Practice Guidance: SEN National Tribunal Process involving Social Care or Early Help Staff

To be read in conjunction with the Timeline Flow Chart attached.

**Background to SEN Reforms**

Since 1 September 2014 the Children and Families Act 2014 has had a big impact on the way children and young people aged 0–25 with special educational needs and disabilities (SEND) are supported in education. Local authorities (LAs) must set out a ‘Local Offer’ of the support they expect to be available for children and young people with SEND in their area.

Schools and nurseries must publish a SEN information report on their website and update it each year. These reports should explain how the school or nursery has put their SEND policy into practice.

‘SEN support’ has replaced School Action and School Action Plus. SEN support means that schools, nurseries and other education settings must take steps to make sure the needs of the child or young person are identified and met.

Education, Health and Care (EHC) plans

• EHC plans have replaced statements of SEN.

• Support must be specific and quantified on EHC plans.

• This means the plan should state the type, hours and frequency of support and level of expertise of the people delivering it and should avoid using vague words such as ‘frequent’ and ‘regular’.

• EHC plans extend to young people in further education colleges and apprenticeships, but not universities.

• Parents and young people aged 16 and over have a right to request a Personal Budget to buy the support set out in an EHC plan.

• A national pilot (April 2018-August 2020) now allows the SEN and Disability Tribunal to consider complaints around the health and social care aspects of an EHC plan, as well as education.

**The role and function of the Tribunal**

The Tribunal forms part of the First-tier Tribunal (Health, Education and Social Care Chamber). Tribunals are overseen by Her Majesty’s Courts and Tribunals Service.

The Tribunal hears appeals against decisions made by the local authorities in England in relation to children's and young people’s EHC needs assessments and EHC plans.

From 3rd April 2018 the Government launched a 2-year trial to extend the powers of the First Tier Tribunal to make non-binding recommendations about the Health and social care aspects of Education, Health and Care (EHC) plans. The trial applies to Local Authority and NHS decisions made and EHC plans issued/amended and will run until August 2020, when a decision will be made on its continuation.

The tribunal process gives parents and young people a ‘single route’ to raise all their concerns about an EHC plan in one place. Parents and young people are now able to appeal to the SEND Tribunal about decisions concerning all three aspects of Education, Health and Care (EHC) plans – but only if there is an educational element to the appeal.

Before the trial, parents and young people could only appeal about the special educational needs and provision sections, and the placement section of EHC plans – health and social care issues would only be able to be addressed through alternative routes. In practice, this will mean that parents, local authorities and health commissioners will need to provide evidence and arguments for any decisions about health and social care issues. Health and social care commissioners will need to let parents and the local authority know what steps they have decided to take or their reasons for any decision not to follow the Tribunal’s recommendations.

The Tribunal seeks to ensure that the process of appealing is as user friendly as possible, and to avoid hearings that are overly legalistic or technical. It is the Tribunal’s aim to ensure that a parent or young person should not need to engage legal representation when appealing a decision. Parents and young people may find it helpful to have support from a voluntary organisation or friend at a hearing.

Who can appeal to the Tribunal about EHC needs assessments and plans?

Parents (in relation to children from 0 to the end of compulsory schooling) and young people (over compulsory school age until they reach age 25) can appeal to the Tribunal about EHC needs assessments and EHC plans, following contact with a mediation adviser in most cases. Young people can register an appeal in their name but can also have their parents’ help and support if needed.

What powers does the Tribunal have about health and social care issues?

For an appeal against a refusal to issue an EHC plan, if the Tribunal orders a plan to be made, it has the power to recommend that health and social care needs and provision be specified when the plan is drawn up. Where health and social care needs and/or provision are not included in the plan, the Tribunal has the power to recommend they are specified in the plan. Where health and social care needs and/or provision are included in the plan, the Tribunal has the power to recommend that the need or provision be amended.

**Tribunal Process for Social Care and Early Help Professionals**

If a Child or young person is not open to a social care team or an Early Help Team, it is allocated from the Front Door for an assessment. The assessment is completed, following the guidance detailed below and any proposed actions notified to the Tribunal Team.

Practice Guidance for social care professionals on developing an understanding of social care needs in an assessment

The key to supporting the child, young person and their family is having a clear understanding of their social care needs and what they require by way of support. This could be information, advice or practical support.

Engaging children, young people and parents is the starting point for establishing social care needs for any assessments for education, health and care plans. The focus on enabling the child or young person to achieve specific outcomes is central to this.

In all conversations with families it is important to:

* Discuss and reference in the assessment any specific recommendations cited in the appeal.
* Discuss and detail what support the family feel they need.

• ‘Signpost’ families to services under the Local Offer or explain how to access Early Help Services.

• Recognise that some families feel there is a stigma associated with social care support and may be reluctant to share information.

• Be alert to safeguarding issues and consider whether you have gathered any information or are aware of any circumstance which raises safeguarding concerns. Working Together to Safeguard Children (2018) and Safeguarding Disabled Children: Practice Guidance (2009) give advice on what to do if this is the case.

• As part of their initial conversations about social care needs, professionals working with children, young people and parents could ask the following questions to support identification of social care needs:

• What is important to the child/Young Person?

• What does the child/young person do outside of school? Do they see friends, attend groups, clubs or activities?

* What are their hobbies or interests? Where do they go to do these things? Do they face any challenges or barriers accessing these activities?

• In their day to day lives, what is going well for the child and their family?

• What support do they receive from family, friends, community members and other professionals?

• What do the child and family find difficult, challenging or stressful? What is not working well?

• Is the child safe at home and in the community? Do they feel safe?

• Has the family had any previous social care assessments or involvement?

• Does the family know how to access the Local Offer and Family Information Services, including the Information and Advice Service Kent (IASK)?

A Child and Family assessment or an Early Help assessment is completed. Proposed actions are notified to the Tribunal Team.

In some cases, alongside an assessment of social care needs, if a child or young person is not known to either Children’s Social Work Teams or Early Help, a witness statement will need to be completed. This follows the format of a court statement. The Evidence must set out:

1. The witness’s name, qualifications, witness’s HCPC registration number, experience, and office address.

2. Background history/Chronology.

3. Child/Young person impact analysis which includes consideration of:

* Is the child/Young Person in need under the Children Act 1989/Chronically Sick and Disabled Persons’ Act 1970/Children and Families Act 2014 and whether he/she can be considered a disabled child? Or for a young adult aged 18+, or coming up to 18 and in transition does he/she fulfil the criteria for a Care Act assessment?
* A description of the social care needs of the child/young person with analysis of the child/Young Person’s daily life and experience.
* Details of any social care provision required to meet those needs.
* The proposed plan for the child/Young Person, including the outcomes expected as a result of the social care provision being made.

4. Statement of Truth

5. Signature and Date report completed.

6. The witness statement along with the assessment are sent to the Tribunal Team.

**Guidance for Pre-Hearing Meetings**

The Pre-Hearing Meeting includes all witnesses and the Local Authority Representative. All professionals are required to respond to the points raised within the appeal. These meetings are usually held in school/college. In preparation for this meeting, the appeal documentation must have been read and staff must familiarise themselves with the contested points contained in the appeal. It is advised that Social Care staff are familiar with their own reports, including the assessment, statement and their recommendations. Social Care staff need to present their professional judgement regarding their recommendations at this meeting. It is important to note that parents may request the Social Worker or Early Help Worker to attend on their behalf, this must be declared at this meeting as it is crucial to note that the worker is a representative of the Local Authority not the parents.

All information discussed at the Pre-Hearing Meeting is protected by legal privilege, it is strictly confidential and must not be discussed outside of the meeting or with parents. The outcome of the Pre-Hearing Meeting is to decide whether further work needs to be completed and to consider the proposed provision, next steps and who will attend the hearing. Tribunal Team then prepare a response and bundle of evidence to be submitted to the Tribunal and all the parties. If any new evidence is submitted, the Tribunal Team will also inform social care.

**At the Tribunal**

The Tribunal hearings are held in private, usually in London at the Royal Courts of Justice. It is recommended that staff arrive at least 30 minutes before the start of the hearing as there may be last minute questions to answer. The Panel includes; A Judge and a panel of members who have a background in SEN. Social Care staff must wear appropriate court attire and address the Judge as “Sir” or “Madam”. Hearings last usually over two days and witnesses usually attend for one day. The Tribunal has an inquisitorial approach and follows a process, usually on an issue by issue basis. Social Care staff need to be alert to other professionals’ evidence at the Tribunal Hearing as it is possible the Judge may come back to them for further information. At the end of the process, the case is summed up by the parent’s representative and the Local Authority Representative.

**Decisions and recommendations issued** **following the Tribunal**

The Tribunal Team alert Social Care staff to the Tribunal outcome. Social Care must respond to the recommendations in writing to the parents or young person within five weeks of the date of the recommendation or any date the Tribunal gives. If not accepting the recommendation, Social Care must give a detailed reason for the decision. Tribunal Team send copy of Social Care response to evaluator of national trial.

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SEN NATIONALTRIBUNAL PROCESS INVOLVING SOCIAL CARE

OR EARLY HELP

*Timeline*

*Timeline*

Appeal received. Tribunal Team (TT) email or phone

*Day 1*

*Day 1*

CScomplaints (Under 18)

Complaintsteamadults (Over 18)

NK

Open and allocated – either Adult or Children incl. Early Help

Tribunal Team refer to Front Door [frontdoor@kent.gov.uk](mailto:frontdoor@kent.gov.uk)

*Day 3*

*Day 3*

Customer Care/Front Door pass to relevant TM/SM or SM in EH with details of issues/evidence required - recommendations being sought

New case: Allocated for Assessment SW or EH Teams

Open case: TM reviews case and decides whether to agree or oppose family’s request in consultation with SM or AD if residential care is requested and IRO if child in care

*Day 5*

*Day 5*

*Day 25*

If agree family’s request, notify TT

Assessment completed and proposed action notified to TT

Case resolved for SC/EH. NFA

If oppose, decide what evidence is needed and who might attend as a witness. Prepare evidence

Email all evidence/witness names to TT Officer

*Day 10 210*

TT send response to Tribunal

*Week 6*

*Week 6*

Pre-hearing meeting, including witnesses and Local Authority Representative

*By Day 30*

TT produce response and bundle of evidence and new draft

Any new evidence to be sent to TT and they will inform SC of any other new information

*Week 9*

All papers submitted by TT to the Tribunal and all parties

*Week 10*

Tribunal hearing held, usually in London

*Week 12*

*Week 14*

Decision and recommendation issued

TT alert SC to Tribunal outcome

*Week 14*

SC must respond to recommendation in writing to parent or young person within five weeks of date of recommendation or any date the Tribunal gives.

If not accepting recommendation, must give detailed reason for the decision

*Week 19 or earlier if requested by Tribunal*

TT send copy of SC response to evaluator of national trial