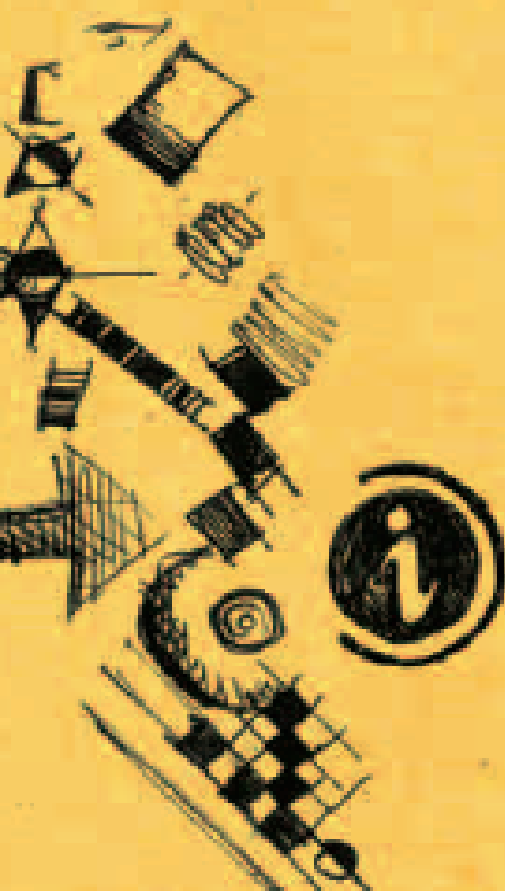


A USER'S GUIDE TO THE ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

additional support needs tribunals for scotland



Additional Support Needs
Tribunals for Scotland

1. INTRODUCTION

This guide is designed to help everyone who has an interest in the Tribunals. If you are a young person with **additional support needs** or a parent of a child with additional support needs, this guide should help you decide whether the Tribunals can deal with your dispute. If you work for an education authority or you have been asked to appear as a witness, this guide should also help you understand what the tribunal process involves. Where the guide refers to a “child” this includes a reference to a “young person”.

The guide aims to give users an overview of what issues the Tribunals deal with and what should happen when a **reference** (appeal) is received. If you would prefer, we can send you this guide in printed format. As well as reading this, you may find it helpful to watch our introductory DVD (www.asntscotland.gov.uk). For a printed guide or if you have unanswered questions, please call our helpline on **0845 120 2906**.

References to all “sections” throughout this guide refer to the **Education (Additional Support for Learning) (Scotland) Act 2004, as amended**, unless otherwise stated.



2. WHO WE ARE

The [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#) introduced far-reaching changes aimed at improving provision for children and young people who have additional support needs and face the biggest barriers to learning. This Act established the Tribunals on 14 November 2005 to provide a way to resolve *certain* disputes between parents or young people and the education authority. There is also amending legislation, the [Education \(Additional Support for Learning\) \(Scotland\) Act 2009](#), which introduces some new changes into the 2004 Act which apply from 14 November 2010. For this reason the version of the 2004 Act showing the changes is referred to as “the 2004 Act as amended”.

The Tribunals are independent of the Scottish Government and education authorities and deal with references fairly and justly according to the statutory provisions.

Each Tribunal is chaired by a **convener** who is legally qualified



and is supported by two **members** who have expertise in additional support needs. However, Scottish Ministers have made rules to allow a convener to sit alone to consider certain references where specialist expertise on additional support is not required.

The Tribunal will aim to ensure that hearings are as informal and flexible as possible. In practice parties, that is the parent and the education authority, can choose to come to the Tribunal without a representative, be represented by someone who is not legally qualified or be represented by someone who is legally qualified. Whatever choice parents make about representation, the Tribunals will exercise their enabling role to try to ensure that no-one is at a disadvantage.



3. WHAT WE DEAL WITH

Children and young people who have complex and enduring needs which require significant input from a body other than the education authority should receive a **co-ordinated support plan** to ensure their needs are met. The Tribunals can deal with disputes about the opening, closure, review, timescales or the content of co-ordinated support plans and, in certain circumstances, can deal with the refusal of a placing request. The following pages contain information about the issues a Tribunal can consider. The legislation which sets out what the Tribunals can consider is found in the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004, as amended at section 18.](#)



Assessment:

- Where a parent has asked the education authority to assess if the child has additional support needs which would require a co-ordinated support plan, but has not had a reply. [Section 18\(5\) - deemed refusal](#)
- Where the education authority has said that the child needs a co-ordinated support plan but the parent has not received it within the time allowed, normally 16 weeks. [Section 18\(3\)\(c\)](#)

The Need for a Co-ordinated Support Plan:

- The education authority has told the parent that their child **needs** a co-ordinated support plan and the parent does not agree. [Section 18\(3\)\(a\)\(i\)](#)
- The education authority has told the parent that their child **does not need** a co-ordinated support plan and the parent does not agree. [Section 18\(3\)\(b\)\(ii\)](#)



The Contents of the Co-ordinated Support Plan:

Where the parent disagrees with what the education authority has written or has omitted in their child's co-ordinated support plan about:

- The factors from which the child's additional support needs arise;
- The educational objectives that have been set taking account of these factors;
- The type of support proposed to help the child meet these objectives;
- The person or agency who will provide that support.

[Section 18\(3\)\(d\)\(i\)](#)

Providing the Support Indicated in the Co-ordinated Support Plan:

The parent may also make a reference where the education authority has failed to provide or make arrangements for the provision of the additional support whether relating to education or not. [Section 18\(3\)\(d\)\(ia\)](#)

Reviewing the Co-ordinated Support Plan:

- The education authority has reviewed the child's co-ordinated support plan and decided the plan is **still**

- required** and the parent does not agree; [Section 18\(3\)\(a\)\(ii\)](#)
- The education authority has reviewed the child's co-ordinated support plan and decided a plan is **no longer required** and the parent does not agree; [Section 18\(3\)\(b\)\(ii\)](#)
 - It has been more than 12 months since the child's co-ordinated support plan was opened/reviewed and the education authority has not started to review it; [Section 18 \(3\)\(d\)\(ii\)](#)
 - The education authority has started to review the child's co-ordinated support plan but has not completed that review within the timescales allowed, normally 12 weeks; [Section 18\(3\)\(d\)\(iii\)](#)
 - The education authority refuses a request for a review where it has been less than 12 months since the child's co-ordinated support plan was reviewed but the parent has written informing the authority that there has been a significant change in the child's additional support needs. [Section 18 \(3\)\(d\)\(iv\)](#)



Placing Requests:

The education authority has written to the parent refusing a placing request for a **special school** anywhere in Scotland, England, Wales or Northern Ireland. [Section 18\(3\)\(da\)\(i\)](#)

OR

The parent made a placing request and has not had a decision (this is only valid within a specified time frame₁).

Placing requests can also be made in the following circumstances:

The education authority has written to the parent refusing a placing request for a **mainstream school**.

OR

The parent made a placing request and has not had a decision (this is only valid within a specified time frame₁).

AND on that date (or the deemed refusal date₁) one of the following applied:

- The education authority has already issued a co-ordinated

¹If a placing request is made after 15 March for the child to start at a specified school on the first day of term in the next school year AND a decision is not received by 30 April, that placing request is 'deemed' to have been refused. For a placing request at any other point in the school year, if a decision is not received within 2 months of a placing request, it is deemed to have been refused. [\(The Additional Support for Learning \(Placing Requests and Deemed Decisions\) \(Scotland\) Regulations 2005, Regulation 3\)](#).

support plan. [Section 18\(4\)\(a\)](#)

- A co-ordinated support plan has not been prepared but the education authority has confirmed that the child requires a plan or is in the process of preparing one. [Section 18\(4\)\(b\)](#)
- The education authority has informed the parent of their proposal to establish whether a co-ordinated support plan is required. [Section 18\(4\)\(ba\)](#)
- The education authority has decided that the child does not require a co-ordinated support plan and the decision has been referred to the Tribunal. [Section 18\(4\)\(c\)](#)

Transitions:

The education authority has a duty to prospective school leavers for whom the authority is responsible but the duties **do not apply to all** school leavers with additional support needs. The Act gives the education authority discretion to approach appropriate agencies (if any) to provide information. The education authority should, however seek information from the appropriate agencies if it will assist the school leaver with additional support needs in the move to post-school provision.

It is expected that the education authority in carrying out their duties to plan post school transitions for children and young people will make provision for those who:

- Have a co-ordinated support plan

- Are in a specialist placement or a day residential special school.
- Have additional support needs arising from a disability as defined by the Disability Discrimination Act 1995.
- Are at risk of not making a successful transition.

Where the education authority has failed to comply with its duties in terms of post school transitions a reference can be made.

[Section 18\(3\)\(g\)](#)

These duties involve:

- Providing appropriate agencies with information concerning the child's, or more usually the young person's additional support needs and school leaving date;
- Considering what provision the authority, in the exercise of any of their functions other than those relating to education, are likely to make for the child on ceasing school education;
- Taking account of information provided by the child and the child's parent;
- Contacting the appropriate agencies for information regarding the additional support needs of young people in their intended destination. [Supporting Children's Learning Code of Practice \(Revised Edition\) Chapter 6 Paragraph 27-37](#)

4. WHO CAN MAKE A REFERENCE/APPEAL

The Tribunals can consider a reference from a parent of a child with additional support needs. “Parent” is defined in [section 135 of the Education \(Scotland\) Act 1980](#) as including guardians and any person who is liable to maintain or has the actual custody of a child or young person. Whenever “parent” is mentioned in this guide, this definition applies.

A “young person” (aged 16 or 17) can make his or her own reference to the Tribunals. Where the young person “lacks capacity”, the parent can make the reference on their behalf. “A child or young person lacks capacity to do something if the child or young person is incapable of doing it by reason of mental illness, developmental disorder or learning disability or of an inability to communicate because of a physical disability”.

[Section 3](#)



5. WHAT'S INVOLVED

Reference Form:

A parent or young person who wishes to make a **reference** may complete the reference form which asks for all the information necessary for a valid reference. We can send a paper copy but if the individual has internet access, a reference form can be completed and submitted online. A reference can be made in writing and signed by the **appellant**, the person making the reference, but a reference submitted electronically will normally be accepted without the appellant's signature. If the appellant has indicated that there is a representative acting for them, thereafter, all correspondence will be with the representative. An exception can be made where an application is made to the convener.

It is helpful to include as much information as possible with the reference form. Documents such as reports, correspondence with the education authority or co-ordinated support plans, will help to indicate if the reference is competent.

If the Tribunal can deal with the dispute raised in the reference, we will copy the reference form and any accompanying documents to the education authority and invite them to respond. If the information in the reference form is supported by

copies of the relevant documents, the authority will be able to make an informed response and will have no need to duplicate the documents already sent by the parent. If there is any doubt as to the competence of the reference then the convener will make directions so that this can be decided on early in the process.

Case Statement Period:

In most circumstances, a 30 working day **case statement period** will be allowed. The parent should produce their case statement before the end of the first 20 working days. Any documents submitted will then be copied to the education authority. The education authority will then have the final 10 working days to respond to the parent's reference. There is no requirement for the parent to produce a case statement, indeed, the parent may have submitted all the relevant information with the reference. There *is* a requirement for the education authority to respond otherwise they may not be *entitled* to take part in the proceedings. [The Additional Support Needs Tribunals for Scotland \(Practice and Procedure\) Rules 2006, Rule 10\(4\)](#)

If there has been a failure to prepare a plan within the required timescales a shorter period applies. Both the parent or young

person and the education authority have the same 15 working days to submit a case statement.

Parties should submit a written statement of the case or response and any relevant written evidence. This may include a timeline of events, the views of the child and the party's position regarding the current situation.

Witnesses:

During the case statement period, parties should consider who they may want to bring as a **witness**. The President has prepared [Guidance for Parties, Representatives and Witnesses: Ensuring an Enabling Hearing](#) which will help each party decide who it would be important to bring. Each party is entitled to have 2 witnesses, but on request, the convener may give permission for additional witnesses. In addition, the parties themselves may also give



evidence.

When the hearing date is allocated, parties should consider whether the witnesses they wish to call will be available to attend. It is possible for a witness to give written evidence or to speak to the Tribunal by telephone conference call if personal attendance is not possible. A reluctant witness or a witness who may experience difficulty getting time away from work to attend, may be cited to attend by the convener following an application from the party wishing to cite the witness.

The fact that a reference is proceeding does not mean that the parties should no longer try to reach an agreement. The Tribunals encourage parties to try and reach agreement prior to the hearing if this is possible. The convener will normally wish to hold a **telephone conference call** close to the hearing date to discuss how the hearing will proceed, confirm what witnesses are to be called, agree a running order and deal with any other preliminary matters.



6. HEARING

Where possible the **date** of the hearing is allocated when the reference is registered. It will only be changed in exceptional circumstances. If there is an insurmountable difficulty with the date that has been set, parties should inform the Secretary immediately stating the reason why this date is unsuitable. Otherwise, as substantial notice is given, parties are asked to keep the date as allocated.

The Tribunals hold hearings in private. For that reason, witnesses will normally be in the hearing room only when they are giving their evidence; they will not be allowed to observe either before or after this period. A waiting room with refreshments is provided and the case officer will come for the witness when the Tribunal is ready and will keep them updated if there is any delay. Parties should ensure that prospective witnesses are given a copy of the President's guidance as this explains how hearings are normally conducted. Provisional times for hearing witnesses may also be agreed, normally at the pre-hearing conference call.

The Tribunal welcomes the opportunity to hear from the child but the decision as to whether the child attends is entirely for the parent. To make it easier for the child to attend, the Tribunal can hear from the child in a less formal setting at a pre-arranged time. The parent may bring an intermediary along to help the child put his or her views across or the convener may make a direction

appointing an advocacy worker to take the child's views prior to the hearing. There will be no cost to the parent. If the parent decides that it would be inappropriate for the child to attend, the Tribunal would welcome hearing the child's views in an alternative format. For instance, in writing or a short audio or video recording.

The hearing itself is recorded on an unobtrusive audio device and the recording is held for a restricted period. This record will be released to parties in the event of an appeal to the Court of Session and in other circumstances following approval of the President. A request for release of the audio recording should be made in writing to the Secretary and should set out reasons for seeking the release. The Tribunal has no facilities to provide a transcript of the hearing.

No two hearings are alike but most last at least a full day and the more complex hearings (such as placing requests) can take two or more days. The convener will try to make the proceedings structured so that parties know what to expect but there will always be scope for flexibility. In such sensitive matters, an understood format can reassure parties about what to expect and how the case will proceed. The Tribunal will also try to ensure that there are short comfort breaks during the morning and afternoon sessions.

The hearing will be scheduled no earlier than 10 working days (at least two weeks) after the case statement period ends. Hearings are held in a variety of venues across Scotland including; Scottish Government buildings, meeting rooms in business centres and universities/colleges, tribunal suites, hotels and in local authority accommodation where parties consent. Selection of the venue is important for the ambience of the hearing but also to ensure that it is private and convenient for parties. If you have any access needs or special requirements, then please inform the case officer.

Hearings normally commence at 10 or 10.30am and can continue until 5pm. Each party will have a private waiting room where tea and coffee will be available on arrival and at breaks in the hearing. A sandwich lunch will also be provided. Providing this service helps the Tribunal to keep breaks short and to make the best use of the time available.

As the hearing approaches, it may become clear that the number of days we have allocated for the hearing will not be sufficient, for instance, the Tribunal might agree to hear evidence from an additional witness. Whatever the reason, if it becomes clear that additional dates are required, these will be agreed as soon as possible.

7. REPRESENTATIVES

Parents will often be unfamiliar with the Tribunal process and may want someone to represent them at the hearing. This could be a family member, friend, someone from a representative organisation or someone with a legal qualification. If a parent decides to have a **representative** this should be confirmed in writing and all communication from the Tribunals will normally only be sent to that named representative.

The 2009 amendments make provision for an advocacy service to provide “a service whereby another person conducts discussions with or makes representations to the Tribunal or any other person involved in the proceedings” on behalf of parents and young people free of charge in Tribunal proceedings. Take Note (a partnership between Barnardo’s Scotland and the Scottish Child Law Centre) has been awarded the contract to provide free lay and legal advice to families and young people who appeal to ASNTS. A parent may instruct any representative of their choice but will require to agree to terms with that provider. Information on how to access the advocacy service is available from the Tribunal secretariat and from the national helpline **Enquire** (0845 123 2303).

Similarly, the education authority can be represented and may instruct who it wishes to present its case. Again, the education authority should advise us in writing who will be presenting its

case. Whoever represents, or if parties are unrepresented, the Tribunal will normally take the lead in questioning witnesses but will permit parties to question where additional information requires to be heard.

Either party can choose to have a representative or change a representative at any point prior to the hearing but it is important that the party informs the Secretary in writing without delay. Where the reference is unopposed by the education authority or both parties choose not to attend there will be no notified hearing but the Tribunal will deliberate and a decision will be issued.



8. DECISION

Depending on the complexity of the issues under consideration the convener may give a verbal decision at the end of the hearing, if parties so wish. It might be that parties reach an agreement in the course of the hearing or the Tribunal can deliberate on the issue within a relatively short time. In all cases parties will receive a **full written statement** of the decision which is usually issued within two weeks of the hearing.

The Tribunal may also issue a summary decision shortly after the hearing date, particularly where there are complex issues which may delay the issue of the full decision or if there are short timescales for implementing the Tribunal's decision to be taken into account.



9. DISPUTE RESOLUTION AND SUPPORT

Submitting a reference should not mark the end of the discussion between the parties; both parties should continue to seek to reach an agreement wherever possible.

The Act requires authorities to make **mediation** services available without charge. If parties take up this service, a hearing may prove unnecessary or they may find that some disputed issues are resolved and the hearing becomes more focussed.

[Enquire](#), the national advice body for additional support needs, may be able to provide details of support groups in the parent's area or those which specialise in the specific area where the child's support needs lie.

There are a number of organisations which can assist parents to prepare for a Tribunal or even attend as their representative. For more information contact [Enquire](#).

The Tribunal staff can advise and answer questions about the process but it is not appropriate for them to advise parties how they should present their case or give a view on the outcome of a reference. If you have an enquiry about the process, please call our helpline on **0845 120 2906**.

There is a decisions database of anonymised decisions on our website. This should provide information about the range and type of issues which have come before the Tribunal, the type of evidence which is usually considered and the format of the final decision.



10. HOW LONG DOES IT TAKE?

The time from submitting a reference to receiving a decision varies considerably. The Tribunals focus on the best interests of the child to avoid any unnecessary delay.

To this end we aim to register a reference within two days of receipt provided we have all the information which the law states is necessary, but some references may take longer where there are issues of competence, time limits, or missing documents.

We will set a date or dates for the hearing as near to the start of the process as we can. This means that parties know how long they have to prepare their case and notify witnesses. It gives the maximum amount of notice of the hearing to minimise the incidence of cancelled dates.

As explained previously, the Rules provide 30 working days (at least six weeks; weekends, certain holidays and the month of July do not count as working days) for parties to prepare a **case statement** in most circumstances. Where the education authority have failed to issue a co-ordinated support plan in the timescales allowed, the case statement period will be 15 working days.

The appellant may amend the reference, submit a supplementary written statement or amend a supplementary written statement, if permission is given by a convener or a

Tribunal at a hearing after having first sought and taken account of the views of the respondent. [The Additional Support Needs Tribunals for Scotland \(Practice and Procedure\) Rules, Rule 8\(4\)](#)

A convener may shorten or extend the case statement period on the application of either party or on the convener's own initiative. Before a convener makes an order to shorten or extend a case statement period, oral or written representations from the parties will be sought. [The Additional Support Needs Tribunals for Scotland \(Practice and Procedure\) Rules, Rule 8\(6\)](#)

[Rule 3](#) provides for an overriding objective to ensure that the procedures applied are flexible and enabling.



11. AFTER THE TRIBUNAL

Parents can claim reasonable travel expenses for their attendance at the hearing, for the child if he or she attends and for an individual brought to the hearing to look after the child. Their witnesses and representative can also claim (provided the representative cannot obtain travel costs from another source). We cannot pay travel expenses for the education authority or anyone attending in connection with their response. Expenses guidance and claim forms will be provided by the case officer or are available on the website.

Both parties will be sent a copy of the written decision, which is normally issued within 10 days of the hearing.

There is a statutory obligation on the President to publish Tribunal decisions. In the interests of transparency, the President has directed that at least all decisions following an oral hearing will be published. In some circumstances the President may direct that



other decisions should be published. To protect the privacy of parties and witnesses, identifying features are removed and the decision anonymised. The decision normally appears on the decisions database three months after it has been issued. Parties are sent a copy of the anonymised decision and can make representations to the Secretary if they are of the view that the decision, or any part of it, should not be published. In the event of any appeal to the Court of Session there will be a note placed with the decision to the effect that it has been subject to appeal and the outcome, if available, will be indicated.



12. WHAT OUTCOMES CAN THERE BE?

The reference may be **allowed** and the decision will set out what requires to be done in consequence and the date by which it must be done.

OR

The education authority's original decision may be **confirmed**.

OR

The reference may be **withdrawn** or **dismissed**.

Very often the parties continue to discuss what is in dispute right up to the day of the hearing. If these discussions lead to agreement, the parent may withdraw the reference by writing to the Secretary. In such circumstances, we would send a copy of the withdrawal to the education authority and the convener would make an order dismissing the reference.

Additionally, if at any point prior to the hearing, it is established that the reference was not made in accordance with the Rules which set out how the Tribunals function or if it is found that the reference is not within the jurisdiction of the Tribunal, the convener may make an order dismissing the reference. Before making such an order, the convener will invite and consider any representation made by the parties.

13. ANY FURTHER APPEAL RIGHTS

Following the issue of a decision of the Tribunal, a party may appeal to the Tribunal for the decision to be varied or revoked.

[The Additional Support Needs Tribunals for Scotland \(Practice and Procedure\) Rules, Rule 45A](#)

The Tribunal may review and vary or revoke the decision if the Tribunal is satisfied that:

- Its decision was based on an error of fact or in law;
- A party who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented and the interests of justice require; or
- Otherwise that the interests of justice require.

An application to appeal in the above circumstances must be received by the Secretary, not later than **one month** after the date on which the party received the decision. The application for appeal should fully state the reasons for appeal. The Secretary



will send a copy of the application to all relevant parties involved with the reference within 10 days of receiving it.

The review will be decided as soon as it is reasonably practical by the Tribunal which made the decision. Where it is not practical to do so, the President will appoint another Tribunal. The Tribunal may dispense with a hearing if both parties agree to do so in writing.

After reviewing the decision and the decision is to be varied or revoked, the Tribunal will substitute it for a suitable decision. The Tribunal may order a rehearing for the same Tribunal that made the decision or a different Tribunal.

Either party may also make an appeal direct to the Court of Session or after a review application has been refused or the party wishes to appeal the varied decision. A party cannot appeal simply on the grounds that it does not agree with the outcome; an error in law must be identified. This is usually where the Tribunal has not correctly applied the law or has not explained its decision adequately. Appeals to the Court of Session must be made within 42 days of the Tribunal decision being issued.

14. MONITORING OF TRIBUNAL DECISIONS

Where the decision of the Tribunal requires the education authority to take action, the President may keep under review the education authority's compliance with the decision. The President may:

- Require the authority to provide information about the authority's implementation of the Tribunal decision.
- Where the President is not satisfied that the authority is complying with the decision, refer the matter to the Scottish Ministers. [Schedule 1\(11A\)](#)

The matter may also be referred to Scottish Ministers by the parent directly, under [Section 70 of the Education \(Scotland\) Act 1980](#).



15. WHERE CAN I GET MORE INFORMATION?

This guide provides a simple introduction. If you have unanswered questions about the process, please contact us.

The Additional Support Needs Tribunals for Scotland

5th Floor, Highlander House

58 Waterloo Street

Glasgow

G2 7DA

Email: inquiries@asntscotland.gov.uk

Helpline: 0845 120 2906 (charged at local rate)

Monday—Friday (9am—4pm)

