

SPECIAL EDUCATIONAL NEEDS TRIBUNAL WALES PRACTICE DIRECTION

Introduction

1. In this Practice Direction “the Act” refers to the Education Act 1996; “the Regulations” refer to the Special Educational Needs Regulations 2012; the First Practice Direction refers to the Practice Direction PD/04/2020 and made on the 26 June 2020; the President refers to the President of the Tribunal and “the Tribunal” refers to the Special Educational Needs Tribunal Wales.
2. The First Practice Direction applied up to the 26 December 2020 and has now been reviewed by the President in accordance with paragraph 5 of the First Practice Direction. The review has taken into account the concerns of the Local Authorities in complying with the First Practice Direction.
3. Following the review, the President of Welsh Tribunals and the President have decided that the First Practice Direction shall cease to apply as from 27 December 2020 and this Practice Direction shall apply in the first instance for a period of six months from 27 December 2020. At the end of that period the Practice Direction shall be reviewed by the President and the President shall decide whether the Practice Direction shall continue in force, either in its current form or with modification, and, if so, for what period of time.

Directions

4. The bundle for Tribunal appeal hearings must include, where available, the documents as set out at items A to K below;
 - A. The appeal application, any amended grounds of appeal and the current Statement (if applicable)
 - B. Both parties Statement of Case
 - C. The LA decision letter
 - D. Any requests for changes made by a party.
 - E. Tribunal orders and any documents ordered to be filed by the Tribunal
 - F. Any relevant correspondence between the parties. Please note that this should not include correspondence relating to dates of meetings or other matters that are not directly pertinent to the appeal/claim.
 - G. Relevant professional reports which have been prepared no longer than three years from the date of the appeal
 - H. Annual review reports which are relevant to the issues to be decided by the Tribunal for the last two years
 - I. Any assessment report and offer of a place (if applicable) from the educational establishment named in Part 4 of the Statement and also (if applicable) details of the cost of the proposed educational placement and the cost of transport for the young person to the educational placement.
 - J. Final working document and /or an agreed list of outstanding issues
 - K. Statements of witnesses to be given in evidence

5. The bundles shall, for items D to K, consist of no more than 300 pages. This page limit is not a target and many cases will not require this number of pages. Items A to C are excluded from the 300 page limit as it is important that the parties to the hearing have the opportunity to put their case fully.
6. The bundle for Tribunal claim hearings must include, where available, the documents as set out at item 1 to 6 below;
 - 1) The claim application, any amended grounds of the claim and the current Statement (if applicable)
 - 2) The Responsible Body's response to the claim and any supplementary or amended response
 - 3) Any requests for changes made by a party
 - 4) Tribunal orders and any documents ordered to be filed by the Tribunal
 - 5) Any relevant correspondence between the parties
 - 6) Statements of witnesses to be given in evidence
7. The bundles shall, for items 4 to 6, consist of no more than 200 pages. This page limit is not a target and many cases will not require this number of pages. Items 1 to 2 are excluded from the 200 page limit, as it is important that the parties to the hearing have the opportunity to put their case fully.
8. If one or more of the parties consider that it would be impossible to produce the evidence that is required for the hearing within the 300 or 200 page maximum on the basis that it is not consistent with the overall objective of dealing fairly and justly with cases, then the party or parties holding that view should make an application to the Tribunal to extend the page limit giving clear reasons why an increase is required and why the inclusion of the documents is necessary for the fair hearing of the matter.

Appellant or Claimant not represented

9. Where the Appellant or the Claimant is not represented, following submission of the the Appellant or Claimant's case statement to the Tribunal and Local Authority/Responsible Body, the bundles shall be prepared in electronic pdf format by the Local Authority for an appeal and by the Responsible Body for a claim and the following rules shall apply:-
 - a. The Appellant/Claimant shall co-operate with the Local Authority/Responsible Body in the preparation of the bundle by providing any documents requested by the Local Authority/Responsible Body for inclusion in the bundle. In the event of a failure of co-operation to ensure that relevant documents are provided within the Bundle, the Panel conducting the hearing may draw such inferences, as appropriate, (including, for the avoidance of doubt, adverse inferences) from the failure when determining the appeal/claim.
 - b. In the circumstances of paragraph 9 the Local Authority/Responsible Body shall ensure that all documents included in the bundle are complete, legible and not duplicated. It is the responsibility of the Local

Authority/Responsible Body to obtain complete and legible documents. An index shall be prepared giving the details of each of the documents and detailing the type of document, its date and the author along with their position. The index should be prepared in a Word document and submitted as a separate document to the electronic pdf bundle of documents.

- c. Prior to finalisation of the bundle, a draft bundle shall be sent to the appellant to be agreed. If no response is received from the appellant agreeing the bundle within 5 working days of being sent, the Local Authority/Responsible Body shall be entitled to presume that the bundle is agreed and it may be submitted to the Tribunal.
 - d. The Tribunal shall amalgamate the bundles and index received, number and finalise the index and send copies of the electronic pdf bundle to the parties at least 10 working days prior to the hearing.
10. If the Bundle submitted does not comply with this Practice Direction the parties shall be informed by the Tribunal Secretariat of the non-compliance and within 3 working days of such notification the Local Authority/Responsible Body must ensure that that the Bundle is made compliant. Failure on the part of the Local Authority/Responsible Body to comply with this obligation may lead to a debarring order against it if the justice of the case so demands.

Appellant or Claimant represented

11. Where the Appellant or the Claimant is represented, each party shall prepare their own bundle of documents in electronic pdf format and the following rules shall apply:-
- a. Each party shall ensure that all documents included in their own bundle of documents are complete, legible and not duplicated. It is the responsibility of each party to obtain complete and legible documents. Each party shall prepare its bundle of documents, giving the details of each of the documents and detailing the type of document, its date and the author along with their position. The index should be prepared in a Word document and submitted as a separate document to the electronic pdf bundle of documents.
 - b. The Appellant/Claimant shall provide the Local Authority/Responsible Body and the Tribunal with their bundle of documents in electronic pdf format by no later than 5 working days after the case statement period. This is to enable the Local Authority/Responsible Body to remove any documents from their own bundle of documents that are duplicated in the Appellant/Claimant's bundle of documents. In the event of the Appellant/Claimant's representative failing to provide the Local Authority with their bundle of documents within the said timescale, the Appellant/Claimant shall be debarred from presenting any documents to the Tribunal Panel at the hearing.

- c. The Local Authority/Responsible Body shall provide the Tribunal with their bundle of documents in electronic pdf format by no later than 10 working days after the case statement period. In the event of the Local Authority/Responsible Body failing to provide the Tribunal with their bundle of documents within the said timescale, the Local Authority/Responsible Body shall be debarred from presenting any documents to the Tribunal Panel at the hearing.
 - d. The Tribunal shall amalgamate the bundles and indexes received, number and finalise the index and send copies of the electronic pdf bundle to the parties at least 10 working days prior to the hearing.
12. If the bundle of documents submitted by a party does not comply with this Practice Direction the party at fault shall be informed by the Tribunal Secretariat of the non-compliance and within 3 working days of such notification, the party must ensure that that the bundle of documents is made compliant. Failure on the part of any of the parties to comply with this obligation may lead to a debarring order against it if the justice of the case so demands.

Sir Wyn Williams
President of Welsh Tribunals

Rhiannon Walker
President Special Educational Needs Tribunal Wales

27 December 2020