Additional Support Needs
Tribunals for Scotland

PRACTICE DIRECTION 5

Hearing from the Child or Young Person

This Direction is issued consequent to Paragraph 12 of Schedule 1 to the **Education (Additional Support for Learning) (Scotland) Act 2004** as amended which provides that the President may give directions as to the practice and procedure to be followed by Tribunals in relation to any matter.

1. The Tribunal will at all times endeavour to manage the reference in such a way that the interests of the child remain central to the process.

2. Section 12 (2)(b)(i) of the Act places a duty on the Education Authority to take account of the views of the child (unless the authority are satisfied that the child lacks capacity to express a view).

3. In all references the convener and members shall consider whether steps require to be taken to hear the views of the child consistent with the ethos of the legislation and having regard, where appropriate, to the views of the parent bringing the reference and any other parent whose views require to be taken independently. The convener may then make directions in order to facilitate this process which may be expressed in terms of draft directions annexed to this practice direction.*

4. Where it is determined that it is not appropriate to seek the views of the child, in framing the decision, the convener will indicate why it was not necessary for the Tribunal to seek the views of the child in any decision issued for that particular reference.

5. The Tribunal shall endeavour to take all necessary steps to ensure that the views, where sought, will be obtained in a way appropriate to the needs and interests of the child having regard to Rule 33 of the **Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006.**

6. Where the views of the child are sought then the Tribunal should have regard to the steps taken by the Education Authority to seek the views of the child, where those views are recorded in evidence produced by the Education Authority the date those views were taken and by whom. This evidence should be reviewed to determine whether it is reasonable for the Tribunal to seek the child's views direct.

Jessica M Burns
President
October 2010

Draft Convener Directions*

"On considering the bundle it is noted that the views of the child are not recorded/out of date/inadequate having regard to the reference before the Tribunal.

(1) The Education Authority is therefore directed to indicate by [date] why no views / no recent views/ more detailed views of the child have not been obtained.

(2) The parent is directed to indicate by [date] if they are satisfied that the views of the child are properly represented in the documents in the case statement or response and, if not, whether they are willing to arrange for the views of the child to be made available to the Tribunal either:

- by arranging, in consultation with the case officer, for the child's presence for part of the hearing;
- written out by the child in advance of the hearing;
- videoed by arrangement with the case officer;
- recorded by a teacher or professional who works with the child; or
- by a person appointed by the Tribunal to record the child's views
- any other means