

The Additional Support Needs Tribunal

This factsheet explains:

- what the Additional Support Needs Tribunal is
- when you can take an appeal or disagreement to the tribunal
- how the tribunal process works.

What is the Additional Support Needs Tribunal?

The full name of the Additional Support Needs Tribunal is 'the Additional Support Needs jurisdiction of the Health and Education Chamber of the First-tier Tribunal for Scotland'. Most people refer to it as the Additional Support Needs Tribunal, or just 'the tribunal'.

The tribunal is an independent and expert body that considers certain kinds of appeals and disagreements about additional support for learning, such as:

- decisions about co-ordinated support plans
- refused placing requests to special schools or nurseries
- failure to plan for pupils leaving school
- decisions about whether children aged 12-15 can use their rights
- claims of disability discrimination.

The tribunal considers the arguments and evidence put to them and decides what should happen next. They may decide either to uphold or overturn decisions made by local authorities or order them to do certain things. Local authorities must do what the tribunal orders them to do.

Who sits on the tribunal?

In most cases, the tribunal will consist of three people. One person will be a legal member who is an experienced lawyer. The other two will be specialist members, who have expertise in additional support for learning. Sometimes the legal member will consider the appeal or disagreement on their own.

When can I use the tribunal?

You can use the tribunal if a local authority is responsible for your child's education. If you home educate your child or your child goes to a mainstream independent school or nursery, contact the Enquire helpline for advice.

The tribunal can hear two kinds of 'appeal', **references** and **claims**.

References

You can make references to the tribunal about the local authority's decisions or failures relating to:

- your child's co-ordinated support plan
- certain types of placing requests
- planning for your child leaving school
- your child's capacity to use their rights
- the impact on your child's wellbeing of using their rights.

These are all explained in more detail below.

Co-ordinated support plans (CSPs)

You can make a reference to the tribunal about a local authority's:

- decision not to assess whether your child needs a CSP
- failure to reply to your request to assess your child for a CSP within the legal deadline
- decision that your child does, or does not, need a CSP
- failure to provide the support that is written in your child's CSP
- failure to review your child's CSP within the legal deadline
- decision to continue or end your child's CSP
- decision not to agree to your request for an early review of your child's CSP.

If you disagree with the contents of your child's CSP, you can also make a reference to the tribunal about this.

Find out more in our factsheet on [Co-ordinated support plans](#).

Placing requests

You can make a reference to the tribunal about a local authority's refusal of:

- a placing request to a special school or nursery, including a special unit or base attached to a mainstream school
- a placing request to a mainstream school or nursery, if:
 - your child has a CSP
 - your child is being assessed for a CSP or one is currently being prepared for them
 - you have taken the local authority to the tribunal about a decision that your child does not need a CSP.

Find out more in our factsheet on [School placements](#).

Planning for leaving school

You can make a reference to the tribunal about a local authority's failure to meet its duties to plan for your child leaving school, including things like:

- passing on information about your child's needs and school leaving date to the agencies that will support them after they leave school
- considering what support the local authority (in departments other than education, like social work or housing) is likely to make for your child after they leave school
- taking account of information provided by you or your child.

Find out more in our factsheet on [Education and additional support after 16](#).

Capacity and wellbeing decisions for children aged 12-15

You can make a reference to the tribunal about a local authority's decision that:

- a child aged 12-15 does not have the maturity and understanding (capacity) to use their rights, or
- using their rights would negatively affect their wellbeing.

Find out more in our factsheet on [Rights of children aged 12-15](#).

Claims

The tribunal can also hear claims of disability discrimination against local authorities or the managers of independent or grant-aided schools or nurseries.

Here are some examples of how a school, nursery or local authority might discriminate against a disabled pupil:

- by treating a disabled pupil unfairly compared to non-disabled pupils
- by excluding a disabled pupil for a reason directly linked to their impairment or condition
- by refusing a pupil a place at a school or nursery because they are disabled
- by putting a disabled pupil at a disadvantage by not making 'reasonable adjustments' for them.

Find out more in our factsheet on [Disabled pupils and the law](#).

Before using the tribunal

You can resolve most disagreements without needing to use formal procedures such as the tribunal. For example, you have the right to ask for independent mediation with the local authority.

Find out more about steps you can take in our factsheet on [Avoiding and solving problems](#). You can also contact the Enquire helpline for advice about what you can do in your situation.

If you are considering making a disability discrimination claim, you can seek advice from the Equality Advisory and Support Service about other ways that you might be able to resolve the situation. They can also help you to work out whether the situation would amount to discrimination, and if so, what kind of discrimination has occurred. Find their contact details in the '**Where can I find out more?**' section at the end of this factsheet.

How do I make a reference?

The tribunal's website has a form that you should use for your application. See the '**Where can I find out more?**' section at the end of this factsheet for links to the website and reference form.

You should include copies of any relevant documents and letters with your application. If the tribunal needs more information about anything, they will ask you to provide this.

You can either submit your reference by post or by email to the tribunal. The reference form contains information about where to send it.

What are the time limits for making a reference?

There is a time limit of two months for making a reference to the tribunal. Depending on the reason for your reference, the two months might start from:

- the date you received the decision that you disagree with
- the date that the local authority missed the legal deadline for giving you an answer about something
- the date the failure happened.

If you are not sure when the deadline for making a reference will be for you, contact the tribunal administration for advice. Find their contact details in the **‘Where can I find out more?’** section at the end of this factsheet. You can also contact the Enquire helpline.

How do I make a disability discrimination claim?

The tribunal’s website has a form that you should use for your application. See the **‘Where can I find out more?’** section at the end of this factsheet for links to the website and claim form.

You should include copies of any relevant documents and letters with your application. If the tribunal needs more information about anything, they will ask you to provide this.

You should also include details of what you would like the local authority, school or nursery to do. For example, would you like them to apologise, train the staff who are working with your child, review their policies and procedures, or something else?

You can submit your claim either by post or by email to the tribunal, and you must also send a copy to the Equality and Human Rights Commission. The claim form contains contact details for both.

What are the time limits for making a claim?

There is a time limit of six months for making a claim to the tribunal, starting from the date of when the alleged discrimination happened.

Can I get support to make a reference or claim?

References

If you wish to make a reference to the tribunal, there is a free advocacy and legal support service available called Let’s Talk ASN funded by the Scottish Government. They can help you complete the reference form and support you throughout the process of making a reference. They can also help you to explore whether there are other ways you could resolve the issue, such as mediation.

Claims

If you wish to make a discrimination claim to the tribunal, you can seek advice from the Equality Advisory and Support Service. Find their contact details in the **'Where can I find out more?'** section at the end of this factsheet.

Legal aid may be available depending on your circumstances. Contact the Scottish Legal Aid Board to find out if you are eligible: www.slab.org.uk, 0131 226 7061. In some situations, the Equality and Human Rights Commission can sponsor cases if legal aid is not available: www.equalityhumanrights.com 0141 228 5910.

The Govan Law Centre Education Law Unit may be able to support you with a disability discrimination claim. Find their contact details in the **'Where can I find out more?'** section at the end of this factsheet.

What happens next?

Checking your application

When the tribunal receives your form, they first need to make sure that your application is 'competent'. If an application is 'competent' it means the tribunal can consider your reference or claim.

The tribunal can ask you for further detail at this point if they need it to be able to decide if they can hear the case.

Collecting the evidence

Once the tribunal decides they can consider your reference or claim, you and the local authority will have a period of time where you can submit any further evidence. This is called the 'case statement period' and is usually 30 working days.

In most cases, you will have the first 20 working days of this time to submit any further evidence you want the tribunal to consider. The local authority will then have the remaining 10 working days to submit their response to your evidence.

The tribunal will collect all the information together and number each document. This collection of documents is known as 'the bundle'. They will send you and the local authority a copy of all the documents in the 'bundle'.

Arranging witnesses

During the case statement period, you should also think about who you would like to bring as a witness and provide a list of names to the tribunal. The witness(es) can either attend in person, provide written evidence, or speak to the tribunal via video or telephone link.

For references, you can call up to two witnesses.

For claims, you can bring up to five witnesses.

A witness can either be a 'lay' witness or a 'skilled' witness. A lay witness would give an account of issues relevant to the case. A skilled witness would also be asked to give an opinion, based on their professional knowledge.

Representation

You can have somebody to represent you throughout the process and at the hearing. This can be a lawyer but can also be someone from an organisation that is supporting you, or a family member or friend.

If you choose to have a representative, you must let the tribunal know in writing as soon as you can. The tribunal will then usually communicate with your representative rather than you.

If your hearing happens via video or phone call, you still have the right to be represented.

Before the hearing

Once the case statement period has ended, the tribunal will arrange a telephone conference call with you (or your representative), the person representing the local authority, and the legal member of the tribunal. This is called the 'case conference call'.

During this call, there will be:

- discussion about the hearing procedure
- confirmation of the witnesses that will be called
- agreement of the running order of the hearing
- an opportunity to deal with any other issues that need to be sorted out before the hearing.

The date for the hearing will usually be fixed at the case conference call, taking account of the availability of everyone who needs to be there. The tribunal will send you (or your representative) confirmation of the date, time and place of the hearing.

If your child's views were not included in the 'bundle' of papers, the legal member from the tribunal might arrange for someone to collect them to make sure they are taken into account.

If necessary, the legal member from the tribunal can arrange more than one case conference call before the hearing. It is possible for the tribunal to decide your case without a hearing, instead using only the documents that you and the local authority submit. You and the local authority would both need to agree to this. If you want to explore this option, you can ask about this at the case conference call. It may be helpful to first take some advice on whether doing this might affect your ability to put your best case forward to the tribunal.

The hearing

Tribunal hearings can be held in a range of different venues across Scotland, such as a Scottish Government building, business centre, hotel, university or college, or a tribunal office. When deciding the venue, the tribunal will consider where will be convenient for both parties, and make sure it is somewhere private.

Because of the coronavirus pandemic, many hearings now take place remotely via video or telephone. If this happens, the tribunal members need to make sure that everyone has the necessary equipment and facilities and can fully participate.

Hearings usually start at 10am and can last a full day, or sometimes longer.

As well as your representative and witnesses, you can also have a supporter with you at the hearing. This person would not be able to speak to the tribunal, but can do things like provide you with moral support, take notes, help you to manage all the tribunal papers and speak to you quietly about what is happening. Your supporter can still attend if the hearing happens via video or phone call.

You will have agreed the order of the hearing during your case conference call. You and the local authority will be able to stay in the room (or in the video or phone call) throughout the hearing. Witnesses usually only stay while giving their evidence.

The decision

Depending on the case, the legal member might give you the tribunal's decision at the end of the hearing. If the tribunal needs longer to decide, they will send their decision in writing. Either way, you will receive a full written statement of all the facts found by the tribunal and the reasons for their decision within 10 working days.

If the decision is in your favour, the local authority will then need to comply with the tribunal's decision. What this will mean will depend on the reason for the hearing, for example they may need to:

- prepare a co-ordinated support plan for your child
- place your child in a particular school or nursery
- make changes to the support your child receives
- issue you with a written apology
- review one or more of their policies.

What if I disagree with the tribunal's decision?

You can either ask for a review of the tribunal's decision or make an appeal to the Upper Tribunal. However, you cannot do this just because you disagree with the decision.

Review by the tribunal

You can ask the tribunal to review their decision if it is 'necessary in the interests of justice to do so'. You must apply for a review within 14 days of the decision and explain why you think it is necessary. If the tribunal agrees that a review is necessary, they may arrange another hearing.

Appeal to the Upper Tribunal

You can ask to appeal the tribunal's decision if you think the tribunal has not applied the law correctly or have not explained their decision properly. You must write to the tribunal to ask for permission to appeal within 30 days of the decision. You will need to identify which part of the law you think the tribunal has not applied correctly, and what you would like to happen.

Where can I find out more?

Additional Support Needs Tribunal www.healthandeducationchamber.scot/additional-support-needs/12

Tel: 0141 302 5860 Email: ASNtribunal@scotcourtribunals.gov.uk

Guidance on 'Making a reference' and 'Making a disability discrimination claim': www.healthandeducationchamber.scot/additional-support-needs/publications/information-notes

Reference form: www.healthandeducationchamber.scot/index.php/additional-support-needs/publications/215

Claim form: www.healthandeducationchamber.scot/index.php/additional-support-needs/publications/39

Let's Talk ASN

Tel: 0141 445 1955 Email: letstalkasn@edlaw.org.uk

Let's Talk ASN is a free advocacy and legal support service for parents and carers who have the right to make a reference to the tribunal. It is a partnership between Barnardo's Scotland and the Govan Law Centre.

Equality Advisory and Support Service www.equalityadvisoryservice.com

Tel: 0808 800 0082

The Equality Advisory and Support Service provides advice and information on issues related to equality and human rights. As well as their telephone helpline, there is a contact form and online chat available through their website.

Govan Law Centre Education Law Unit www.govanlawcentre.org/education-law-unit

Tel: 0141 445 1955 Email: advice@edlaw.org.uk

The Govan Law Centre's Education Law Unit provide free legal advice and may be able to help with a disability discrimination claim. They also provide legal support for references to the tribunal via the Let's Talk ASN service (see above).



How Enquire can help

Enquire can help you understand your child's rights to additional support for learning and how to work in partnership with their school or nursery to make sure your child gets the support they need.

Enquire can:

- explain your child's rights to additional support for learning
- listen to any questions and concerns
- advise you on the way forward
- help you find local education and support services.

You can contact our helpline on **0345 123 2303** or info@enquire.org.uk
Access to interpreters is available.

You can also find lots more information about additional support for learning, including our full range of publications, at www.enquire.org.uk

The information on our website is available in over 100 languages and with a range of accessibility tools, such as text-to-speech.

Reach, as part of Enquire, provides advice and information for children, parents, carers and professionals about children's rights to additional support for learning: www.reach.scot

Enquire is also a partner in the My Rights, My Say service. My Rights, My Say supports children aged 12-15 with additional support needs to exercise their rights to be involved in decisions about their support in school:
www.myrightsmysay.scot

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