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## Consultation Document

# The draft Special Educational Needs Tribunal for Wales Regulations 2011



Date of issue: **6 July 2011**

Action required: Responses by **12 August 2011**

# The draft Special Educational Needs Tribunal for Wales Regulations 2011

- Overview** This consultation document seeks views on draft Regulations which set out procedures relating to special educational needs (SEN) appeals and claims of disability discrimination in education made to the Special Educational Needs Tribunal for Wales.
- These draft Regulations consolidate and overhaul the existing four sets of regulations that apply to SEN appeals and claims of disability discrimination into one comprehensive and user-friendly piece of legislation.
- How to respond** The consultation response form is available for completion at [www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations)
- Responses to this consultation should be e-mailed/posted to the address below to arrive by **12 August 2011** at the latest.
- Further information and related documents** Large print, Braille and alternate language versions of this document are available on request.
- Useful links:  
*Education (Wales) Measure 2009*  
[www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-ed.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-ed.htm)
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## **Data protection**

### **How the views and information you give us will be used.**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## **The draft Special Educational Needs Tribunal For Wales Regulations 2011-06-30**

### **What are the main issues?**

1. These draft Regulations consolidate and overhaul the existing four sets of regulations that apply to SEN appeals and claims of disability discrimination.
2. They set out the procedure to be followed by a person when making a SEN appeal or a claim of disability discrimination in education to the Tribunal. They also set out the procedure governing the proceedings for determining a SEN appeal or a claim of disability discrimination and the procedure relating to compliance with orders of the Tribunal.
3. The Secretary of State for Justice's consent is required to make provision in the draft Regulations relating to the constitution of the Tribunal, members of the Tribunal panel and compliance with Tribunal Orders. Welsh Ministers are seeking consent.
4. The draft Regulations will give effect to the Education (Wales) Measure 2009 by enabling children in specified pilot areas to make an SEN appeal or claim of disability discrimination to the Tribunal themselves<sup>1</sup>. The Education (Wales) Measure 2009 can be found at: <http://www.legislation.gov.uk/mwa/2009/5/contents>.
5. In addition, the opportunity has been taken to improve the structure of the legislation and recast it in more "plain English" terms to improve its user-friendliness.

### **Where are we now?**

6. The Special Educational Needs Tribunal for Wales is an independent statutory Tribunal set up in 2003. It is funded by the Welsh Government but is independent of both the Welsh government and local authorities. The Tribunal has jurisdiction to hear and decide appeals against certain decisions made by local authorities in Wales. Appeals are currently made by parents whose children have SEN and relate to decisions concerning their children's education. The Tribunal is also responsible for dealing with claims of disability discrimination against schools in Wales.
7. The Tribunal's current regulations are:
  - The Special Educational Needs Tribunal Regulations 2001, Statutory Instrument 2001, No. 600.
  - The Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, Statutory Instrument 2001, No 3982.

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<sup>1</sup> Section 17 of the Education (Wales) Measure 2009 enables the Welsh Ministers to make Regulations to pilot the provisions of the Measure in specified areas.

- The Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002, Statutory Instrument 2002, No 1985.
- The Special Educational Needs Tribunal (Amendment) Regulations 2002, Statutory Instrument 2002, No 2787.

8. These Regulations set out the procedures to follow when parents make SEN appeals and claims of disability discrimination.

9. The grounds of appeal under the Education Act 1996 are that a local authority:

- Will not carry out a formal assessment of a child's SEN.
- Refuses to issue a statement of a child's SEN.

10. Or, where a statement has been issued or changed, appeals may be made against:

- The needs identified within a statement, and the special help designed to meet those needs (parts 2 and 3 of the statement).
- The name of the school where the child will be placed (part 4 of the statement).
- The local authority's decision not to name a school.
- The local authority's refusal to change the school named within a statement, where that statement is at least one year old.
- A refusal by a local authority to reassess needs where a new assessment has not taken place within the preceding six months.
- The local authority's decision to cancel a statement.
- The local authority's decision not to amend a statement following a reassessment.

11. The grounds of claim under the Equality Act 2010 are that:

- An independent school has discriminated against a pupil in the arrangements it makes for deciding who is offered admission; or as to the terms on which it offers to admit the person as a pupil; or by not admitting the person as a pupil; or by imposing a fixed-term or permanent exclusion from the school.
- A maintained school has discriminated against a pupil by imposing a fixed-term exclusion from the school.
- A school has discriminated against a pupil in the way it provides education for the pupil; or by not providing education for the pupil; or in the way it affords the pupil access to a benefit facility or service; or by not affording the pupil access to a benefit, facility or service; or by subjecting the pupil to any other detriment.

The provision of education and access to a benefit, facility or service covers all education, benefits, facilities or services that a school provides or offers to provide to pupils. It includes the teaching provided at the school, and also what happens during break-times and activities such as school clubs, orchestras, plays and trips or visits.

12. On 9 December 2009 the Education (Wales) Measure 2009 (“the Measure”) received Royal Approval. The Measure built on the United Nations Convention on the Rights of the Child and the Welsh Government’s Seven Core Aims in extending children’s entitlement by providing them with a parity of rights with those their parents currently possess to make SEN appeals and claims of disability discrimination to the Tribunal.

13. The Measure:

- Gives children<sup>2</sup> the right to make an appeal or claim themselves to the Tribunal.
- Requires local authorities to inform children of their appeal rights.
- Places a new duty on local authorities to make arrangements for, and inform children about access rights to both Partnership and Disagreement Resolution Services.
- Places a new duty on local authorities to provide access to independent advocacy services that can listen to and give voice to children’s views and concerns. Advocates will be expected to assist children in resolution processes, appeal/claim case preparation and support or representation at hearings.
- Provides for an initial legislative pilot and evaluation phase during which children in specified areas will be able to make appeals and claims to the Tribunal themselves and also enable the Tribunal to register and hear such appeals/claims.

14. In addition, the Measure enables the Welsh Ministers to pilot and evaluate the new rights given to children. The purpose of the pilot is, in part, to tease out the intricacies around the new duties imposed on local authorities and to develop and disseminate good practice. The intention is that 2 local authorities will pilot the new rights/duties and that at the end of the pilot and evaluation period, the new rights/duties imposed by the Measure will be implemented across the whole of Wales. Children in a specified pilot area will have the same rights that their parents currently enjoy to make SEN appeals and claims of disability discrimination to the Tribunal.

15. The Measure amends Part 4 of the Education Act 1996 and Part 4 of the Disability Discrimination Act 1995. On 1 October 2010 the Equality Act 2010 Act repealed Part 4 of the Disability Discrimination Act 1995 and as a consequence the disability discrimination provisions in the Measure were also repealed on that date.

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<sup>2</sup> Section 19(1) of the Education (Wales) Measure 2009 defines a child as “any person who has not attained the age of 19 and is a registered pupil at a school”

16. To enable the aim of the Measure to be achieved for disabled children the Welsh Ministers propose to lay an order under Section 20 of the Measure before the National Assembly of Wales. The order will give children the same disability discrimination rights as parents under the Equality Act 2010.

### **Why are we proposing change?**

17. Changes to the Tribunal's procedures are being made to improve the service provided. The changes arise from recommendations of the Tribunal's Users Group, suggestions offered by the Tribunal's President to help make the system run more smoothly and from provisions in the Education (Wales) Measure 2009.

18. Changes include the following:

- The procedure regulations are recast so that they follow a more logical structure and are expressed in "plain English" terms.
- The creation of an overriding objective.
- If before expiry of the two month time period for commencing an appeal, the dispute is referred for dispute resolution, the time period for commencing an appeal is extended by three months.
- In an appeal, both the parent and the local authority must state the views of the child or provide an explanation of why such views have not been obtained.
- The President and the tribunal panel will have the power to issue witness summonses of the President's and the tribunal panel's own initiative.
- The president of the Tribunal may issue practice directions to ensure parties adopt a consistent approach towards procedural issues.
- On receiving an application for permission to appeal, the President and the Chair will have the opportunity to consider whether or not to review the Tribunal's decision.
- Children in specified pilot areas will be able to make appeals or claims to the Tribunal themselves.
- A person known as a case friend may exercise the child's right to make an appeal or a claim to the Tribunal.
- Representatives may incur costs on account of their own conduct.
- The procedure for onward appeals to the Upper Tribunal is aligned.

19. Key changes to the procedures are summarised overleaf.

**Part A contains general provisions and also makes provision in relation to the Tribunal's constitution.**

### **Interpretation (regulation 2)**

#### **Members of the "Education Panel"**

20. The panel formerly called the lay panel, is recast as the "education panel" to more accurately reflect the status of panel members as persons with recent knowledge and experience of SEN and/or disability.

21. Currently, the terms "parent", "local authority" and "responsible body" are used to describe the parties to a SEN appeal or claim. This terminology needs to be revised to take account of the new right given to children under the Education (Wales) Measure 2009 to make a SEN appeal or claim to the Tribunal themselves. The terms "appellant" and "claimant" are now used to refer to a person who makes an appeal or claim. This avoids the necessity of repeatedly referring in the Regulations to the parent, child or both.

#### **Appeals and claims registered before these Regulations come into force (regulation 3)**

22. The existing Tribunal regulations will continue to apply to SEN appeals or claims of disability discrimination registered before the date that these Regulations come into force. The only exception will be for any cases that are pre-registered before the date that these regulations come into force with a letter requesting further information. In these cases, if all of the required information is received on or after that date, the appeal or claim will proceed in accordance with the provisions made in these draft Regulations.

#### **Transitional provisions (regulation 5)**

23. If an appeal or claim made by a parent is registered by the Tribunal before date that these regulations come into force and the child subsequently makes an appeal or claim on or after that date in relation to the same disputed issue and on the same grounds as the parent, the President or the Chair may consolidate the appeals or claims or consolidate an appeal together with a claim.

#### **The Overriding Objective (regulation 6)**

24. This provision underpins the ethos of co-operation expected by parties to the appeal/claim process. It enables the President and the tribunal panel **with the assistance of the parties**, to deal with appeals and claims fairly and justly, allowing sufficient flexibility for the President and the tribunal panel to ensure that the aim can be met. This is fundamental in ensuring that children and young people are central to the case.

25. Dealing with a case fairly and justly includes dealing proportionately to the complexity of the issues, seeking informality in the proceedings, ensuring so far as is practicable, that the parties are able to participate fully and equally in the



proceedings, including assisting any party in the presentation of any appeal or claim, without advocating the course the party should take and avoiding preventable delay.

26. The President and the tribunal panel are required to give effect to the overriding objective when exercising any power or interpreting any regulation under these Regulations.

### **Parties' obligation to co-operate (regulation 7)**

27. Parties are obliged to co-operate in giving documents or information to each other to enable each party to prepare a case statement and also to co-operate with the Tribunal. A party should not obstruct another from preparing its own case or from complying with directions set by the President or the tribunal panel. Failure to comply with these requirements could result in the appeal or claim being struck out where the party in default is the parent or the child, or the case statement and written evidence being struck out where the party in default is the local authority or responsible body.

### **Alternative Dispute Resolution (regulation 8)**

28. The President and the tribunal panel may draw the parties' attention to the availability of any appropriate alternative dispute resolution procedure and to suspend the appeal or claim if the parties agree to use the alternative dispute resolution procedure.

**Part B makes provision about commencing proceedings, case preparation, hearings, Tribunal decisions, reviews and appeals against Tribunal decisions. It also makes provision about Tribunal orders – in particular, the time limits within which local authorities must comply with such orders and the time limits within local authorities must take specified action following their concession of certain appeals to the Tribunal.**

### **Extension for mediation (regulation 12)**

29. A person will have an extension to their appeal period in line with that open to a person who makes a claim of disability discrimination should they enter into mediation before the end of the two month period within which proceedings before the Tribunal must be commenced. This will allow persons using mediation a three-month extension to the window within which an appeal may be made.

30. Persons can either use the disagreement resolution service funded by (but independent of) the local authority, or the conciliation service through the Equalities Mediation Service which is funded by (but independent of) the Equality and Human Rights Commission, to resolve disputes about discrimination.

### **Making an appeal or claim (regulations 13 and 14)**

31. Changes are made to the information to be required in or with an appeal or claim application. The appeal or claim application must:

- State the names and addresses of **all** persons who have parental responsibility for the child or have care of the child.

- Be accompanied by confirmation that the person has notified all persons with parental responsibility for the child or have care of the child, that the person proposes to submit an appeal or claim to the Tribunal. (There is currently no requirement for a person satisfying the test of parenthood to inform any other parent that an appeal or claim has been made. This provision rectifies the position).
- State the steps, if any, taken to resolve the dispute.

32. In the case of an appeal application it must, where the name of a school is named in Part 4 of the statement, include written confirmation that the person has notified the head teacher of the school and either the local authority (if the local authority maintains the school) or the proprietor of the school (if the school is an independent school) that the person intends to name the school in the statement. Giving notice to the school and local authority, or the proprietor of the school will enable them to make representations at an early stage.

33. The appeal application may also include a copy of the child's statement, any documents attached to or forming part of that statement and if available, a copy of the latest review of the child's statement.

34. In the case of a claim application it may, if available, include evidence of a medical or other professional diagnosis relating to the child's disability.

#### **Case statement (regulation 21(2))**

35. The current requirement is for only local authorities, to provide in their case statement the views of the child concerning the issues raised by the appeal or the reasons why the authority has not obtained those views. To achieve a balanced view, parents and local authorities will now be required to state the views of the child in their case statement or confirm reasons why those views have not been ascertained. Where an appeal is made by the child the parent and local authority may, but will not be obliged to, present the views of the child.

#### **Amendment of appeal application, supplementary statement of reasons for the appeal or supplementary case statement (regulation 21(3))**

36. The current Regulations give the Tribunal the power to permit a parent to amend an appeal notice, or a supplementary statement of reasons for the appeal, or a supplementary case statement in "exceptional circumstances".

37. The "exceptional circumstances" bar is considered too high so does not appear in the draft Regulations. The President or Chair may grant permission to amend such documents at any time. It is hoped that this will allow for a greater consistency of approach and also cater for late negotiations resulting in reduced numbers of appeal hearings.

#### **Observer (regulation 26(a)(vi))**

38. Parties will be able to name an "observer" to attend the hearing. An observer is a person who may attend a hearing to observe the hearing but who must not

participate in the hearing, or make any notes of the hearing or make any recording of the hearing.

### **Voice of the Child (regulation 26(a)(vii))**

39. The parties will be able to name a person whose sole function during the hearing is to give voice to the child. For example, if the child could not attend the hearing or would have difficulties in expressing their views then this person could convey the child's views and wishes. The weight given to any such views and wishes will be a matter for the President or the tribunal panel to determine.

40. This role is not to be mistaken for a case friend (Regulations 63 -68). The role of the case friend is to help the child bring forward the appeal or claim, but they might not necessarily represent the child. Similarly, the independent advocate (provided under arrangements made by the local authority) might not always represent the child.

### **Failure to respond to enquiries (regulation 27)**

41. Failure to comply with enquiries of the Tribunal may where the party in default is the appellant or the claimant, lead to the appeal or claim being struck out, or where the party in default is the local authority or the responsible body, to an order preventing them from taking any further steps in the proceedings or from attending the hearing.

### **Practice directions (regulation 28)**

42. The President will have the power to make practice directions about the procedures of the Tribunal. The President will be able to make practice directions, vary or revoke practice directions; and make different provision in practice directions for different cases including different provision for specific types of proceedings. These practice directions must be published. Parties will be expected to comply with any practice directions issued by the President.

### **Power to strike out the appeal or claim (regulation 29)**

4.3 The grounds on which an appeal or claim may be struck out have changed. The President or Chair will now be able to strike out an appeal or claim if, after considering any representations made, the President or the Chair is satisfied that the appeal or the claim:

- Is made otherwise than in accordance with these Regulations.
- Is not, or is no longer, within the jurisdiction of the Tribunal.
- Discloses no reasonable grounds.
- Is an abuse of the Tribunal's process.

### **Evidence and submissions (regulation 31)**

44. The President or the tribunal panel will have the power to direct the parent of the child, or any other person with parental responsibility for the child or care of the child or, to make the child available for examination or assessment and for the school to allow a named person to have access to the school for the purpose of assessing the child or the provision to be made for the child.

45. A party's failure to comply with such a direction, in the absence of any good reason, may be considered a failure to co-operate with the President and the tribunal panel which could result in the appeal or claim being struck out where the party in default is the appellant or claimant, or the case statement and written evidence being struck out where the party in default is the local authority or responsible body.

### **Addition and substitution of parties (regulation 39)**

46. The President and the tribunal panel will be able to join a person as a party to the proceedings and substitute a party if the wrong person is named or the substitution becomes necessary because of a change in circumstances since the start of the proceedings.

### **Time and place of hearing (regulation 41)**

47. Whilst parties provide their availability for attending a hearing this has not been without difficulty and delay. Equally, late withdrawal of availability following the fixture of a date is unhelpful and can appear vexatious.

48. Provision is made so that once fixed, the date of a hearing will not be changed without the express permission of the President or Chair. If a party fails to provide details of their availability in response to the Secretary's enquiries, the date will be set without further consultation.

### **Public hearings (regulation 43)**

49. The default position is that hearings will be in private unless the parties agree to a public hearing and the President or the tribunal panel is satisfied that a public hearing would not prejudice the welfare or interest of the child and allow for the fair hearing of the appeal or claim.

50. Subject to any exclusion order made by the President or the tribunal panel, a case friend will be entitled to attend a hearing as will any person named by a party, in response to an enquiry made by the Secretary of the Tribunal, whose role is to communicate the views and wishes of the child.

51. The President and the tribunal panel will have the power to exclude from a hearing or any part of it, any person (which includes a party or representative) whose conduct has or is likely to disrupt the hearing, or any person whose presence has made or is likely to make it difficult for a person to give evidence or make representations.

### **Restricted reporting orders (regulation 44)**

52. The President and the tribunal panel will be able to limit or prohibit the publishing of any matter that is likely to identify the parent, child or any other person connected to the proceedings.

### **Change of witness (Regulation 47)**

53. A party will be able to change any person named as witness if written notice is received by the Secretary to the Tribunal and the other party at least 5 working days before the hearing. Late applications will be determined by the President before the hearing or, if not practicable, by the tribunal at the hearing).

### **Tribunal's power to call witnesses of own volition (regulation 48)**

54. The President and the tribunal panel will have the power to call any person to attend as a witness at a hearing.

### **Evidence by telephone, video link or other means (regulation 49)**

55. The President and the tribunal panel will have the power to allow a witness to give evidence by telephone, through a video link or by any other means of communication.

### **Applications for postponement (regulation 51)**

56. There is currently no provision within the current Regulations for dealing with requests for postponement of hearings. These draft Regulations change that position so that hearing dates once fixed must not be postponed other than in exceptional circumstances. In addition, an application for postponement must be made in writing to the Tribunal **and** served on the other party, at least five working days before the hearing.

### **Review of Tribunal's decision (regulation 56)**

57. The mechanism and processes for dealing with applications for review following a Tribunal decision (i.e. after a hearing) have changed so that:

- A party may seek a review on the grounds that there was an 'obvious and material error' in the decision.
- An application for a review must be received by the Tribunal within 28 days of the date on which the decision was sent to the parties.
- The Chair of the tribunal panel will have the power to determine an application or propose a review and issue directions.
- The Tribunal may give permission for a party to change a witness for the purpose of any review hearing.

### **Review of Tribunal's decision not to extend the period in which proceedings must be commenced (regulation 57)**

58. The current Regulations do not enable a local authority or a responsible body to make representations against a parent's application for a review of the Tribunal's decision not to extend the time period for submitting an appeal or claim. The draft Regulations address this issue.

### **Onward claims to the Upper Tribunal (regulation 58)**

59. Legislation providing for onward appeals to the Upper Tribunal instead of the High Court came into force in November 2008. The existing Regulations under which the Tribunal currently operates do not align with provisions for onward appeals. These Regulations correct this anomaly.

### **Tribunal's consideration of application for permission to appeal to the Upper Tribunal (regulation 59)**

60. On receiving an application for permission to appeal, the President or the Chair will have the opportunity to consider whether or not to review the President's or the tribunal panels decision. The process will work as follows:

- A party makes an application for permission to appeal to the Upper Tribunal containing all relevant grounds and asserting why the decision is flawed.
- The President or the Chair firstly decides whether to review the decision based on the reasons for appeal and goes ahead with the review if the President or the Chair decides to do so.
- If the President or the Chair makes any changes on review, that is the end of the process, although the new decision can be the subject of a separate appeal and the time to apply for permission to appeal that decision would then start again.
- If the President or the Chair does not consider a review appropriate, or does carry out a review but does not alter the decision on review, the President or the Chair must then consider whether to give permission to appeal.
- Where the President or the Chair does not give permission to appeal, an applicant may seek leave to appeal to the Upper Tribunal.

61. The President and the Chair will have the power to suspend the effects of the tribunal panel's decision pending the President's or the Chair's determination (or that of the Upper Tribunal) of an application for permission to appeal against, and any appeal or review of, the tribunal panel's decision.

## **Compliance with tribunal panel orders – appeals (regulation 61)**

62. Currently, the time periods for local authority compliance with tribunal panel orders are variable dependent on the order. For consistency and clarification, it is felt that these time periods should be equalised as much as possible.

63. These provisions replicate those in current Regulations and in addition:

- Extend the time period for a local authority to comply with an order to make an assessment from 4 to 5 weeks.
- Make provision for a local authority to comply with an order to substitute the name of the school in the child's statement **and** amend another element of the statement, within 5 weeks.

## **Compliance with appellant's request when a local authority concedes an appeal (regulation 62)**

65. These provisions replicate the provisions in current Regulations and in addition:

- Extend the time period in the case of an appeal under sections 328, 329 or 329A of the Education Act 1996, for a local authority to make an assessment from 4 to 5 weeks.

## **Part C sets out the procedure to be followed and the requirements that must be met for a person to act as the child's case friend.**

### **Case friends (regulations 63 – 68)**

66. The provisions in part C of the draft Regulations apply only to appellants or claimants who are children.

67. A child may make an appeal or claim to the Tribunal without a case friend. A child may also conduct proceedings before the Tribunal without a case friend unless the Tribunal decides that the child does not have sufficient understanding to participate or continue to participate as a party to the proceedings without a case friend. A case friend is a person who may make an appeal or claim to, and conduct proceedings before, the Tribunal on behalf of a child appellant or child claimant.

68. Any person may act as the child's case friend if they satisfy the requirements set out in the Regulations. A case friend could for example, be a parent, sibling, friend, advocate, teacher, SEN Coordinator, or, in the case of Looked After Children, a foster carer or social worker.

69. A person who wishes to act as a case friend must submit a declaration of suitability to the Tribunal. The declaration of suitability must, amongst other matters, include the following:

- The person's relationship or connection to the child.

- Confirmation that the person will make representations and exercise the child's rights fairly and competently; has no interest adverse to that of the child; will ensure that all steps and decisions taken are for the benefit of the child; and will take account of the child's views.
- The views of the child's parent in relation to the proposal to act as the child's case friend.

70. The person who wishes to act as the child's case friend must serve a copy of the declaration of suitability on the parties to the proceedings and the child's parent.

71. Whilst the Tribunal will **not** have any role in the appointment of a case friend, the President or the tribunal panel will have the power to remove a case friend in the following circumstances:

- The person is barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006 or the person has failed to comply with requirements under that Act.
- The person has failed to exercise the child's rights fairly and competently; has an interest adverse to that of the child; has failed to ensure that all steps and decisions taken are for the benefit of the child; or has failed to take account of the child's views.
- Other good reason exists.

**Part D contains miscellaneous provisions which apply to proceedings before the Tribunal.**

### **Costs (regulation 71)**

72. While the Tribunal does not normally award costs, it may make an order in respect of expenses and costs against a party if satisfied that the party is responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay that could have been avoided, or that's the party's conduct in making or resisting an appeal or claim was unreasonable.

73. The President or Chair may also award costs against a representative if satisfied that the representative is responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay that could have been avoided.

74. An application for an order for expenses and costs may be made at any time during the appeal, or within 28 days of either the date the Tribunal's decision which disposed of all the appeal or claim was issued, or the withdrawal or concession of the appeal/claim.

75. An application for costs can be dismissed by the President or Chair if satisfied that the application has no reasonable chance of success.



**Publication (regulation 76)**

76. The President may arrange for tribunal panel decisions to be published, and for such decisions to be published electronically, or in an edited form, or subject to any deletions, where the President considers it appropriate to do so.