

# SPECIAL EDUCATIONAL NEEDS TRIBUNAL FOR WALES

## SENTW

### NOTES FROM FOLLOWING USER GROUP MEETINGS:

North Wales	Monday 16 <sup>th</sup> October 2017 at 10:00am	The Quays Hotel, Conwy
South Wales	Wednesday 18 <sup>th</sup> October 2017 at 10:00am	The Newhouse Hotel, Cardiff

The Tribunal President welcomed everyone to the meeting.

#### **Legal Update**

The Tribunal President introduced Meleri Tudur to the group. Meleri Tudur is a Deputy Chamber President in England but is also Tribunal Chair for SENTW and was providing the Legal update for this meeting.

Legal Update - Meleri Tudur provided a comprehensive presentation in relation to the parts of the Statement that the Special Educational Needs Tribunal deal with. As Wales is facing some major changes in legislation this is an opportunity to go back to basics to look at the statutory frame work. When the new bill comes in we will need to be asking ourselves what the legal questions are. Mrs Tudur also said that although most Local Authorities have their own Policies and Guidance, the tribunal work by applying the Law. The questions we ask emanate from the legislation. This is an opportunity to look at what the legislation says and what the Upper Tribunal has said recently because in England the Children and Families Act has grafts of provision which has been cut and pasted from the Education Act 1996. It looks like the Code of Practice is going to be the biggest difference in Wales as at the moment it is guidance but it appears that it will become compulsory.

The presentation dealt with the Legal framework within the Statementing process in which areas the Tribunal have Jurisdiction. Refusal to Assess, Refusal to Statement, Contents of Parts 2,3 & 4 etc.

There was a lot of discussion within the group following the Presentation; the main questions were around the costs:

LA – not clear about what the Law allows to be included when working out the costs of a placement, more clarity is required.

There was a discussion around children's views, capacity and parental rights, for their child in Further education.

It is essential to the Tribunal in making their Decision to have the views of the child.

A copy of the presentation is attached. – Appendix 1

## **ALN Transformation**

The Tribunal President informed the group that due to internet issues our Tribunal Chair Jaqueline Blackmore could not deliver the talk as planned.

We received notification very late last Thursday afternoon, that the Welsh Assembly's Children, Young People and Education Committee, have agreed over 100 amendments including changes to provision in relation to Welsh Language, duties on NHS Bodies and powers of the Tribunal. They haven't told us what they are. We have to wait to see the amended version of the Bill to see what the amendments are. We propose to present a Paper about the Bill to the User Group Meetings next year when we can see what the final piece of legislation will look like, the draft regulations and the latest draft Code of Practice will hopefully be available as well.

The Tribunal President talked about some of the benefits of the Bill, the Bill in its present form and the fact statutory protections are being widened to include any child or young person with ALN across the age range of 0 -25 and across maintained nursery settings, schools and further education provision. In addition, duties towards some of the most vulnerable children and young people in our society are to some extent clarified i.e. Looked After Children and Detainees.

Other benefit is the proposal to strengthen the roles of the ALNCO and the DECLO (Designated Education Clinical Lead Officer). The introduction of statutory rights relating to access to Welsh Language are welcome.

The Tribunal President agrees that Multi agency working is a great idea, but can't really see how it will work. Some LA's have informed the rest of the group that they already have multi agency meetings that appear to be working really well.

## **Issues**

The highlighted benefits however raise issues of capacity, resources and training which The SENTW raised in its representations to the Children, Young People and Education Committee.

Some of the other areas that the SENTW raised in its representations related to the following:

The central importance of establishing a system that delivers on effective multi agency working and delivery of provision linked to this and a concern that the Bill as drafted is some way off creating an effective statutory framework to deliver this.

In this regard the roles and contributions of Health Services and Social Care in particular need further consideration in the opinion of the SENTW.

Issues relating to decision making processes where there are disputes were also noted as a matter of concern. If all opinions are to be taken into account and have equal weight under s. 6 of the Bill (except for parents of young people who have no

statutory right to have a say) then clarity needs to be provided as to how final decisions will be made and on what basis.

Linked to this, how in particular will disputed placement decisions be made.

There is as yet no clarity in the Bill as to what decision making processes will be used to identify nursery and FE placements.

Also, in regard to school placements the proposed mechanism needs to be made much clearer and further thought needs to be given as to how the proposed mechanism will work effectively.

This is particularly so given that the parental right of preference under Schedule 27 of the Education Act 1996 appears to be going, but the general duty to give effect to the wishes of parents under s. 9 of the Education Act is staying and presumably the general right of parents to express a preference for a school under s. 86 of the School Standards and Framework Act 1998 will apply to all children with IDPs.

Linked to all of the above and when clarity on these issues is provided, the powers of the SENTW also need to be reconsidered.

Some of the above could have been tackled in the amendments recently ratified by the Children, Young People and Education Committee!

If not the new Code and supporting regulations will need a considerable degree of work!!!

Finally, a general concern of the SENTW is how the current uncertainty appears to be impacting on the quality of Statements and provision generally as evidenced by the cases that are coming before the SENTW presently.

Some of the Statements we are seeing are very out dated, lack any specificity of provision and there are clear issues relating to ineffective multi agency working.

There was a suggestion this could be because the funding arrangement have changed, as the LA are giving schools designated Education funding to spend as they need. Statements are not specific enough, no quantifying of support etc.

There is a lot of concern from the group in relation to the Health involvement in the new Bill. There are many incidents where the Health Authority will be involved from an education perspective, but the Local Authorities will need to pay for it. There was a comment from the group that some parents in some areas believe that Statutory Statements no longer exist.

The Tribunal Presidents asked the group for their contribution and thoughts in relation to the Benefits and Concerns about the Bill, any feedback can be incorporated into full presentation next year, if those concerns are still not being addressed by the Bill. Send them to us and we will push them forward as much as we can.

There was a discussion around this topic within the group.

**SENTW Stats Update – 2016 -2017**

Kelly Helliwell provided the stats update in North Wales Meeting

Diane Pritchard provided the Stats update in South Wales Meeting

2016 – 17 has seen a significant increase in Appeals Received and Appeals Registered continuing the increases that have been seen over the previous 4 years:

- In 2012 -13 we received 81 Appeals 73 of which were registered.
- In 2013 – 14 we received 92 Appeals 78 of which were registered.
- In 2014 – 15 we received 111 Appeals 101 of which were registered.
- In 2015 – 16 we received 118 Appeals 108 of which were Registered.
- In 2016 – 17 we received 153 Appeals 144 of these were registered (25 of those have been carried forward to this current year 17 – 18).

Our last 5 years of data shows that Disability Discrimination Claims remain relatively unchanged, there does not appear to be any noticeable dips or rises in the number of Claims we have received and the number of Claims that have been registered.

In 2016 – 17 we received 11 Claims, 6 of which were registered. 1 was upheld and 5 have been carried over to 17-18.

Of the registered appeals we had: 84 pre statement (Refusal to Assess, Refusal to Re-Asses and Refusal to Statement), 58 were against the contents of a statement. A further 2 were about ceasing to maintain the statement.

If we take into account the 29 appeals we carried over from year 15-16 in year 16-17 we have dealt with a total of 170 appeals during this reporting period.

We had 67 DNO's (Not opposed by the Local Authority), 29 were withdrawn, 15 were upheld in full, 6 were Upheld in part, 12 were dismissed/Struck out, 18 Consent Orders were Issued, 23 were carried forward to year 17-18 and 11 were unregistered.

We had 33 Appeals Decided at Hearing, these outcomes were. 15 upheld in full, 6 upheld in part and 12 Dismissed/Struck out. The slide details the types of Appeals and the outcomes.

Of the 23 LA's in Wales, all except Anglesey had appeals registered against them last year. The LA's with the most appeals this year were Swansea with 33 appeals, followed by RCT with 24 and Conwy with 16, Newport had 13, Bridgend had 12, closely followed by Vale of Glamorgan with 11, Cardiff had 9 appeals, Both Pembrokeshire and Carmarthenshire had 7 appeals, Powys and Ceredigion had 5, Denbighshire and Neath Port Talbot had 4, Monmouthshire, Gwynedd, Torfaen, Wrexham and Caerphilly all had 3, Flintshire had 2 and finally Ynys Mon, Blaenau Gwent and Merthyr Tydfil all had 1 appeal.

Our last 5 years of data shows that Disability Discrimination data remain relatively unchanged, there does not appear to be any noticeable dips or rises in the number of claims we receive and the number of claims that are registered.

In 2016 – 17 we received 11 claims, 6 of which were registered, 1 was upheld and 5 have been carried over, the other 4 were out of jurisdiction.

Claims are historically much more complex and very often require more than 1 day hearings.

Of the 170 appeals we dealt with this year, it remains that boys make up 2/3rds of appeals. This year 124 appeals were about boys SEN's compared to 46 for girls. This compares to 95 for boys and 43 for girls in year 2015-16.

Of the types of SEN we recorded, children with ASD had the highest number of appeals, which was 65, out of the 170, 18 appeals were children with other forms of SEN, e.g. SPLD, HI etc. 54 did not declare and 16 were unknown.

For the age groups of the children, we had 4 for nursery age, 15 for primary transition age, 105 for primary school age, 3 for secondary Transition and finally 43 for Secondary school age.

### **Summary**

Received 153 Appeals, Received 11 Claims, 144 Appeals were registered, 6 Claims were registered

We have carried over 26 appeals from last year. 13 Appeals received up to end second week in October. 5 – Swansea, 2 – Flintshire, 1 each for Pembrokeshire, Gwynedd, Bridgend, Blaenau Gwent and Denbighshire

Presentation is attached. – Appendix 2

### **Tribunal Update – Rhiannon Walker**

The Tribunal President informed the group that she had a meeting with the new Minister of Lifelong Learning in early April 2017. They discussed SENTW's stats for the previous year, in particular the case load, as it is increasing year on year. They also discussed the issue about LA's not complying with Tribunal Orders and the Welsh Government's process that parents have to go through when this happens, as it is a lengthy, stressful and costly process for parents who have just spent a long period of time and potentially a lot of money bringing their appeal to the Tribunal in the first place. The Tribunal President suggested an alternative new arrangement to address this, by allowing the parents to come back to the Tribunal and the Tribunal providing the documentation to the named person in Welsh Government as we already have it all on file in any case, the Minister appeared to be quite interested in this suggestion, but nothing has been agreed at this stage.

They also discussed the ALN Transformation and the issues in relation to the post 16 parental rights. It appears at the moment that the young person's right will be taken into consideration even if the parents do not agree with this, this could potentially cause problems between parents and their children. There may be issues that remain to be resolved around capacity.

There followed a lengthy discussion around these points.

The Tribunal President requested that anyone who had any comments or feedback about the ALN and amendments, they could send them to the Tribunal for the Tribunal President to bring the concerns forward to the consultation meetings.

During the South Wales User Group Meeting it was announced that stage 3 had officially commenced.

Next years User Group meeting, the President will prepare a paper about the Bill.

The Tribunal President informed the Group that on 1<sup>st</sup> December 2017 the Wales Bill will be coming into being, with that brings a new post of the President of the Welsh Tribunals, this post has to be filled by a High Court Judge.

The Tribunal President told the group about the unfortunate untimely death of the President of the RPT, this has opened up discussion with Welsh Government about all Tribunals having a Deputy President, RPT Tribunal were fortunate in the respect that they already had a Deputy President already in place to over the work load and to allow the Tribunal to continue appropriately. This is still under discussion with no decisions been made as yet.

The Tribunal President informed the group that she had recently attended the yearly Inter-jurisdictional meeting with Presidents from Scotland and England Education Tribunals. Ireland did not attend for the second year. The President told us that both England and Scotland had seen significant rises in their case loads with England dealing with 5000 appeals in the past 12 months. Scotland have had similar figures to Wales and have 12 conveners' (Chairs) to deal with all their appeals and this will be increasing to 16. Wales currently have 4 Chairs and 10 Lay Members and we have slightly more cases. We are currently having a competition to appoint 2 further Chair's as we want to prepare for the potential increase of Appeals when the new Bill comes in; we know the age range has increased to 25 years therefore it is likely that there will be an increase in Appeals. England have seen a 25% increase in their appeals since their new legislation came into force. We will also have 2 Chairs in reserve. The Tribunal President also mentioned that Scotland have more Powers to monitor their Decisions.

Scotland and England are also experiencing issues with Bundle sizes. England have brought in new measure to address this problem Unfortunately we have not had the time to focus on this issue yet, but we hope to put some measures in place within the next 12 months to address this growing problem. Some of the issues we are having are:

- Duplication of documents, there appears to be several of the same documents in bundles coming from the Local Authority. We expect to receive some of the same documents from the appellant and the LA, but not several copies of the same documents from the LA;
- out-dated information, very often receiving reports that are over 5 years old etc.;
- illegible documents, poor copies; and
- In some cases we have received our own publications (copies of guidance booklets) as part of the LA' s case statement supporting documentation.

**Action Point – Tribunal President, to discuss this issue with Tribunal Members at Annual Conference and consider options.**

The Tribunal President also informed the group that the Welsh Standards are keeping us busy; we have almost agreed all with the Welsh Language Commissioner, we had to oppose 1 or 2 of the Standards that were being imposed on us. SENTW were already complying with most of the Standards in any case.

The Tribunal President informed the Group that we will be running a Pilot on Refusal to Assess appeals. The President wants all Refusal to Assess Appeals to be considered at paper Hearings where possible. This is why it is crucial for parties to ensure that they are sending us appropriate and up to date information when submitting case statements. We will be running the Pilot from December 2017 until May 2018, at which point we will ask for feedback from people that have taken part in the Pilot to help ensure it's success. If any changes are required, we will put them in place. As part of the change, parents will have to tick a box on the Appeal Application form to opt out of the paper hearing if they want an Oral Hearing. A Tribunal Panel will still consider the Appeal paperwork and Decide if an Oral Hearing is necessary to make a Decision.

We would ask for feedback during this period so that we can refine the process and ensure that we get it right.

The Tribunal President was asked "How or Who decided if an Appeal is dismissed or Struck Out?"

The Tribunal President replied that the LA can make a request to the President for an Appeal to be Struck out or dismissed if they feel that incorrect information has been submitted to the Tribunal. If they think the Appeal should not have been registered, they should provide their reasons why. The President will consider all representations and make a Decision.

We were asked if we had any Appeals brought to us in this Tribunal year by any Children.

We had not had any Appeals from Children in this Tribunal Business year.

The Tribunal President informed the group that during this year we have had many Directions being ignored by parties The President explained that when Directions are issued, they are done so to assist the panel in managing the case and to assist the parties to ensure that the panel have the information they need. the President also told the group that if they are in the situation that they do not understand any Directions that have been issued to them, that they are to contact the Tribunal to ask if they can be clarified, but not to ignore them. If they cannot comply with them in the time frame then they should write to the Tribunal to ask for more time explaining the reasons why they cannot comply with the time frame. All requests will be considered. The Tribunal President told the group that if Directions are not complied with, parties will risk being excluded from the hearing.

**Action Point – Tribunal President to discuss with Chairs at Annual Conference.**

The Tribunal President also informed the group that we are having real issues with parties supplying minimal availability for hearings, with some parties very often only

giving 1 day in a 2 month period. Please provide as much availability as possible, so that we can arrange Hearings at a mutually convenient time for everyone concerned.

It was reported that LA's are having issues with Egress.

The Tribunal President thanked everyone for their attendance and very valuable contribution to the discussions.

Meeting Closed.