



# Tribunals Judiciary

**PRACTICE DIRECTION  
FIRST-TIER TRIBUNAL  
HEALTH EDUCATION AND SOCIAL CARE CHAMBER  
SPECIAL EDUCATIONAL NEEDS OR DISABILITY DISCRIMINATION IN  
SCHOOLS CASES**

---

1. This Practice Direction applies to a “special educational needs case” or “disability discrimination in schools case,” as defined in Rule 1(3) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended).

## **DEFINITIONS**

2. In this Practice Direction:-
  - a. “Child” means the person in respect of whom a parent makes an application to the Tribunal;
  - b. “Child or young person’s Education Health and Care (EHC) Plan” means the EHC Plan made for the child or young person under the Children and Families Act 2014 s.37;
  - c. “Final hearing” means a hearing held to dispose of proceedings;
  - d. “LA” means the local authority which made the decision in relation to which the application is made;
  - e. “Parent” has the meaning given in section 576 of the Education Act 1996 (and includes a parent who has made or may make an application to the Tribunal under the Children and Families Act 2014 or the Equality Act 2010);
  - f. “The 2008 Rules” means the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended);
  - g. “Young person” means a person over compulsory school age but under 25, as defined in the Children and Families Act 2014 s.83(2), whether or not that young person brings an appeal or claim in their own name.

## **INFORMATION OR DOCUMENTS REQUIRED IN THE APPLICATION NOTICE**

3. Rule 20(2) of the 2008 Rules states that the application notice must be signed and must include—
  - a. the name and address of the applicant;
  - b. the name and address of the applicant’s representative (if any);
  - c. an address where documents for the applicant may be sent or delivered;
  - d. the name and address of any respondent
  - e. details of the decision or act, or failure to decide or act, to which the proceedings relate;
  - f. the result the applicant is seeking;
  - g. the grounds on which the applicant relies; and

- h. any further information or documents required by an applicable practice direction.
- 4. Rule 20(3) states that the applicant must send with the application notice a copy of any written record of any decision under challenge, and any statement of reasons for that decision that the applicant has or can reasonably obtain.
- 5. In a special educational needs case, the application notice must also include:-
  - a. the name and date of birth of the child or young person;
  - b. if possible, the names and addresses of all persons or bodies who have or share parental responsibility for the child or have care of the child, including an email address, if available;
  - c. the name of the LA and the date upon which the applicant was notified of the decision in relation to which the application is made;
  - d. a list of documents included in or provided with the application notice;
  - e. if the applicant seeks an order that a child's EHC Plan shall be amended, details of which part or parts of the EHC Plan the application relates, as well as details of the changes sought; and
  - f. if the applicant seeks an order that a different school or other institution from that already named in the child or young person's EHC Plan be named in it, either the name and address of that preferred school or other institution, or a sufficient description of the type and nature of the school or other institution which the applicant considers would constitute an appropriate placement for the child or young person; and if available, in the case of an independent school or other institution not approved under the Children and Families Act 2014 s.41, written confirmation that there is a place available for the child or young person (provision of place);
  - g. where the application to appeal is made under the Children and Families Act 2014 s.51(2) (a) or (b), a copy of all the supporting documentation provided by the LA to the parent or young person, if available.
  - h. where the application to appeal is made under the Children and Families Act 2014 s.51 (2) (c), (d), (e) or (f) a copy of the child or young person's EHC Plan together with all appendices and supporting documentation provided by the LA to the parent or young person, if available; and
  - i. where the application notice states the name of a preferred school or other institution, written confirmation that the applicant has informed the school that they proposed to request that it be named in the child or young person's EHC Plan in proceedings before the Tribunal.
- 6. In a disability discrimination case, the application notice must also include:-
  - a. the name and date of birth of the child or young person;
  - b. the names and addresses of all persons or bodies who have or share parental responsibility for the child or have care of the child, including an email address, if available;
  - c. where it is alleged that a school has discriminated against a child or young person, the name and address of the school and their contact details including an email address, if available;
  - d. where it is alleged that a local authority has discriminated against a child or young person or where the school named is maintained by a local authority, the name of the local authority and their contact details including their email address, if available;

- e. a description of the child's disability, including evidence of a medical or other professional diagnosis, if available;
  - f. if there is an EHC Plan in relation to the child, a copy of that EHC Plan and appendices, if available.
  - g. details of the alleged discrimination, including the date or dates on which it is alleged to have taken place; and
  - h. if any part of the alleged discrimination complained of took place outside the time limit for bringing a claim under Paragraph 4(1) of Schedule 17 of the Equality Act 2010, either:
    - i. an explanation why each act of alleged discrimination should be treated as part of a course of conduct extending over a period and which other acts are said to form part of the conduct; or
    - ii. the reasons why the Tribunal should, in its discretion, admit claims about alleged discrimination which occurred outside the time limit.
  - i. if the claim includes an allegation that the Responsible Body has failed in its duty to make reasonable adjustments:
    - i. The provision, criterion or practice applied to pupils generally which placed disabled pupils, including the child or young person identified in the claim, at a substantial disadvantage; and
    - ii. A description of the substantial disadvantage the child or young person suffered (or would have suffered) by having the identified provision, criterion or practice applied to them.
7. In a disability discrimination in schools case:
- a. Every claim is considered by the Tribunal on receipt to determine whether the application meets with the requirements of Rule 20 and this Practice Direction.
  - b. Since the Tribunal's form does not require the claimant to set out numbered grounds of claim nor require them to identify with precision how each act complained of amounts to discrimination, the Tribunal will identify from the information provided by the claimant the general grounds of claim to which the Respondent must respond.
  - c. If the Tribunal forms the provisional view, based on the information provided with the claim form that there is no reasonable prospect of the claimant's case, or part of it, succeeding, then the Tribunal may, in its discretion under Rule 8(4)(c), warn that the claim, or part of it, may be struck out and require the claimant to provide additional information before deciding whether to strike out the claim, or part of it.
  - d. If the claimant avers that the grounds admitted by the Tribunal do not adequately reflect their complaint, they may apply to the Tribunal for a variation of the Registration Directions Order in accordance with the timetable set out in the Order, setting out reasons why the allegations should be admitted.
8. If the Tribunal forms the provisional view that a claim (or part of it) does not form part of a course of conduct extending over a period which ends within the time limit, or is otherwise made out of time, they may either:
- a. Exercise discretion to admit the parts of the claim that are made out of time. In such cases, questions of timeliness will be a matter for the Tribunal determining the claim, having heard all the evidence; or

- b. Refuse to admit those parts of the claim which are, in their provisional view, out of time, and direct the parties to participate in a preliminary hearing to determine whether those parts of the claim should be admitted.

In a disability discrimination in schools case, the Tribunal's provisional views about timeliness when considering the claim on receipt shall not be a 'decision' of the Tribunal within the meaning of Paragraph 4(4) of Schedule 17 of the Equality Act 2010.

9. If the applicant fails to include the required information or documents with the application notice in an appeal or claim, the Tribunal may waive the requirement under rule 7(2)(a) or require the applicant to remedy that failure under rule 7(2)(b) before admitting the application notice.
10. Under Rule 8(3) of the 2008 Rules, the Tribunal must strike out the whole or a part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them and it does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them. In such circumstances, the respondent may not be sent a copy of the application notice unless that respondent is an LA which has requested that they be sent such application notices. If, on the information provided with the claim form, the Tribunal requires information from one or both parties before deciding whether the Tribunal has jurisdiction to decide the claim, the Tribunal, having identified any point which it is required to decide may either:
  - a. Require the parties to provide further information and direct them to participate in a preliminary hearing to decide the point(s); or
  - b. Direct the parties to address the Tribunal on any jurisdictional point at the final hearing.

### **INFORMATION OR DOCUMENTS REQUIRED IN THE RESPONSE**

11. Rule 21(2) states the response to an appeal or claim must include:-
  - a. the name and address of the respondent and email address, if available;
  - b. the name and address of the respondent's representative (if any);
  - c. an address where documents for the respondent may be sent or delivered;
  - d. a statement as to whether the respondent opposes the applicant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response;
  - e. in a special educational needs case, the views of the child or young person about the issues raised by the proceedings, or the reason why the respondent has not ascertained those views; and
  - f. any further information or documents required by an applicable practice direction or direction.
12. In a special educational needs case the response must also include:-
  - a. where the application relates to the contents of the child or young person's EHC Plan and the LA states it does not resist the application or that it withdraws its opposition to the application, a final amended EHC Plan incorporating the amendments (if any) to the child or young person's EHC Plan which it agrees to make;

- b. a copy of the child or young person's EHC Plan, appendices and supporting documents where these were not submitted by the applicant with the notice of application;
  - c. any supplemental evidence and professional reports currently available to the LA and upon which it intends to rely, and
  - d. detailed grounds setting out what parts of the application are admitted, detailed grounds setting out what parts of the application are resisted, and details of any legal points that will be relied on at a final hearing.
  - e. A signed and dated statement or report from any of the Respondent's witnesses on whose evidence the Respondent intends to rely.
13. In a disability discrimination in schools case, the response must also include:-
- a. detailed grounds setting out what parts of the application are admitted, detailed grounds setting out what parts of the application are resisted with reasons and details of any legal points that will be relied on at a final hearing.
  - b. A signed and dated statement from any of the Respondent's witnesses who are in their employment and on whose evidence the Respondent intends to rely;
14. If the respondent fails to include the required information or documents with the response, the Tribunal may waive the requirement under rule 7(2)(a), or require the respondent to remedy that failure under rule 7(2)(b) before admitting the response.

#### **NOTIFICATION OF THE RIGHT OF APPEAL IN SPECIAL EDUCATIONAL NEEDS CASES**

15. Under Regulation 5(3), 10(3), 14(2), 20(11), 21(10), 22(5), 25(2), 31(3) of the Special Educational Needs and Disability Regulations 2014 (as amended) ("the 2014 Regulations"), the LA must notify the child's parent or young person of;
- a. the parent or young person's right of appeal to the Tribunal;
  - b. the time limit within which the appeal must be made;
  - c. the availability of dispute resolution arrangements;
  - d. the fact that use of such arrangements does not prejudice the right to appeal.
16. The Tribunal may have regard to any failure on the part of the LA to comply with the requirements of the 2014 Regulations when considering whether to extend time where the application notice is not provided within the time limit set out in Section 20(1)(c) of the 2008 Rules.

#### **INFORMATION REQUIRED FROM PARTIES IN PREPARATION FOR A FINAL HEARING**

17. Each party must provide, on a form provided by Tribunal staff and within the time directed by the Tribunal, the following information in preparation for the final hearing:-
- a. A list of the issues to be determined by the Tribunal at the final hearing;
  - b. details of any further evidence, over and above that sent with the notice of application or response, on which the party intends to rely at the final hearing;

- c. if they were not available by the time of sending the response to the Tribunal, the views of the child or young person about the issues raised in the proceedings or the reasons why they have not been provided;
  - d. where a party wishes to rely on professional evidence and has identified a professional witness on whose evidence the party wishes to rely and has provided a report from the witness, whether the party wishes the professional to attend the hearing as a witness;
  - e. the name, address and occupation (or other description that shows their relevance to the proceedings) of any other witnesses the party wishes to attend the final hearing and the name, address and occupation (or other description that shows their relevance to proceedings) of any other person the party wishes to attend the final hearing (but not give evidence) where it is to be held in private;
  - f. confirmation of whether the party wishes to attend and/or be represented at the final hearing;
  - g. if a party does wish to attend or be represented, confirmation of whether they consent to the Tribunal deciding the case on the papers without an oral hearing; whether any proposed hearing date is convenient to the party and, if not, details of their availability;
  - h. whether the party or any witness will require the assistance of an interpreter or signer at the final hearing and, if so, details of the language, dialect or type of signing skill required; and
  - i. whether the party has any disabilities that may require adjustments to be made at the hearing.
18. Unless there is a good reason for not doing so, a party must make any application for a witness summons at least 14 days before the final hearing.
19. If a party requests that the Tribunal admits evidence which has been recorded, whether by audio or visual means, the party must send an electronic copy to the Tribunal in an accessible format in advance of the final hearing and within such time as the Tribunal may have directed.

### **ATTENDANCE AT PRIVATE HEARINGS**

20. Under Rule 26(4) of the 2008 Rules where a hearing, or part of it, is to be held in private the Tribunal may determine who is permitted to attend the hearing or part of it. The following persons (in addition to a party and the child or young person) will normally be entitled to attend the final hearing, or part of it, unless the Tribunal determines otherwise or they are excluded under Rule 26(5) or (6);
- a. The party's representative and witnesses;
  - b. Any other person the party has informed the Tribunal they wish to attend the hearing unless the Tribunal determines that any such person should not attend the hearing and has notified that party accordingly;
  - c. A parent of the child who is not a party to the application;
  - d. The Chamber President and any judge or other member of the First-tier Tribunal (when not sitting as a member of the Tribunal);
  - e. A person undergoing training as a judge or other member of the First-tier Tribunal or as a member of staff;
  - f. A person acting under the supervision of the Chamber President in the training or supervision of a member of staff;
  - g. An interpreter.

21. This Practice Direction is made by the Chamber President with the agreement of the Senior President of Tribunals and the agreement of the Lord Chancellor. It is made in the exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007.

**Judge M Sutherland Williams**  
**President, Health, Education and Social Care Chamber**  
20 April 2021