

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Disability Discrimination Claims

I have made a Claim, How do I Prepare a Case Statement? A guide for parents

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This document is also available in Welsh. Please contact the Tribunal for a Welsh version of this document.

Language Preference

SENTW welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents, and make written representations to SENTW in Welsh or English

About this guide

This leaflet should be read with our guidance booklet, **How to make a claim**. If you do not have a copy of our booklet please ask us for one.

The aim of this leaflet is to provide helpful information about preparing a case statement, where a Disability Discrimination Claim has been made to SENTW.

We cannot cover everything that would be useful for every claim.

You should contact SENTW if you have any questions about the process. We cannot give legal advice or help with preparing a claim.

If we have already received information with your Claim Application you do not have to tell us again.

Who is this guide for?

This guide is for parents who have made a disability discrimination claim to SENTW.

Children and young people can also make their own claim.

Overriding Objective and Obligation to Co-operate

The Tribunal's overriding objective is to deal with cases fairly and justly. It is the Tribunal's expectation that parents, representatives, Local Authority officers and responsible bodies, will help further the overriding objective by co-operating with each other and the Tribunal for the purposes of progressing the appeal or the claim.

Telling us about your case

You have two chances to tell us about your case, firstly, in writing before the hearing of your claim and, secondly, at the hearing.

Before the hearing, you must send us a written case statement. This is to give us your views about the claim and the facts. At the same time, the Responsible Body (RB) will send in their own case statement. The members of the tribunal panel will consider both at the hearing.

After the deadline for the case statements, we will make sure that you and the RB see each others case statement. We will give you and the RB a page-numbered set of papers. You will need to bring these to the hearing.

At the hearing, you and any witness you bring will have a chance to give your views about the claim and explain the facts to the tribunal panel.

The evidence you send us before the hearing and what you say on the day are equally important. The Tribunal's decision can only take into account the evidence you and the RB give to us. If you want the Tribunal to take account of something, make sure that it is in the evidence.

Sending us evidence

When preparing your case statement please help us by ensuring:

- where possible, papers should be single-sided A4 copies and not stapled,
- papers should be in black and white. We cannot make colour copies so we suggest that you make a photocopy of any booklets, such as a school prospectus, and send this in,
- please do not add your own page numbers,
- please include a contents list for all reports and evidence you are submitting with your case statement, for example: Educational Psychologist's report dated 5 March 2012.

- please do not send originals, only photocopies of the originals

Time limit for case statements

There is a strict time limit by which we must receive your case statement and any other evidence. We'll tell you when this is. Normally you have 30 working days.

There are restrictions on the admission of evidence that is received after the deadline for case statements has passed.

Sometimes, people want to send us videos, recordings and photographs. The same time limit applies to sending them in, but please send us five copies of any recording and photograph. Please only send us video and audio material on DVD and CD formats. You should try to keep recorded evidence as short as possible.

Please also note that we cannot, for data protection issues, accept evidence that contains information, recordings or pictures of children other than your own.

What the Tribunal's regulations require

You must submit a case statement and any evidence you intend to rely on so that it is received in SENTW's office before the end of the case statement period.

Your case statement must include:

In all cases where the **claim has been made by the parent of the child:**

- the views of the child on the issues to do with the claim, **or**
- the reasons why the views have not been provided.

Where the **claim has been made by the child or the child's case friend:**

- the views of the child's parent on the issues raised in the claim, **or**
- the reasons why the views have not been provided.

It is a requirement of the Tribunal's regulations that the views of the child or the parent, depending on who has made the claim, are provided. The **tribunal panel** will expect this information to be included in your case statement unless there is a good reason for not doing so.

The views of the child can be submitted in various formats to support the child's ability or preference. This can include:

- Writing,
- Drawings,
- Audio/visual recordings or
- You asking the child questions and writing the answers they give

The child's views must be about the issues to do with the claim.

If you cannot obtain your child's views please tell us the reasons why.

Information that we need you to tell us about

Depending what your claim is about we may need to know about:

- A description of your child's disability and the effect it has on their ability to do day-to-day activities.
- Evidence of a medical or other professional diagnosis relating to the child's disability.
- In what way was your child's disability the reason for the alleged discrimination
- A timetable and description of events or actions which you claim were discriminatory.
- A factual description of the treatment or failure to make a reasonable adjustment to which your claim relates and the circumstances leading up to that treatment or failure. You should give key factual details, such as the date, time, place and number of instances of the treatment or failure you are claiming was discriminatory.
- Why you think that the treatment was unlawful.
- What steps or adjustments could have been made to prevent the alleged discrimination?
- What do you want to happen now? **What would you like the Tribunal to order to put things right?**

What will the Responsible Body do about my claim?

The Responsible Body will have the same timetable as you to send us their evidence. Their response must say whether or not they oppose your claim and, if they do, they need to give reasons why. They should provide a summary of the facts and let us know what your child thinks about the issues, generally.

The Responsible Body may also apply to strike out (bring to an end) your claim if they believe it is a case that we are not able to hear. If this happens, we will send you a copy of the application so you can comment on it, and we will give you the opportunity to explain to us why you think your claim should continue.

What happens if the Responsible Body does not oppose the claim?

A tribunal chair will consider the case and will decide what should happen. They will decide whether your case can be dealt with on the papers or whether there should still be a hearing. If they decide to hold a hearing, they may issue a direction precluding the Responsible Body from attending the hearing.

What if the Responsible Body does not send us a response?

If the Responsible Body does not send a response by the end of the time in which they have to reply, we can do a number of things, including barring them from taking further part in the claim. Before deciding what to do, we will write to the Responsible Body asking for an explanation of why they have not responded, or not responded in time. A tribunal chair will consider any reply the Responsible Body gives and will decide what should happen. If the Responsible Body is barred from further involvement, we will decide whether your case can be dealt with on the papers or whether there should still be a hearing, but without the Responsible Body.

What if I find it difficult to get hold of a document that is important to my case?

If you apply to us well before the hearing, we may be able to make an order to get the Responsible Body or anyone else who may have relevant information to release it.

Late Written Evidence

Written evidence that is submitted after the deadline for case statements is called late written evidence. There are restrictions on the admission of late written evidence.

You can ask the Tribunal panel on the day of the hearing whether the late evidence can be admitted. The Tribunal panel will consider your request so long as:

- both parties agree to the admission of the late written evidence; **OR**
- you can show that the late written evidence meets the following conditions:
 - the late evidence was not, and could not reasonably have been, available before the end of the deadline for the case statement; and
 - a copy of the late evidence has been sent to SENTW and the other party so that it is received at least 5 clear working days before the hearing.
 - The tribunal panel may only admit the late written evidence after considering any representations from the other party and only if the evidence is unlikely to impede the efficient conduct of the hearing.
 - If the conditions are not met, the tribunal panel may still give permission to a party to submit late written evidence at the hearing if it can be shown that

unless the evidence is admitted there is a serious risk of prejudice to the party seeking to rely on it.

- The tribunal panel may refuse to admit late written evidence if it is of the view that to do so would be contrary to the interests of justice.
- If the late written evidence has not already been copied to SENTW and the other party so that it is received at least 5 clear working days before the hearing, you should bring 5 copies of the late written evidence with you to the hearing.

The hearing

We will write to you, usually after we have received case statements to let you know the date when the hearing will take place.

The hearing will usually take place in a hotel no more than an hours travelling distance from where you live.

Hearings usually start at 10:00 in the morning and often take all day. You should aim to arrive at least 30 minutes before the hearing is due to start.

Why must I complete an attendance form?

You will need to let us know on the attendance form who you will be bringing with you to the hearing. If you do not give us this information, we may prevent your witness from taking part in the hearing or even being in the room where the hearing is held. If you change your witnesses, you should tell us immediately.

You do not have to bring any witnesses at all but if you do want to, you are normally allowed to bring no more than two witnesses to the hearing. Often a report by a professional who has assessed your child will contain all the information you want us to consider and it may not be necessary for that person to come to the hearing as well.

If you want to bring more than two witnesses, you will need to ask our permission in writing.

What if a witness refuses to come to the hearing?

If you have asked someone and they are unhappy about coming to the hearing, you can write to us explaining why you feel it is important they be there. We will need to receive your request at least 15 working days before the hearing.

If we agree, we will issue a witness summons for you to give to the person. That person will then have to come to the hearing unless there are very good reasons why they cannot.