule 2(2)(a)).**

## **Areas of difficulty can exist around**

- Scope of the case
- Relevancy (as a concept and in practice)
- Legal points
- Jargon (legal and other)
- Importance of process concepts (such as fair notice)
- Questioning technique
- Controlling emotions

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Additional Support Needs



**Enquires and Questions**

# Partners in Advocacy

## Q.1 UNCRC and Tribunals.

# Cairn Legal

Q2. Section 7(5) of the *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*. Is it anticipated that regulations will be brought forward with a view to extend powers to grant appropriate remedies / reliefs to:

- a) The First-tier Tribunal for Scotland (Health and Education Chamber)? and / or
- b) education appeal committees?

This would allow those bodies to award damages where appropriate (section 8) and to respond appropriately to the full breadth of views which children so affected may provide on the issue of relief (section 9).

It would also avoid a situation where placing request appeals and challenges to exclusions which can end up in the Sheriff Court as well as these other bodies, would have different potential remedies depending on the route the appeal or challenge happened to take.

**Does the Tribunal have a view on this?**

# East Ayrshire Council

Q3. ASN Tribunal trends – from a content / outcome perspective.

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

Q4. We are concerned at the high number of placing requests for special schools which are granted following referral to the tribunal, particularly where children have very complex needs. Decisions should be made in the best interests of the child – particularly given the imminent commencement on the UNCRC Incorporation Act.

**What do you think the high number of referrals of this type tells us about decision making?**

# Fife Council

## **Statement:**

Reviewing timescales for lodging responses to case statements (10 working days) is not enough time to get all of the detailed information available as well as lodge all of the documents required in a case.

# Fife Council

**Q6. Case management hearings – can these be fixed at the date a claim/reference is received similar to those in Employment Tribunals? This would remove the uncertainty about dates.**

# Fife Council

Q7. In-person hearings and having local resources as currently travelling to Glasgow for all in-person hearings is taking up a lot of time and resources.

**There used to be local provision for hearings before COVID-19, can this be reintroduced again?**

# Stirling Council

Q8. Co-ordinated Support Plans (CSPs).

**Recourse if appropriate agencies do not respond to requests for information (after numerous attempts and when this could affect adherence to statutory timescales) to support the CSP process or if they disagree that their input should be included in a CSP.**

# South Lanarkshire Council

Q9. The Council being allowed to be present throughout whole tribunal.

# North Ayrshire Council

Q10. Examples of reasons that tribunals are upheld or not upheld.

# Midlothian Council

Q11. ASN (2016) legislation effectively raising the age for young people to remain in education if they have additional support needs into S7, S8 and S9. We have seen an increase in young people requesting out of authority placement and in some incidents out of the country for further education at college due to local colleges not being able to meet the need. As an authority this is only going to increase due to the complexity of need coming through.

**Is this something that is being looked at nationally and the financial impact this has on authorities?**

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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.

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

Needs to Learn



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**.

