SENlegal NEWSLETTER

Parent's Newsletter Edition 16

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SEND Tribunal Hearing update

- User Group Meeting

By James Brown, Solicitor

As many of our readers will have seen online, parental appeals which are currently being submitted to the SEND Tribunal are being returned with hearing dates in September 2023. At the time of writing, the most recent listing we have received is 18th September 2023, with the date for serving all of the evidence in the appeal listed for August 2023. The Tribunal are currently operating a 50-week timetable.

Understandably, this is causing extreme concern for parents and users of the Tribunal alike. How can it be just for a parent to have to wait nearly 12 months for their Appeal to be heard to resolve disputes concerning their child's education? The simple answer is that it is not. However, the Tribunal is clearly struggling to cope with the demand for hearing dates which is increasing to over 13,000 appeals a year, with limited Judges and Panel members available to hear the appeals, but the situation is unacceptable.

A further concerning point is what will happen for parents who are left with a dispute when it comes to phase transfer next year. If hearing dates are being listed for September 2023 now, where will they be when these issues arise next year?

Fresh from the User Group meeting held on 13th October 2022, the Tribunal have confirmed there are dates available in April, May, June and July for these Appeals to be heard. Therefore, this should, 'in theory', resolve the issues with phase transfer dates. It has also been confirmed if all of these dates are not taken up, the Tribunal will bring other appeals forward. A slight relief for many, but it still leaves lots of families facing considerable delay.

What can be done about this?

Two obvious answers spring to mind – 1) Local Authorities stop making absurd decisions in the first place and reduce demand. 2) The Tribunal return to shorter timetables and list cases sooner. Both unlikely to happen anytime soon, especially point 1.

However, we have set out some useful practical points on the next page which may assist you when having to navigate these delays.

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1 - If you are awaiting a decision from your Local Authority to obtain your right of Appeal to the SEND Tribunal, you must obtain this as soon as possible so you can get your Appeal in to the Tribunal. There are no signs at this time the Tribunal will be listing hearing dates anytime sooner, particularly if you are not a phase transfer case, so you must act with speed. A Pre-Action Protocol Letter will resolve this if the LA have missed the deadlines. (please see newsletter from February 2021 with further advice on this).

2 - You must ensure your phase transfer review meetings are being held now if they have not already been done so. If your phase transfer review has not been held already or is not due to be held in the coming weeks, it is very likely your Local Authority will miss the phase transfer deadlines (please see our November 2020 newsletter for advice on phase transfers reviews).

3 - We understand the Tribunal are listing cases in what they deem priority order. Priority at the Tribunal will include children who will be without an educational placement whilst the Appeal is ongoing. Parents can make a request to the Tribunal via a Request for Changes to bring the hearing date forward setting out the reasoning as to why the case is urgent and a priority. The Tribunal has confirmed these hearings will be heard earlier.

4 - Tribunal hearings that are being requested to be considered on the papers only are being considered sooner than those that a require a live hearing. With a paper hearing you will not attend the Tribunal and a decision will be made by the Tribunal on the papers within the Bundle alone. Whether it is advisable to proceed with a paper hearing needs to be considered very carefully and you should take advice in respect of this. However, it is an option to consider.

5 - If your child is to be out of education for some time whilst the appeal is ongoing and the Local Authority are not offering any support, they may be falling short of their duties under **Section 19** of the **Education Act 1996**. If your child is unable to attend school due to exclusion, mental health difficulties or other reasons, the Local Authority have a duty to provide a suitable alternative education. You can enforce this right.

If you need assistance or advice on any of these issues, please do get in touch.

"To thine own self be true"

- the plight of a Non-Maintained Special School

By Richard Nettleton, Solicitor

Every month, almost without fail, we seem to come across the same issue regarding either a Local Authority's understanding of what a Non-Maintained Special School is, or the school itself not understanding how its status interacts with being named in an EHCP.

While Non-Maintained Special Schools are different in terms of funding, fees, and taxable status, in terms of being named in an EHCP by a Local Authority they are no different to Maintained Schools, Academies etc.

What seems to generate confusion is claims that the school is an Independent School, or a Non-Maintained Special School is a type of Independent School and therefore to be named inside an EHCP, an offer of place must be made first before the Local Authority or SEND Tribunal can name the school.

This is incorrect and is confirmed by **Section 38** of the **Children and Families Act 2014.** Once a school (whose type is included on the list contained within this section) has been consulted, the decision rests with the Local Authority regarding the naming of the school in the final EHCP.

If the Non-Maintained Special School in question is named in **Section I**, the duty under **Section 43** of the **Children and Families Act 2014** applies. The only way a Non-Maintained Special School is able to prevent attendance when they disagree with the Local Authority's or SEND Tribunal's decision is either through complaint to the Department for Education or launching Judicial Review proceedings.

If there is any doubt in a situation like this, a check on www.get-information-schools.service.gov.uk will provide the answer sought regarding the type of school in question.

In summary, if you are informed that a Non-Maintained Special School must offer a placement before it can be named by your Local Authority or the SEND Tribunal in Section I of the EHCP, do not believe everything you are told!

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Sectioning and Care & Treatment plans

By Melinda Nettleton, Principal Solicitor

A frequent question we are asked by parents and professionals alike, is what the lawful basis of sectioning under the Mental Health Act and what rights for support are there after this has been decided.

Engagement with **The Mental Health Act (MHA)1983** can occur through **Section 2** of the **MHA** (known as being sectioned) involving compulsory admission to hospital for assessment and (possibly) medical treatment in the interests of your own health and safety or the protection of others. **Section 2** is on the recommendation of two doctors and lasts for a maximum of up to 28 days.

This can be converted to a **Section 3 MHA** compulsory admission for treatment. This lasts for a period of up to six months, but can be renewed for further periods of detention.

After a **Section 3** detention, a **Section 117 MHA** Care and Treatment Plan providing free after care services should follow. It doesn't always, and you may need to take action to get one.

Under **Section 3**, there is an entitlement to free after care services, including:

- Health care.
- Social care and employment services
- Supported accommodation.
- Services to meet cultural and spiritual needs.
- Specialist accommodation.
- Accommodation.

Section 117 (6) provides that *"after care services"* means:

(a) Meeting a need arising from or related to the person's mental disorder.
(b) Reducing the risk of deterioration of the persons mental condition (and accordingly, reducing the risk of the person requiring emission to hospital again for treatment for mental disorder).

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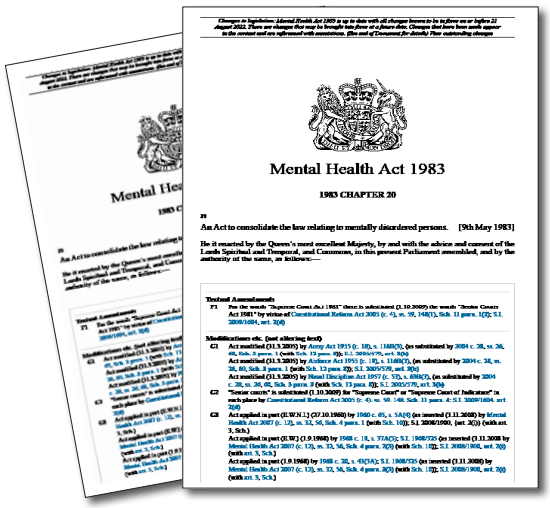
Mental Health Act 1983

1983 CHAPTER 20

An Act to consolidate the law relating to mentally disordered persons. [9th May 1983]

Click here to read The Mental Health Act 1983

Section 117 is designed to prevent a revolving door of discharge and readmission. Unfortunately, **Section 117** Care and Treatment Plans are not always provided when they should be, and if they are not, action needs to be taken, to prevent the "revolving door" situation arising.

The **Section 117** Care and Treatment plan is supposed to cover eight areas and there is a separate section setting out:

- Services, date when they will be provided.
- Who is responsible for the delivery.

The eight areas are:

(i.) Finance and money.
(ii.) Accommodation.
(iii.) Personal care and physical wellbeing.
(iv.) Education and training.
(v.) Work and occupation.
(vi.) Parenting or caring relationships.
(vii.) Social, cultural, and spiritual.
(viii.) Medical and other forms of treatment.

Whilst there should be a care co-ordinator, when going to a Planning and Discharge meeting think about each heading. Consider what is needed and ask what provision is being putting in to address each area. It is needs and provision just like the old **Section 2 & 3** of a Statement of Special Educational Needs and **B & F** of an EHC Plan.

The young person will not be entitled to anything if it doesn't go into the services section. The date on which it is going to be provided needs to be included so that you are then in a position to challenge it either by Judicial Review or through Complaints Procedures or the Health Service Ombudsmen. There is a Code of Practice with after care planning in chapters 33 & 34. Hospitals are obliged to follow the code unless there in good reason to depart from it. **R v Islington LBC Ex Parte Rixon 1997 ELR 66, 1996 3 WLUK 251**. If Judicial Review is the chosen option, and with expedition that can be very fast, it has to be started within three months of the discharge because there is a strict time limit.

If you require any further advice on these points, please do get in touch.

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