

# **SPECIAL EDUCATIONAL NEEDS TRIBUNAL FOR WALES**

## **SENTW**

### **NOTES FROM FOLLOWING USER GROUP MEETINGS:**

South Wales	Thursday 10 <sup>th</sup> November 2016 at 10:00am	The Copthorne Hotel, Cardiff
North Wales	Wednesday 30 <sup>th</sup> November 2016 at 10:00am	Glyndwr University, Wrexham

#### **1. Welcome - Rhiannon Walker, President**

The President of the Tribunal welcomed everyone. The President explained that the Tribunal had been waiting for developments from the WG before this meeting, but decided that we needed to touch base with everyone as time was getting on. The President explained to the group that she is very interested to hear about their views and experiences or any problems they may have experienced since the previous meeting.

The President informed the group that we had a few points to raise, that might be of interest to the group. That there have been a lot of changes and that as a result of the many changes taking place, a Legal Update would be very helpful, as there have been some very interesting cases recently that have brought up some points of interest.

#### **2. Attendees and apologies**

As listed at Annex A

#### **3. Legal Update – Mark Allen – Tribunal Chair**

The Tribunal Chair provided a brief update of some recent case law and hand outs were provided to the group.

A copy of the presentation is available from SENTW upon request.

The presentation covered recent case law relating to Upper Tribunal Decisions about costings and comparative costings, which are matters that come before the Tribunal all the time; Section 9, avoidance of unreasonable public expenditure. 3 case studies were provided, 2 from the English Tribunal and 1 from the Welsh Tribunal.

The Tribunal Chair covered the facts of the cases detailed in the presentation.

The purpose of the presentation was to inform the Group that the cost of provision is important. The Tribunal often have to decide whether there would be an 'inefficient use of resources' or 'unreasonable public spending'. When this is likely to be a relevant issue, parties should provide detailed figures and full explanations.

The Tribunal are still having cases where figures are given orally at hearing, the Tribunal Chair suggested that this is not appropriate, as it is not fair to the other party and there is no evidence available to back it up the figures. Cases can be lost if accurate costings are not provided; that is why the guidance is given in the initial stages of the appeal being registered.

Another significant point that was apparent during the presentation was the importance of parties providing the views of the child, the Tribunal feels that this is a very important factor in the evidence provided.

A lengthy discussion followed within the group once the Tribunal Chair finished talking about the last case study, the following comments were made:

Could this case not be considered as a mis-use of Tribunal time?

There was a suggestion that this was a family court issue, as it was more of a parental dispute.

The President explained the difficulty with this case as one parent didn't want to pursue through the Tribunal and the other parent did. It was an extremely fraught case.

The Tribunal Chair referred the group to the comment in the Education Law Monitor regarding this case.

The President asked if anyone had any questions or comments.

There was a comment from the group that 'it is very worrying when Directions are made by the Tribunal, and are not being complied with'.

Further discussions continued in relation to the subject of parties ignoring Tribunal Directions.

The President told the group that she feels very strongly about giving the Tribunal powers. The President said that she will come down hard on parties not complying with Directions and may in the future consider excluding them from the hearings.

The President also commented that she feels strongly that the views of the child are very important. The President asked for comments from the group regarding the difficulties they experience when trying to obtain the Child's views in relation to the case. The President explained that there are ways and means to obtain the views.

Comment from a member of the group, using wiggits is one way to obtain the child's views, even just asking some very basic questions is a good way to obtain the child's views, even when the child is very disabled. A NYAS representative could also be an option to obtain child views if available.

The Tribunal chair suggested using an advocate to obtain the views of the child, and cautioned against using DVD evidence, as it can make things unmanageable during the hearing.

The President returned to the subject of costings, through feedback it does appear to be a problem. The President explained that cases are being lost because the correct evidence is not being brought forward by appellants and Local Authorities, which leaves the Tribunal panel with limited options. The President noted, that, parents are regularly paying independent school fees and other associated costs, that they are aware of the costings and are coming forward with figures. When no figures are provided by the other side, the Tribunal have to come to a Decision on the evidence that is produced on the day. The quality of that evidence is not good enough as it sometimes has come via telephone with nothing to back it up. This is a cause for concern everywhere, not just in Wales.

Question from group, 'could a party ask for the Tribunal to issue a Direction for a party to provide costings before the hearing if they are not within the evidence provided'.

The President responded by saying that she would consider favourably on such a request, because anything that helps the Panel on the day, helps for a smoother hearing and is less stressful for all parties.

Question, what is the evidence about moving a child from an independent setting to a mainstream, anxiety caused to the child what evidence can be used.

The Tribunal Chair responded by saying that parental evidence would be considered, as they know the child best, but evidence can be provided from doctors, psychologists etc., they all can't to come to hearing, but written signed and dated statements can also be provided as evidence.

Comment from Group, parties' relationships can break down throughout the Tribunal process and it is harder for the parents and school to work together afterwards. Parties need to be measured in how to collate evidence to build their case.

Comment- trying to obtain costs from the Health Authority is very difficult as you cannot get to speak to the person that deals with the costs.

The Tribunal Chair informed the group that they can ask for a witness summons or for a Directions hearing or get the professional to attend a costs hearing to get the figures.

The Tribunal Chair suggested to the group that, when you know there is going to be a hearing, start to obtain the costs as soon as possible.

The President thanked the Tribunal Chair for the presentation.

#### **4. ALN Update – Diane Pritchard - SENTW Casework Manager**

The President explained to the group that the WG are working hard to meet their deadlines and were unable to attend the User Group Meetings to update us, they have provided us with a short presentation.

The SENTW Casework Manager provided hand-outs containing a short presentation on the ALN Transformation sent from the WG – The Short Video to compliment the hand-out is available at [www.gov.wales/ALN](http://www.gov.wales/ALN). A copy of the hand-out is available from SENTW upon request.

We have been informed by the Welsh Government that they plan to be schedule further Stakeholder engagement events in the New Year.

The President informed the group that there has been assurance from WG that clear appeal rights will be protected.

The President said that there are a lot of issues to come in respect of the rights to appeal for post 16's, for parent's and carer's.

The President said if anyone has any specific concerns about anything, to address them now, by writing to local AM's as soon as possible, as it is important. Alternatively they can bring any concerns they may have to SENTW and we will take them forward. We have a new Minister for Education, and the President will be scheduling a meeting in the New Year, and will present any issues to the Minister.

Question – what are the time scales for the new Bill?

The President responded by informing the group that the WG are trying to get it complete in December 2016.

Question – At the consultation there was a lot of feedback from all quarters about the identification and assessment, because they seem to have done away with the statutory assessment system altogether, at least the consultation stage, has there been any change on that?

The President response was, not as far as I am aware, I think that teachers in school will identify and they will have an Individual Development Plan.

Question – Are we anticipating that there will be repeated appeals about every little thing that parents or the LA want to put in?

The President – I don't know until I see the format or the IDP, but I haven't seen that, I am in discussions about this now.

Comment from the group, that in England there was an increase of 13% in the first 2 years, and then reduced, but in the last quarter they have increased again by 29%.

There was a discussion around the role of Educational Psychologist in regards to the reforms.

Question – What is the time frame of the Code of Practice?

The President said that it is anticipated it will be around the summer 2017.

## **5. Tribunal Update – Rhiannon Walker – Tribunal President**

The President welcomed our new staff member, Kelly Helliwel. The President informed the group that we have also appointed 3 new expert Lay Members to the Tribunal, they are Catherine Pape, Natalie O'Neill and Rhys Wyn Parri.

Consent Orders - The President informed the group that the Consent Orders are working well, and are assisting both parties, as they know what's been agreed, if the agreed statement is under an Order, this helps to prevent any arguments later on. The President added that, recently there was a request for an extension to case statement period as they thought that the appeal was going to be settled. The President agreed with the extension but directed that they will come back to Tribunal for an Order because it is still a matter for the Tribunal; we will provide a Consent Order on what has been agreed.

The President informed the group that it is a very simple process, just contact SENTW, they will then arrange for the Consent Order upon receipt of the agreed amended statement. The Tribunal will then issue the Consent Order to all parties.

Paper Hearings - The President suggested that all Refusal to Assess Appeals should be Paper Hearings unless they become complex. The President informed the group that she wants to have this implemented within the next 12 Months.

The President asked the Local Authorities to send their feedback about what they thought about Paper Hearings. One Local Authority representative reported that they recently had a Paper Hearing and agreed that it was a much more straight forward process that saved time and money for all involved.

The President has been discussing the issue of enforcement with the Welsh Government. What is being proposed is that they are looking to SENTW to send copies of all Decisions, we will need to inform all parent of this due to data protection to make sure it's alright to share the information. The view is that, if a

party believes that the Order made by the Tribunal is not being adhered to, the current process is that you need contact the Welsh Government, find the right person, and then you have to explain the situation to them, then you have to send the papers to them. It is not a very satisfactory process.

The President has proposed to the Welsh Government that, if a party feels that the Order is not being complied with, they should come back to SENTW, as SENTW have already got all the papers it would be less stressful, less work, SENTW will investigate the complaint and possibly hold a hearing, if necessary, then report to the Welsh Government with the findings, the Welsh Government would then be able to decide what onward action should be taken. This would be quicker, cleaner, far more efficient system for anyone who is dissatisfied with an Order that is not being complied with. We will inform everyone once this has been agreed.

The President informed the Group that some case statements are becoming unmanageable due to the sheer number of documents being submitted, in particular, repetition of documents. Some bundles being issued to parties are 1200 pages or more. It is time consuming for all parties involved. So it is felt that something needs to be done about this. The President advised that we are considering limiting the bundles to 300 pages for each party. Parties should be able to say what needs to be said within these pages. In exceptional circumstances allowing extra pages will be considered. The President said that the Local Authority should provide the core documents as they will have them electronically. By doing this it will mean that we will have far better hearings as it will reduce the amount of time when the same document has been issued by both parties and has different numbered pages within the Bundle. It is not currently in place, so the President wanted to bring the subject to the User Group to give everyone involved an opportunity to think about it and send any thoughts on this to SENTW before Christmas.

There was a suggestion that the information and dates for submitting the core documents from the Local Authorities, if they are opposing the appeal, could be added to the Registration letters; this would then inform the appellants which documents they did not need to supply the Tribunal with, as well as informing the Local Authority which date they needed the core documents to be sent to the Tribunal.

The President also suggested that the Local Authority should send in the Statement, so the appellants don't need to supply this.

Once we receive comments from everyone we will decide which documents are the core documents required to fulfil the case statements.

Comment from SENTW member, just to remind everyone that the Panel are not sitting to judge previous actions from a Local Authority.

SENTW Panel Member mentioned that there is an issue with the use of very small fonts being used in core documents i.e. reports from professionals, this does not assist anyone with poor eyesight trying to read these documents, sometimes poorly photocopied documents are also problematic.

The President mentioned to the group that the Tribunal when issuing Directions and Decisions we use Ariel font size 12. Specifying the heading on Ariel size 14.

There was a comment about Essential reading, and followed a short discussion about this.

The President said that when we receive a Bundle we are duty bound to read all of it and can't cherry pick which documents to read.

For the Group Information, our Welsh Language Standards have come in, we were served with our appropriate compliance notice on 30 September 2016, The President was pleased to report that we had very little difference, we were very much going along with the spirit of it all and we had to comply with the Standards by 30 March 2017. We are well ahead on that.

#### **6. SENTW Stats Update – Diane Pritchard, Casework Manager**

The Casework Manager gave a presentation to update the Group of the SENTW stats for the past 12 Months. A copy of the presentation is available upon request to SENTW.

The President thanked everyone for attending and closed the meeting.

## **ANNEX A SENTW (16)01**

### **SEN TRIBUNAL FOR WALES**

#### **SUMMARY NOTES FROM REGIONAL USER GROUP MEETINGS**

##### **ATTENDANCE:**

Claire Bridges	Cardiff CBC	South Wales Region
Deborah Davies	Cardiff CBC	South Wales Region
Michael Nelson	Cardiff CBC	South Wales Region
Rebecca Williams	Cardiff CBC	South Wales Region
Elinor Williams	Cardiff CBC	South Wales Region
Jane Smith	NDCS Cymru	South Wales Region
Kay Poultney	Vale of Glamorgan CBC	South Wales Region
Jane Werrett	Vale of Glamorgan CBC	South Wales Region
Rachel Vaughan – Jones	Vale of Glamorgan CBC	South Wales Region
Gill Toon	Vale of Glamorgan CBC	South Wales Region
Gill Smith	Blaenau Gwent CBC	South Wales Region
Tracy Tucker	Torfaen CBC	South Wales Region
Alyson Costa	Torfaen CBC	South Wales Region
Jenny Archer	Independent Advocate	South Wales Region
Nigel Pugh	Education Advocacy	South Wales Region
Mary Greening	AEP	South Wales Region
Jane Jones	Caerphilly CBC	South Wales Region
Angharad Behnan	Ceredigion CBC	South Wales Region
Gerwyn Loosley	Ceredigion CBC	South Wales Region
Derek Tilley	CEREBRA	South Wales Region
Amanda Daniels	SNAP Cymru	South Wales Region
Carol Davies	Independent Advocate	South Wales Region
Lisa Carter	RCT CBC	South Wales Region
Ffion Edwards Ellis	Gwynedd CBC	North Wales Region
Ian Davies	Conwy CBC	North Wales Region
Zoe Holman	Parent Partnership CAB	North Wales Region
Einir Thomas	Anglesey LA	North Wales Region
Sally Richard Simpson	Wrexham LA	North Wales Region
Natalie Jones	Wrexham LA	North Wales Region

### **SEN TRIBUNAL FOR WALES**

Rhiannon Walker	Tribunal President
Mark Allen	Tribunal Chair
Catrin Lewis	Tribunal Lay Member
Gwyn Griffiths	Tribunal Lay Member
Norman Donovan	Tribunal Lay Member
Andrew Wilson	Tribunal Lay Member
Sandra Boyle	Tribunal Lay Member
Rhys Wyn Parri	Tribunal Lay Member



Diane Pritchard  
Kelly Helliwell

Tribunal Secretariat  
Tribunal Secretariat

**Appologies**

Huw Davies  
Ceri Bater  
Janette Carr  
Sue Pink  
Jil Timothy  
Vicky Hancock

Estyn  
Monmouthshire Local Authority  
AFASIC Cymru  
Parent  
Denbighshire Local Authority  
Flintshire Local Authority