



Additional Support Needs
Tribunals for Scotland

Tribunal Forum

03 May 2016 at Europa Building, Glasgow

Each year the Tribunal hosts a forum which provides the opportunity to meet the President, the Secretary and members of the Secretariat, and to discuss topical matters in relation to the Tribunal.

The most recent forum was held on Tuesday 3 May 2016 in Glasgow, and was attended by representatives of 28 organisations.

The President delivered a presentation on hearing the views of the child in the tribunal process, preparing for a tribunal, witnesses and the Education (Scotland) Act 2016 (a copy of which is attached).

Below is a flavor of some of the questions and topics discussed at the event.

Preparing for a tribunal – pre-hearing

1. How does a joint minute work in practice?

A joint minute of agreement is a written statement of facts which are agreed between the parties. It assists in focusing the minds of the parties on the matters which remain in dispute. Parties, when preparing a joint minute, often realise there is less in dispute than they may have presumed. A joint minute can also reduce the need for oral evidence.

After the case statement period has ended, the convener will hold a case conference call and at this stage may direct that a joint minute be prepared (where both parties are represented). The President will shortly issue a new Guidance Note on case conference calls, which will be available on the Tribunal's website.

2. Is it beneficial to have an independent Educational Psychologist's report – and where one is prepared, should the author attend to give evidence at an oral hearing?

Factors:

- *Parent incurring the cost of the report/attendance at an oral hearing*
- *Differing feedback from tribunals on the benefits*

The President explained that it depends on the individual facts and circumstances of each reference or claim, if a report or a particular witness may be required. This question can be raised with the convener during the case conference call. Where an expert report is to be relied upon by one party, the other party is entitled to question



the report provider. However, if the terms of the report are not disputed, this could form part of the joint minute, or, it may be that the other party indicates at the case conference call that they do not intend to ask questions of this witness.

Is an “independent” Educational Psychologist independent? After all they appear for a particular party.

The President explained that an expert witness must deliver their evidence within the realms of their experience (see presentation slides). A witness, whoever they appear for, is not there to promote the view of a party. Their role is to speak to the facts and, where qualified to do so, to give an expert opinion within the limits of their knowledge and expertise.

3. Could training be given to colleagues who are requested to give evidence at a tribunal?

The Tribunal, as an independent judicial body, does not provide training. The President will issue guidance and information from time to time, and this can be located on the Tribunal’s website. The President is also willing to attend events, if requested and where time permits, to speak generally on Tribunal practices.

Children’s views

4. Is there an increased focus on hearing the views of the child or young person with the introduction of the Education (Scotland) Act 2016? What if a parent lodges a reference and does not think that it is necessary to hear from the child or young person?

This is a matter for each tribunal which is independent of the office of the President. A tribunal will explore the parent’s reasoning before forming a view and deciding how to proceed. A tribunal can instruct that a report be prepared on the child’s views from an independent advocate.

A comment was made by an independent advocate that children often want to make people happy, therefore it is a very important process to take a child or young person’s views. Depending on the area of the country, access to independent advocacy can be limited. Independent advocates can support children before, during and after a tribunal hearing.

The President has recently issued guidance on independent advocacy, which can be located on the Tribunal’s website.



General

5. *Is there a concern that there are small numbers of Co-ordinated Support Plan's (CSPs) for children / young people who have:*
- a. *Social, emotional or behavioural needs; or*
 - b. *Who are looked after children*
- What action should be taken even if individual needs are fully addressed through the supports given?*

The President referred to the findings from a Freedom of Information enquiry repeated by Govan Law Centre in 2015 (earlier in 2013), which suggests there continues to be wide variances in practice across all 32 education authorities.

6. *How a CSP and Child's Plan inter-relate? Is there a reduction in the requests for CSPs due to an effective Child's Plan?*

It is intended that a CSP will sit within the Child's Plan and that this can be transported out when necessary, for a Tribunal. This removes the need for the whole Child's Plan to be lodged as a production.

One education authority commented that they have noted a reduction in requests for CSPs.

The President remarked that it is too early to assess the impact, if any, of the statutory Child's Plan on the number of CSPs. She reminded attendees that the CSP is a statutory document in its own right.

7. *Should Parties be required to consider mediation before raising a reference / claim to the Tribunal? (akin to the ACAS system in Employment Tribunals)*

The 2004 Act does not require parties to engage in mediation, or to consider mediation. Tribunals will encourage mediation to continue where it has begun, but tribunals are not part of the mediation process.

One education authority remarked, in their experience, that mediation could be resented if there was an obligation to engage in this.

A mediator commented that mediation is complicated and it depends on the circumstances. Directing people down a particular route may not be entirely helpful. Another remarked that mediation services is not something that you are always aware of and you might not know what is out there until you are involved in a dispute.

One education authority asked if it was possible for the convener to raise this issue at the case conference call stage. Has mediation been used or explored?



The President advised that a convener may ask the question to explore the history and present circumstances of the case.

8. Continuing brief of the Additional Support Needs Tribunals for Scotland in the context of the Children and Young People (Scotland) Act 2014.

The President explained that she would be monitoring the provisions relating to named persons, corporate parenting and the child's plan, and their effect, if any, on Tribunal proceedings.

9. Is there any variance in procedures between references to the Tribunal and disability discrimination claims?

The President advised that there is no noted variance in procedures. She explained that she issued an Information Note in 2015 on how to make a disability discrimination claim. This is located on the Tribunal's website.