

NEWSLETTER TO SENDIST MEMBERS AND SERVICE USERS

INTRODUCTION

We know that many of you are concerned about what is happening to SENDIST. We now have reliable information to communicate to all of you who use or work in the Tribunal to let you know what decisions have already been taken, what is still under discussion/development and what the consequences are for this Tribunal. We trust you will find it a helpful start in a series of updates to improve communication and understanding of the changes.

Please keep us informed about your views by emailing Simon Oliver at simon.oliver@judiciary.gsi.gov.uk – your input is vital in our efforts to ensure the remaining decisions are right and make this Tribunal fit for purpose in the new system. Attached to this letter you will also find a list of individuals and service user groups, with contact details.

THE NEW TRIBUNAL SERVICE

On 3 November 2008, SENDIST will become part of a new unified tribunal system. Based on the recommendations of the Leggatt Review, this will bring together most tribunals in a single structure under the leadership of the Senior President, Lord Justice Carnwath. Subject to expected Parliamentary approval, there will be two tiers of tribunal:

The First Tier Tribunal

- will hear all SENDIST appeals against LEAs in England ¹
- will consist of groups of tribunals called ‘Chambers’
- SENDIST will be part of the provisionally entitled Health, Education and Social Care Chamber or ‘HESC’, with the Care Standards Tribunal (CST) and the Mental Health Review Tribunal (MHRT).
- HESC will be headed by a new Chamber President, whose appointment will be announced in July
- Each Chamber will have its own unified Rules (see below), that are intended to be simple, flexible and easy to understand

The Upper Tribunal

- will hear appeals by those wishing to challenge a decision if they consider there has been an error of law.
- will become the normal route for appeals from first tier tribunals instead of going to the High Court and will use similar procedures when dealing with judicial reviews

A copy of the separate new Rules for each tier is available at www.tribunals.gov.uk/latestnews.htm

¹ Note that SENT Wales is not joining the First Tier Tribunal but their appeals will be to the Upper Tribunal

The Senior President of Tribunals

One of the basic tenets of the Leggatt Review was service to the user, and the new system has a collective commitment to improvement and innovation for the benefit of the public. As Lord Justice Carnwath states clearly in his first review of the service, change must not be at the expense of those who use the tribunal service. In the difficult transitional phase his key objective has been *“to maintain continuity of service for the user, and to put ourselves in the position to build on the strengths of what exists, not to jeopardise it”*.

Lord Justice Carnwath published his “First Implementation Review” on 30 June 2008. This sets out his views on many topics and gives an idea of the structure of the Tribunal Service. It is available on:

<http://www.tribunals.gov.uk/Documents/SPIImplementationClean7b.pdf>

The Act

The Tribunals, Courts and Enforcement Act 2007, which introduced the new system is available at www.opsi.gov.uk

This imposes a duty on the Senior President to:

- have regard to the need for tribunals to be accessible, proceedings to be fair and handled quickly and effectively
- explore and develop innovative methods of resolving disputes. ,

and requires members to be experts in the particular subject matter or law

Members can get further details of the changes on our website at

www.sendistforum.org.uk, and users on

www.judiciary.gov.uk/publications_media/general/tribunals/review_0608.htm

The Senior President is actively encouraging feedback and contact details for his office are on the attached sheet.

The HESC Rules

The new HESC Rules set out general procedures applicable to all tribunals in the Chamber and will replace the current SENDIST **Regulations**. These **Rules** are intended to be “simple, flexible and easy to understand.” Their overriding objective is to deal with cases fairly and justly and to avoid delay, so far as is compatible with proper consideration of the issues.²

At a public consultation event on 6th June in London Andrew Moseley, the Implementation Manager, made it clear the Rules are intended to “draw on tried and tested processes” and “allow maintenance of best practice”, and not to be a radical overhaul. A group of service users gave their initial views then , but the full consultation closes on 11 July– responses and questions to

² Rule 2(1) and 2(2)(e)

Michaela.strange@justice.gsi.gov.uk and see www.tribunals.gov.uk/Documents/Draft_HESC_ChamberRules_290508.pdf

The Senior President has recognised additional specific provision may be necessary for SENDIST applications.³ So he has asked for views on whether, and how, these (and any other provisions that might specifically be needed for SENDIST) could best be achieved, with the particular needs of users in mind – A document will be available on the TS website shortly at www.tribunals.gov.uk/latestnews.htm and all responses can be sent to Michaela.strange@justice.gsi.gov.uk. We will send out the full version of the draft Practice Directions as soon as possible.

We have been working hard on the draft Rules since January with the help of colleagues and have had considerable input into them. We also have a response ready to send to the Tribunal Procedure Committee (which is responsible for the Rules) and SENDIST will have a judicial member attending that committee from now on until the HESC rules are agreed. We will send the draft response to all Tribunal members for comment before sending it in.

WHAT THIS MEANS FOR SENDIST

Under the new Rules parties will no longer submit parallel case statements. Instead the applicant will put in their case and the respondent will be required to reply within a given period. The case will then be subject to case management by a Chair (see below).

Provisions such as the power to limit the number of witnesses will be familiar, but some key provisions in the draft Rules will be new for SENDIST:

- a duty to cooperate with the Tribunal
- application followed by response (i.e. no case statement period)
- joint appointment of a single expert,⁴ although the issue of who pays for this is not yet clear
- a single combined process of application for a review at the same time as making an appeal to the Upper Tribunal on a point of law.

There are also some specific provisions for SENDIST, e.g.

- an exemption from the rule that all hearings should usually be in public
- a power to require a parent to make a child available for examination or assessment by an expert – with a failure to comply being able to be considered as a failure to comply with the Tribunal and leading to the possibility of an adverse decision

(and we are seeking an amendment to require LEAs to allow parents' experts into maintained schools)

³ i.e. those First-tier Tribunal applications made under section 325, 326, 328, 329 and paragraphs 8 and 9 of Schedule 27 of the Education Act 1996 and section 281 of the Disability Discrimination Act 1995.

⁴ Rule 19

SENDIST Practice Directions (to be approved by the Senior President) are needed to apply the Rules to the practice and procedure in our particular jurisdiction. These have been drafted by members of SENDIST and will be out for consultation shortly. They are intended to include:

- excluding the whole of August and the period from Christmas to New Year from the definition of a 'working day'
- clear requirements about what additional information must be filed with the application and response
- provision for the views of the child
- details of the case management process and the information required from parties
- arrangements for submission of video evidence
- specifying who can claim expenses
- applications for costs

Guidance on how to appeal or make a claim will be revised, but we intend to keep the format of all documentation straightforward and easy to use. All Chairs will have the title 'Tribunal Judges', but will continue to sit with specialist members with experience and expertise in this area.

BUT, the most significant change for everybody will be the introduction of **case management**.⁵ This is a real opportunity to make sure parties have a clear picture of what they need to do and when. Its purpose is to ensure the right evidence is filed and the real issues are identified at the right time, within the existing **20 week** timetable. This will contribute to improved decision-making and reduce the number of hearings that get cancelled at the last minute at inconvenience and expense to all. We are working on the details of this scheme at the moment with service user colleagues as well as the administrative staff with a view to piloting the rules, practice directions and the case management process shortly.

The draft case management scheme provides for a preliminary hearing at about 10 weeks called a **case management hearing (CMH)**. This will be done by a single Chair either by oral hearing, or by telephone or simply by the issuing of standard paper directions. This will help parties sort out what they have agreed and focus on the issues that need to be determined by the Tribunal at the final hearing. The CMH will also finalise the date of the final hearing.

We will need to identify a cohort of chairs to do this work – and to ensure that they are all trained before November. At present the legislation does not allow specialist members to issue directions.

⁵ HESC Rules 5 & 6 provide for a wide range of case management powers including directions

The pilot will help to identify what amendments are needed to the paperwork, registrations, listings and the IT systems beyond those already being considered by an administration/judicial working group

The Administration and Secretariat

The Tribunals Service will continue to provide the Secretariat. However, as part of the rationalisation programme, Procession House, the London HQ, will close in October and the administrative work will move to the Darlington office. There are proposals to have all new cases dealt with in Darlington but this will need to be confirmed. We are told the ultimate aim is to move all the administrative work to a central office in Leicester/Loughborough not before April 2009.

For obvious reasons, some valued and experienced staff have already left to take up new jobs in advance of these changes. This has inevitably had an impact on service delivery, but we are continuing to work very closely with senior Tribunals Service managers to maintain and improve levels of service in both London and Darlington. We also hope to keep the Darlington office open for as long as possible to allow the case management process to bed down properly. If you have any complaints or praise about the service, please let us know.

Preliminary Hearings

Until 3 November these will continue to be conducted by a 3-member panel with a Chair drawn from a rota. After November Chairs will sit alone as the new rules allow for a single legal member.

Hearings and Venues

Hearings will be conducted in much the same way as they are now.

The transitional arrangements for cases that *start* before 3rd November but are *listed for hearing or adjourned to* after that date are not yet clear. We are told a hearing that has started but not been completed before 3rd November will be heard in front of the same tribunal and any directions, orders and time limits imposed before that date will continue in force,⁶ but we are not certain whether the normal practice of making provisions for the old rules apply to such cases will be followed.

You may have noted that hotels are being used less. Some of the alternative venues in existing tribunal centres have proved to be unsuitable for SENDIST hearings and we are currently compiling a list of more suitable user-friendly ones, (bearing in mind that some venues may close in future anyway).

In the medium term there will be a national network of 59 permanent hearing centres and other venues hired on a daily basis, including a number of

⁶ Transfer of Functions Order to be laid before Parliament

provisional sites in Central London. Most of these 'Multi-jurisdictional Hearing Centres' (MJHCs) are at the planning stage. Bridget Prentice, the Tribunals Minister, has agreed that each site and any closures will be subject to public consultation.

We have already made it clear that SENDIST must be involved in planning the layout and facilities of these MJHCs to make them user-friendly and accessible.

The SENDIST President and judicial leadership

Our current President, Rosemary Hughes, is taking her long planned retirement at the end of September 2008. Until then, she is being shadowed by a team of 4 Chairs led by Simon Oliver. This team will be responsible for the judicial leadership of SENDIST until decisions are made about any replacement. The individual roles and responsibilities of these people are set out on the attached sheet, but they are working as a team to address all the issues that need to be resolved to make SENDIST fit for purpose by 3rd November.

All team members, with the help of other SENDIST members, are involved in commenting on the rules, formulating practice directions, designing the case management system, and ensuring the administrative functions support the judicial functions. After Procession House closes, the team will operate from the current CST office at 18 Pocock Street, London SE1 0BW

CST has 2 full time judicial appointments (one of whom is Simon Oliver) and 11 such appointments have already been made to MHRT, with another 11 due next year. At present there is no budget and no time allocated for any such appointments to SENDIST but a bid has been made for 4 full time judicial posts that will be subject to open competition. It is not yet known whether this bid will be successful and, if so, whether it will be that number of full time posts. Much will depend on the decision of the senior management team of HESC. Whatever happens, the earliest date for any appointments will be late 2009. We will let you know more when we know more.

CONTACTS

TRIBUNAL SERVICE

RESPONSES TO THE CONSULTATION

Michaela Strange, 1st Floor, 4 Abbey Orchard Street, London SW1P 2BY or by email to Michaela.strange@justice.gsi.gov.uk

SENIOR PRESIDENT - Lord Justice Robert Carnwath

General concerns or queries about the reform programme – 020 3206 0691, or email Sean Cuthbert at Sean.Cuthbert@tribunals.gsi.gov.uk or Leueen Fox at Leueen.Fox@tribunals.gsi.gov.uk

DEPUTY SENIOR PRESIDENT

Gary Hickinbottom, (Chief Social Security Commissioner)

ACTING CHIEF EXECUTIVE

Jeanne Spinks (acting head of administration)

TRIBUNALS MINISTER

Bridget Prentice MP, general.queries@justice.gsi.gov.uk or info@bridgetprenticemp.org.uk

SENDIST JUDICIAL MANAGEMENT TEAM

Rosemary, Lady Hughes (President to end September 2008)

PA: Ann Waterton Ann.Waterton@TRIBUNALS.GSI.GOV.UK

Simon Oliver (Deputy President of Care Standards Tribunal and judicial lead for SENDIST management team from 1 October 2008):

Liaison with Tribunal Service, High Court appeals, complaints and references

Charlotte Beatson:

Rules and procedure group, representative on Northern Joint Area Liaison Forum. and from 1 October general day to day office and work enquiries, queries from staff and members.

Liz Goldthorpe:

Communications (Tribunal Service Judicial Communications Group representative for SENDIST & CST); service user groups queries and meetings; Case Management pilot user group

Richard White:

Training and appraisals

Contact all four team members on simon.oliver@judiciary.gsi.gov.uk

SENDIST Administration

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

Mike Watson, Central London Area Manager, Tribunals Service, 1st Floor, Procession House, 55 Ludgate Hill, London EC4M 7JW
Tel. 020 7029 9772

Martin Geddes, Secretary to SENDIST and Operational Manager

Paul Higgins:

Contact point for comments.

sendiststandards@tribunals.gsi.gov.uk

OTHER INFORMATION

Judicial Communications Office: 020 7073 4857

The Government's response to the Transforming Tribunals consultation on the implementation of the TCE Act is available at: <http://www.justice.gov.uk>

And the press release (which includes the names of those on the new Rules Committee) is at:

<http://nds.coi.gov.uk/Content/Detail.asp?ReleaseID=367840&NewsAreaID=2>