1. Executive Summary

The responses to questions 1d, 1e, 2 - 4 appear below and have been completed in relation to our experience as a charity advising users, and as a user of, a Specialist Tribunal; the First-tier Tribunal (Special Educational Needs and Disability) (“the SEND Tribunal”).

For the reasons outlined below:-

- To the extent that we are able to understand the intended reforms to the SEND Tribunal we anticipate that they will have an overall negative effect on access to justice for SEND Tribunal users, those who are digitally excluded and those who require support to use digital services.

- Users of the SEND Tribunal are already experiencing delays in the administration and hearings of their appeals and claims due to the lack of HMCTS staff and venue availability. We anticipate that these delays will be further increased as additional venues are closed and the numbers of HMCTS staff reduced further.

- The lack of consultation by the Ministry of Justice and HMCTS to date with the advice sector and other relevant stakeholders of the intended reforms to the SEND Tribunal is likely to compound the anticipated negative effects of the reforms.

- In our view, the Ministry of Justice and HMCTS have not taken sufficient steps to evaluate the impact of the reforms implemented so far nor are we aware that they have made any commitment to evaluate this in future.

2. Introduction

IPSEA (Independent Parental Special Education Advice) is a charity established in 1983. We advise and support over 4,000 parents and carers of children with special educational needs (“SEN”) and/or a disability every year on the law and the appeal procedure in the First-tier Tribunal (Special Educational Needs and Disability) (“the SEND Tribunal”).

The SEND Tribunal hears disputes between parents and local authorities regarding educational, health and social care support1 (the “National Trial”) for children and young people with SEND and also claims of disability discrimination against schools.

We are submitting evidence as we believe the reforms will have a negative impact on our service users, the majority of which do not qualify for legal aid and face the SEND Tribunal without any legal representation.

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1 See https://www.sendpathfinder.co.uk/send-single-route-of-redress-national-trial for further information about the trial extending the powers of the First-tier Tribunal (SEND) to make non-binding recommendations about the health and social care aspects of Education, Health and Care (EHC) plans as part of a special educational appeal. The trial applies to local authority decisions made and EHC plans issued/amended from 3 April 2018 and runs for two years.
Our opinions are based on the evidence from parents and carers that we support and from our own experiences of the current SEND system.

3. The reforms

It is not yet apparent from HMCTS’s ‘Transforming Our Justice System’ (September 2016\(^2\)), its ‘Reform Update’ (May 2018\(^3\)) or its ‘Reform Programme Projects Explained’ (June 2018) precisely what reforms are intended for the SEND Tribunal beyond HMCTS’s global statements that:-

- all tribunal claims will be started on line;
- ‘suitable’ cases will be able to be managed through affordable and simple online services, specifically designed to meet user needs; and that
- they will be digital by default.

In its Reform Update, HMCTS states that:

**Specialist Tribunals:** This project will establish new ways of working across the specialist tribunals, developed on a tribunal-by-tribunal basis, but re-using elements of what has been developed for SSCS, IAC and others where that works to provide a good service quickly. Again, this has been planned for later in the programme to enable it to learn from the earlier projects, and it will start 2020\(^5\).

And in its Reform Programme Projects Explained:-

**…Specialist Tribunals**  
The project will establish new ways of working across the tribunals, developed on a tribunal-by-tribunal basis\(^6\).

4. Question 1

What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to:

a. civil justice?  
b. family justice?  
c. criminal justice?  
d. administrative justice, particularly as delivered by the tribunals system?  
e. those who are digitally excluded or require support to use digital services?

We provide a response to questions 4d and 4e below.

\(^3\)See the Reform Update at - [https://bit.ly/2SZakb0](https://bit.ly/2SZakb0)  
\(^5\)See HMCTS Reform Update  
\(^6\)See HMCTS reform, programme projects explained
4.1 What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to 1(d) administrative justice, particularly as delivered by the tribunals system?

Access to justice issues already exist within the current SEND Tribunal system and it is under further pressure mainly from:-

- the lack of hearing venues and the capacity of the current administrative staff; and
- a year on year increase in the appeals registered with the SEND Tribunal.

To meet increasing demand, the SEND Tribunal has in fact recruited additional Tribunal Judges and has access to additional administrative staff resource. It is not clear whether this additional resource will continue to be available once the Specialist Tribunal project is launched.

In addition, the Tribunal has already implemented a number of procedural reforms, as far as we are aware with little recourse or investigation into the effect of those reforms on users. For example:-

- appeals by parents/carers against a refusal by a local authority to conduct an educational health and social care needs assessments for their child or young person is automatically listed as a paper hearing; and

- it has imposed a limitation on the number of pages of evidence parents/carers can rely on at their hearing. The SEND Tribunal hasn’t produced any guide to assist parents or carers to assess what makes good evidence or how to decide what should be included but has produced a guide telling "local authorities how to prepare ‘hearing bundles’ for a SEND Tribunal appeal or claim."

Our view is that further procedural reforms will be made to aid efficiency but without the appropriate guidance for the users of the system; parents and carers. This is already the case with guidance and forms on the SEND tribunal website. Over a period of time, guidance has been removed and forms changed or updated without any consultation, communication or advance notice with stakeholders. If HMCTS is not able to communicate these basic changes effectively, we have grave concerns over its ability to communicate and implement effectively any proposed reforms.

4.2 What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to 1(e) those who are digitally excluded or require support to use digital services?

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7 For example (i) legal aid cuts following LASPO and (ii) the funding available to local authorities to meet the increased burden of dealing with National Trial cases (where the SEND Tribunal can also make recommendations in respect of health and social care). Local authorities can seek reimbursement of £4000 towards their increased costs. There is no increase in legal aid or support available to those parents facing a National Trial hearing who are not able to afford legal representation and who don’t qualify for legal aid.


9 See the SEND forms and updates – there are no explanatory notes provided - [https://bit.ly/2EP7vUY](https://bit.ly/2EP7vUY)
Unrepresented parents and carers make up the majority of users of the SEND Tribunal. They describe their experiences as stressful\(^\text{10}\) and very often seek advice and support from the charity sector. We have concerns that access to justice will be reduced if the SEND Tribunal moves online for all parents as well as those who are digitally excluded or require support to use digital services.

Whilst virtual hearings may assist some parent/carers who are unable to travel or whose local venue is too far away to attend a hearing and manage their work and family commitments, the parents and carers using the SEND Tribunal can also be vulnerable and suffer from learning difficulties themselves.

Many appeal hearings from the South of England are now being heard at the Royal Courts of Justice due to the lack of hearing venues. Tribunals are intended to provide ‘a simple, accessible system of justice where users can represent themselves’\(^\text{11}\). It is hard to imagine a more foreboding venue for parents and carers than the Royal Courts of Justice.

**Summary**

To the extent that we understand the intended reforms to the SEND Tribunal, we anticipate that they will have an overall negative effect on access to justice for SEND Tribunal users, those who are digitally excluded and those who require support to use digital services.

**5. Question 2**

5.1 What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented; and of reductions in HMCTS staffing under the reform programme?

This has been referred to above.

Parents and carers experience delays in the progression of their appeals explained to IPSEA in the Tribunal User Group meetings as a result of an insufficient number of Judges, staff and hearing venues.

The data from the SEND Tribunal suggests that demand is increasing. It is not clear whether the proposed reforms have been updated and/or viewed in light of the increased demand or whether any forecasting of future demand has been undertaken.

If the system cannot cope with the current demand with its existing resources it is difficult to comprehend how future cost cutting and venue closures will reverse the decrease in the quality of service and access to justice experienced by users.

5.2 For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

\(^{10}\) See [https://sossen.org.uk/information_sheets/SOSISENResearchReport18Feb14.pdf](https://sossen.org.uk/information_sheets/SOSISENResearchReport18Feb14.pdf)

It is difficult to answer this question without further information or details of the specific proposed reforms with regard to the SEND Tribunal.

In the first instance, it is difficult to understand the apparent analogy being made by HMCTS in the Reform Update between the “SSCS, IAC and others” and the SEND Tribunal.

We share the concerns articulated by Justice\(^\text{12}\) in their Report ‘Understanding Courts’ where they state that little research into video hearings has been undertaken and more should be conducted. However, current research shows that the use of video hearings can compound problems of effective understanding and participation in hearings and therefore affect access to justice of those participants.

**Summary**

Users of the SEND Tribunal are already experiencing delays in the administration and hearings of their appeals and claims due to the lack of HMCTS staff and venue availability. We anticipate that these delays will be further increased as additional venues are closed and the numbers of HMCTS staff reduced further.

**6. Question 3**

**Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with:**

- **Judicial office holders at all levels of seniority?**
- **The legal professions and the advice sector?**
- **Other relevant stakeholders?**

We do not believe the Ministry of Justice and HMCTS have consulted effectively on the reforms or maintained sufficient communication with (b) the legal professions and the advice sector or (c) other relevant stakeholders.

IPSEA has not been consulted.

There are numerous other charities and organisations involved in assisting and advising parents with appeals and claims to the SEND Tribunal including the SENDIASS\(^\text{13}\) service and the National Network of Parent Carer Forums\(^\text{14}\). These would be ideal organisations to consult regarding proposed reforms the SEND Tribunal. No information could be found on their websites regarding the proposed HMCTS reforms or any changes to the SEND Tribunal procedures.

IPSEA is a member of a number of interested policy groups in the SEND arena as well as attending local Tribunal User Groups. The issue of the reforms has not appeared as an agenda item at those meetings save for at the latest Tribunal User Group meeting there was an agenda item ‘Changes to the Tribunal Processes’ that reviewed the Bundle Guidance (referred to above) and the procedure to vacating listed hearings.

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\(^\text{12}\) See Justice – Understanding Courts – page 53
\(^\text{14}\) NNPCF – see [http://www.nnpcf.org.uk/](http://www.nnpcf.org.uk/)
If the Specialist Tribunals project is due to commence in 2020 we would have anticipated pro-active steps being taken to (i) alert all stakeholders of the intended reforms and (ii) meaningful consultations already taking place by HMCTS and the Ministry of Justice ahead of the intended start date for implementation.

**Summary**

The lack of consultation by the Ministry of Justice and HMCTS with the advice sector and other relevant stakeholders of the intended reforms to the SEND Tribunal to date are likely to compound the anticipated negative effects of the reforms.

7. **Question 4**

**Have the Ministry of Justice and HMCTS taken sufficient steps to evaluate the impact of reforms implemented so far, including those introduced as pilots; and have they made sufficient commitment to evaluation in future?**

IPSEA is not aware of any steps taken by the Ministry of Justice or HMCTS to evaluate the impact of the reforms they have implemented to date in the SEND Tribunal nor of any intention to do so in the future.

**Summary**

In our view, the Ministry of Justice and HMCTS have not taken sufficient steps to evaluate the impact of the reforms implemented so far nor are we aware that they have made any commitment to evaluate this in future.

**March 2019**