

Appealing an Educational Health and Care (EHC) needs assessment or content of the EHC plan to the Tribunal



First-tier Tribunal (Special Educational Needs and Disability)

Below is a **5 -step** guide to help you appeal to the SEND Tribunal. The appeal form is very straight forward to complete, with links to the correct form in **Step 4** below. Before you start the appeal process, you could try speaking with your EHC Plan Co-ordinator. You could discuss how to resolve your disagreement informally within a reasonable time-frame, bearing in mind the time-scale you have to complete the process shown below. Additionally, there is a formal mediation arrangement available if you choose to do so (**see Step 2**).

There are a number of reasons for you to lodge your appeal:

- **Refusal to Assess.** Refusal to secure an EHC Needs Assessment: **See Step 4 (1)** below with a link to form SEND35a
- **Appealing eg name of setting – Part I, or the contents of the EHC plan – Part B and F of the EHC plan (& other reasons):** **see Step 4 (2)** below for a full list and a link to form SEND35
- **Health & Social Care – Parts G and H of the EHC plan** (*only* where there is already a valid appeal). In April 2018 the SEND jurisdiction was extended to make recommendations about health and social care issues, for all rights of appeal except refusal to secure an EHC needs assessment. **See Step 4 (2).**

Important! You must send your appeal to the Tribunal **no later than 2 months from the date of the Local Authority’s decision letter** or **within one month of the date of a mediation certificate** (see **Step 2**) if later.

Example: Mrs H receives a letter from the Local Authority with the final plan for her son, dated 10th January. Therefore, 2 months from the date on the letter will take her to the 10th March. The mediation certificate is dated 5th March, so Mrs H would then have until 5th April to send her appeal request to the SEND Tribunal.

January							February							March							April						
S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S
			1	2	3	4							1	1	2	3	4	5	6	7				1	2	3	4
5	6	7	8	9	10	11	2	3	4	5	6	7	8	8	9	10	11	12	13	14	5	6	7	8	9	10	11
12	13	14	15	16	17	18	9	10	11	12	13	14	15	15	16	17	18	19	20	21	12	13	14	15	16	17	18
19	20	21	22	23	24	25	16	17	18	19	20	21	22	22	23	24	25	26	27	28	19	20	21	22	23	24	25
26	27	28	29	30	31	23	24	25	26	27	28	29	29	30	31	26	27	28	29	30							

- Decision letter sent by LA (10th Jan) ————— 2 months from letter sent (ends 10th Mar)
- ————— Mediation certificate (5th Mar) extends deadline to 5th April

For further information visit our website or contact SEND IASS on 02476 694307:
<https://www.covsendiass.co.uk/advice-support/resolving-disagreements>

Step 1: The Decision Letter

You **must** include the Local Authority (LA) decision letter when you send your appeal. The LA **must** inform you of your right to appeal in a dated letter, which you should receive from your EHC Plan Co-ordinator.

Step 2: Mediation Certificate

At the same time as undertaking **Step 1**, you will need to obtain a mediation certificate from the mediation service listed below without delay. There is no charge for this service and you do not have to agree to a meeting. If you prefer, you can just request the certificate to be sent to you.

If you have been issued a final EHCP and appealing just the name of the setting in part I, then you do not require a mediation certificate. However, you may want to also appeal other areas of the plan, **especially parts B and F to ensure accuracy, which in turn would inform the appropriate provision and placement**. The following link includes a check-list, to help guide you to look at your EHCP, when considering appealing the contents: <https://www.ipsea.org.uk/what-an-ehc-plan-contains>
If you decide to appeal parts B and F, then you need a mediation certificate, so contact the following:

Mediation service:

KIDS Tel: 03330 062 835 <http://www.kids.org.uk/mediation-info>
Susanna Diegel - SEN Mediation Regional Manager. Email: senmediation@kids.org.uk
249 Birmingham Road
Sutton Coldfield
West Midlands

Step 3: Legal Aid

You do not need a solicitor to appeal, as it is not a complicated form. However, you could try the on-line Legal Aid Checker by clicking onto the link below, to find out if you are eligible for Legal Aid. For young people aged 16 and 17 who live at home with their parents, the parents are regarded as the client and so the parents' income will be taken into account. Where a young person aged 18 or over who is in receipt of Employment Support Allowance, he or she will be the client and only his or her means will be considered: <https://www.gov.uk/check-legal-aid>

Step 4: Completing the Appeal Form

There are two appeal forms depending on your reasons to appeal, see **(1)** and **(2)** below. The Tribunal prefer you to email your appeal if you can, so download the appropriate appeal form (see below for links):

(1) Refusal to Assess

Form SEND35a: Special Educational Needs and Disability Tribunal appeal a refusal to secure an EHC Needs Assessment:

<https://www.gov.uk/government/publications/form-send35a-special-educational-needs-and-disability-tribunal-appeal-a-refusal-to-secure-an-ehc-needs-assessment>

When emailing your appeal add 'New Appeal' in the subject heading. Along with your completed appeal form, you also need to include the Local Authority Decision Letter, informing you why they have not agreed to assess, along with your mediation certificate and any other documents you have, such as the paperwork that went originally with the request for an EHC Needs Assessment to the Local Authority. **Now go to Step 5.**

(2) All other Appeals around the EHCP

Form SEND35: Special Educational Needs and Disability Tribunal appeal:

<https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>

Use this form to appeal the Local Authority's decision about:

- Disagreement over the contents of the EHC plan (eg in parts B & F) or name of the setting (part I)
- Refusal to make an EHC plan (following assessment)
- Refusal to secure a Re-Assessment of EHC Needs
- Disagreement of amendments to the EHC plan following annual review
- Refusal to amend the EHC plan after an EHC Needs Re-Assessment
- The EHC plan no longer being necessary and the LA are going to 'Cease to Maintain' it

Appealing the contents of the final EHC plan - If you are appealing the name or type of setting, in part I, check that the Local Authority (EHC Plan Co-ordinator) has consulted with the setting/s of your preference. Also contact the setting/s to inform the head/principal that you have requested a place there and make a note of any response they may give you. You can also continue to discuss the contents of the plan with the EHC Plan Co-ordinator.

Along with your appeal form, you will also need to include the EHCP, the Local Authority decision letter that came with the plan, the mediation certificate (if required) any copies of reports/ annual review paperwork, other information to assist your case as evidence. If you can, also include your child's voice such as in their own writing/ a drawing or via another person working with your child (add their name and profession).

For further information, go to the First-tier Tribunal (Special Educational Needs and Disability):
<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

Step 5: Sending the Appeal

Write in the subject heading of your email 'New Appeal' to ensure it is dealt with quickly. If your child is moving to Reception, Year 7, post 16 or only in school part-time/ out of school, then add this to the subject heading, as this may help with priority. Make sure your completed appeal form is signed and dated (just enter your name if you do not have an electronic signature). Also attach all other relevant documents: Local Authority decision letter, mediation certificate (if required) and any other reports. If the appeal is about your child's current EHC plan, include reports that came with it or paperwork following Annual Review and any other reports. Email your appeal and attachments to: send@Justice.gov.uk

The Tribunal prefer emails but the postal address is: *HM Courts & Tribunals Service Special Educational Needs and Disability Tribunal 1st Floor, Darlington Magistrates Court Parkgate Darlington DL1 1RU*

If you need to contact the Tribunal Helpline then phone: 01325 289350/ 0300 303 5857

If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter or one month after the date of the mediation certificate, you must set out in writing the reasons for the delay and why you think the appeal would succeed if time for making the appeal is extended and if you do not do so, the papers will be returned to you without being registered or seen by a Tribunal Judge.

How long does the appeal take?



You should receive an automatic response from the Tribunal immediately, so if that is not the case, check the email address or phone the Tribunal Helpline: 01325 289350/ 0300 303 5857. Next you will receive the registration notification (which is usually within 20 working days, so contact the tribunal if it is later than that). This will inform you of the timetable of dates for actions for all parties, including the date of the final hearing. If you would like to make a request for any changes regarding your original appeal, amend any dates/ request an earlier hearing, you can do so by using the **Request for Change Form**, stating your reasons why. (You **must** obtain the LA's response to your request before sending this form to the Tribunal):
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728334/send7-eng.pdf



Do I have to attend the hearing?

For all appeals, when the Tribunal send you a time-table of actions, this will include an opportunity to send further information/evidence for the hearing.

Refusal to Assess – this is a paper hearing only, so neither party would attend a hearing. All appeals against a **refusal to secure an EHC needs assessment** are decided by the Tribunal on consideration of the written evidence only.

For all other appeals (eg the name of the setting and contents of the EHC plan), there would be a video hearing, unless the Tribunal and **both parties** agree it can be decided as a paper hearing only, on the written evidence. **This then gives you your right to attend the video hearing, to speak up about your appeal.**

However if you prefer not to attend, you can request a paper hearing with the **Request for Change Form:**

<https://www.gov.uk/government/publications/form-send7-request-for-change>

As both parties **must** agree, you would need to obtain the LA's response to your request before sending this form to the Tribunal. If the LA do not agree, then a video hearing would still go ahead. However, the guidance states that the tribunal will not look less favourably on parents if they feel they are unable to attend.

I haven't received my letter from the LA informing me of my right to appeal.



Email or write to your EHC plan Co-ordinator to make a formal request for this information:

SEN@coventry.gov.uk

Statutory Assessment and Review Service
PO Box 15
Council House
Coventry CV1 5RR

Tel 024 7683 1614



What should I do if I still haven't received my letter informing me of my right to appeal?

You cannot appeal to the Tribunal without sending a copy of this Local Authority letter to the SEND Tribunal, therefore if necessary you can make a complaint to the Coventry City Council in the first instance:

https://www.coventry.gov.uk/info/5/contact_the_council/545/comments_compliments_and_complaints/2

If this has not resolved the problem, you can then contact the Local Government Ombudsman: <https://www.lgo.org.uk/make-a-complaint>

Disability Discrimination:

The Tribunal can also handle appeals against discrimination by schools or local authorities due to a child's disability:

(1) **Form SEND4A: Disability discrimination claim by a parent:**

<https://www.gov.uk/government/publications/form-send4a-disability-discrimination-claim-by-a-parent>

(2) **Form SEND26A: Disability discrimination claim by parent after permanent exclusion:**

<https://www.gov.uk/government/publications/form-send26a-disability-discrimination-claim-after-permanent-exclusion-parent>

Useful contacts/ information:

Statutory Assessment and Review Service (Local Authority EHC Plan Co-ordinator)

SEN@coventry.gov.uk Tel 024 7683 1614

SEND Information Advice and Support Service: <https://www.covsendiass.co.uk> Tel 024 7669 4307

SEND Code of Practice: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

Coventry Local Offer: <https://www.coventry.gov.uk/sendlocaloffer>



IPSEA

Independent Provider of Special Education Advice (known as IPSEA) is a registered charity. IPSEA offers free and independent legally based. They also provide training on the SEND legal framework to parents and carers, professionals and other organisations. www.ipsea.org.uk

<https://www.ipsea.org.uk/appealing-to-the-send-tribunal>

IPSEA Refusal to Assess Pack: <https://www.ipsea.org.uk/refusal-to-assess-appeals>



LawWorks is a charity working in England and Wales to connect volunteer lawyers with people in need of legal advice who are not eligible for legal aid and cannot afford to pay. If you are being helped by a not-for-profit organisation they can also support them.

www.lawworks.org.uk



**National
Autistic
Society**

The NAS, a leading national charity supporting people with autism and their families, maintains a list of solicitors in the Advocacy (legal) section of its comprehensive Autism Services Directory.

<https://www.autism.org.uk/> Tel **0808 800 4104**.

SOS!SEN

SOS!SEN is a national charity aiming to empower parents and carers of children with SEN to tackle successfully themselves the difficulties they may face regarding their children's rights.

https://www.sossen.org.uk/useful_tips_for_parents.php Tel **0300 302 3731 or 0208 538 3731**



This website helps parents of children with special educational needs and/or disabilities living in England to get the right educational provision for their child or young person. They have a number of downloadable resources including template appeal forms with examples of how to complete them. Documents also include research, caselaw, and model letters:

<https://www.sen-help.org.uk/>



Parents in Need is a charity which supports families of children with Special Educational Needs by funding professional's reports.

<https://www.parentsinneed.org/>

Contact: info@parentsinneed.org

Registered Charity No. 1169363