



# Courts and Tribunals Judiciary

JUDGE M SUTHERLAND WILLIAMS  
PRESIDENT

HEALTH, EDUCATION AND SOCIAL CARE CHAMBER

## PRACTICE GUIDANCE ON PROCEDURE FOR THE PREPARATION OF APPEALS AND CLAIMS IN THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY AND DISABILITY DISCRIMINATION IN SCHOOLS JURISDICTIONS OF THE HEALTH, EDUCATION AND SOCIAL CARE CHAMBER <sup>1</sup>

### PRACTICE GUIDANCE NO. 1 OF 2025

*This Practice Guidance shall have effect in any appeal, claim or application lodged **on or after 2 June 2025**.*

*This Practice Guidance accompanies the Senior President of Tribunals Practice Direction on the Preparation of Bundles (No 1 of 2025)<sup>2</sup>. Paragraph 5 of said Direction is hereby revised to read as referring to this Practice Guidance, namely No 1 of 2025, and not No 2 of 2024.*

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<sup>1</sup> Issued by the Chamber President under Schedule 4 of the Tribunals, Courts and Enforcement Act 2007

<sup>2</sup> <https://www.judiciary.uk/guidance-and-resources/practice-direction-preparation-of-hearing-bundles-in-the-first-tier-tribunal-health-education-and-social-care-hesc/>

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*Note: Some of the external links in this document may become out of date. The Tribunal will endeavour to update this Guidance periodically. Parties may either contact HMCTS or search on the internet for links that may become broken.*

## Overview

1. This Practice Guidance is designed for judicial office holders, professional advisers, representatives, local authority staff and other interested persons.
2. It sets out the Tribunal's usual approach to issues that it regularly faces. It is, and will be, supplemented by SEND user guides publicly available on these sites:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

and

[Special Educational Needs and Disability - Courts and Tribunals Judiciary](#)

3. It is produced to achieve consistency in the preparation for hearings in **Special Educational Needs and Disability (SEND) appeals** and **Disability Discrimination (DD) in Schools claims** and is drafted to assist in managing, amongst other things:
  - preparation for hearings;
  - the hearing itself;
  - post hearing matters.
4. It accompanies a Practice Direction issued by the Senior President of Tribunals on 22 April 2025, which deals with the preparation of bundles for hearings.

## Objective

5. Ensuring cases are ready to be heard on the day they are listed is central to this Practice Guidance. Too many cases are adjourned or postponed due to cases not being ready, late evidence being produced, or some other procedural issue that may otherwise have been avoided.

6. This not only causes delay for the parties, but it means that another case, which may have been ready, is denied the opportunity to be heard. Such delays are costly for HM Courts and Tribunals Service ('HMCTS') in terms of both time and expense and are contrary to the overriding objective set out in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

## **Application of this Guidance and Interpretation**

### *The Tribunal*

7. The following Practice Guidance applies to all hearings in the **SEND** and **DD** jurisdictions ("the Tribunal").

### *The Parties*

8. A "party" means a person who is an appellant/claimant or respondent in proceedings before the Tribunal or a person who was an appellant/claimant or respondent when the Tribunal concluded their case.

### *The appellant and the respondent*

9. A parent, young person or Alternative Person will be the appellant in a SEND appeal and the Local Authority ('LA') will be the respondent. A parent, young person or an Alternative Person will be the claimant in a DD claim and the Responsible Body ('RB') of a school will be the respondent.

### *The Rules*

10. Unless stated otherwise, any reference to "the Rules" in this document is a reference to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended), and any reference to a numbered rule is to the rule so numbered in the Rules.

11. Nothing in this guidance is intended to dilute or detract from the application of the Rules, which continue to take precedence.
12. It is important to note that at each stage of this guidance, parties have the option to apply to the Tribunal, in accordance with rule 6, for further Directions if circumstances arise that suggest an exception should be made to this Practice Guidance.

### **Commencement of this Practice Guidance**

13. In order to allow parties the opportunity to prepare for the introduction of this guidance, this Practice Guidance shall have effect in any appeal, claim or application lodged **on or after 2 June 2025**.

### **Failure to comply with the Practice Guidance**

14. All parties have an obligation to cooperate with the Tribunal (rule 2). It is important that parties do so. It ensures cases are dealt with efficiently and effectively, avoiding unnecessary delay. It is imperative therefore that parties comply with this Guidance and cooperate with each other.
15. **If there is a failure to comply with any part of this Practice Guidance, the Tribunal has a discretion to take action that may result in the listed hearing date for the case being vacated at short notice, striking out a case (rule 8) or barring a party from participating further in the appeal or claim. Further, it may result in certain limited circumstances in a costs order.**

## **PART 1 – PREPARING FOR A HEARING**

### **Preparing for the SEND or DD Tribunal hearing**

16. A tribunal hearing is like a court hearing, except most of the hearings in SEND and DD take place in an online ‘video’ hearing room, known as the Cloud Video Platform (CVP). These are secure hearings, usually held in private. Parties will be sent details on how to join before the hearing takes place.

17. Before a hearing, and at any stage, parties are encouraged to work together to try to resolve their dispute. If the parties do resolve their dispute, they should notify HMCTS Darlington as soon as possible via email [send@justice.gov.uk](mailto:send@justice.gov.uk)

or

First-tier Tribunal (Special Educational Needs and Disability)  
1st Floor, Darlington Magistrates Court  
Parkgate  
Darlington  
DL1 1RU  
United Kingdom

### **Preliminary matters**

#### ***Important principles for all parties***

18. The following principles provide parties with a guide to the approach the Tribunal will take:

#### *Independence*

- The Tribunal is independent of the parties.
- The Tribunal’s role is to make decisions. It is not required to accept the views (or requests) of a party or accept a position simply because a party believes it to be the case.
- The above does not mean to say the Tribunal is against a particular party, it is simply that the Judge or Tribunal take a different view of the facts for

the reasons they give. This is something a Judge or Tribunal is entitled to do.

### *The issues*

- The appellant/claimant should set out the issues the Tribunal is being asked to resolve in the initial notice of appeal form and should number these individually. These do not need to be extensive, but they should give the reader a clear indication of what matters the appellant/claimant disagrees with or wants resolved.
- For DD claims this will also include identifying:
  - i. the specific failure or unfavourable treatment alleged;
  - ii. the date or date range when the failure/treatment arose;
  - iii. how the claimants say that failure arises from the claimed disability; and
  - iv. the disadvantage that has been suffered as a result.
- The Respondent should set out its initial reply to each issue in dispute in the response form (Form SEND 35), found here:  
<https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>  
or  
For DD claims:  
<https://www.gov.uk/government/publications/form-send4a-disability-discrimination-claim-by-a-parent>
- Unless proper notice is given, the Tribunal will not usually consider issues that have not been identified as being in dispute at the outset of the proceedings. However, the parties are provided with an opportunity to narrow the issues in dispute shortly before the final hearing in a Case Review Form.

## *Evidence*

- Evidence is what witnesses say to the Tribunal and includes the documents that support what they say.
- It is up to the party to provide the evidence they rely upon.
- The evidence on which a party intends to rely must be provided with the appeal form (Form SEND35 or SEND4A, above) and must be relevant to the issues in dispute.
- Material that is not relevant to those issues (like excessive email correspondence or historic education, health and care plans) should not be provided and will not be taken into account by the Tribunal. (See the Senior President of Tribunals' Practice Direction on Bundles (No 1 of 2025)).
- Both parties must send the evidence on which they intend to rely to the other party.
- The Tribunal does not collect evidence by writing letters or making telephone calls.
- The Tribunal does not have the Respondent's files and does not know what they have been told.

## *Directions*

- Where directions are given by the Tribunal requiring specific evidence to be provided, that is to help explain the case and to help the party understand what documents are needed.
- A party is entitled to challenge any direction given by applying for another direction which amends, suspends or sets aside the first direction.



## **The importance of following the Tribunal's directions**

18. When the appeal is registered, the Tribunal will issue directions that set a timetable with deadlines by which the parties must take action. **All parties must comply with those directions given by the Tribunal by the time or date the Tribunal has stated.**
19. Failure to comply may lead to the appeal being struck out or the LA or RB being barred from further participation in the appeal.
20. At the final hearing, a Tribunal will usually make a decision on the basis of the evidence available. A failure by a party to comply with directions or produce the information requested may result in inferences being drawn. This could lead to the Tribunal coming to conclusions that may not favour that party's case.
21. No party should assume that simply because they have not supplied evidence or have failed to comply with a direction, the Tribunal will adjourn or postpone the case. The Tribunal will want to know whether there is a good reason for the failure or non-compliance. If there is not, or if the evidence is still not likely to be available on the next occasion, the Tribunal is likely to proceed without that evidence, having given an adequate opportunity for it to be provided.
22. Equally, if evidence is not produced until shortly before or on the day of the hearing, it will be considered late. The Tribunal does not have to agree to it being considered in the appeal. This is because it may put the other side at a disadvantage and that may be unfair. The Tribunal may refuse to adjourn the hearing, particularly if the evidence could have been produced earlier.
23. Importantly, parties should note that HMCTS Darlington cannot resolve disputes about the evidence. Only the Tribunal can do that.

## **Changing the Tribunal's directions**

24. If a party wishes to apply for a change to the directions or hearing date (rule 6), the request should be made on a 'Request for Change' form (SEND7), found here: <https://www.gov.uk/government/publications/form-send7-request-for-change>
25. The request for change form should include the views of the other party on the application.
26. Any application to extend time for submitting evidence or a change of the hearing date may lead to the hearing date in a case being vacated and the appeal being referred for a case management hearing.

## **Redacted evidence**

27. It is not usually possible for a document to be shown to the Tribunal without showing it to the other party involved. If a person sends documents to the Tribunal and requests that the other party (or parties) does not see them, the Tribunal will need to be given a full explanation for why the documents should not be shared. This may also delay the hearing. The Tribunal will decide whether those documents will be included as evidence in the case and whether they should be edited before being shown to the other party.

## **Types of hearing, and decisions without a hearing**

28. A party may request that the case is decided without an oral hearing, taking into consideration only the documentary evidence and submissions so that the appeal is decided "on the papers". If the other party agrees, this means it will be decided on the information provided in the appeal form, response and any other documents submitted as evidence in the bundle (as long as the Tribunal considers that it is able

to make the decision that way). If this course is taken, there will be no need to attend a hearing. The Tribunal is often able to list these matters quickly without notice and without delay. The parties are informed of the outcome afterwards.

29. If an oral hearing is requested, this will usually be held over video and the Cloud Video Platform.
30. Alternatively, an oral hearing can be an 'in-person' hearing. This is a hearing at which parties and their representatives (if any) will have an opportunity to attend a court or tribunal building with any witnesses.
31. The Tribunal will need adequate notice of any request for an in-person hearing and why such a hearing is required, with details of any access requirements. The Tribunal is still entitled to decide, in accordance with rule 2 and the overriding objective, that the hearing should take place online.
32. At an online or in-person hearing, the Tribunal will hear from the people who attend. What a witness says to the Tribunal is evidence. The Tribunal will want to know why there is disagreement with what is said and why. Witnesses can be asked questions by the other party and by the Tribunal to explain their evidence.
33. Importantly, the Tribunal can go ahead with a hearing and decide an appeal even if a party to the case does not attend.
34. While HMCTS Darlington try to list for the convenience of the parties, it is the availability of a tribunal panel that must take priority because the Tribunal has an obligation to avoid unnecessary delay. This means that on occasion parties and witnesses will need to make themselves available to fit in with the Tribunal's requirements.
35. After the hearing, once the decision has been made and issued, it will be too late to submit more evidence. A party may need to apply for the decision to be set aside if extra evidence materialises that they were unaware of – see rule 45(2).

## Requesting Reasonable Adjustments

36. Any party may request that the Tribunal make reasonable adjustments to allow them to effectively participate in the Tribunal process.
37. The Tribunal should be made aware as soon as possible after an appeal or claim is registered of any reasonable adjustments required to support anyone attending or wanting to participate in an appeal hearing. Someone from the Tribunal should then make contact to discuss these in more detail. If this does not happen, then the person who made the request should contact HMCTS Darlington via email [send@justice.gov.uk](mailto:send@justice.gov.uk)

Or by writing to:

First-tier Tribunal (Special Educational Needs and Disability)  
1st Floor, Darlington Magistrates Court  
Parkgate  
Darlington  
DL1 1RU  
United Kingdom

38. It is important that a party confirms what is required as soon as practicably possible. If a request is made too close to the hearing date it may mean that the hearing is vacated to allow for the arrangements to be confirmed and put in place.
39. In all in-person hearings, Guide or Assistance Dogs can also attend. Information in **SEND** cases about special requirements must be provided on the Case Review Form (SEND45) when it is returned. A copy may be found here:

[https://assets.publishing.service.gov.uk/media/654256a61f1a600010360bda/SEND45\\_1123.pdf](https://assets.publishing.service.gov.uk/media/654256a61f1a600010360bda/SEND45_1123.pdf)

In **DD** claims, the party should write to the Tribunal to request reasonable adjustments (address above).

## **The Hearing Bundle, Working Document and Case Review / Attendance Form**

40. The Respondent must prepare the bundle for the hearing in compliance with the latest Tribunal Bundle Guidance (see the Senior President of Tribunals Practice Direction on Bundles (No 1 of 2025) <https://www.judiciary.uk/guidance-and-resources/practice-direction-preparation-of-hearing-bundles-in-the-first-tier-tribunal-health-education-and-social-care-hesc/>).
41. In SEND, where there is a dispute about the contents of an Education, Health and Care (EHC) Plan, the parties should work together to prepare a final working document to include in the tribunal bundle. The Tribunal has produced guidance to assist parties in preparing a working document (SEND23), found here: <https://assets.publishing.service.gov.uk/media/5b23d8d0e5274a18f738e073/send23-eng.pdf>
42. Both parties should also provide a Case Review Form (issued by HMCTS Darlington) which sets out the issues remaining for determination by the Tribunal at the final hearing in a SEND appeal and confirm who will attend any oral hearing. For cases being determined on the papers, the parties should send their written views on the issues to be determined with their initial application or claim (see para 45 below).
43. In DD, a completed attendance form must be provided. This can be obtained here: <https://www.gov.uk/government/publications/form-send11-attendance-form-parents>  
[https://assets.publishing.service.gov.uk/media/64381b6422ef3b000f66f191/SEND11YP\\_0718\\_save.pdf](https://assets.publishing.service.gov.uk/media/64381b6422ef3b000f66f191/SEND11YP_0718_save.pdf)

## **Case Management**

44. Once the tribunal bundle is received, the progress of a case may be considered at a Case Review Hearing (CRH) or Judicial Alternative Dispute Resolution (JADR)

hearing which the parties will be directed to attend. The latest JADR hearing guidance will be sent to parties by HMCTS Darlington where a JADR is proposed.

### **Providing your written views or submissions to the Tribunal**

45. Written views and submissions should be as concise and focused as possible. Do not overload the Tribunal with excessive detail or irrelevant points. They should be no longer than 2 pages of A4 and can be presented as a series of bullet points.

46. Subject to any specific directions given by the Tribunal, parties should aim to provide any written views or submissions at the same time as the Case Review Form is completed and returned to the Tribunal.

47. Any written points or submissions should be a short overview of the issues in dispute in the case and should include:

- a. a heading that identifies which party is sending the submission and an introduction that states the position;
- b. a list of identified issues;
- c. any brief points on the issues in dispute with reference to the written evidence;
- d. a conclusion that states what the Tribunal is being asked to do.

## **PART 2 – THE HEARING**

### **The hearing**

49. The final hearing of the appeal or claim will be listed for a set time: two hours, half a day or a full day. In exceptional cases, it will be necessary to list a hearing for more than one day.

50. All parties attending a hearing, by video or in person at a hearing centre, will receive notification of the hearing at least 10 days before the date it is due to be held. This will set out what time the hearing will start and details of how to join or directions about where to go. Those selecting to have their appeal or claim decided on the papers will not usually be given notice, as the case will be determined at the Tribunal's convenience.

51. If a hearing is to be held online by video, parties will be provided with a link to join the video platform and test their connections. A clerk will assist with any difficulties and try to resolve any technical issues. If the issues cannot be resolved, then it may be necessary to postpone the hearing.

### **General Principles**

52. Both parties are allowed to attend the hearing.

53. The parties can each have a legal representative in attendance at the hearing.

54. With the Tribunal's permission, parties can be accompanied by another person who may act as a representative or assist in presenting the party's case at the hearing.

55. The Judge should be addressed as 'Judge' or 'Judge [surname]'. Robes are not worn in tribunal hearings.

56. Whether in person or by video, parties should be dressed appropriately for a formal hearing. Their location should be private, free from distraction and quiet.

57. Either side can ask any witness they consider important to the appeal to attend the hearing. Every witness must submit their evidence in compliance with directions given when the case is registered. In exceptional circumstances, applications can be made for additional witnesses by submitting the Request for Changes form (SEND7, above) with the views of the other party accompanying the application.

58. If the details of a witness (name, role) are not provided on the Case Review Form or attendance form, the Tribunal will not allow them to attend the hearing unless they consider there are exceptional circumstances. All witnesses are required to have provided a written witness statement or report by the final evidence deadline.

59. At the final hearing, the Tribunal considers the outstanding issues between the parties which require a decision. The judge should set out the issues at the start of the hearing and parties will be given an opportunity to give any additional evidence during the hearing if that is necessary. **The Tribunal will not usually be required to deal with any matter that has not already been identified in the Case Review Form as an issue in the appeal or claim.**

60. The parties will be able to give views or comments on the evidence as the hearing progresses. They may be asked if they want to give a brief summary of their case (no more than 5 minutes) at the end of the hearing, but only if they wish to do so. No formal closing submissions are usually required.

#### *Behaviour at a hearing*

61. The administration of justice benefits from mutual respect. The Tribunal realises that for unrepresented parties, attending a hearing may be a very stressful experience. To support their participation parties should;

- Assist the Tribunal when asked to do so i.e. provide answers when asked and avoid interrupting others.



- Be prepared. Have a note of what relevant points you want to emphasise to the Tribunal at the hearing.

62. It is important to remember to:

- be on time
- act with integrity
- be respectful of the judge and judicial office holders, together with those representing the other side, your opponent, witnesses, family members and parents.

### *Recording*

63. It is the Tribunal's intention that every SEND and DD hearing is recorded by HMCTS. Parties may apply for a transcript at their own expense in accordance with the Presidential Guidance on Recording Hearings in HESC. The Judge has a discretion to direct that the hearing is not recorded. See:

<https://www.judiciary.uk/guidance-and-resources/presidential-guidance-recording-of-hearings-and-transcription-of-recordings-in-hesc/>

### **The views of the child or young person in a SEND appeal**

64. In SEND cases, the LA must provide to the Tribunal the views of the child or young person in an appeal. This is because rule 21(2)(e) provides that in a SEND case brought by a child's parent, the LA's response to the appeal must include the views of the child about the issues raised by the proceedings or the reason the respondent has not ascertained those views.

65. These views are to be obtained by someone who the child or young person trusts and usually with whom they have an existing relationship, such as a teacher or social worker. This person must understand how they can best communicate effectively whether it be through word, writing, electronic means, sign or drawing.

## **Attendance of a Child at a SEND or DD Hearing**

66. The Rules provide that the child who is the subject of the appeal or claim may attend the hearing. The Tribunal may permit the child to give evidence and to address the Tribunal (rule 24(b)).
67. The child can meet the Tribunal panel, see how the hearing will be conducted, and be reassured about what the Tribunal is doing. It will also allow the child to express their views about the appeal. Questions will be asked by the panel in appropriate language using the expertise of the specialist members.
68. Parents must inform the Tribunal in advance and in good time if a child is to attend a hearing. The parent or carer will need to ensure that there is another adult present to accompany the child if the child does not attend the whole hearing.
69. The child's meeting with the Tribunal panel will normally take place before the main hearing starts and will be less formal than the main hearing. This is easy to organise in a video hearing but, if it is a hearing in person, then the room will be set up more informally (for instance, by taking the chairs away from the main table and forming a separate circle). If the room is too small, it may be possible to arrange seating casually at one end of the table.
70. Apart from the Tribunal panel and the child, the only other people present will normally be the child's parent(s), the parent's representative and the respondent's representative.
71. If they wish, both representatives will also be able to ask the child questions in an age and situational appropriate way.
72. The Tribunal panel may tell the child that they are welcome to stay for part or all of the main hearing, but they may equally decide it is not appropriate for this to happen.

73. If the child stays for the hearing and the panel agrees, the panel will keep under review the appropriateness of the child's continuing presence. It must not inhibit the giving of any evidence and the panel must be sensitive to possible damage caused to future relationships by hearing heavily disputed or very personal evidence.

### **Attendance of a Young Person at a Hearing**

74. For the purposes of the Children and Families Act 2014, a 'young person' is someone 'over compulsory school age but under 25' (subject to the academic year.)

75. Where a young person is the appellant or claimant, or where an Alternative Person is bringing an appeal or claim concerning them, they can attend all or part of any hearing if they wish to do so. They can bring an advocate and/or a supporter to the hearing.

76. For young and vulnerable witnesses, the Tribunal shall have regard to the latest version of the Equal Treatment Bench Book produced by the Judicial College and any guidance issued concerning evidence from young people or vulnerable witnesses. See:

<https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/>

## **PART 3 – AFTER THE HEARING**

### **The Decision**

77. The Tribunal may, but does not normally, give a decision on the day. Instead, it aims to send out a written decision within ten working days of the conclusion of the hearing, setting out briefly the reasons for its decision.
78. In some cases, the Judge will announce the decision on the day of the final hearing, but the decision is not final until the parties receive the written decision.
79. The time limits for Respondents to comply with the Tribunal's decision in SEND appeals are set out in the Special Educational Needs and Disability Regulations 2014 Regulations [Regulation 44.] Time limits for DD claims are usually set out in the Tribunal's decision.

### **Post-hearing applications**

80. Once the hearing has concluded, no further evidence will be considered. The Rules provide for applications to be made in very limited circumstances for correction, setting aside or review of the decision (rules 43-50). Information about post-decision applications will be sent by the Tribunal to both parties with the final decision.
81. An application for permission to appeal the decision because of an error of law must be made within 28 days of the date of issue of the written decision.
82. An application for costs must be made within 14 days of the written decision being sent. The Tribunal's powers to make costs orders are very limited.
83. It will be the responsibility of the party making an application for permission to appeal to the Upper Tribunal to make sure that they have a complete copy of the Tribunal Bundle, including any evidence that was accepted at the Tribunal hearing.

84. The primary copy of the Tribunal Bundle must be retained by the LA or RB for a period of at least 6 months after the date of the hearing and may be requested for production to the Tribunal in the event of an onward appeal.

**JUDGE M SUTHERLAND WILLIAMS**

**PRESIDENT**

**HEALTH, EDUCATION AND SOCIAL CARE CHAMBER**

**Dated this 30<sup>th</sup> day of April 2025**