

**Proposal to amend the Practice Statement
regarding panel composition in the First-tier
Tribunal (Special Educational Needs &
Disability)**

**Conclusion of the pilot to test the composition of a panel in
the First-tier Tribunal (Special Educational Needs & Disability)
(FtT-SEND).**

(Pilot ran from October 2013 – April 2014)

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Background

In January 2013, the Senior President of Tribunals (SPT) published a consultation seeking views on the proposal to change the composition of panel in the Special Educational Needs and Disability (SEND) jurisdiction in the Health, Education and Social Care Chamber of the First-tier Tribunal (FtT).

By suggesting the amendment to the Composition Practice Statement, the proposal aimed to strike the balance between providing judicial resources more flexibly and tailoring the composition of the panel to the complexity of the case and the issues being raised; ensuring the functions of the Tribunal are exercised effectively and efficiently.

Respondents to the consultation raised a number of concerns; in particular about the complexity of cases. There was also a suggestion that evidence did not yet exist to demonstrate that smaller panels would offer advantages or be able to maintain the same standards.

A pilot scheme was set up to test the approach to introducing greater flexibility with panel composition in SEND appeals. It began in October 2013 and has been running now for a period of just over 6 months.

The pilot was restricted to appeals against a local authority's refusal to assess (RTA) cases and the judges and members used on the two person panels are ones with considerable sitting experience, having sat on at least 25 hearings within the jurisdiction.

The composition pilot was set up accordingly:

1. The pilot scheme will run from 1st October 2013 and will apply to all appeals against a refusal to assess the needs of a child in respect of their special educational needs.
2. The duration of the pilot scheme is 6 months.
3. Records will be kept of the number of cases involved and the method of dealing with them.
4. An evaluation of the pilot will take place upon completion

The Panel Composition Statement was amended to accommodate the pilot, as shown below.

A decision that disposes of proceedings, made at or following a hearing, must be made by

a. One judge and:

b. Two other members where each other member has substantial experience of educational, child care, health or social care matters.

c. In appeals concerning refusals to arrange an assessment of a child's Special Educational Needs, the decision may be made by one judge and one other member where the other member has substantial experience of educational, child care, health

or social care matters and both the judge and member have sat on at least 25 hearings within the jurisdiction.

Pilot Conclusions

Data gathered from the pilot period concluded the following:

FtT SEND received a total of 638 refusals to assess cases during the period, of which only 69 appeals (approximately 11%) actually proceeded to a hearing, which is consistent with historical trends – (RTA cases have the highest rate of withdrawal/concessions prior to the hearing in SEND).

Out of the 69 RTA cases disposed of since October, 30 decisions were made in favour of the appellant, 32 decisions of the LA were upheld, 6 were adjourned and 1 appeal was withdrawn at hearing.

Of the 6 appeal hearings adjourned during this period, none were related to panel composition.

Only one application was received during the period from a Parent / Parent's Representative applying to have the number of persons on the panel increased. The reason cited on the application was given as case complexity. The application was considered and refused by a SEND Judge who concluded that the application was premature and that the evidence did not support the submission that the case was sufficiently complex to require a three person panel.

During the period of the pilot only 2 applications have been made seeking 'Permission to Appeal to the Upper Tribunal'. Again neither of these applications was linked to panel size but instead related to procedural irregularity (unspecified) and changing circumstances.

No reference was made to panel composition in the grounds for either application. Permission to appeal was not granted in either case.

No formal complaints or queries have been received regarding the panel composition pilot since it started in October 2013.

As part of the monitoring and reviewing process FtT SEND administration prepared a feedback survey for completion after every hearing by Parents / Representatives, together with Judges and Members. Some of the headlines are captured below.

Judges and Members

Overall, the majority of respondents felt the hearings went well. There were some suggestions, however, that a second specialist member would have been beneficial to properly interrogate the issues and to make it easier to listen and take notes at the same time. In addition, some specialist members commented that they felt under pressure and that the onus was on them to lead on inquisitorial issues.

Users – Parents, Representatives, Local Authorities

Very few of the additional comments provided by Parents/Representative related specifically to the composition of the Panel.

Only 1 Parent/Representative respondent raised any issue with the panel having the right expertise to deal with the issue at hand; most recorded that they had been fairly treated at the hearing.

Most rated their overall hearing experience as Good or Very Good; they understood the guidance that had been issued to all parties explaining the two person panel composition, and most commented that they felt the hearing had lasted about the right length of time.

Conclusion

Given the data and feedback coming out of the review of panel composition in the First-tier Tribunal (SEND) I am satisfied that there is currently no difference in the standard of decision making between two-person and three-person panels. I am also confident that sufficient safeguards are in place to enable a party to the process to present a case to increase the size of the panel. Additionally, I am reassured that the Judge can direct a change to the panel composition if it becomes apparent that the particular issues in a specific case require the input of an additional member.

I will extend this process to all RTA cases in FtT SEND on a permanent basis with immediate effect. This will allow the Tribunal to further embed and refine the process to make full use of the judicial resource pool.

I also consider that the pilot principles should be extended, to test the approach to introducing greater flexibility in panel composition in **all** case types in FtT SEND. This will be dealt with in a separate document.

In accordance with Rule 5 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, SEND Judges will issue directions relating to the composition of a panel in a particular case. This will be facilitated by the use of case management conferences, interlocutory referrals and consideration of the individual facts of a case and will provide for a more appropriate and proportionate approach to dealing with SEND cases.

The SPT's power to determine the composition of any tribunal comes from the Tribunal Composition Order:

http://www.legislation.gov.uk/ukxi/2008/2835/pdfs/ukxi_20082835_en.pdf

The composition statement for each chamber is the record of the SPT's decision on composition. The CP, under delegated powers, determines the composition of an individual tribunal within the framework of this statement. The SPT can change the statement, whether for a pilot or on a permanent basis.

The aim of both the SPT and the CP is to ensure the tribunal can provide a more efficient service specific to individual tribunal users; recognising the variations in complexity of FTT SEND cases and allowing for more appropriate allocation of tribunal panel members.

The SPT's Practice Statement on composition will be amended to reflect this permanent change:

6. A decision that disposes of proceedings, made at or following a hearing, must be made by at least

a. One judge and:

b. Two other members where each other member has substantial experience of educational, child care, health or social care matters; or

c. In respect of appeals concerning refusals to arrange an assessment of a child's Special Educational Needs; one other member where that member has substantial experience of educational, childcare, health or social care matters; and where both the Judge and single member have each sat on a minimum of 25 hearings within the jurisdiction.

Sir Jeremy Sullivan

Senior President of Tribunals

21 July 2014