

PRACTICE GUIDANCE

FIRST-TIER TRIBUNAL (HEALTH EDUCATION AND SOCIAL CARE CHAMBER)

APPEALS AGAINST STATEMENTS OF SPECIAL EDUCATIONAL NEEDS

This Practice Guidance is issued by the Chamber President to offer guidance to Tribunal Judicial Office Holders and to Tribunal Users as to the practice to be adopted in relation to the hearing of appeals in respect of statements of special educational needs (“statements”) in the First-tier Tribunal (Health Education and Social Care Chamber) after 31 March 2018.

Introduction

The Children and Families Act 2014 introduced a new statutory framework for the assessment of special educational needs and the delivery of special educational provision. This was intended to replace the previous statutory framework over a period ending on 31 March 2018. The Children and Families Act 2014 (Transitional and Saving Provisions) (No 2) Order 2014 Article 11 provides for the application of the old legislation to pre and post commencement statements. Article 17 provides for children for whom Education, Health and Care (“EHC”) needs assessments could not be secured before 1 April 2018 and for the new law to be applied to statements from that date.

Guidance

Although the expectation was that all statements would be converted to EHC Plans before 31 March 2018, the Tribunal continues to receive applications for statement appeals to be registered and has statement appeals hearings listed after 1 April 2018.

The purpose of this guidance is to explain to Tribunal Judicial Office Holders and Tribunal Users the approach to be taken to statement appeals heard after 1 April 2018.

The Tribunal can continue to register statement appeals after 1 April 2018, but the law applied to the appeal will be the Children and Families Act 2014. Therefore, in compliance with the Children and Families Act 2014, statement appeals for young people over statutory school age will be dealt with on the basis that the young person is the appellant, rather than their parent. If the young person is over 18 years and seeking further provision, the decision can identify suitable provision beyond the age of 19 years. Similarly, the right of appeal against the description of need (Part 2), provision (Part 3) and placement (Part 4) will exist under section 51 of the Children and Families Act in respect of the contents of the statement. Decisions made after 3 April 2018 where there are issues relating to health and social care needs and provision will be eligible for registration under the National Trial.

Every statement appeal will be considered by applying the provisions of the Children and Families Act 2014 provisions if the hearing is after 1 April 2018.

The legislation does not empower the Tribunal to direct the conversion of a statement into an EHC Plan. Accordingly, the outcome of appeals will be identified by reference to the continuation of the statement of special educational needs outcomes. The legislation requires the Local Authority to undertake an EHC assessment as soon as reasonably practicable after the appeal is concluded.

**HHJ Phillip Sycamore
President First-tier Tribunal (HESC)
29 March 2018**