



Additional Support Needs Tribunals for Scotland

Presidential Guidance 2

Guidance for Witnesses

1. These guidance notes are issued for the benefit of all those who may be called to give evidence at a Tribunal hearing in the hope that they can provide a realistic expectation of what the process will involve.
2. Although the Guidance is described as being for witnesses, the parties to the proceedings (the parent who is the appellant and any other parent and also the party who is present on behalf of the Education Authority) will also all normally give evidence. However the parties will be permitted to remain in the Tribunal room throughout the proceedings. The child or young person may also be present for some or all of the proceedings and may be heard. A separate Guidance note will be issued for children or young people who will be heard by the Tribunal.
3. Normally each party is restricted to calling two witnesses, aside from those persons noted above. In certain circumstances, and normally at the discretion of the convener in advance of the hearing or Tribunal on the day of the hearing, an additional witness may be permitted. The Education Authority will normally lead their case first but in some circumstances the appellant will lead. It may depend on the issue or whether parties are represented. It may also depend on how much evidence can be agreed in advance. Where possible the Tribunal will try to settle this in advance of the hearing so that parties can give their witnesses a better estimate of when their evidence is likely to be heard. Where this is not possible witnesses will generally be asked by the party calling them to attend at the start of the hearing (usually 10.30 am) or even shortly before. Where it is settled in advance of the hearing who will lead then the attendance time for the witness may be later in the day to minimise inconvenience but it should be borne in mind that it is always very difficult to estimate how long each witness will take to give evidence.

4. As hearings are held in private, the witnesses will only be admitted to the hearing room for the purpose of giving their evidence, and in order to preserve the privacy of the proceedings will be asked to leave once their evidence has been heard. An exception to this is where there is an expert witness or an expert who is attending to give evidence at the direction of the tribunal. They will usually be permitted to remain to hear all the evidence.
5. It is unavoidable that witnesses generally find that they have time to wait before giving evidence. There will be a separate room set aside for the witnesses for each party in which to wait. You might want to bring a book to read or something to do to help pass this time. A witness may be taken out of turn if there are pressing reasons. Please let the case officer know if this is the situation.
6. Where possible the convener of the hearing will ask the case officer to keep you informed of the likely time when you will give evidence. If your home or workplace is very near the hearing room, you may even arrange with the party or representative that you will be telephoned shortly before you are due to give evidence to minimise inconvenience to you. It is acknowledged that communication between the hearing room and the waiting room is helpful, if not essential, in making witnesses feel more at ease.
7. The Tribunal may administer an oath under the Act which sets up the Tribunals but it is anticipated that this will be unusual as the ethos of the legislation is that the Tribunals are as informal as is consistent with ensuring that parties receive a fair hearing. However all witnesses are expected to be as honest as they can in giving their evidence and the Tribunal will, where appropriate, take a view as to the reliability and credibility of the evidence heard in reaching their decision.
8. When you enter the hearing room the case officer will direct you where to sit and the convener (the chairman) will normally introduce you to the persons in the room who are not already known to you. The case officer may also give you this information in advance of you entering the hearing room. You will be seated when giving evidence and there is no witness box as in a court room. Seating arrangements vary according to the venue. Whoever asks you the question it is helpful to address the answer to the tribunal as they are hearing the case.
9. There is no rigid procedure for conducting these informal hearings but the hearing is not usually conducted like a meeting or a discussion. The convener will adopt the most appropriate procedure in each case. Normally the person who has asked you to attend as a witness (or where they are represented, their representative) will usually be asked to question you first. The other party will then ask you questions followed by the members of the Tribunal. Finally the party who called you will be asked if there are any additional questions. Where the appellant is unrepresented then the Tribunal may take a more active

role in questioning to ensure that all the relevant issues are covered. In some cases parties may be content for the Tribunal to take the most active role in questioning. The convener may interrupt at points for the purpose of clarification, or to rule certain questions irrelevant or inappropriate. It is important for the Tribunal to remain focussed on the issues which are necessary for them to reach a proper decision.

10. Where you are asked a question and you do not know the answer then you should say so. If you are uncertain about the answer you should also indicate this. You should not try to give the answer you think the Tribunal wants to hear or the party who has called you. Very few witnesses have perfect recall of events.
11. The proceedings are all digitally recorded in the event of any dispute as to what evidence was heard, where this is relevant to an appeal or in the event of any complaint. Copies are only issued to the parties on application, and at the discretion of the President. The recording remains with the file and is destroyed after six months.
12. The convener will take a note of the evidence. It is not a word for word record but at certain points you may be asked to stop or speak more slowly so your evidence may be noted more accurately.
13. If you are a witness to facts, such as the observed behaviour of the child or young person, then you will not normally be asked to express any opinions and the person asking you to give evidence should have ascertained in advance of the hearing the things on which you are able to give evidence. You may have notes to refresh your memory on these aspects in advance of the hearing. You may even bring your notes to the hearing and you may be allowed to refer to them.
14. Where the person giving evidence also has a relevant professional qualification, it is appropriate for the Tribunal to be made aware of the background and experience of the witness who appears before them. Expert witnesses might find it helpful to draft a brief outline of their professional background which can be presented in written form to the Tribunal at the hearing so that this can be noted and thereby deal with this matter more expeditiously. An appeal from a decision of the Tribunal is heard in the Court of Session and the courts generally place weight on the source of any expert opinion expressed and relied upon in reaching the decision. If the Tribunal fails to ascertain the background and experience of the witness then their decision may be flawed. If you are asked such questions you should not think that they are asked because the Tribunal is calling into question your qualifications. However parties should not feel that the more qualifications of the expert the more weight will be placed on their opinion. It is usually better to have witnesses who know the child well rather than witnesses who have considerable expertise but little or no contact with the child.

15. Where the qualification is relevant to the additional support needs of the child then that person may be asked to express an opinion based on the child but also based on their professional experience. Such a witness might well have prepared reports which form part of the case bundle and will often be asked to refer to particular pages of evidence. The case officer, or the person questioning you, will indicate the page number to which you should turn.
16. It is not unusual for parties questioning or for the Tribunal to put hypothetical situations to such witnesses and ask for their view. This is quite proper in such types of hearing. If you are unable to express any view then you should say so and possibly explain why.
17. In most cases, the Tribunal will be aware that the parties will be in a continuing relationship after the hearing is ended, whatever its outcome, and will expect that the proceedings are conducted in an atmosphere of dignity and mutual respect. The convener of the hearing will endeavour to ensure that questions put to parties are not unreasonable, hostile or inappropriate. Representatives may also object to certain questions being asked. It may be necessary to press witnesses on certain points of importance or to revisit aspects of evidence to understand inconsistencies. This is part of the process to ensure a fair hearing.
18. If you have been cited by the Tribunal to attend the hearing as a witness you are bound to do so subject to notified penalties which may be imposed for failure to attend but you will not be treated any differently from witnesses who have attended without citation. It is recognised that some witnesses may require to be cited to attend in order to be released from their employment.
19. Where you have not been cited and are attending as a voluntary witness it is of the utmost importance that you ensure your attendance on the day and time of the hearing as notified. It is distressing for parties where witnesses are unable to attend and it may result in the decision being delayed.
20. Evidence before the Tribunal need not be oral and since documents do not always have to be spoken to the evidence may be received in written form. We are currently exploring the possibility of video links.
21. If you have any further questions about the hearing then where, possible, you should raise these with the person who has asked you to give evidence. Questions relating to expenses and loss of earnings should be directed to the case officer.

Jessica M Burns
President
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