

Special Educational Needs and Disability

Newsletter 2 October 2008

Changes being implemented on 3 November 2008

INTRODUCTION

Much has happened since the first general SENDIST newsletter in early July and this one is specifically designed for service users to bring you up to date with the developments since then.

On 3 November 2008 SENDIST will no longer be a separate tribunal, but will become the Special Educational Needs and Disability Panel or SENDISP. Subject to the approval of the appropriate legislation by the House of Lords on 23rd October, a brand new coordinated Tribunal Service will be introduced. We will then join a part of the new structure called the Health, Education and Social Care Chamber, or HESC for short.

HESC will be one of the chambers in the First-Tier Tribunal (FTT) and appeals against SENDISP decisions will go to the Upper Tribunal (UT) instead of the High Court. The other two tribunals in HESC will be the current Care Standards and Mental Health Review Tribunals, to be joined in April 2009 by the Family Health Service Appeal Authority.

The changes include new **Rules** new **Practice Directions** specifically designed to deal with SENDIST issues and some new procedures, including a **new case management system**. In this newsletter we have used “**Rules**” to mean the new HESC Rules and “**Regulations**” to refer to the current Special Educational Needs and Disability Tribunal Regulations that will be replaced. Many months have been spent working on these with colleagues and a group of service user representatives drawn from parent groups and from local authorities. Our aim throughout has been to preserve what is best about SENDIST, to use the opportunity to build on good practice, and to ensure the transfer takes place as smoothly as possible.

We very much hope that whilst the changes may affect the appearance of SENDIST it will not mean any reduction in our reputation or our ethos. It is important to know that our general approach will not change - we do not intend to undermine the principles on which this tribunal was originally set up. Our decision-making must continue to be firmly based on the law and good practice but it must also avoid being so legalistic or formal that it discourages the very people it is intended to serve.

Appeals and claims will continue to be heard by a specialist Panel consisting of a lawyer and two non-legal (specialist) members with experience and expertise in special educational needs and disability issues. Any new Chairs or members will only be appointed subject to the approval of the Chamber President and with appropriate training and mentoring.

We will continue trying to make the process of appealing or claiming as accessible and as easy to understand as possible. Please tell us if we are succeeding or not – like all new systems, the procedures need a chance to be tested, but the changes will be kept under close scrutiny and will be reviewed in the near future.

You will find a list of changes in personnel, together with relevant contact points at the back of this newsletter – there are still some issues to sort out before 3 November (see below), so keep giving us your views.

NEW RULES & PROCEDURES.

It is worth reminding ourselves that SENDIST was established in 1994 with a particular set of aims and principles:

- To take decisions as effectively and efficiently as possible
- To bear in mind that whilst it is the parent/s' appeal, the subject of the appeal is a child and decisions should not prejudice him or her
- To ensure the process was as clear, accessible and straightforward as possible, taking account of the particular needs of service users
- To restrict the number of people attending hearings to take account of the high proportion of parties not legally represented and issues of confidentiality
- To ensure the views of children and young people could be heard wherever possible

So, the old *Regulations* aimed to:

- deal with each case in about 22 weeks – 2 school terms at most – with a case statement process designed to keep to that limit
- limit the evidence to that which was directly relevant to the issues
- control the submission of late evidence
- avoid adjournments unless absolutely necessary
- require LEAs to seek the child's views on the issues in the appeal
- enable children and young people to contribute to, and participate in the process subject to appropriate facilitation and protection

The new HESC Rules

A consultation on the draft HESC Rules took place in June and many SENDIST users sent in comments. Unfortunately, for a variety of reasons, the draft Practice Directions regarded as essential to make the generic HESC Rules work effectively for SENDIST were not made public at the same time.

There have been many misleading rumours and myths about the proposed new Rules. Whilst acknowledging some changes are both helpful and inevitable, we must emphasise that the aim has been to try to keep what works for SENDIST. A tremendous amount of work has gone into this and we are very grateful indeed to the parent and LEA representatives who gave

their time to attend regular meetings. Their considerable input into the Rules, the Practice Directions and the new Case Management process has undoubtedly made an invaluable contribution to making the changes accessible and tailored to SENDIST needs.

The Practice Directions have been subject to considerable discussion subsequently and a completed version was made available for training purposes last week. The Rules have also undergone several revisions since June and we have kept a close eye on the final amendments. The final drafts of the new Rules and the Practice Directions as approved by the Tribunal Service Rules Committee are due to be sent to the Lord Chancellor for his approval next week.

Current Guidance on how to appeal or make a claim is now being revised. The aim is to produce a booklet for each type of case that provides advice in a clear, easy to understand format dealing with the key points users will need to address when appealing or making a claim.

Please note the following important points:

❖ ***Appeals & claims***

all cases dealt with under the new **Rules** will start with an Application, followed by a Response from the LEA. This means a return to the original system - the current case statement period will disappear altogether.

- ***one school*** - the new application form provides for only one school to be named by the parents. If the chosen school is not suitable it will be necessary for an amendment to be sought.

❖ ***Evidence***

- ***joint experts*** – this is just a power, not a requirement! A joint expert will not be ordered against the wishes of the parties and will only be appointed if both parties agree, are agreed on who that person should be and have agreed how that person will be funded. Please note that there are no provisions in the Practice Direction on this for the moment because it clearly needs further careful consideration and discussion.
- ***Witnesses*** - The HESC Rules do not restrict the number of witnesses at hearings, but the tribunal has the power to limit the number of witnesses attending. The new case management system will help parties determine which witnesses are necessary and ensure a fair balance. Service users have told us they see the limit on witnesses in the *current Regulations* as an important tool for efficient and effective hearings and it is clear that in order to reach timely and focused decisions SENDIST needs to take oral evidence only from key witnesses. We are intending to have an informal consultation with users about whether or not we should set a preliminary limit of (say) 3 witnesses for each party - the aim is still to finish a case in one day.

- **Children and young people:** contrary to current rumours, they will NOT be **required** to attend hearings – their current rights to participation remain the same and have been transferred into the new Rules
- **Assessments of children** – this is not a power to direct a child to attend a Tribunal for assessment! The provision in the new Rules gives the Tribunal the power to require a parent to make a child available for assessment by an appropriate professional and/or to require a school to allow a professional instructed by a parent into the school to assess the child's functioning in a school environment. This is designed to ensure professionals can provide up to date information about a child and ensure the right level and balance of up to date evidence is given to the Tribunal so that it has the fullest possible picture to support effective decision-making for the child.
- **Late evidence:** the old provisions are not repeated in the new Rules and the time table set during the case management process set out below should avoid any need for late evidence in all but the most exceptional of cases, i.e. ones in which there has been a last minute change of circumstance.
- **Costs:** The sum of £10,000 that appeared in an earlier draft of the Rules has now gone because it gave a potentially unhelpful and misleading impression. It is particularly important to remember that costs will only be awarded against a party who has behaved unreasonably and is able to pay the money ordered. It is also very important to stress that costs are rarely awarded in SENDIST and in the case of parents and others; the principle is that the threat of costs should not be used to deter people from appealing or making a claim.

The new Case Management process

Under the HESC Rules case management is to be done throughout the Chamber. This is a new (and welcome) change for SENDIST. It is the key to ensuring cases continue to be finalised within 22 weeks, supported by a timetable set to ensure late evidence is avoided and setting a date for final hearing from the start.

Both parties will be required to fill in a form giving information. The first is for the parties to state what they think are the issues in the case. This is quite deliberate, to encourage parties to think about the points they want to make as soon as possible.

Each case will involve either a preliminary oral or telephone hearing or the issuing of standard paper directions. The approach in each case will be based on criteria to be published shortly. But, for example, an appeal against Parts 2, 3 and 4 of a statement will almost certainly have an oral directions hearing – i.e. the parties will need to meet with the Chair for about an hour at an appropriate hearing centre.

By contrast, a straightforward refusal to carry out a statutory assessment will be dealt with by paper directions only, (i.e. the administration will issue standard directions to the parties to deal with the information that needs to be filed and the timetable - in effect, transferring the Secretariat's current written requests for information into formal directions).

- This means most cases will be initially scrutinised without the need for the parties to attend an additional hearing
- Any special arrangements such as the need for an interpreter or signer, will be made in any case that requires it
- No-one will be forced to have a telephone hearing if they do not feel able to address the issues in this way
- There will be a degree of flexibility – a Chair may well decide that a particular case should be dealt with in a different way, depending on the circumstances

Most importantly, the process is designed to identify the issues and the witnesses at an earlier stage than at present. This is in the hope of encouraging:

- A focus on what is important to the case and to a well-informed decision by the Tribunal
- Minimising delay for children by substantially reducing adjournments that could have been avoided
- Reducing the number of last minute cancellations that cause inconvenience and expense to everyone
- Earlier settlement, in the interests of the child
- Improving cooperation and outcomes for parties

We will make every effort to ensure the process is as user-friendly as possible and that it does not become more 'legalistic', but you will notice some increase in paperwork – this is necessary to make sure both parties follow all the steps correctly and all the right information gets to the Tribunal Panel at the final hearing.

One live case is being run through the new process as a pilot with the kind agreement of all concerned – and with the clear understanding that they have the choice of going back to the existing system at any stage if necessary. The process will be kept under regular scrutiny with feedback and will be subject to formal review after 12 months.

Key points:

- There will be a group of experienced Chairs specially trained in case management who will be responsible for this process
- Although specialist members will not be involved in case management of individual cases, their expertise will be used to produce a guide for the Chairs on specialist evidence issues

- The system puts the Tribunal in charge of setting a timetable and making sure each party puts its case as effectively and as fairly as possible
- There will be a number of new forms to fill in that are designed to ensure the Tribunal does not miss anything that needs action
- The power to strike out a case has been retained, with the addition of a power to make an ‘unless’ order i.e. making it clear that the Tribunal may exercise its power to strike out a case where directions are not complied with
- Withdrawal of a case will need the approval of the Tribunal – this is aimed at ensuring the interests of children and parents are protected
- The structure of the bundles is to be revised to provide a clearer set format and eliminate duplications, but we will run a pilot on this first.

What if I want to appeal the decision of the SENDIS Panel?

From the user’s point of view the most marked change in the appeal process will be that the first step is to apply to SENDISP for permission to appeal. On receipt of the application the Tribunal must first consider whether or not to exercise its power of review, limited to “points of law”. There is an additional specific power of review in SENDISP cases to cover a change of circumstance as set out by the Court of Appeal in the *Dean v East Sussex* case.

If the tribunal does not review the case and then refuses to give permission to appeal, there is a power in the Upper Tribunal Rules to renew the application for permission to appeal to the Upper Tribunal. The forms for this are being considered at present.

What happens to my case now?

It is our intention to direct that the ***old Regulations*** shall apply to a case that *starts (i.e. has been registered)* before 3rd November but is *listed for hearing or adjourned to* after that date., **until the written decision is issued**. The new Rules will then apply to any application for review or appeal in respect of that decision.

A case that is *registered* on or after 3rd November will be heard under the new Rules.

Therefore the new processes will only apply to cases registered after 3 November, which makes it likely that the first Case Management hearing to timetable a case will not occur until mid/late January. There is still time for refinements and improvements, so all views are welcome!

JUDICIAL LEADERSHIP

Rosemary, Lady Hughes, SENDIST’s second President, has now taken a well-earned retirement. We currently have no full time salaried lawyers in this

tribunal, but obviously SENDIST needs judicial leadership for the time being during this period of transition and until a permanent replacement for the President is identified.

There has been a group of four Chairs 'shadowing' Rosemary for some months and helping in the preparation for the run up to 3 November. They have now taken on the leadership role with effect from Monday 29 September. This group is called the Judicial Management Group (JMG) and is led by Simon Oliver (as a full time member of the judiciary through his appointment as Deputy President of the Care Standards Tribunal), with three fee paid members namely Charlotte Beatson, Liz Goldthorpe, and Richard White. The newly appointed President of the HESC Chamber is His Honour Judge (HHJ) Phillip Sycamore and from 3 November JMG will act under his authority.

Whilst there is still considerable uncertainty about how long this leadership structure will continue, it is clear that it should last no longer than absolutely necessary. Decisions about a more permanent arrangement subject to open competition are urgently needed in order to maintain confidence and provide longer-term consistency, a view endorsed by HHJ Sycamore.

JMG will be based on a collective decision-making process and there will be a duty rota. But each member of JMG also has specific areas for which they are primarily responsible:

Simon: appeals, legislation, judicial complaints and references

Charlotte: general day to day office and work enquiries, queries from staff and members. She has been the SENDIST Representative on the Tribunal Service Rules and Procedure group, and is on the Northern Area Leadership Forum.

Liz: Communications and Service User Groups. She represents HESC on the Tribunal Service Judicial Communications Group. For details of the next round of service user group meetings please see below.

Richard: Training, Appraisals and Mentoring

Continuity will also be provided by retaining the services of Ann Waterton, the current PA to the President's office, who is due to retire in April 2009. Ann.Waterton@tribunals.gsi.gov.uk

For a short while JMG will continue to operate from Procession House, but will move soon to the current Care Standards Tribunal office at 18 Pocock Street SE1 0BW. As soon as the necessary arrangements are made, we will let you know any changes to contact details.

Please contact all four team members at simon.oliver@judiciary.gsi.gov.uk

ADMINISTRATION

We know there has been a lot of concern about the delivery of the administrative service that is so critical to the smooth running of the Tribunal. Part of this has been due to the ongoing transfer of work to the Darlington office following the decision to surrender the lease on Procession House as from March 2009.

The Secretariat has been making great efforts to improve the situation and although it isn't yet uniformly consistent with still some issues to resolve, things do appear to be getting better.

By the end of October all administration will be based in Darlington: 6 new staff will join the existing team in mid-October. All registrations, listings, case progression and decisions are already based in Darlington, so staff will now also be dealing with the administration of case management. We have been assured that the Darlington office will remain open until at least the end of 2009 to allow the new systems to bed down. To make sure nothing is overlooked there are very regular meetings between administration and judicial management representatives.

All the permanent London staff have now been found other jobs in London in the Tribunal Service - you may well meet some of them again as clerks at our hearings.

Clerking

From 1st September all our hearings have been clerked by multi-jurisdictional clerks who have received training on the procedures in SENDIST. Three of our current London clerks will also be joining the generic London clerking team based in Fox Court at the bottom of Grays Inn Road.

Venues

We recognise there have been some temporary difficulties with inappropriate venues being used for hearings. A list of criteria for venues that are right for our cases has been drawn up and in future venues that are inappropriate will not be used. There will also be an additional national network of 59 permanent hearing centres available to our users that will be user-friendly and accessible. As a last resort, where there is no other appropriate venue, hotels will continue to be used.

We will also continue to use the existing hearing rooms in Procession House until March 2009 and will be using other venues in London in future, including appropriately laid out rooms at the offices of the Care Standards Tribunal.

Please continue to tell us about your experiences of service delivery, administration and venues.

Training

Funding has been given to provide free ½ day training courses for parents representatives and LEAs in the new Rules and case management processes at a variety of venues in England – please see details below. We are delighted that nearly 500 have signed up already for this.

The training will be delivered by members of the special user group, i.e. parents' representatives, LEAs and SENDIST judiciary. There will also be further training for members early next year.

WHO's WHO

TRIBUNAL SERVICE

SENIOR PRESIDENT - Lord Justice Robert Carnwath

Tel 020 3206 0691, or email Leueen.Fox@tribunals.gsi.gov.uk

DEPUTY SENIOR PRESIDENT - Mr Justice Gary Hickinbottom, (Chief Social Security Commissioner), Chair of Judicial Communications Group

CHAIR OF TRIBUNALS PROCEDURE COMMITTEE – Mr Justice Patrick Elias

EliasJ@judiciary.gsi.gov.uk

ACTING CHIEF EXECUTIVE Jeanne Spinks (acting head of administration)

TCE ACT IMPLEMENTATION –

Andrew Moseley, Andrew.Moseley@tribunals.gsi.gov.uk

Steve Cryer, Project Manager Tel 07882 091771,

Steve.Cryer@tribunals.gsi.gov.uk

Ministerial communications – Peter Middleton (TS Official correspondence), Arnhem House 0116 249 4164

SENDIST Administration

Helen Kettlewell, North East & North West Area Manager: 2nd Floor, York House, York Place, LEEDS LS1 2ED. Tel. 0113 389 6015.

Helen.Kettlewell@Tribunals.gsi.gov.uk

Mike Watson, Central London Area Manager, Tribunals Service, 1st Floor, Procession House, 55 Ludgate Hill, London EC4M 7JW

Tel. 020 7029 9772. Mike.Watson@Tribunals.gsi.gov.uk

Martin Geddes, Secretary to SENDIST/SENDISP and Operational Manager,

Martin.Geddes@tribunals.gsi.gov.uk

Jacqui Miller, Centre Manager, SENDIST/SENDISP, Darlington
Jacqui.Miller@tribunals.gsi.gov.uk

Paul Higgins: Contact point for service user groups and feedback.
sendiststandards@tribunals.gsi.gov.uk

PRESS ENQUIRIES

Judicial Communications Office: 020 7073 4857

TRAINING DATES

London: 3rd and 10th November
Birmingham: 13 & 14th November (to be confirmed)
Manchester: 20th November
Newcastle: 27th November
Bristol: to be confirmed

All enquiries to:

Clare Rushworth, Tribunals Service, Phoenix House, Rushton Avenue,
Thornbury, Bradford BD3 7BH

Or by e-mail to: Clare.Rushworth@tribunals.gsi.gov.uk

SERVICE USER GROUP MEETINGS

11 November	Northern Users Group, Darlington
24 November	London & SE Users Group, London
26 November	South West Users Group, Taunton
5 December	Midlands User Group, Birmingham