

SPECIAL EDUCATIONAL NEEDS AND DISABILITY TRIBUNAL

CORONAVIRUS UPDATE

The Tribunal is open and operating as normally as possible within the obvious constraints caused by Coronavirus and the lockdown. Details are as follows:

- The time limits for lodging appeals remain the same as usual, i.e. two months from the date of the decision being appealed or 30 days from the mediation certificate, whichever is later. The tribunal continues to have a discretion to accept late appeals and is likely to be sympathetic where a deadline has been missed for a coronavirus-related reason.
- New appeals are being accepted as usual. Urgent cases – primarily those relating to change of phase placements (e.g. children due to start secondary school in September) will continue to have a 12 week timetable. Others will be on a 20 week timetable.
- There should be no difficulty in obtaining mediation certificates. Mediation companies have staff working remotely and conducting mediation meetings through video conferencing.
- All hearings are currently being dealt with by video or telephone, or (if both parties consent) on the papers. If a tribunal has to be dealt with face to face, it will be adjourned. Initial reports are that the video system is working well.
- Any late evidence needs to be filed at least 5 working days before the hearing. If it is any later, it is unlikely to be admitted.
- However, if evidence that was filed on time has not been included in the hearing bundle, arrangements will be made to get the missing evidence to the panel. The earlier the tribunal is alerted, the better.
- All witnesses appearing at the hearing must have previously filed a report or signed and dated witness statement.
- Information about how to connect to online hearing rooms will normally be sent out around two days before a hearing. For video hearings, the tribunal will ask parties, representatives and witnesses to come online 30 minutes before the hearing is due to start to check connections. They will have IT people available to help.
- It is a good idea to set up a separate means of communicating before and during the hearing between the appellant, representative and witnesses, e.g. by email or a separate WhatsApp group.

- LAs are still expected to send out paper bundles to appellants. If there are problems, LAs will need to discuss with appellants whether they are able to print off emailed copies or cope with them electronically, but there is no expectation that appellants will necessarily be able to do so; alternatively they need to discuss alternatives, e.g. arrangements for bundles to be delivered or collected, or payment for appellants' printing costs. No matter how short-staffed an LA may be, refusing to send out paper bundles is not an option unless the appellant agrees to do without.
- During the hearing, judges will regularly check that everyone can hear what is going on and will note that they have done so.
- The tribunal currently has reasonably good capacity for hearings, as some judges that normally work across different types of tribunal are currently fully available to SENDIST. There is more flexibility as it doesn't matter where judges and parties are geographically, and because judges are not spending time travelling around the country there is a little more time to deal with paperwork and applications.
- The tribunal has therefore got some spare capacity and has invited parties who need an early hearing to apply. This will need the agreement of both sides, and parties are asked to liaise with each other to identify suitable hearing dates before contacting the tribunal. The tribunal will prioritise appeals that have already been postponed due to lack of judicial time, and change of phase cases.
- LAs who are in real difficulty with dealing with appeals due to non-availability of staff etc are asked to alert the tribunal and other side as soon as possible. However, when deploying staff away from SEN departments they are expected to take into account that the tribunal is regarded as a critical service and therefore should have at least some priority.
- Very few administrative staff are working in the Tribunal's Darlington office and they have reduced ability to answer phone calls. Therefore the use of emails is encouraged.
- Emails to the tribunal are being picked up and dealt with between 7.30 a.m. and 5.00 p.m.
- The National Trial is continuing. However, it was originally planned that steps to evaluate it and take a decision as to next steps would have begun in April, and that has not been possible. As matters stand at present, the tribunal will continue accepting NT appeals up to 30th August, and any in the pipeline at that point will be heard when ready.
- It may well be easier to have an August video or telephone hearing if travel restrictions are still in place, given that witnesses, judges etc are presumably not going away. If both parties agree it is worth applying for this.