



COT/ BAOT Frequently Asked Questions - TRIBUNALS:

Last Update: August 2014

Lead Group: Practice

Country Relevance: England, Scotland, Wales, Northern Ireland

Q1. What are panel members looking for in the evidence presented?

A. The written evidence is the panel member's first contact with the information that has been provided. If an occupational therapists' report is included, it will be presented in the bundle of written evidence which will contain the parent's case statement and supporting evidence drawn from educational sources, NHS sources, independent expert reports, the local authorities' Statement of Case, along with supporting documents.

Further information may be requested by the local authority, the parents, or by the panel themselves. For this reason, the child's interests will be best served if the occupational therapist's initial report for the Education, Health and Care Plans (EHCP) / Coordinated Support Plan (CSP) / Statement, and any further report, is objective, concise and clearly written. When using technical language or medical terminology, the therapist may offer a definition if the vocabulary is not generally familiar in the context of special needs. General statements about child or young person's needs that cannot be backed up from a professional perspective should be avoided.

The panel members will take particular note of:

- an account of the therapist's involvement with the child and family;
- the therapist's involvement with the school (or pre-school provision);
- the reasons for the therapist's involvement with the child; and
- where the child been assessed and/or observed, for how long and over what period, under what circumstances.

Q2. What should I do if I have to dispute another occupational therapist's opinion in my advice?

A. When there is conflicting written evidence in two different occupational therapy reports, the best route is communication between the occupational therapists. *The Code of Ethics and Professional Conduct* requires you to liaise with the other practitioner, (COT 2010, (5.3.4) p29). There may be common ground that is agreeable to both parties in terms of needs and provision. If this is not feasible, you need to **clearly state the rationale and justify your viewpoint**. It is the responsibility of the tribunal to decide whose opinion is more credible.



Q3. What makes a report for a tribunal or court different from a normal occupational therapy report?

A. It should:

- Contain details of your qualifications
- Contain details of literature/other material relied upon
- Contain a statement setting out the substance of facts and instructions given
- Make clear what is within your own knowledge (as opposed to what has been reported to you)
- Say who carried out any examination, measurement, test or experiment, the qualifications of that person and whether they were carried out and interpreted under supervision
- State where there is a range of opinions, summarise that range and give reasons for your own opinion
- Contain a statement that you understand that your duty is to the court & that you have complied with that duty
- Contain a summary of conclusions reached

Further details can be found at:

http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/civil/procrules_fin/pdf/practice_directions/pd_part35.pdf, accessed 20 August 2014.

Thus

- It is your opinion not that of your employer
- You must state (and therefore understand) the question you are being asked
- If there is a range of opinion, you should set it out before explaining the basis of your own view
- If unable to give a full view you should say why

Q4. What should I try to address in a tribunal report?

- **What does this child need?** Justify what the child cannot do at present and support from occupational therapy would enable the child to do their occupations and participate in their school, home or community roles.
- **What is this child getting?** Clearly state exactly what is being provided.
- **Is this working?** What evidence is there of progress and how is this being measured (e.g. outcome measures, school records/occupational therapy notes/parental reports)
- **What should this child get?** Consider the possible outcomes, evidence base, prospects for achieving the outcomes, cost to the child (e.g. effort, prioritising this over other occupations) and benefit of trying to achieve the outcome.
- **Are recommendations resource-driven?** The answer should be NO!
- **Is my advice specific?**
- **Have I integrated my advice with other education, health and social care professionals involved with the child?**



Q5. Is there any practical advice to help me prepare for attendance at a tribunal?

A. The following points will help you to prepare for attendance at a tribunal:

- Clarify the issue (what is the area of dispute?)
- Review the child's occupational therapy records and have them available
- Ensure you have read the paperwork and have seen the points raised in the dispute; what are they saying and why?
- Think about why you agree or disagree and how you would explain that view
- Consider gathering evidence to support your view
- If the other side are not wrong then advise your instructing authority
- How recently was the child assessed? Is further assessment indicated?
- How reliable was the assessment information and could there have been factors which impacted on the results such as the performance of the child on the day or the setting. Has the child changed since the assessment and could this be a cause of the dispute?
- Ensure you declare any limitations on your assessment and consider the impact of these on your results and recommendations.
- Anticipate questions that you may be asked and consider writing out your answers. Discuss this with others who have been involved with similar experiences.
- Relish the challenge!

Reading List

- http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/civil/procrules_fin/pdf/practice_directions/pd_part35.pdf
- Bond Solon Training (2003) *The occupational therapist and the court: a step-by-step guide for occupational therapists and their staff*. London: College of Occupational Therapists.
- College of Occupational Therapists (2010) *Code of Ethics and Professional Conduct*. London: College of Occupational Therapists.
- Department for Education and Skills (2011) *Support and aspiration: A new approach to special educational needs and disability - A consultation*. London: Stationery Office.



Legal References

- Great Britain, Parliament (2010) *Equality Act 2010*. London: HMSO.
- Great Britain, Parliament (1996) *Education Act 1996*. London: HMSO.
- Great Britain, Parliament (2001) *Special Educational Needs and Disability Act 2001*. London: Stationery Office.
- Great Britain, Parliament (2001) *The special educational needs tribunal regulations 2001*. (SI 600). London: Stationery Office.
- Great Britain, Parliament (2005) *Disability Discrimination Act 2005*. London: Stationery Office.
- Great Britain, Parliament (2007) *Tribunal, Courts and Enforcement Act 2007*. London: Stationery Office.
- Warnock HM (1978) *Special educational needs: report of the Committee of Enquiry into the education of handicapped children and young people*. (Command Paper 7212). London. HMSO.

References relating to the law in Scotland

- Scottish Executive (2005) *Supporting children's learning: code of practice*. Edinburgh: Scottish Executive.
- Scottish Office, Education Department (1996) *Children and young persons with special educational needs: assessment and recording*. (Circular 4/96). Edinburgh: Scottish Office.
- Scotland, Parliament (2004) *Education (Additional Support for Learning) (Scotland) Act 2004*. Edinburgh: Stationery Office.

References relating to the law in Wales

- Great Britain, Parliament (2002) *The education (special educational needs) (Wales) regulations 2002*. (SI 152) (W20). London: Stationery Office.
- Great Britain, Parliament (2002) *The special educational needs (provision of information by local education authorities) (Wales) regulations 2002*. (SI 157) (W 23). London: Stationery Office.
- Great Britain, Parliament (2001) *The special educational needs tribunal (time limits) (Wales) regulations 2001*. (SI 3982). London: Stationery Office.
- Great Britain, Parliament (2002) *The education (special educational needs) (Wales) regulations 2002*. (SI 152) (W 20). London: Stationery Office.
- Welsh Assembly Government (2004) *Special educational needs code of practice for Wales*. Cardiff: Welsh Assembly Government.

References relating to the law in Northern Ireland

- Great Britain, Parliament (1996) *The education (Northern Ireland) order 1996*. (SI 274). London: HMSO.
- Northern Ireland, Department of Education (1998) *Code of practice on the identification and assessment of special needs*. Bangor: Department of Education.
- Northern Ireland, Department of Education (2005) *Supplement to the code of practice on the identification and assessment of special educational needs*. Bangor: Department of Education.
- Great Britain, Parliament (2005) *The special educational needs and disability (Northern Ireland) order 2005*. (SI 1117) (NI 6). London: Stationery Office.