



# Best practice guidance document: Educational Psychologists who are invited to give evidence at a tribunal

*N.B. Below are **two versions** of this document. [The first is for EPs practicing in England and Northern Ireland](#). The second version is for [EPs practicing in Wales](#).*

*After consultation with colleagues from Scotland it was felt that a guidance document on tribunals for Scottish EPs was not relevant as the Scottish system is very different and EPs are very rarely involved in tribunals.*

## Version 1: EPs practicing in England and Northern Ireland

The Special Educational Needs and Disability Tribunal (SEND Tribunal) is an independent court to which parents and young people can appeal against local authority decisions relating to SEND. It can rule on the following issues:

- Whether a young person should or should not be assessed for an Education, Health and Care Plan (EHCP)/Statement
- Whether a young person should or should not be reassessed to update their EHCP /Statement.
- Whether an EHCP/Statement should or should not be issued.
- Whether an EHCP/Statement should or should not be maintained.
- What should or should not be included in the contents of the EHCP/Statement.

Educational Psychologists are often asked to be expert witnesses to support the decision making of the tribunal. They can be called upon by either the local authority or the family of the child or young person.

## General Guiding Principles for Educational Psychologists

- 1) Your role is to provide “full, frank and honest evidence” to the tribunal. Your advice should be “fair, impartial and independent” and should not be influenced by who employs you or commissions your services (e.g. the local authority, a parent). You should ensure relevant written evidence is made available by the due date for the tribunal that addresses any specific questions the tribunal would like you to answer. Depending on prior involvement, an EP may not need to complete a new assessment or write a full report in preparation for the tribunal. If a report has been recently written and contains sufficient relevant and up-to-date information, this could be submitted as evidence
- 2) There may be questions you have been asked for which you cannot provide evidence. In these instances, you may wish to provide a hypothesis, based on your professional judgement. You may alternatively wish to say that you are not able to offer an opinion



due to a lack of evidence or expertise. If the tribunal asks you a question that you feel is out of your realm of expertise, you should say that you are not able to offer an opinion on these grounds.

- 3) The tribunal may seek to direct the organisation you work for (e.g. the local authority) to gather further advice from an EP. The tribunal should not dictate the way in which this advice should be gathered (e.g. requesting a particular type of assessment). We are, however, aware that this sometimes happens. If a tribunal does dictate the way in which advice is gathered and the LA or EP feel this is inappropriate, the LA can file an appeal to the tribunal to challenge this decision. It may be useful to suggest alternate methods of information gathering or ask the tribunal for specific questions they want answering instead.

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### General Guiding Principles for Commissioning Organisations

- 1) If a specific EP is considered to be best placed to attend as a witness, organisations should consider how tribunal, and other, work is distributed equitably amongst EPs.
- 2) Organisations should consider how EPs are notified of tribunal work. We suggest that all tribunal invites should be sent to the PEP or Senior EP, who determines if an EP should be involved and then allocates the work to EPs as appropriate.
- 3) Wherever possible, EP prior commitments (e.g. annual leave) should be taken into account when arranging the tribunal date.
- 4) Organisations should provide EPs with an appropriate timeframe within which to complete an assessment and report. If an EP has had no prior involvement, we suggest they are given a **minimum of 6-weeks** to complete an assessment and a report, in line with comparable timelines for statutory work. If an EP has had prior involvement, they are likely to need a shorter timeframe, particularly if a recent relevant and sufficient report has already been written.
- 5) Organisations, in liaison with the PEP or Senior EP and the EP witness, should consider whether the EP needs to be in attendance for the full tribunal, or just for relevant parts and make suitable representations to the Tribunal to request this. The EP's wishes should be considered here, as they may or may not wish to be in attendance for parts of the tribunal that they are not directly contributing to.

### Best Practice Timeline for tribunal work:

- Within **three working days** of the local authority receiving notification of a tribunal appeal, the local authority tribunals officer should notify the EP Team that:
  - A tribunal appeal has been made.
  - Which parts of the EHCP/Statement are being appealed.
  - What case is going to be made by the LA.
  - The date of the tribunal hearing



- Which witnesses will be required (and whether an EP will be required).
  - The contents of the tribunal bundle.
- As soon as possible, local authority tribunals officer should provide all witnesses with the dates, times, and location of the tribunal.
- Within **one week**, the EP Team should have been provided with an outline of the case summary by the tribunal officer.
- Within **two weeks** of the notification to appeal, the tribunals officer should facilitate a planning meeting to:
  - Discuss the appeal.
  - Outline which parts of the EHCP/Statement are being appealed.
  - Agree which witnesses will be required.
- **At regular intervals**, pre-tribunal meetings should be held to discuss the progress of the case.
- **At least one week before the hearing:** a pre-tribunal meeting should be held for all witnesses. The tribunals officer should also send the current version of the tribunal bundle to each witness. The LA's legal counsel should be present at this meeting to provide advice and guidance.
- **On the day of the tribunal:** a pre-meeting should be held with the LA's legal counsel.
- **On the day of the tribunal:** When being held online, a secure online meeting space should be available for discussion. Were held in person, discussions should take place within a private room. Witnesses should bring their own refreshments.
- **After the tribunal:** witnesses should be offered a debriefing, acknowledgement of their contribution and a well-being check-in by their line manager. The tribunal officer should notify all witnesses of the outcome of the tribunal. If you are in private practice, you may wish to seek additional support and guidance via your supervision arrangements.

If you need any further support regarding your involvement in a tribunal, you can either seek guidance from your employer (if you have one) or the AEP at [enquiries@aep.org.uk](mailto:enquiries@aep.org.uk)



## Version 2: EPs practicing in Wales

The Education Tribunal for Wales (ETW) is an independent court to which parents and young people can appeal against local authority decisions relating to Additional Learning Needs and Education Tribunal (ALNET) Act (Wales) 2018. It can rule on the following issues:

A decision by a further education institution or a local authority about whether a child or young person has additional learning needs (ALN)
In the case of a young person, a decision by a local authority about whether it is necessary to prepare and maintain an individual development plan (IDP)
The description of a person's ALN in an IDP (including planned start, review, and end dates)
The additional learning provision (ALP) in an IDP, or the fact that the ALP required is not in an IDP
Whether an IDP says that ALP should be provided in Welsh
The school or institution, or board and lodging, mentioned in an IDP for the purpose of meeting the child's reasonable needs for ALP
The school named in an IDP for admission, or if no school is named in an IDP for admission
A decision by the local authority not to change an IDP when a child, child's parent, or young person has asked the local authority to reconsider an IDP maintained by a maintained school
A decision by the local authority not to take over responsibility for an IDP, which a school maintains, when the child or their parent, a young person, or the governing body of that school has asked the local authority to maintain it instead
A decision to stop maintaining an IDP
A refusal to decide a matter because there is no change in needs, or no new information that materially affects the previous decision

There are additional regulations if the appeal is about a detained person (child or young person) available here: <https://educationtribunal.gov.wales/sites/educationtribunal/files/2021-08/ETW02-appeal-guidance.pdf> pages 4 and 5.

Educational Psychologists are often asked to be expert witnesses to support the decision making of the tribunal. They can be called upon by either the local authority or the family of the child or young person, or the young person themselves.

### General Guiding Principles for Educational Psychologists

- 1) Your role is to provide “full, frank and honest evidence” to the tribunal. Your advice should be “fair, impartial and independent” and should not be influenced by who



employs you or commissions your services (e.g. the local authority, a parent). Your role is to “identify the needs that are in the child’s interests” and you should not be influenced by “a party’s wishes, time constraints or lack of resources.”

- 2) You should prepare a witness statement or report in advance of the tribunal that addresses the specific questions the tribunal would like you to answer.
- 3) There may be questions you have been asked for which you cannot provide evidence. In these instances, you may wish to provide a hypothesis, based on your professional judgement. You may also wish to say that you are not able to offer an opinion due to a lack of evidence.
- 4) If the tribunal asks you a question that you feel is out of your realm of expertise, you should say that you are not able to offer an opinion on these grounds.
- 5) The tribunal may seek to direct the organisation you work for (e.g. the local authority) to gather further advice from an educational psychologist. The tribunal should not dictate the way in which this advice should be gathered (e.g. requesting a particular type of assessment). We are, however, aware that this is sometimes happening. If a tribunal does dictate the way in which advice is gathered and the LA or EP feel this is inappropriate, the LA can file an appeal to the tribunal to challenge this decision. It may be useful to suggest alternate methods of information gathering or ask the tribunal for specific questions they want answering instead.
- 6) Depending on prior involvement, an EP may not need to complete a new assessment or write a full report in preparation for the tribunal. If a report has been recently written and contains appropriate and up-to-date information, this could be submitted as evidence.

### **General Guiding Principles for Commissioning Organisations**

- 1) If an EP is considered to be best placed to attend as a witness, organisations should consider how tribunal work is distributed equitably amongst EPs.
- 2) Organisations should consider how EPs are notified of tribunal work. We suggest that all tribunal invites should be sent to the PEP or deputy, who determines if an EP should be involved and then allocates the work to main-grade EPs as appropriate.
- 3) EP prior commitments (e.g. annual leave) should be taken into account when arranging the tribunal date.
- 4) Organisations should provide EPs with an appropriate timeframe for which to complete an assessment and report. The LA case statement is required to be submitted 4 weeks from the date the appellants appeal is received by the Tribunal. However, if there has been no prior EP involvement and an EP assessment is required the LA may wish to apply to the Tribunal for an extension to the time period.
- 5) Organisations, in liaison with the PEP or deputy and the EP witness, should consider whether the EP needs to be in attendance for the full tribunal, or just for relevant parts and make suitable representations to the Tribunal to request this.



### Best Practice Timeline for tribunal work:

- Within **three working days** of the local authority receiving notification of a tribunal appeal, the local authority tribunal officer should notify the EP Team that:
  - A tribunal appeal has been made.
  - What is being appealed.
  - What case is going to be made.
  - The approximate date of the appeal.
  - Which witnesses will be required (and whether an EP will be required).
  - The content of the appeal application and/or the appellants ground for appeal.
- Within **one week**, the EP Team should have been provided with an outline of the case summary by the tribunal officer.
- Within **two weeks** of the notification to appeal, the tribunals officer should facilitate a planning meeting to:
  - Discuss the appeal.
  - Outline what is being appealed or which parts of the IDP are being appealed.
  - Agree which witnesses will be required.
- **At regular intervals**, pre-tribunal meetings should be held to discuss the progress of the case.
- **One week before the hearing**, a pre-tribunal meeting should be held for all witnesses. The tribunal officer should also send the tribunal bundle to each witness. Tribunal witnesses should provide all witnesses with the dates, times and location of the tribunal.
- **During the tribunal**, parties will be given opportunities for private discussions.
- **After the tribunal**, the tribunal officer should notify all witnesses of the outcome of the tribunal. Witnesses should be offered a debriefing, acknowledgement of their contribution and a well-being check-in by their line manager. If you are in private practice, you may wish to seek additional support and guidance via your supervision arrangements.

If you need any further support regarding your involvement in a tribunal you can either seek guidance from your employer (if you have one) or the AEP at [enquiries@aep.org.uk](mailto:enquiries@aep.org.uk)