

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

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

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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 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 ran 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 on the following basis:

1. The pilot scheme would run from 1st October 2013 and applied 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 was 6 months.
3. Records would be kept of the number of cases involved and the method of dealing with them.
4. An evaluation of the pilot would take place upon completion

RTA pilot conclusions

Given the data and feedback coming out of the review of panel composition in the First-tier Tribunal (SEND) I was satisfied that there was no difference in the standard of decision making between two-person and three-person panels. I was also confident that sufficient safeguards were in place to enable a party to the process to present a case to increase the size of the panel. Additionally, I was 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 directed that the process would apply to all RTA cases in FtT SEND on a permanent basis with immediate effect.

Extension of the pilot

I 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.

Having regard to one of the main concerns raised by consultation respondents which questioned the process for assessing complexity, I recognise that case type does not necessarily determine complexity. I therefore propose taking an alternative approach and leaving decisions on panel composition to the discretion of SEND Judges, with decisions being taken on the basis of the individual facts of the case. This will be piloted for 6 months beginning in October 2014.

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/uksi/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 the permanent change in respect of RTA cases and the extension of the pilot in respect of other FtT SEND cases:

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; or

d. For the duration of the pilot in respect of cases other than 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. The appropriate composition of the panel shall be determined by the exercise of judicial discretion.

Sir Jeremy Sullivan

Senior President of Tribunals

21 July 2014