



Additional Support Needs Tribunals for Scotland

Tribunal User Group Event – Tuesday 25 March 2014

Europa Building, Glasgow

Additional Support Needs Tribunals for Scotland (ASNTS) hold regular Tribunal User Group (TUG) events to provide an opportunity to discuss any aspect of tribunals with the Tribunal's President and the Tribunal's Secretary.

The latest TUG event took place in Europa Building, Glasgow on Tuesday 25 March 2014 and was attended by 11 Tribunal users.

The President commenced with an overview of the last year and outlined what he envisages will be the likely future of the Tribunal. With Dr Morrow due to relinquish his role as President of the Tribunal, his recent functions have been in a caretaker capacity. This will continue to provide stability during the hand over process until the next President is formally recruited.

Dr Morrow reflected on the overall trend of the year, which saw a decrease in the number of references that went to an oral hearing. This is to be measured as a success, borne out of the successful implementation of a mediation approach by the Tribunal. This has reduced the number of hearings for Tribunal members, but has given Conveners significant responsibilities with regards to facilitating dialogue between parties. For the future, the President envisages such policies will be likely to be continued and developed by the next President, with more work being done to raise the awareness of Mediation Services with Tribunal users.

The President advised that he will conclude a review of the Tribunals Practice Directions, and those involved in tribunals should expect the number of directions to decrease. These, the President confirmed, were applicable to the earlier setup stages of the Tribunal. He does however, expect that the next President may complement the decrease in Practice Directions by considering issuing guidance notes.

Those involved in tribunals should also expect to see legislative changes, with the introduction of *Children and Young People (Scotland) Act 2014* (which received Royal Assent on 27 March 2014) and further amendments to the 2004 Act. Dr

Morrow referred to the current consultation which proposes to extend a right to children to allow them to raise a reference under the 2004 Act.

The President's contribution was followed by a presentation from the Secretary on Tribunal activity over the last financial year which can be found at www.asntscotland.gov.uk

The Secretary's contribution was followed by a presentation from May Dunsmuir, Convener, on the importance of ensuring that the views of the child are not lost in the tribunal process. Mrs Dunsmuir reminded attendees that the 2004 Act and the Tribunal's Rules do not impose a statutory duty on the Tribunal to consider the views of the child before reaching a decision. The former President has drafted Presidential Guidance to overcome this deficit. Mrs Dunsmuir referred to the terms of current President's Direction 5, rule 33 of *The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 (as amended)* and rule 34 of *The Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011*. She referred to the statutory principles which exist elsewhere and which impose duties to have regard to the views of the child, or the child's welfare, or their "wellbeing". Mrs Dunsmuir used the example of the *Mental Health (Care and Treatment) Act 2003* which imposes a duty on a mental health tribunal to have regard to the past and present wishes of a patient and the duty to reach a decision which best secures the welfare of a patient who is under the age of 18 years. She concluded by reminding attendees that the views of a child can be obtained through a range of means. She hopes that the next President will continue to place an emphasis on the importance of the child's views.

Question and Answer Session

Question: What measures are taken for a deaf or hard of hearing person during the Tribunal process. Are note takers, BSL interpreters organised on their behalf?

Answer: There is a duty to make reasonable adjustments under the *Equality Act 2010*. The 2004 Act and the Tribunal's Rules do not make any specific provision for this, however, the Tribunal would endeavour to provide appropriate services, on request. Attendees were invited to ensure that they inform the Tribunal promptly where such services are required.

The President expressed the view that the provision of a guidance note regarding this matter may be a future task for the next President.

Question: Why are Disability Discrimination Claims not included in more detail within the annual figures and why are decisions not anonymised on the website?

Answer: Due to the small number of claims made within a year, it could be easier for the public to identify individual cases from anonymised decisions and from statistical information.

The President expressed the view that protection of the child is paramount. Therefore decisions and statistics which had the potential to allow individual cases to be identified, would not be published.

Question: Do the statistics provided show a greater spread of references across all educational authorities?

Answer: The statistics in the annual report reflect the broad trend of the last several years with the larger educational authorities still being the main authorities involved with references.

The President expressed the view that this is to be expected due to the population sizes but that one of the successes of the past year has been that authorities are more willing to engage in mediation.

Question: Are there any broad themes which can be detected during the years of operational activity of ASNTS?

Answer: It is very difficult to establish themes as cases are based on the individual facts presented. The President expressed the view that there is a danger when giving themes as parties may look to these in order to establish a legal precedent for their particular cases. However, the President presented some general comments on areas of note, namely:

- The key requirement to keep communication channels open between parties.
- The tribunal process, in particular the hearing stage, is still very alienating for a child.

Question: Regarding cases which go to tribunal, is there a disparity between advocacy and legal provision at hearing?

Answer: The President expressed the view that there must be equality of arms between parties. There is no automatic right for parents or young persons to access legal aid in this jurisdiction, however, there are free legal resources and advocacy services available. The Tribunal has a role in seeking to ensure any disparity is addressed and mitigated as much as possible, during the Tribunal process.

Question: Does the Tribunal see any actions which could be taken to regulate how education authorities seek the Childs view on issues?

Answer: The procedure of the Tribunal is to ensure that the child's views have been sought and have been clearly communicated to the convener. Individual conveners can then determine whether they are content that they have the child's views. If they

are not, they can then order that an independent advocate be instructed to take the child's views.

The President concluded the event by emphasising his hope that the next President will continue to develop mediation services, encouraging settlement between parties, with the Tribunal as final arbitrator. This must be in the best interest of the parties and the child, as hearings could result in the break-down of relationships between parents and the education authority.