

SPECIAL EDUCATIONAL NEEDS TRIBUNAL FOR WALES

SENTW

NOTES FROM FOLLOWING USER GROUP MEETINGS:

North Wales	Monday 18 November 2013 at 10.30AM	Oriel Hotel, St Asaph
South Wales	Wednesday 20 th November 2013 at 10.30AM	New House Hotel, Cardiff

1. **Welcome and Apologies**

As listed at Annex A

2. **Notes of the meetings from Spring 2013 – SENTW (13)01**

An administrative error to be amended. At point 4.4 the word 'extradite' should be replaced with 'expedite'.

3. **Update on Additional Learning Needs Reform/Post 16, Welsh Government – Richard Mulcahy / Charlie Thomas**

(Presentation notes available on request from SENTW)

A summary of responses to the consultation was published in May 2013 by the Welsh Government. In October 2013, a series of workshops took place with key stakeholders to discuss four key themes:

1. Defining need
2. Assessment and planning
3. Partnership-working and accountability
4. Resolving concerns and avoiding disputes

The Welsh Government plan to publish a White Paper on detailed legislative proposals in spring 2014.

The proposals concerning Special Educational Needs appeals were outlined as:

- **a more collaborative, child-centred approach**, involving children, young people and their parents, families and carers in the Individual Development Plan (IDP) process to identify and meet their needs through the IDP process

- **better access to information and improved support** for parents/carers, young people and families as soon as a child's or young person's needs are identified
- **consistent, high-quality, multi-agency local authority Family Partnership Services**, able to provide information and support for young people and their parents/carers
- **mediation and early resolution of concerns and disagreements** through a range of informal and formal disagreement-resolution services , which are used and deployed earlier to prevent escalating, costly disputes.

In relation to appeals to Tribunal, the Welsh Government propose:

- **to replace the current statutory systems of time limits and appeals relating to 'statements of SEN'** with shorter timescales and a simpler system of dealing with disagreements and complaints and relating to the IDP processes for those with the greatest additional learning needs
- **a continued right of appeal to Tribunal** where a child or young person aged 2 to 18 falls into the group with significant or severe and/or complex needs (equivalent to the group currently entitled to a statement of SEN)
- **to extend the right of appeal to 0–2 and 19–25 year olds** (in respect of specialist Further Education(FE)) with severe and/or complex needs
- **to ensure that a child or young person has the right to make their own appeal**
- **to require engagement in a disagreement-resolution process** prior to referral to the Tribunal, in line with current practice in relation to other public tribunals
- **a maximum of 4 weeks for the disagreement-resolution process**, to ensure that access to the Tribunal is not unreasonably blocked.
- **to explore the possibility of expanding the SENTW remit and membership** to consider appeals concerning health and social services' contributions to IDPs in a way which will safeguard clinical judgement of need
- **to require internal reviews to be undertaken by local authorities** and other agencies involved, in cases where the SENTW upholds the parents'/ carers'/ child's/ young person's appeal or local authorities concede appeals

The post-16 proposals were included in the Education Wales Bill when it was introduced to the Assembly in July 2013. In brief this bill:

- Gives local authorities (LA) responsibility for arranging assessments of school leavers with statements of SEN who wish to access post-16 education and training
- Gives local authority responsibility for securing placements at specialist FE colleges where this is needed to meet assessed needs
- Introduces a new right of appeal to SENTW for learners aged 16 to 25
- Local authorities will have to make arrangements for dispute resolution services to be made available
- Where these services don't result in a satisfactory outcome then learners or their parents will be able to appeal to SENTW

- Welsh Ministers can make regulations about the bringing of an appeal and appeal proceedings and will consult on these

It is intended that local authorities will begin making assessments from September 2014.

There was much discussion at the User Group meetings. Some of the points raised include:

- Spectrum of need, there needs to be a clearer definition of severe and complex needs. It was argued that those with most complex needs are often the most protected as their needs are more easily identified. Concerns were raised that it is those children who fall below this line, that are more likely to need targeted support.
- Confusion regarding the proposal for 'non-statutory IDP' and a 'statutory IDP' for severe & complex cases which would be entitlement protected and the process for gaining an 'statutory IDP'. It was argued that there will need to be a right of appeal for those who are refused a 'statutory IDP'.
- Why are only some children entitlement protected? Everyone who is 0-25 years should have a right of appeal.
- The Human Rights Act must be considered. If appeal rights are removed, Judicial review may be possible.
- Concern regarding the proposal for shorter timescales. LAs feel they already faced difficulties obtaining medical reports and advice within current timescales. Legislation is required to ensure Health etc co-operate. Others felt that the timescales could be reduced, as children going through statutory assessment should already be known to services and be in the system.
- The consultation has taken too long, causing anxiety and lack of confidence.
- Schools need to take more responsibility.
- There needs to be a joining up all current initiatives, such as the Social services and Wellbeing Bill.
- There was strong support for the Code of Practice to be rewritten and adherence to it made statutory.
- It was expressed that the transition process needs improving for post 16 education, with decisions made before the end of February/March. This would bring the process into line with secondary transitions.
- Concerns were expressed regarding the future recruitment of Educational Psychologists (EP's) in Wales, due to the closure of the Educational Psychology course in Cardiff. It was thought that EP's will need to train in England and commit to English LA's for a number of years.
- How can you enforce DRS if someone doesn't want to engage with mediation?
- Further information is required regarding the post 16 proposals.

Action: SENTW to invite WG representative to next User Group to provide post 16 update

4 **Update on Children’s Pilot Research Project – The People and Work Unit, Duncan Holtom/Sarah Lloyd-Jones**

(Presentation notes available on request from SENTW)

The Education (Wales) Measure 2009 introduced the right for young people to make their own appeals and claims to SENTW. The new right is currently only applicable to those that live in the pilot authorities (Wrexham and Carmarthenshire). The pilot study aims to evaluate the implementation of the new rights.

A presentation was given regarding the background of the pilot study, work carried out, some initial findings and what this may indicate.

The requirements of the project were to:

- Inform children of their appeal rights
- Provide support, make arrangements for and access to
- Inform children about rights to partnership and disagreement resolution services
- Provide access to independent advocacy services.

Two models were established in the pilot authorities. Each authority took a slightly different approach to meeting the requirements of the project. One model primarily mirrored existing processes for parents and carers, whilst the second developed new processes for families.

Existing structures and process were used (e.g. annual reviews, SENCO meetings)

The pilot LAs also extended some existing services (e.g. advocacy)

One disability claim was received by SENTW during the pilot study period. No SEN appeals were made and there was no take up of advocacy or dispute resolution services. This means that:

1. There was little “latent” demand. This may be because:
 - There is improved provision, less recourse to statutory assessment, more confidence and understanding
 - appeal rights are “weighted” to the start of the process,
 - not all children and young people have the “capability” due to age and/or complexity of needs,
 - only a very small percentage of adults appeal – therefore there are few scenarios where children rather than adults would appeal?
2. Pupil/parent “voice” and “support” has led to a reduction in conflict
3. understanding of rights increases well-being

The final report on the pilot studies will be submitted to the Welsh Government at the end of November 2013.

The Pilots will end on 30 June 2015, at which point the rights and duties will automatically apply across Wales.

Comments from attendees of the User Group meetings included:

- North Wales users report having knowledge of Wrexham's LAs practices but would find it useful to know what Carmarthenshire are doing, as each LA have different approaches.

Action: SENTW to arrange pilot authorities to update at Spring User Groups

- Concerns that parents do not seem to have an understanding of children's rights.
- Person Centred Planning/Additional Learning Needs pilot authorities have begun work on obtaining children's views, all seems to be fitting together.
- It was reported that a Powys Special School has been working with young and difficult to reach children in respect of obtaining children's views. It was suggested that this practice could be shared.

Action: SENTW to obtain more information from the school.

- Concerns were raised that children may feel constrained when giving their views if a parent is present as they may not want to disappoint.

5. Annual Report & Tribunal updates- Sarah Smith, SENTW

- SENTW Annual report 2012-2013 to be published by the end of December 2013.
- 2012-13 has seen the lowest number of appeals received and registered since the Tribunal was established in 2003. 81 appeals were received, with 73 registered. Of the registered appeals, 21 were against refusal to assess, 10 refusal to statement, 41 about the contents of the statement, and 1 appeal against cease to maintain.
- Appeals for children with Specific Learning Difficulties made up 32% of all appeals, and those with Autistic Spectrum Disorders accounted for 29% of appeals.

- SENTW discharged a total of 83 appeals during the year. 24 were decided at Hearing which is a 33% increase on the previous year. Of these, 15 were upheld in full, 6 were upheld in part and 3 dismissed.
- 31 registered appeals were withdrawn and 27 appeals were conceded by local authorities.
- SENTW has found that the appeals are now of a more complex nature. This is supported in the increase in hearings SENTW has held and the number of Presidential requests.
- SENTW registered 6 claims of Disability Discrimination during the year 2012-13. Of the claims; 1 was upheld, 3 withdrawn and 2 carried forward to 2013-14.
- SENTW has now been established for 10 years. In this time SENTW has registered 1075 appeals. Of these, 29% were against refusal to assess, 21% against Parts 2, 3, and 4, 19% against parts 2 and 3. SENTW has also registered 44 disability discrimination claims. 327 hearings have been held which is approximately 30% of all applications. Of these hearings 262 appeals were upheld, 59 dismissed and 6 struck out.
- For Tribunal year 2013 – 2014, SENTW has currently received 23 appeals and 4 disability discrimination claims. This compares to 15 appeals and 0 claims for the same period last year.

6 Tribunal Update – Rhiannon Walker, President

Empirical study – The President reported on a recent study (Tribunal Decision-Making Research Programme, Professor Dame Hazel Genn and Professor Cheryl Thomas) which has shown that decision made at paper hearings produced the same decisions as those made at oral hearings. The only difference came when there was a difference in the quality and availability of the evidence produced. The study concluded that if the Tribunal has the same information, the outcome will be the same.

Paper Hearings – SENTW will be offering parties the option of having their case decided at a paper hearing. This means that the appeal/claim will be decided by the panel on the basis of the papers submitted and that an oral hearing will not be held. This option will not, however, be available for part 2, 3 and 4 appeals or more complex appeals. Both parties will need to agree to a paper hearing being held instead of an oral hearing. The President will then review the case to make sure it is suitable for this type of hearing. The appeal would be case managed and directions may be issued to ensure all required information is available to the panel.

Refusal to assess pilot study – A pilot ran from January – August 2013, with the aim of completing Refusal to Assess appeals within 10 weeks instead of the current 20 week timeframe. The pilot has produced excellent results and the administrative changes have been made permanent for this type of appeal.

Minster for Education and Skills – The President will be meeting with the new Minister for Education and Skills in January 2014 and invited any issues that User Group Members wish to be raised with the Minister to be forwarded to SENTW by January 2014.

7. Date of Next Meetings:

- North Wales Region: Monday 12th May 2014.
- South Wales Region: Wednesday 14th May 2014

SEN TRIBUNAL FOR WALES

SUMMARY NOTES FROM REGIONAL USER GROUP MEETINGS

ATTENDANCE:

Marie Macey	Parent	South Wales Region
Paula Blackmore	Blaenau Gwent LA	South Wales Region
Rebecka Bow	Merthyr Tydfil LA	South Wales Region
Michael Olufsen	Newport LA	South Wales Region
Jane Werrett	Vale of Glamorgan LA	South Wales Region
Kay Poultney	Vale of Glamorgan LA	South Wales Region
Gill Smith	Snap Cymru	South Wales Region
Tony Lawrence	Bridgend LA	South Wales Region
Jeanette Carr	Afasic Cymru	South Wales Region
Meleri Thomas	NAS Cymru	South Wales Region
Deborah Davies	Cardiff LA	South Wales Region
Claire Bridges	Cardiff LA	South Wales Region
Sian Richass	Caerphilly LA	South Wales Region
Irene Yendle	Caerphilly LA	South Wales Region
Emma Turner	Turners Solicitors	South Wales Region
Mary Greening	AEP	South Wales Region
Hayley Jeans	RCT LA	South Wales region
Andre Mundy	NPT LA	South Wales Region
Elin Wyn	National Deaf Children's Society	South Wales Region
Richard Azzopardi	RCT LA	South Wales Region
Clive Noble	Conwy LA	North Wales Region
Phoebe Thompson	Parent Partnership	North Wales Region
Paula Roberts	Flintshire LA	North Wales Region

Karen Parry	Flintshire LA	North Wales Region
Jil Timothy	Denbighshire LA	North Wales Region
Ian Davies	Conwy LA	North Wales Region
Rhys Wyn Parri	Snap Cymru	North Wales Region
Michael Duke	Denbighshire LA	North Wales Region
Andrew Felton	Welsh Government	South Wales Region
Eurwyn Pierce-Jones	Translator	North Wales Region
Sarah Lloyd-Jones	Peoples and Work Unit	North Wales Region
Duncan Holton	Peoples and Work Unit	South Wales Region
Richard Mulcahy	Welsh Government	North Wales Region
Charlie Thomas	Welsh Government	South Wales Region

SEN TRIBUNAL FOR WALES:

Rhiannon Walker	President	All Regions
Sarah Smith	Secretary to the Tribunal	All Regions
Tania Ryland	SENTW Regional Manager	All Regions
Gwyn Griffiths	Panel Lay Member	South Wales Region
Catrin Lewis	Panel Lay Member	South Wales Region
Sandra Boyle	Panel Lay Member	South Wales Region
Gareth Roberts	Panel Lay Member	South Wales Region
Mark Allen	Panel Lay Member	South Wales Region
Susan Taylor	Panel Lay Member	North Wales Region

APOLOGIES:

Meleri Tudur	SENTW
Mark Allen	SENTW
Jacqueline Blackmore	SENTW
Hilary Hayward	SENTW
Norman Donovan	SENTW
Gwyn Davies	SENTW
Charlotte Bellis-Williams	Bridgend LA
Sharon Davies	Swansea LA
Jayne Ciccotti	Pembrokeshire LA
Nigel Pugh	Education Advocacy
Cheryl Hopkins	Carmarthenshire LA
Ann Pumford	Wrexham LA
Sally Richards-Simpson	Wrexham LA