

## SPECIAL EDUCATIONAL NEEDS TRIBUNAL FOR WALES

### SENTW

#### NOTES FROM FOLLOWING USER GROUP MEETINGS

SENTW	Monday 10 May 2021 at 10.00am Wednesday 12 May 2021 at 10.00am Friday 14 May 2021 at 10.00am	SENTW Virtual Hearing Room
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#### **Introduction**

1. The Tribunal President, Rhiannon Walker, welcomed everyone to the meetings and reiterated some of the 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 there were no suggested amendments made, agreed the minutes with the group.

#### **Tribunal update including Practice Direction**

3. The President discussed the current Practice Direction that parties are required to follow.
4. The President asked the groups if they had any comments in relation to the current Practice Direction. Comments included that it was an improvement over the original Practice Direction that was issued and that it was now clearer to follow. The President noted that feedback from members was that bundles are now more concise and therefore helpful to the parties and panel. It was also noted that if bookmarks are added to the bundle it assists during virtual hearings as enables easy access to the relevant documents. It will be looked in to whether index bookmarks can be set up, which in some cases have been done by the parties.
5. The President raised concerns regarding the delay in some of the Tribunal decisions being issued and discussed with the group the potential option of, where it appeared that there would be a delay with a decision being issued, whether parties would find it helpful to receive an initial decision with the full reasoned decision being issued at a later date. The groups could see that there could be a benefit to this, but didn't want the initial decision being given leading to longer delays for the full decision.
6. The President providing information about the recent training that the members had undertaken including training on unconscious bias. The President also provided

information about a new training resource that has been set up for the members, so that they can access previous training that had been provided, which will also be invaluable to any new members that join the Tribunal.

7. The President noted that the Tribunal are currently looking to run a recruitment competition for chairs.
8. The President confirmed that the Tribunal's new regulation has now been finalised and that the Code is in place. The President noted that the new regulations do include some aspects that the Tribunal wanted included, which the Tribunal are pleased with. The Code provides more mandatory provisions for users.
9. The Tribunal is currently preparing for the changes that come in to force in September.
10. The President informed the groups that the office address for the Tribunal would be changing as the Tribunal is being relocated and that there will be a PO Box address for the Tribunal. The President confirmed that there are no facilities for hearings in our new office space. Hearings in Mid Wales will therefore be arranged at hotels or other suitable conference venues if an oral hearing is required in the future.
11. Information was provided regarding a recent hearing where the Tribunal used a speech to text facility in Microsoft Teams which worked well for the purpose it was used for.
12. Information was provided about how people used alternative means for communicating with members of their party during virtual hearings, including having WhatsApp groups set up to pass "notes". The possibility of setting up virtual rooms for the individual parties was also discussed.
13. There was a discussion around how working documents appear to be prepared earlier and have far less instances of working documents being worked on the morning of hearing which has been a benefit for all as when completed before hearings the hearing itself can start immediately and therefore ensure that the full day is used for the hearing.
14. It was noted that in England there is a choice as to whether a hearing is done orally or by virtual means and it was noted that this is likely to be something that the Tribunal may consider in the future.

### **Statistics update**

15. The Secretary of the Tribunal provided an update on the statistics as follows:

### Virtual hearings

16. 23 Virtual Hearings were held up to the end of August 2020, with 39 Virtual Hearings held since September 2020 giving a total of 62 Virtual Hearings being held since the Tribunal set them up.

### Received appeals

17. 84 Appeals have been received since September 2020, of those:
- 33 against a local authority's refusal to carry out a statutory assessment;
  - 14 against a local authority's refusal to issue a statement;
  - 4 against the contents of Part 3 of a statement;
  - 8 against the contents of Part 4 of a statement;
  - 3 against the contents of Parts 2 & 3 of a statement;
  - 18 against the contents of Parts 2, 3 & 4 of a statement;
  - 3 against the contents of Parts 3 & 4 of a statement; and
  - 1 against a local authority's decision to cease to maintain a statement.

### Received Claims

18. 6 Claims of alleged disability discrimination have been received since September 2020.

### Comparison stats

19. The secretary provided a quick comparison of the appeals received over the last few years to show the impact of the pandemic on Tribunal cases as set out in the table below:

Month	2018-2019	2019-2020	2020-2021
September		16	10
October		18	10
November		17	6
December		18	6
January		13	13
February		9	8
<b>Total (6 month)</b>		<b>91</b>	<b>53</b>
March	9	8	15
April	13	7	13
May	11	8	3
June	15	9	
July	11	9	
August	6	8	
<b>Total (6 month)</b>	<b>65</b>	<b>49</b>	<b>31</b>

## **Outcomes including appeals carried over from 2019-2020 tribunal year**

20. 12 appeals have been dismissed, of those:
- 5 against a local authority's refusal to carry out a statutory assessment;
  - 5 against a local authority's refusal to issue a statement;
  - 2 against the contents of Part 4 of a statement;
  - 1 against the contents of Parts 2 & 3 of a statement; and
  - 2 against the contents of Parts 2, 3 & 4 of a statement.
21. 33 appeals have been conceded, of those:
- 23 against a local authority's refusal to carry out a statutory assessment;
  - 5 against a local authority's refusal to issue a statement;
  - 3 against the contents of Part 4 of a statement;
  - 1 against the contents of Part 3 of a statement;
  - 1 against a local authority's decision to cease to maintain a statement.
22. 11 appeals were upheld in full or part, of those:
- 2 against the contents of Parts 2 & 3 of a statement;
  - 6 against the contents of Parts 2, 3 & 4 of a statement;
  - 2 against a local authority's refusal to carry out a statutory assessment; and
  - 1 against a local authority's refusal to issue a statement.
23. 34 appeals were withdrawn or withdrawn by consent, of those:  
9 against a local authority's refusal to carry out a statutory assessment;
- 1 against a local authority's refusal to issue a statement;
  - 4 against the contents of Part 3 of a statement;
  - 6 against the contents of Part 4 of a statement;
  - 3 against the contents of Parts 2 & 3 of a statement;
  - 8 against the contents of Parts 2, 3 & 4 of a statement; and
  - 3 against the contents of Parts 3 & 4 of a statement.
24. 5 appeals have been struck out and 36 appeals are still pending with the Tribunal.
25. There was a short discussion around the figures from the comparison stats with some input on the possible reasons for the reduction in cases being brought to the Tribunal during the Covid 19 pandemic and the restrictions that have been in place.
26. There was a request for information regarding appeals to the Upper Tribunal and these, whilst not provided at the meetings, are provided below:

### **Reviews and onward appeal to the Upper Tribunal**

27. Since September 2020 to date the tribunal have received 8 applications for review/permission to appeal. Of those 1 was given permission to appeal to the

Upper Tribunal and 7 were refused. One case was remitted back from the Upper Tribunal for reconsideration by SENTW.

## **ALN Implementation**

28. The Welsh Government gave a presentation in relation to the ALN implementation as attached to these minutes. In summary the Welsh Government provided details of the package of subordinate legislation and information about the commencement orders, including when and who are included in the commencement orders as follows:

Commencement order 2:

- Children not over compulsory school age; and
- From 1 September are newly identified as having, or newly thought to have, ALN; or
- Are detained.

Commencement order 3:

- Children not over compulsory school age;
- On 1 September 2021, have SEN provision via school action/school action plus;
- Attend a maintained school in Wales; and
- Fall into one of the following mandated years during the 2021/2022 school year: Nursery Years 1 and 2, Year 1, Year 3, Year 5, Year 7 and Year 10.

Commencement order 4

- Children not over compulsory school age
- On 1 September 2021, have SEN provision via school action/school action plus, who:
- Attend a pupil referral unit (PRU);
- Are registered at more than one setting where one of those settings is a maintained school or a PRU; or
- Attend a maintained school in Wales and are looked after by a local authority in Wales; and
- who fall into one of the following mandated years at the start of the 2021/2022 school year: Nursery, Year 1, Year 3, Year 5, Year 7 and Year 10.

29. The Welsh Government also provided information about how the commencement orders will work as follows:

Commencement order 2

- Children who from 1 September 2021 are newly identified, or newly thought to have, ALN regardless of how their education is delivered.
- This includes pupils in maintained settings, independent settings, FEIs and children not educated in a setting - such as being electively home educated or in receipt of home tuition.

- The ALNET act and the ALN code comes fully into force for these pupils on 1 September - there are no transition arrangements.

#### Commencement order 3 – schools

- Children will move from the SEN system to the ALN system over the course of the 2021/2022 school year
- This is achieved by schools giving a notice – an IDP notice or a no needs notice. The date of the notice is the date the new law applies and the old law ceases.
- Where the school issues an IDP notice, the school must give a copy of the IDP to the child and the child's parent within 35 school days of the date of the notice unless exceptions apply.
- A child, with identified SEN via school action/school action plus, or the child's parent can request, at any point in the school year, that a school gives a notice and the school has 10 school days to issue a notice – the new law applies on the date of the notice.
- When preparing an IDP, schools must have regard to the SEP the child was receiving immediately before the IDP notice was given.

30. There are two instances where a child captured by commencement order 3 will automatically move to the new system:

1. Where a school has failed to give a notice to a child during the 2021/2022 school year – the child will automatically move to the ALN system at the end of the school year (31 August)
2. Where a child has one of the following 3 changes of circumstance:
  - Ceases to be a registered pupil at the maintained school at which the child was registered on 1 September 2021
  - Is registered at a maintained school on 1 September 2021 and at some point after that date becomes a registered pupil or an enrolled student at another institution (registered at more than one setting) and for whom a local authority in Wales is responsible.
  - Is registered at a maintained school on 1 September 2021 and at some point after that date becomes looked after by a local authority in Wales.

31. Children who have these changes of circumstances will automatically move to the ALN system on the date of the change of circumstance.

#### Commencement order 4 – PRUs and local authorities

- The act comes into force at the start of the 2021/2022 school year for this group where they are in a mandated year on 1 September 2021
- That is, they move to the new law and the ALN act and ALN code apply from the start of the 2021 school year
- PRUs: are responsible for preparing IDPs where they become aware, or it otherwise appears, that a child who has moved to the ALN system at the start of the school year, has ALN.

- From the start of the school year, PRUs have 35 days to make a decision about whether children have ALN and to issue IDPs, other than where looked after, registered at more than one setting or exceptions apply.
- Local authorities: are responsible for preparing IDPs for children who have moved to the ALN system and who are looked after or who are registered at more than one setting.
- Where the local authority becomes aware, or it otherwise appears, that a child who has moved to the ALN system, has ALN - the local authority must make a decision on ALN, prepare the IDP and give a copy of it within 12 weeks from the start of the first day of the school year.

#### Right to ask to move to the ALN system

- Similar to the right for a child or their parent to request a school to give a notice in order 3
- Children captured by order 4, or their parent, may request that the appropriate person – a LA – moves the child to the ALN system. The child moves to the ALN system on the date the request is received.
- The new law applies in relation to the child on the date the request to move is received and the old law ceases to apply
- When preparing an IDP, PRUs and local authorities must have regard to the SEP the child was receiving immediately before they moved to the ALN system.

32. There were some concerns raised by the Local Authorities in attendance including that there should be guidance around the bar for when processes should start.
33. There was a view that the current refusal to assess concedes are likely to be mirrored in the LA's agreeing to taking over responsibility for maintaining IDPs. The President noted that the Tribunal can't advise on this point and that we have to rely on the Welsh Government legislators and what they say. The Tribunal itself will need to have its decisions tested through the appeal to the Upper Tribunal, whilst the regulations and wider legislation are bedding in, which will determine how future cases are dealt with.
34. Questions were asked around the mandatory process and about whether statutory assessments will still be taking place. It was confirmed that there would be no new statutory assessments from September as these would be dealt with under the new system.
35. There was a query around whether annual reviews for non-mandated years should be considering moving to IDPs or proposed amendments to the statement. It was confirmed to continue as is, unless a request is made for an IDP as there is the ability to make a request to go in to the new system.

36. It was detailed that there is a need to consult EPs in the new system, but under the new rules there would be slightly less merit, depending on the case, for the level of involvement of other professionals.

37. There was a query regarding how to access the Welsh Government for queries and the following e-mail address was provided:

[SENreforms@gov.wales](mailto:SENreforms@gov.wales)

### **Education Tribunal Wales – Philip Morais**

38. Philip Morais provided an update on the work being done to prepare the Tribunal for upcoming changes due to the ALN reforms. This included information about updating the Tribunal's guidance, anticipating the next steps the Tribunal will need to undertake and identifying any improvements that can be made in the first year of implementation.

39. Philip noted the challenges facing all responsible bodies, professionals, children and parents to come to terms with, not least considering the wider context, in view of the difficulties everyone has experienced with the Covid pandemic and also the curriculum changes expected in 2022.

40. Philip asked that if there any suggestions, or feedback on what attendees would like to have considered from the Tribunal's point of view would be greatly appreciated and thoughtfully considered.

41. Philip noted that the 2018 Act renames SENTW "The Education Tribunal" from September 2021 and that it will be the one tribunal essentially working to 2 different systems – the SEN system for children with statements and ALN system for those with IDPs.

42. The Tribunal anticipate at first that case numbers MAY increase as the system is tested, and also a potential for a small increase considering the first year introduces preschool ages into the system too, but not necessarily a considerable increase.

43. A considerable shift will be in the 3rd year of implementation, when young people in post-16 education will be introduced, but the phased implementation should allow us all time to cope and prepare for each development.

44. Internally, for the Tribunal, working to two systems, we have to ensure that our members and secretariat have a sound knowledge of the new system, and are able to differentiate, or switch "caps", as will the rest of the group.

45. A lot of the preparation over the next few months will be about ensuring that our guidance and knowledge enables us to provide sound advice and guidance to everyone coming to a Tribunal



46. Philip detailed the internal resources and training that is being prepared to ensure we're all acting to the correct criteria, and also able to advise and instruct people appropriately.
47. Information about the work ongoing into exploring different platforms for virtual hearings, and also streamlining our own administrative processes, including record keeping and reporting techniques was provided.
48. The most important focus of the next few months is going to be developing the new website and updating our guidance, taking care to ensure users can identify which set of guidance their case relates to as there is the potential for confusion with two different systems running at the same time
49. The SENTW website is going to remain available, and people will be redirected to it from the Education Tribunal website as required. There will also be a breakdown of the wider picture, how to differentiate between the two systems, and how to identify where to get assistance.
50. All of the current guidance is being revised to match the new ALN system, with the inclusion of new guidance documents. Philip noted that he had been in discussions with the transformation leads and will continue to do and the have provided some suggestions.
51. The hope is to provide information for responsible bodies and professionals coming to the hearings as they might be new to it, and therefore require this information. This is to include expanding on the case statement guidance so that it aligns with current practice, and clarify responsibilities for all.
52. We are also aiming to expand our virtual hearing guidance, as this is new to all of us, and can be more tailored to the platform we're using. This will include options available for accessibility, so people are aware of the types of additional services they can request from the tribunal
53. Continuing to update all guidance throughout the first year to ensure they cover arising common issues or gaps in the provision to help people feel more comfortable preparing for coming to the Tribunal.
54. To finish, Philip reiterated that any feedback and suggestions are welcomed, and that users should feel free to email in over the coming year if they have any as Philip is in post until September 2022, and will be continuing to anticipate how to tackle implementation and how to prepare the Tribunal's response to the challenges, and to make any improvements as the system beds in.

**Any other business**

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