

SPECIAL EDUCATIONAL NEEDS TRIBUNAL FOR WALES

SENTW

NOTES FROM FOLLOWING USER GROUP MEETINGS

SENTW	Tuesday 11 August 2020 at 10.00am Thursday 13 August 2020 at 10.00am & 1.00pm	SENTW Virtual Hearing Room
-------	--	-------------------------------

Introduction

1. The Tribunal President, Rhiannon Walker, welcomed everyone to the meetings and discussed some benefits of holding the user groups virtually as they provided a mix of North and South attendees, which does not happen when the meetings are held in person.

Notes from last meeting

2. The President discussed the notes from the last meeting and, as they mainly related to the ALN consultation, agreed the minutes with the group.

Tribunal update

3. The President provided a background to how the Tribunal sourced the Virtual Hearing rooms following discussions and testing with the English tribunal. The Welsh Government were generally supportive for the tribunal to take this forward and to continue to hold hearings. The President provided details about the benefits of Virtual Hearing rooms, noting the detrimental effect on children if cases weren't being heard and that we wanted to keep going as far as we could. The president also briefly covered how other Welsh tribunals had been working during the crisis.
4. The President informed the groups that it was likely that the Virtual Hearing rooms will remain in place for tribunal hearings except for situations that warranted an oral hearing, such as the more complex cases. There were discussions around Virtual Hearings and these are included later in these notes.
5. The President provided information about the Commission on Justice in Wales and ongoing work and serious consideration being given to the devolution of law in Wales, including whether it can run its own justice system. Potential changes in Wales could be more devolution of the justice system.
6. The President gave details about the President of Welsh Tribunals', Sir Wyn Williams, input to the Senedd Legislation, Justice and Constitution Committee, noting the wish for there to be similar procedures for different tribunals to

ensure familiarity and consistency between tribunals. A link to the transcript of the meeting can be found below:

<https://record.assembly.wales/Committee/6414>

7. The President also provided details of the Senedd Sub Committee on Justice, noting the committee's wish to have further input about what is included in the Tribunal's Annual Reports. The President confirmed that the reports were a matter for the Tribunal, as it is an independent body.
8. The President provided information regarding the inter-jurisdictional meetings that took place virtually between the education tribunals in the UK and what is happening in the other jurisdictions. The President noted that Scotland's figures are increasing and provided detail about the scale of cases in England.
9. The President provided information about the recruitment of educational panel members, noting they are now conducted by the JAC, through competency based interviews which appeared to reduce the number of applicants. However the standard of the applications was high and we have recruited 5 new members.
10. The President discussed the ongoing position with the new regulations and advised that we would share when possible. The President confirmed that she will be meeting the Welsh Government officers next week and that we are hoping to work closely with them on the regulations with a view to changing any regulations that are unwieldy and to clarify certain aspects. The President also advised that we are likely to issue more directions in the near future due to virtual hearings. The President also reminded everyone that they should forward any comments about the regulations to us and we will look at and include as necessary the views of users.

Statistics update

2018-2019

Appeals Registered	135
Types of Appeal	
Refusal to assess	54
Refusal to statement	27
Parts 2 & 3	9
Parts 3 & 4	3
Part 3	5
Part 4	12
Parts 2, 3 & 4	23
Refusal to re-assess	1

Cease to maintain	1
-------------------	---

Outcome:

Decided	34
Upheld in full	15
Upheld in part	6
Dismissed	13
Withdrawn	49 (10 by consent)
DNO	44
Pending	47

Claims

Claims registered	18 (2 carried over pre-reg)
Claims outcome	

Upheld	2
Dismissed	9
Withdrawn	4
Pending	4

2019-2020 – Current 7/08/20

Appeals Registered	126	2018-2019 – 118 end of July
Appeals carried over from 2018-2019	45	

Types of appeal 2019-2020:

Refusal to Assess	40
Refusal to Statement	19
Parts 2 & 3	20
Parts 3 & 4	2
Part 3	5
Part 4	14
Parts 2, 3 & 4	24
Refusal to re-assess	1
Cease to maintain	1

Outcome

41 (16 upheld in full, 11 upheld in part, 14 dismissed)	
Withdrawn	39
Consent order	11
DNO	44
Pending	36

Claims

16 claims registered

Carried over 4 Claims from 2018-2019 (1 carried over pre-reg)

Claims Outcome

Dismissed	5
upheld in part	2
withdrawn	7
by consent order	2
pending	5

11. The President discussed the conceded cases. She stated that there was a trend that a large number of concedes were received on or before the end of the case statement period and that this was something that she would be considering further and may be commenting upon in the President's foreword in the next Annual Report.

12. The groups provided the following comments in relation to the conceded cases:

- All decisions are made on individual cases.
- LA workloads can have an impact, but it does not sit right if agreed without thought and that the point of the tribunal is to provide the independent view.
- School action plus provides a lot of support for children and that they have conversations with parents to try to resolve matters.
- Appeals are often lodged before having a further discussion with LAs due to the time limits.
- LA capacity can have an impact with one user noting that with only 7 members of staff, they receive approximately 20% requests for assessments over the last few years and that health provision can cause delays as the case statement deadline approaches and they are left with having to concede as they run out of time.
- That LAs have to carry on with the rest of their normal work and that this can have an impact.
- There can be administrative pressures in producing case statements.
- Financially speaking it can be cheaper to do the assessment rather than fight the case.
- Some LAs noted that carrying out statutory assessments can pull resources from other areas to do the assessment. This can affect other services and provision.
- With the new ALN process imminent there has been a general drive to reduce statements or to have fewer statements.

- The groups noted that there is detail about mediation in the new act and that currently independent parental bodies provide help and support.
- There was a general discussion around statements and it was clear that parents regard statements as providing legal protection.
- The President queried how the new IPDs covering the 0-25 age range will affect LAs. Comments were that the challenge is significant as LAs are used to dealing with young people up to 19 years of age. The process of covering the 0-25 age range is still being developed.
- It was also noted that there is still some confusion around routes to take.

Practice direction

13. The President gave details around the previous discussions about bundles that had taken place and details of the present situation as to why the Practice Direction had been made; she also provided information about problems with bundles:
 - Out of date information, e.g. assessments from a number of years ago
 - Duplication of documents
 - Our own correspondence being provided as part of case statement.
14. The President confirmed that the Practice Direction was approved by the First Minister and that it is currently in place for a 6 month period with a review to take place in December on how it has been working.
15. The President provided a quick recap of the information contained in the Practice Direction including the limits on pages, 300 for appeals and 200 limit for claims, but no limit on case statements specifically.
16. The President confirmed that parties must co-operate and provide documents as required and if they do not co-operate, the tribunal panel may draw such inferences, as appropriate, including adverse inferences. The President confirmed that this would also apply to parents if they were being unhelpful.
17. The President covered that there should be no duplicates and the documentation should be legible. Information regarding the index was also provided. Requirements of bundles are detailed in para. 6 in the Practice Direction.
18. The President also provided details about the process including that the bundle is to be sent to parents to be agreed and that the Tribunal will notify LA if there are issues with the bundle and the LA will have 3 days to rectify.
19. The President also noted that failure to comply with the pd can lead to debarring order, whereby the LA would not be allowed to participate further.

20. The President noted that if a parent doesn't agree or reply, the LA can deem the bundle as agreed. The bundle is to be provided to the tribunal at least 15 working days before hearing.

21. This led to a discussion on the Practice Direction with the following points noted:

- There are benefits of doing this and England has been doing for some time.
- LAs not happy about being forced to comply with new rules and raised concerns about additional administration capacity required to deal with this additional workload whilst preparing for hearings and they may need to raise this with director of education. LAs would prefer not to do the bundles and wondered whether the legal representatives of the appellants could assist. However, as appellants are regularly in person, this would not be possible in most cases. There were concerns about the additional responsibility.
- It was noted however that this should result in the bundle size being reduced and that there will be an opportunity to review after 6 months what is working and what is not working.
- It was hoped that as both parties have to consider what should go in to the bundle, that it may resolve some issues. However there were concerns that it also cause issues between parties as tensions can be raised in preparing the bundle.
- There were some concerns about parents not cooperating with the LA. However they are required to and have consequences if they do not, this may be a positive change.
- There were some concerns that current office closures may impact LAs ability to comply and that there may be issues around security, but it was noted that all appeal and claims are generally not being sent by post in the current situation.
- It was noted that the default in England was a debarring order if bundles hadn't been prepared appropriately, the President confirmed that debarring would be a last resort in Wales, however frequent offenders will be dealt with.
- It was noted the index information should provide improvements.
- There were requests for further guidance around page allowance for parties and it was noted the scale of some expert reports can be 50-60 pages long with information cut and pasted and can often have large appendices. This led on to whether there should be a core and a separate reference bundles to reduce the core bundle size. The core bundle would have the 'meat' in it.
- There were queries as to whether a guide would be developed; however the Practice Direction itself provides guidance. The Tribunal will consider a PDF guide for assisting LAs in preparing PDF bundles. The Tribunal will also consider a webinar on PDFs to assist. There was also a query as to whether advice from English LAs, who have

been already been producing bundles, could be provided to Welsh LAs.

Virtual hearings

22. The President provided feedback that the tribunal has received especially from parents and gave an example of positive feedback we have received.
23. The President also noted concerns in family courts regarding virtual hearings, that they are not taken as seriously and doesn't have the same magnitude and made reference to a scathing report from a litigant in person on a High Court hearing. It was noted that the branded backdrops used by the tribunal help identify panel members and look neutral and professional. It reinforces the decision for them and the importance of the work.
24. There were discussions around Virtual Hearings and it was felt there should be a cost benefit for practitioners. It was noted that parents find it more straight forward. Those that have attending virtual hearings noted that it worked very well, although it is intense for participants using small screens and therefore more breaks should be given.
25. The Tribunal noted that we have multiple rooms we can use and that breakout rooms can be provided for parties and witnesses if helpful.
26. There were comments that parents struggle with technology and therefore assistance has been provided by parental support services.
27. As part of the discussion hybrid hearings were mentioned where witnesses give evidence in person, with submissions being written.
28. A parental perspective was provided noting that preparations are key with limited ability to prompt and converse in virtual hearings and so required more preparation to ensure parents get their points across. Even more critical to be prepared properly.
29. The President noted a letter sent to the secretariat from a parent which was very positive of her experience of a virtual hearing. She felt that the panel listened and understood what she wanted.
30. It was noted there were some teething problems, but that it was generally a positive experience.
31. Queries about whether the Virtual Hearing room could be improved to give a 'Hands raised' button to indicate a party wishes to speak. This facility is available with other video conferencing systems. The Tribunal will look in to whether this facility could be developed for the tribunal's system.

32. That there needs to be an awareness of parties representing themselves and their technical ability.
33. The tribunal gave details about the test runs the secretariat provides to parties and the benefit it brings.
34. It was noted that it is tiring focussing for long periods of time and tricky to pick up on non-verbal clues. Bundles can also be difficult to manage during virtual hearings.
35. It was felt that Virtual Hearings achieve the same outcome as oral hearings and that as hearing were now location neutral it allowed for a mix of different panel members which is a benefit and virtual hearings also give cost savings and that the Tribunal should be able to overcome challenges with the virtual hearings.
36. There was a proposal for:
 - a) a step by step guide with questions that might be helpful in detailing what to expect of a virtual hearing;
 - b) anything useful that may help with connecting to the Virtual Hearing Room;
 - c) whether there could be any generic training for users and LAs.

Any other business

37. The next User Group is to be arranged in December; attendees will be contacted about arrangements.