

## What is a Tribunal appeal?

If you disagree with a decision made by the local authority (**LA**) relating to your child's special educational needs, you can appeal to an independent body called the First Tier Tribunal for Special Educational Needs and Disability (**SEND Tribunal**).

## Who can appeal?

To be able to appeal, you must be a parent or a young person over the age of 16. In education law 'parent' means you are either a birth parent, have acquired parental responsibility or have care of the child (e.g. a foster parent or grandparent with whom the child lives).

If the decision concerns a child, it is the parent who has the right of appeal. If the decision concerns a young person, then it is the young person who has the right of appeal.

## What decisions can I appeal about?

Appealing a local authority decision is a different course of action to making a complaint to the local authority. You can only appeal in certain situations. You can appeal if:

- **The LA has refused to carry out an EHC needs assessment for your child.**

The SEND Tribunal can order the LA to carry out an EHC needs assessment.

- **The LA has refused to issue an EHC plan after an EHC needs assessment.**

The SEND Tribunal can order the LA to issue an EHC plan.

- **You have received a final EHC Plan and you are not happy with:**
  - The description of your child's special educational needs in part B.
  - The description of the special educational provision in part F.
  - The education setting named in part I or if there is no setting named.

The SEND Tribunal can order the LA to change these sections of the EHC plan.

- **The LA has refused your request to carry out a reassessment of your child's SEN.**

The SEND Tribunal can order the LA to carry out an EHC assessment of your child's SEN.

- **The LA has refused to amend the EHC plan after an annual review or a re-assessment.**

The SEND Tribunal can order the LA to amend the plan with changes to parts B, F and I.

- **The LA has decided to cease to maintain (end) your child's EHC Plan.**

The SEND Tribunal can order the LA to maintain the plan, with changes to B, F and I if necessary.

### **Can the tribunal look at other parts of the EHC plan?**

The Department for Education and the Ministry of Justice are carrying out a trial in England to extend SEND Tribunal powers to the health and social care sections of EHC plans. From April 2018, parents and young people who are dissatisfied with the sections of the plan relating to health and social care, and who have not been able to resolve their disagreement locally, can take their appeal to the SEND Tribunal. The appeal **must** also involve an appeal about the education parts of the EHC plan (Sections B, F or I).

The SEND Tribunal will only have the power to make 'non-binding recommendations' on health and social care (unlike the binding decisions they make in relation to special educational provision). However, it has been made clear that the expectation is that the recommendations will generally be followed.

### **What decisions can I NOT appeal about?**

Some sections of an EHC plan which are completely outside of the SEND Tribunal's scope. You **cannot** appeal about these sections of the EHC plan:

- Section A – the views, wishes and aspirations of the child and parents or the young person
- Section E – the outcomes to be sought
- Section J – dealing with direct payments

You also **cannot** appeal about:

- How the school or college is supporting your child without an EHC Plan.
- The way the school or local authority are giving the help in your child's EHC Plan, including decisions about personal budgets. Failure to meet the timescales or deadlines for the EHC process or annual review of an EHC plan.
- Transport to school or college (except where there is also an issue about the school named)
- The local authority's failure to do what the tribunal ordered them to do.

You can find information about other avenues to express your concerns, such as complaints and disagreement resolution, in our [What if I do Not Agree? Factsheet](#).

## When can I appeal?

You have the right of appeal when your local authority sends you its decision in writing. It **must** tell you how to appeal and **must** include the following information:

- That you have the right to appeal within two months of the decision.
- The contact details of a mediation service.
- That using mediation does not prejudice your appeal.
- The availability of disagreement resolution services, and information and advice about matters relating to the special educational needs of children and young people.

The date of this notification is the date from which the time frame for making an appeal starts to run.

**You must send an appeal form to the SEND Tribunal within two months of the date of the decision you are appealing or the final EHC plan, or one month from the date you obtain a mediation certificate, whichever is the later.**

## Mediation before appeal

For **most** types of SEND tribunal appeal, you **must** contact a mediation service before you can send in your form to the tribunal.

You do not have to contact the mediation service if you are only appealing the name of the school, college or other education setting in part I of an EHC plan.

You must contact the mediation service **within two months** of the decision.

In Milton Keynes, you will need to contact [Global Mediation](#) on [02084411355](tel:02084411355)

Mediation is a way of resolving problems with the help of an independent person who is trained to help each side express their views and reach an agreement.

In some cases, mediation can avoid the need for a tribunal appeal.

When you contact the service the mediation adviser will tell you what mediation is and answer your questions. They will ask you if you want to use mediation or not.

Mediation is **free** and it is **voluntary**.

If you do not want to use mediation, the adviser must send you a **mediation certificate** within three working days. You **must** send this certificate with your appeal form to the tribunal.

If you decide you want to use mediation, this will be arranged within 30 days.

If you attend mediation and the LA agrees to settle the case and take the steps you are asking for, you must ensure that you get their agreement **in writing**, setting out clearly what they have agreed to do.

Regulations 42 and 44 of the [Special Educational Needs and Disability Regulations 2014](#) set out certain **timescales** that an LA **must** stick to after a mediation, if they have agreed:

- To carry out an EHC needs assessment: the LA **must** notify the parent or young person that it is starting within 2 weeks, then either let the parent or young person know they have decided not to issue an EHC plan within 10 weeks, or send a finalised EHC plan within 14 weeks
- To issue an EHC plan: the LA **must** issue the draft plan within 5 weeks and the finalised EHC plan within 11 weeks
- To change the name of a school in an EHC plan: the LA **must** issue the amended EHC Plan within 2 weeks
- To amend an EHC plan: the LA **must** issue the amended EHC Plan within 5 weeks

If the LA agree to take certain steps in a mediation agreement but then fail to do so, they are acting unlawfully. This could be challenged via judicial review.

You can still appeal to tribunal if you are not happy with the outcome of the mediation, and in this case **you have another month** to send in your appeal.

## How do I register an appeal?

You will need to fill out various forms and send in supporting evidence to the SEND Tribunal. Remember to **keep copies** of all of your paperwork (letters, reports etc.), so you have a clear record of everything you've sent.

You can submit your appeal either by email or by post. If you send it by post, we recommend that you send it by recorded delivery.

Before you appeal, we strongly recommend that you read the SEND Tribunal's guide on [How to appeal a special educational needs \(SEN\) decision \(SEND37\)](#) which explains the process clearly in full. There is an [easy-read version](#) too.

## The appeal form

You will need to fill in an appeal form, which you can obtain from the [SEND Tribunal's website](#).

In the boxes on the appeal form, fill in:

- Your child's name and date of birth, or yours if you are a young person
- Your name and address
- Details of anyone else who has parental responsibility
- The name of your LA and the date of the decision you're appealing against or the date of the final EHC plan
- Any special requirements to make the process accessible to you: say here if, for instance, you need documents translated, wheelchair access, a reader or a signer, or cannot manage negotiations over the phone.

In the appropriate section of the form, you will need to explain which decision you're appealing against or which parts of the EHC plan you disagree with. This is called your reasons for appeal.

## Reasons for appeal

It is often easier to put these on a separate sheet and write 'See separate sheet headed Reasons for Appeal' in the box on the form.

This is where you set out why you think the LA's decision is wrong, or why the contents of the EHC plan need to change. Try to put in everything you need to say, your full case, at this point.

As much as possible, you should try to get together any supporting evidence to submit with your appeal form. In your reasons for appeal, you should refer to this evidence to support your arguments (for example, if you are saying that your child has not made progress despite the support they currently receive, refer to school reports and/or annual review records which show this).

Don't worry if you don't have everything ready to send straight away; you can submit more evidence after you've registered your appeal.

You must send in enough information for the LA to be able to respond.

## **DO**

- Keep it short and to the point.
- Separate your points into paragraphs.
- Number your paragraphs or organise them under headings.
- Refer to any evidence that backs up your points. (You can send more evidence later and you should say if you know there is evidence you don't yet have but intend to send later.)
- Refer to the legal issues.

## **DON'T**

- Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself.

## **What should I send with the form?**

With the completed and signed form send the SEND Tribunal the following:

- A copy of the letter the LA sent you that told you of its decision
- Your mediation certificate
- The evidence supporting your arguments
- A list of all the documents enclosed with the application (it will be helpful to the SEND Tribunal if you put your evidence in chronological order, and then write out a list explaining what each document is).

Don't send original documents, send photocopies or scans. Keep a copy of everything you send, including the form.

## **Where can I get more information, advice and support?**

You can find more information about [appealing on the IPSEA website](#), including specific information on:

- [Refusal to assess appeals](#)
- [Appeals about the contents of an EHC plan](#)
- [Appealing against the school named in your EHC plan](#)
- [Challenging SEND Tribunal decisions](#)

**Milton Keynes Special Educational Needs & Disability Information, Advice & Support Service (MK SENDIAS) can give you:**

- Information about SEND support, including information about SEND funding
- Advice about what to do if you are not happy with the support your school is providing
- Support to prepare for school meetings and Annual Reviews.
- Information and advice about your rights to request an EHC needs assessment and support with the process
- Help to navigate Appeals and Complaints procedures
- Information about other organisations, support groups and information services that could help

**You can contact us:**

- By completing a [referral form](#)
- Via our [website](#) for lots of useful information and factsheets
- To discuss your concerns by phone on 01908 254518
- By [email](#), briefly outlining your concerns
- On [Facebook](#)