

The SEND Tribunal – looking ahead

A speech given by the President of the Health, Education and Social Care Chamber, Judge Mark Sutherland Williams, to the Local Authorities Special Educational Needs London and Home Counties Regional Conference at Guy's Hospital on Wednesday 8 July 2026

Good morning everyone. Before I begin, I want to express my thanks to the Regional Conference organisers for their kind invitation and for bringing us together for what is such an important conversation.

Events such as this matter. They provide an opportunity not only to reflect on the challenges we face, but also to learn from one another, to share ideas, and to strengthen the partnerships that sit at the heart of delivering fair, effective and accessible justice.

Thank you for the work that you do in what I know is not always easy circumstances. You work in what I consider to be one of the most important and sensitive areas of public law: the system of support for children and young people with special educational needs and disabilities.

The SEND Tribunal sits within the Health, Education and Social Care Chamber, alongside other jurisdictions such as mental health and care standards. I have the privilege of leading a Chamber of some 1700 judicial office holders nationwide and I am now, after some recent changes, supported by 8 dedicated resident judges, some 60 salaried district tribunal judges and a further 1600 others who all sit within this Chamber.

In many respects HESC occupies, like other tribunals, a fairly unique constitutional position. It is both a set of specialist courts and a safeguard of statutory rights. It resolves disputes that sit at the intersection of education, health and welfare, and to an extent family life.

In SEND, at its core is a simple but profound question: what support does this child need in order to learn, develop, and thrive? And if you pause to think about, much of the work we do flows from that.

The current landscape: rising demand and sustained pressure

Now, it will not come as a surprise to most of you, and I think it would be correct to observe, that we are all currently operating in a system under sustained pressure.

Over recent years, HMCTS data shows a continuing rise in appeals relating to Education, Health and Care Plans. Appeal receipts now run into tens of thousands annually, and despite increases in disposals, the open caseload remains high. In

practical terms, the Tribunal is working harder than ever, yet demand continues to exceed capacity, which means we are also currently managing something of a backlog.

It is important to understand what “backlog” means in this context. It is not a static queue. It is a caseload in constant motion - cases are still being registered, properly managed, settled, agreed, withdrawn, progressed, heard and decided, but not at the pace any of us would like, particularly I know from the perspective of the LAs and parents concerned.

We recognise that. Part of the issue is that the complexity of that caseload has also increased. Many appeals now involve more than one expert report, often contested professional opinions, and disputes over school and specialist placements, which we know can involve very significant public expenditure. These are often far from straightforward administrative appeals; they can be intense, evidence-heavy determinations, where for the parents, the children and the LA the stakes are high.

Why demand has increased

I suspect it would be fair to observe that there is no single cause of rising demand. On one view, it is the product of several competing features.

First, there has been for a long time a sustained increase in the identification of special educational needs. Greater awareness of autism spectrum conditions, ADHD, speech and language difficulties, and needs relating to mental well-being which has appropriately led to more children being assessed.

Second, there have been regular reports that local authorities continue to operate under significant financial pressure in relation to funding in this area. That pressure can inevitably affect decision-making at the margins. That can also impact on things like staff retention, training and continuity.

Third, families are more aware of their rights under the statutory framework. That awareness, correctly so, has been strengthened by advocacy organisations, legal advice services, and online communities.

Fourth, I think there is a view shared by some that there remains some variability in first-instance decision-making. Where parents see or perceive inconsistency or uncertainty in local authority decisions, they are more likely to seek independent adjudication and therefore appeal to the tribunal.

Finally, to an extent since 2022/3 we have seen the legacy of the pandemic continue. That had been felt in delayed assessments and some unmet needs and a degree of catch-up that is still being addressed within the system.

What the SEND Tribunal has been doing

The Tribunal has responded to these pressures with what I would like to think is a sustained period of reform and modernisation.

Since I began in this Chamber some 6 years ago, we have increased judicial capacity and looked to improved listing efficiency by retaining a national online presence. We have expanded the use of remote and hybrid hearings, allowing more flexible use of judicial time and meaning panel members can hear cases, for example, in Northumbria from Cornwall.

We have strengthened case management practices, ensuring earlier identification of issues, removal of non-viable hearings from the lists to prioritise hearings to maximise the effectiveness of judicial availability, reducing adjournments and provide parties with clearer directions to bring the appeal to readiness. Our standard directions have been amended more than once as a result.

I am particularly pleased with the way we have introduced and developed Judicial Alternative Dispute Resolution, enabling judicial engagement at an earlier stage to assist resolution or narrow disputes, and initiative that has seen a 70% success rate in terms of settlement or agreement between the parties.

We have issued Practice Directions and Practice Guidance aimed at improving proportionality in bundles and evidence, recognising that excessive documentation can hinder rather than assist justice.

We have also improved disposal rates, even as receipts have increased and we have maintained our record of 98% of all decisions being issued to parties within 10 working days of determination.

These reforms are not isolated measures. They represent a shift towards a more active, and efficient model, which ultimately we hope will serve our users better.

Communication, transparency, and open justice

Alongside procedural reform, we must also focus on how the Tribunal is understood. That is in part why I am here today. It is crucial that we not only meet but listen to our stakeholders.

As many of you will know, the SEND jurisdiction operates in a highly sensitive and personal arena. For families, these cases are not abstract legal disputes, they are decisions about their child's future, and very often a child with learning difficulties or some form of disability. That is why we must get this right.

We are therefore in the process of strengthening:

- The clarity of published guidance – and you saw this last year with our new procedural guidance

- consistency of reasoning – and sometimes shorter decisions, to make the work of the tribunal more digestible, particularly for those who may be unfamiliar with it
- and more transparency in the process – and that is why we have over the past few years been developing our public facing website and will continue to do so

Open justice to that extent means ensuring that the Tribunal's work is understandable, visible, and trusted. And we are striving to get that right.

The SEND reform programme and its implications for the Tribunal

It is of course now essential to place the Tribunal's work into context within the wider reform programme being set out in the Government's new consultation, *SEND reform: putting children and young people first*.

I am not here today to comment on that in any detail, and I trust you understand I couldn't and wouldn't in any event as a member of the judiciary, but I would suggest in a more neutral fashion that, if you have had the opportunity to read the paper, you may find on a number of levels the direction of travel or intention is clear.

It reflects perhaps a move to rebalance the system towards earlier intervention, whether that is through stronger mainstream inclusion, or reduced reliance on Education, Health and Care Plans as the primary gateway to support. Instead, a graduated model of provision is as I understand it being proposed, underpinned by national standards.

It will be for others to decide whether this reduces any variability between areas of the country or ensures that more children's needs are met. That will remain to be seen.

I think for the here and now, in the short term, there is unlikely to be any immediate reduction in demand. Many lawyers and seasoned professionals will recognise that periods of structural reform or new legislation can sometimes generate uncertainty and even increase litigation or appeal numbers as stakeholders perhaps try to get their appeals in before new legislation takes effect. I am not suggesting that will happen here, but as a tribunal we need to an extent to prepare for that possibility.

It is equally possible that over the medium term, we may see a reduction overall in appeal volumes, but I think the cautious observer would regard it as a mistake to assume a simple downward trajectory. It may be that we will see a re-composition of caseload and in the future a greater proportion of cases concerning what we sometimes refer to as threshold questions: whether statutory criteria are met, whether mainstream provision is sufficient, and whether specialist provision needs are engaged.

What I think I can say is that I very much hope that the Tribunal will remain not only a dispute resolution body, but also a stabilising institution within a changing system. By this I mean, for example, if provision becomes more standardised nationally, the Tribunal's role will be in ensuring consistency of interpretation is embedded into what we do.

It is perhaps worth emphasising that whatever the future holds, and however any white paper develops, we are looking at a number of years down the line.

Conclusion

Let me conclude with three points.

First, the SEND Tribunal is under a degree of sustained pressure, yes, but I am pleased to report that it continues to function effectively, resolving thousands of complex cases each year and upholding legal rights in what I think we all acknowledge to be a sensitive and important jurisdiction.

Second, any backlog is not I would suggest a symptom of inefficiency. It reflects a system where demand has grown significantly, where needs are increasingly complex, and where expectations are high on all sides.

Third, reform is underway—not only within the Tribunal, but across the wider SEND system. That reform offers the prospect of a more coherent and less adversarial future, but it will require careful implementation, sustained investment in early resolution and continued judicial adaptability.

The Tribunal's role will remain central throughout. It is, and will remain, the final and an independent safeguard of legal rights in the SEND system.

If we keep that principle firmly in view, then we can move together towards a system that is not only more efficient, but also more consistent, more transparent, and ultimately more just.