

Assessments of children and young people (Rule 15)

Key Points

Under the *current Regulations*, the Tribunal can only encourage parties to provide the most up to date evidence possible, including that derived from assessments by professionals such as Educational Psychologists, speech and language therapists etc. If one party refuses to cooperate, the Tribunal is faced with having to base its decision on what may be incomplete evidence, with potential distortion to decision-making for children.

Under the *new Rule 15(4)*:ⁱ

The Tribunal has the power to require

- a) a **parent** to make a child available for assessment by an appropriate professional; and/or
- b) a **school** to allow a professional instructed by a parent into the school to assess the child's functioning in a school environment.

This aims to ensure

- i) professionals can provide up to date information about a child
- ii) the right level and balance of up to date evidence from both independent and LEA witnesses is given to the Tribunal so that it has the fullest possible picture to support effective decision-making for the child
- iii) parties are aware of the importance of cooperating with the Tribunal in accordance with the overriding objective in Rule 1ⁱⁱ, i.e. in the interests of justice and of the child

What is the sanction for non-compliance?

The Tribunal may consider a failure by a party to comply (***in the absence of any good reason***) as a failure to co-operate with the Tribunal, which could lead to an adverse result to that party's case. **(Rule 15 (5))**

Consent to assessment

Parents with parental responsibility can give or withhold consent to their child being assessed.

If the child is the subject of a full care order, the responsible Local Authority must give consent (where there is an interim care order, parents and local authority share parental responsibility)

A child or young person with capacity (i.e. of sufficient age and understanding) can give or withhold consent to assessment regardless of parental consent.

Reasons for refusing assessment might include the argument that it is not in the child's interests for the child to undergo another assessment when one has recently been done.

Therefore,

- a) the Tribunal cannot force children to undergo an assessment where a parent and/or the child withholds his or her consent
- b) where there are good reasons for refusal the Tribunal would not draw an inference adverse to a party's case.

ⁱ **Rule 15(4)** In a special educational needs case the Tribunal may require—

- (a) the parents of the child, or any other person with care of the child or parental responsibility for the child (as defined in section 3 of the Children Act 1989), to make the child available for examination or assessment by a suitably qualified professional person; or
- (b) the person responsible for a school or educational setting to allow a suitably qualified professional person to have access to the school or educational setting for the purpose of assessing the child or the provision made, or to be made, for the child.

(5) The Tribunal may consider a failure by a party to comply with a requirement made under paragraph (4), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal, which could lead to a result which is adverse to that party's case.

ⁱⁱ —**Rule 2** The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(6) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(7) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(8) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.