



Department
for Education

SEND Tribunal: extended appeals

**Guidance for local authorities, health
commissioners, parents and young
people**

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1 Introduction

This is a guide for all local authorities (LAs), health commissioning bodies and parents and young people in England on the extended powers of the First-tier Tribunal Special Education Needs and Disability (SEND) ('the Tribunal') to hear appeals and make non-binding recommendations about health and social care aspects of Education, Health and Care (EHC) plans, provided those appeals also include education elements.

The extended powers were tested under a National Trial that started on 3 April 2018 and ran until 31 August 2021. An evaluation was undertaken alongside the trial and the evaluators (IFF Research and Belmana) were in contact with LAs, health commissioning bodies, parents and young people in England to ask them about their experiences of the trial. The evaluation findings were used to inform a decision on whether the Tribunal's extended powers should be continued after the trial. The evaluation has been published in full and can be found on the [GOV.UK website](#).

Prior to the National Trial, a recommendations pilot was undertaken by 17 LAs for 15 months. However, few appeals were received and only 9 went to a hearing. It was therefore decided to run a National Trial in order to collect more robust evidence.

On 20 July 2021 the Department for Education confirmed it will be continuing the extended powers given to the SEND Tribunal since April 2018 to hear appeals and make non-binding recommendations about health and social care aspects of EHC plans, provided those appeals also include education elements. As current arrangements that have been in place since April 2018 are continuing, with no new requirements introduced, LAs, health commissioning bodies and parents and young people should follow the same procedure for the Tribunal as has been in place since April 2018.

From 1 September 2021, the Tribunal appeals which include health or social care aspects, will be known as 'extended appeals'.

This guidance explains the extended powers conferred on the Tribunal by the [Special Educational Needs and Disability \(First-tier Tribunal Recommendations Power\) Regulations 2017](#) ('the Regulations') and the associated duties on LAs and health commissioning bodies. The guidance can also be used to inform advice that Information, Advice and Support services and others provide to parents and young people.

The SEND reforms

On 1 September 2014, Part 3 of the Children and Families Act 2014 ('the Act') introduced important changes to the system of support for children and young people who have SEND, including:

- the replacement of statements of SEN and Learning Difficulty Assessments (LDAs) with person-centred EHC needs assessments and plans that should be prepared with the full involvement of an LA's social care service, local health care providers, children, young people and parents
- the continuation of a system of mediation for disagreements between parents or young people and the LA or health commissioning body about EHC needs assessments or plans
- the requirement for parents and young people to consult a mediation adviser to see if mediation might be a suitable way to resolve a disagreement about an EHC needs assessment or plan (in some circumstances) before registering an appeal with the Tribunal
- the continued requirement for LAs to make disagreement resolution services available to parents and young people to resolve disagreements about any aspect of SEN provision. Disagreements about health and social care aspects of EHC plans can also be resolved through disagreement resolution services.

The reforms implement an approach which seeks to join up help across education, health and care from birth to age 25 and ensure that children and young people's needs are identified early, with children and young people with SEND and their parents or carers fully involved in decisions about their support and what they want to achieve, and with a strong focus on outcomes. Further detail on the reforms can be found in the [0-25 SEND Code of Practice](#).

Overview of the extended powers

Parents and young people are able to appeal to the Tribunal about decisions concerning EHC needs assessments and plans. Prior to the National Trial, they were only able to appeal about the special educational needs and provision sections and the placement section of EHC plans.

The extended powers give parents and young people rights to request recommendations about the health and social care needs and provision specified in EHC plans, in addition to the educational aspects, when making a SEND appeal. This applies for all SEND appeals apart from those that are only about carrying out an EHC needs assessment. The Tribunal's extended powers to make non-binding recommendations on the health and social care aspects of EHC plans, give parents and young people the opportunity to raise all their concerns about an EHC plan in one place.

The policy aims of the extended powers remain as they were throughout the National Trial, i.e. to:

- create a more holistic, person-centred view of the child or young person's needs at the Tribunal
- bring appeal rights in line with the wider remit of EHC plans

- encourage joint working between education, health and social care commissioners
- bring about positive benefits to children, young people and parents

Principles for resolving disagreements

Chapter 11 of the 0-25 SEND Code of Practice sets out the following general principles for resolving disagreements, which also have relevance here:

- Decisions about provision for children and young people with SEN or disabilities should be made jointly by providers, parents, and children and young people themselves, taking a person-centred approach, with the views of children, young people and parents taken into account when those decisions are made
- Relations between education, health and social care services and parents and young people should be marked by open communication so that parents and young people know where they are in the decision-making process, their knowledge and experience can be used to support good decision-making and they know the reasons why decisions have been made
- Parents and young people should be given information and, where necessary, support so that they can take part in decision-making and complaints processes. Support can be provided by statutory or voluntary organisations
- LAs must make known to parents and young people the possibility of resolving disagreements across education, health and social care through disagreement resolution and mediation procedures and education, health and social care providers should have complaints procedures which, along with details about appealing to the Tribunal, should be made known to parents and young people through an LA-funded statutory SEND Information, Advice and Support Service.

2 Requirements and expectations for local authorities and health commissioners

The Regulations outlining the Tribunal's extended powers when determining appeals and the associated duties on LAs and health commissioners can be found at: [Special Educational Needs and Disability \(First-tier Tribunal Recommendations Power\)](#). These sit alongside the [Tribunal Procedure \(First-tier Tribunal\) \(Health, Education and Social Care Chamber\) Rules 2008](#) (the 'Tribunal Procedure Rules').

The Regulations explain that the Tribunal can make non-binding recommendations on:

- the health and social care needs specified in EHC plans
- the health and social care provision specified in EHC plans related to the learning difficulties or disabilities that result in the child or young person having SEN
- the social care provision specified in EHC plans that is made under Section 2 of the Chronically Sick and Disabled Persons Act 1970

The Regulations enable the Tribunal to make a recommendation about health and social care needs or provision as part of an appeal by a parent or young person relating to:

- a decision by the LA not to issue an EHC plan
- a decision by the LA not to carry out a re-assessment for a child/young person who has an EHC plan
- a decision by the LA not to amend an EHC plan following a review or reassessment
- a decision by the LA to cease to maintain an EHC plan
- the description of the child/young person's special educational needs in an EHC plan
- the special educational provision specified in an EHC plan
- the school or other educational institution named in an EHC plan

For an appeal against a refusal to issue an EHC plan, if the Tribunal orders a plan to be made, it has the power to recommend that health and social care needs and provision be specified when the plan is drawn up.

Where health and social care needs and/or provision are not included in the plan, the Tribunal has the power to recommend they be specified in the plan.

Where health and social care needs and/or provision are included in the plan, the Tribunal has the power to recommend that the need or provision be amended.

It should be noted that the Tribunal will only make a recommendation about health and social care needs or provision related to a child or young person's learning difficulties or disabilities which result in them having special educational needs, with the exception of any social care provision made under Section 2 of the Chronically Sick and Disabled

Persons Act 1970. The Tribunal will not make decisions relating to conflicting clinical diagnosis from medical professionals concerning health needs or health provision.

Requirements for local authority SEND teams

The following outlines the requirements LA SEND teams must follow:

- LAs **must** notify parents and young people of the Tribunal's power to make non-binding recommendations on the health and social care needs or provision specified in EHC plans (see Regulation 8 of the Regulations), when they:
 - notify a parent/young person of a decision not to issue an EHC plan
 - send a final version of an EHC plan to a parent/young person
 - send an amended version of an EHC plan to a parent/young person
 - notify a parent/young person of a decision not to carry out a re-assessment where an EHC plan already exists
 - notify a parent/young person of a decision not to amend an EHC plan following a review or re-assessment notify a parent/young person of a decision to cease to maintain an EHC plan
- LAs **must** include information on the extended right to appeal in their Local Offers (see Schedule 2 to the [Special Educational Needs and Disability Regulations 2014](#)).
- If requested by the Tribunal, LAs **must** provide evidence from the health and social care bodies in response to the issues raised, within the timeframe specified, and as necessary can seek permission to bring additional witnesses to the hearing (see the Tribunal Procedure Rules).

Additional considerations

Taking into consideration the above requirements, LAs should ensure their local systems, policies and procedures are up-to-date and compliant. This includes but is not limited to:

- ensuring decision letters include the relevant information about the Tribunal extended appeals and the rights parents and young people have, including the availability of [information, advice and support services](#) (IASS)
- ensuring Local Offers include co-produced information about the Tribunal extended appeals
- ensuring IASS can provide parents and young people with information and guidance about their rights
- training staff and disseminating key information and guidance to those involved in the process, including high level training to ensure that those responsible for decisions are fully aware of the legal duties when making decisions

- ensuring local responsible health commissioner and children and adult social care leaders are aware of the Tribunal extended appeals and the implications
- identifying lead contacts for mediation and appeals for:
 - responsible health commissioner (each responsible health commissioner, where an LA is covered by more than one)
 - children social care services
 - adult social care services

Template wording, forms and information available to help LAs can be found in the [toolkit](#) and Section 4 of this guide.

Requirements for health and local authority social care commissioners

The following outlines the requirements health and LA social care commissioners must follow:

- Health and LA social care commissioners **must** respond to any request for information and evidence from the Tribunal within the timeframe specified (see the Tribunal Procedure Rules).
- If required, health and LA social care commissioners **must** send a witness from the health and/or social care bodies to attend the hearing to give oral evidence (see the Tribunal Procedure Rules).
- Following the health and social care recommendations, the responsible health commissioning body and LA social care team **must** respond in writing, within 5 weeks from the date of the recommendation (or the date specified by the Tribunal, if different), to the parent or young person, and for health commissioners to the LA, to state what steps they have decided to take or to give reasons for any decision not to follow the recommendation(s).

Additional expectations

Taking into consideration the above requirements, LA social care teams and health commissioners should update their local systems, policies and procedures to comply.

This will include but not be limited to:

- for health commissioners, there is a need to ensure that all responsible health commissioners are working together with specialist commissioning colleagues – the Tribunal extended appeals includes all health commissioning bodies
- for social care commissioners, ensuring both adult and children’s social care services are fully informed and prepared

- training staff and disseminating key information and guidance to those involved in the process
- considering local processes to ensure that there is a clear communication system and understanding of any previous learning points around complaints, Tribunal appeals and mediation
- setting up arrangements to consider recommendations in detail, to draft clear and full evidence and to implement any recommendations agreed in a timely manner.
- drafting responses to recommendation letters

3 The Tribunal appeals process

As set out in Section 2 of this guide, parents and young people can ask the Tribunal to make non-binding recommendations concerning health and social care aspects of an EHC plan only as part of an appeal relating to:

- a decision by the LA not to issue an EHC plan
- a decision by the LA not to carry out a re-assessment for a child/young person who has an EHC plan
- a decision by the LA not to amend an EHC plan following a review or reassessment
- a decision by the LA to cease to maintain an EHC plan
- the description of the child/young person's special educational needs in an EHC plan
- the special educational provision specified in an EHC plan
- the school or other educational institution named in an EHC plan

When a parent or young person is bringing an appeal on any of these grounds against an LA and also wants the Tribunal to make non-binding recommendations about the health and/or social care aspects of an EHC plan, they should follow the process for bringing an appeal to the Tribunal. Advice on making SEND appeals to the Tribunal is available from the [GOV.UK website](https://www.gov.uk).

Mediation

When LAs issue a decision letter or send a final EHC plan or a final amended plan, they must tell the parent or young person that they can go to mediation about the education, health and social care aspects of the plan and give contact details of the mediation adviser, whom the parent or young person should contact if they want to go to mediation, alongside the contact details of someone acting on behalf of the LA.

Before parents and young people can register an appeal with the Tribunal, they must contact a mediation adviser within two months of the LA decision they wish to appeal and consider whether mediation might be a way to resolve their disagreement with the LA. If parents and young people want to appeal only about the school or other education institution named in the EHC plan or about the fact that a school or other institution has not been named, they do not have to contact a mediation adviser.

If parents and young people wish to pursue mediation, they must inform the mediation adviser and LA of this fact alongside what the mediation issues are and whether they include disagreements about health provision. Parents and young people's right to appeal is not affected by entering into mediation. Mediation will take place within 30 days from when parents and young people inform the mediation adviser that they wish to pursue mediation. Once mediation is complete, or if parents and young people decide not

to take up mediation, the mediator will issue a certificate within 3 days that will allow them to register an appeal with the Tribunal within 30 days.

Mediation is carried out by an independent and impartial mediator who has had no prior involvement in the case and who has no personal interest in its eventual outcome. The mediator will have knowledge of EHC plan procedures and will be trained in resolving disagreements and working with people to help them take part in mediation. Mediation can be used to resolve education, health and social care issues.

Mediation is generally successful – of the 4,135 mediation cases held during the 2020 calendar year, 73% of these were resolved without the need to appeal to the Tribunal that year¹. CEDAR's review of disagreement resolution² also found that mediation generates overall cost savings, when LA, Tribunal and parental costs are taken into consideration. The Department for Education provided support³ to the sector to introduce SEND mediation standards and an accreditation system to increase confidence in, and quality of, mediation.

Mediation for health and social care issues

Parents and young people can go to mediation about the health and social care elements of an EHC plan, but this is not compulsory. Parents and young people can request recommendations about health and social care issues without having to receive mediation advice or attend mediation about those issues, provided there is also an education issue about which they are appealing.

If mediation resolves the appealable educational issues, the parent or young person will not be able to ask the Tribunal to make recommendations on any health and/or social care aspects of the EHC plan. However, mediation provides an opportunity for people to resolve disagreements and it can be completed more quickly than an appeal. It does not affect the right of parents and young people to make an appeal about educational aspects of EHC plans, and some aspects of the disagreement can go to appeal even when other aspects are resolved. Commissioners and parents and young people are encouraged to pursue this route first for health, social care and education disagreements to see if an agreement can be reached with all parties involved.

If the parent wishes to mediate about education or social care, the LA must arrange the mediation through the mediation provider (even if the parent also wants to mediate about health). The health commissioning body or bodies must take part in the mediation arranged by the LA if the mediation is about the health element of the plan as well as either the education or social care parts of the plan.

¹ [Education, Health and Care Plans data: England, 2020](#)

² [Review of arrangements for disagreement resolution \(SEND\), 2017, Centre for Educational Development, Appraisal and Research \(CEDAR\), University of Warwick](#)

³ [The College of Mediators \(COM\) and Civil Mediation Council \(CMC\)](#)

The responsible health commissioning body must organise the mediation if the mediation is solely about health and must take part in it. In this situation, the health commissioning body (rather than the LA) must pay the reasonable expenses of the parent or young person.

Tribunal orders and recommendations

The Tribunal has powers under the Children and Families Act 2014 to make certain decisions in relation to appeals. The Tribunal can dismiss the appeal or order the LA to carry out an assessment, make and maintain an EHC plan or maintain a plan with amendments. The Tribunal can also order the LA to reconsider or correct a weakness in the plan, for example, where necessary information is missing. When the Tribunal orders the LA to reconsider the special educational provision in an EHC plan, the Tribunal can also consider whether the education and training outcomes specified are sufficiently ambitious for the child or young person. LAs have time limits within which to comply with decisions of the Tribunal (see the [Special Educational Needs Regulations 2014](#)).

For extended appeals, the Tribunal is also able to make non-binding recommendations concerning:

- the health and social care needs to be specified in EHC plans
- the health and social care provision which is related to the learning difficulties or disabilities that result in the child or young person having SEN
- the social care provision that is made under Section 2 of the Chronically Sick and Disabled Persons Act 1970

If the Tribunal orders a plan to be made it has the power to recommend that, when drawing up the plan, health and/or social care needs and provision are specified. Where health and/or social care needs or provision is not included in the plan the Tribunal has the power to recommend it be specified in the plan. Where health and/or social care needs or provision is included in the plan the Tribunal has the power to recommend that the need and provision be amended.

Although any recommendations made by the Tribunal on health and social care elements of an EHC plan are non-binding and there is no requirement to follow them, they should not be ignored or rejected without careful consideration. Any reasons for not following them must be explained and set out in writing to the parent or young person.

It is important to be aware that, should an LA or responsible health commissioning body decide not to follow the recommendations of the Tribunal, parents and young people can complain to the Ombudsmen or seek to have the decision judicially reviewed. Further information on these and other options for further redress is set out in Section 5 of this guide.

Registering an appeal with the Tribunal

Parents and young people have either one month to register a SEND appeal with the Tribunal from the date of a certificate which has been issued following mediation or the parent or young person being given mediation information, or two months from the date when the LA sent the notice containing an appealable decision, whichever is the later. In some cases, parents and young people will not register the appeal within the two-month limit. Where it is fair and just to do so the Tribunal has the power to use its discretion to accept appeals outside the two-month time limit.

If a parent or young person wishes to appeal against an LA decision and wishes to ask the Tribunal to make non-binding recommendations on health and/or social care aspects of an EHC plan, they should follow the process for bringing an appeal to the Tribunal, including considering mediation and using the appeal form found on the [GOV.UK website](https://www.gov.uk). When registering an appeal, they should also tick the box on the appeal form relating to a health and/or social care appeal.

When appealing to the Tribunal parents and young people must supply a copy of the decision that they are appealing against, the mediation certificate and the date when the LA's decision was made, or the date of the mediation certificate. The parent or young person who is appealing will be required to give the reasons why they are appealing. The reasons do not have to be lengthy or written in legal language but should explain why they disagree with the decision and should include information about any health or social care issues. Parents and young people have to send all relevant documents, such as copies of assessments, to the Tribunal.

Once the appeal is registered the LA will be sent a copy of the papers filed and will be given a date by which they must respond and asked to provide details of witnesses – this will apply to all parties. The parties will also be told of the approximate hearing date.

The appeal timetable

The Tribunal has wide discretion to give case management directions (this often involves an informal telephone meeting) and set a timetable for appeals. The standard timetable that the Tribunal will usually follow is the same as that for appeals without health and/or social care elements and is:

- Week 1 – the appeal is registered and the notice of appeal is sent. There will be a case management review of the appeal to:
 - identify the issues, including the educational issues and any health and social care issues
 - identify the evidence required
 - clarify the recommendations being sought

- Week 6 – the LA must send in their response, including the response from health and social care commissioners
- Week 7 – final evidence deadline
- Week 8 – telephone case management of appeal (if required)
- Week 10 – evidence bundle produced by the LA and sent out to the Tribunal and all parties
- Week 12 – the hearing takes place (if not resolved by case management)
- Week 14 – the decision and recommendation (if applicable) is issued

The Tribunal hearing

For a Tribunal extended appeal, the LA will be required to provide evidence from the health and/or social care commissioners. The Tribunal's Procedure Rules give the Tribunal discretion to give case management directions in each case, including on the number of witnesses.

The Tribunal has limited the number of witnesses who can attend the hearing to three for each party, and careful thought should be given to the identification of the witnesses who are required at the hearing. As necessary, LAs will be able to request an additional witness from the health commissioning body or from social care to give evidence at any hearing (i.e. four, rather than the three witnesses usually allowed by the Tribunal), as will the parent or young person who has requested the recommendation. Where a fourth witness is required because of health or social care issues, then the party seeking to bring an additional witness will need to make an application to the Tribunal for permission to bring them explaining why their attendance is required.

The length of the hearing will depend on the number and complexity of issues to be decided and the number of witnesses who give oral evidence (if any). Hearings are heard throughout the country at Her Majesty's Courts and Tribunals Service buildings. The Tribunal will try to hold hearings as close to where the parent or young person lives as possible, with at most two hours' travelling distance.

Appeals are heard by a judge and a panel of Tribunal members who have been appointed because of their knowledge and experience of children and young people with SEND. Panel members for extended appeals will have a health and/or social care background and be trained in SEND law. The Tribunal has recruited and trained additional specialist health and social care members for this purpose.

The LA will provide a bundle of papers for each of the panel members and the parent or young person, including any documents requested by the parent or young person.

The Tribunal seeks to ensure that the process of appealing is as user friendly as possible, and to avoid hearings that are overly legalistic or technical. It is the Tribunal's

aim to ensure that a parent, young person, LA or health commissioner should not need to engage legal representation when appealing a decision. Parents and young people may find it helpful to have support from a voluntary organisation or friend at a hearing (see Section 4 on the support available).

Presenting evidence

Evidence from all professionals should clearly specify a child or young person's special educational, health or social care needs and the provision required to meet each of those needs. It should also identify the outcomes expected if that provision is put into place over a period of time. Specification means being clear what needs a child or young person has and quantifying and qualifying what provision they require, including who will deliver that provision, when, how often, for how long and the arrangements that should be in place to monitor its effectiveness.

Once an appeal is registered at the Tribunal, the LA will be required to respond to the issues raised and to present its evidence concerning the child or young person's special educational needs. The LA will also have to obtain and submit evidence relating to the social care and health issues about which the parent or young person has requested recommendations. LAs have a duty to obtain evidence during the assessment process and this can be used for this purpose.

Parties seeking to rely on professional witness evidence should obtain written reports or witness statements from them to submit to the other party and to the Tribunal explaining their evidence. It may then be possible for the evidence to be agreed and for the attendance of that witness at the hearing to be avoided. Where evidence is in dispute, it is likely that it will be necessary for the witness to attend the hearing to answer questions arising from their evidence by the other party and the Tribunal panel.

The Tribunal has extensive powers to direct the production of evidence by the parties and by third parties where they consider it necessary, and powers to direct that existing evidence be supplemented or its adequacy improved. It is therefore important to ensure that reports prepared during the assessment process are sufficiently detailed and specific. The Tribunal can also issue witness summonses to require the attendance of witnesses who have indicated to the parties that they will not attend the hearing voluntarily.

In some circumstances, special arrangements can be made for the presentation of evidence by telephone, Skype, video conference or recorded video clips where the attendance of the witness is problematic unless these special arrangements are made.

Communicating the Tribunal recommendations

The Tribunal must send its decision, including any recommendations relating to health and social care, to the LA and parent or young person who made the appeal. The

Tribunal must also send a copy of any recommendations it makes to the relevant health commissioning body if it includes any recommendations on health issues and may also send a copy of the full decision.

Responding to recommendations

Although any recommendations made by the Tribunal on health and social care elements of an EHC plan are non-binding and there is no requirement to follow them, the LA and/or responsible health commissioning body are generally expected to follow them. They are recommendations made by a specialist Tribunal and should not be ignored or rejected without careful consideration. Any reasons for not taking them forward must be explained and set out in writing as explained below.

When the Tribunal makes recommendations about health or social care needs or provision, the responsible health commissioning body or LA social care team must respond in writing to the parent or young person within five weeks of the date of the recommendation, unless the Tribunal imposes a different time limit (see Regulations 6 and 7). If a health commissioning body is responding to a recommendation about health provision in an EHC plan, it must also send a copy of its response to the LA SEND team. Depending on the complexity of the case and the issues being addressed, the Tribunal has discretion to shorten or lengthen the five-week response time.

Responses must be in writing and state what steps the health commissioning body or LA social care commissioner has decided to take following consideration of the Tribunal's recommendations. If a decision has been taken not to follow all or part of the recommendations, the health commissioning body or LA social care commissioner must give sufficiently detailed reasons for that decision.

The response to recommendation letters will be obtained by Ofsted and the Care Quality Commission for the purpose of their local area SEND inspections. Template letters are included as part of the [toolkit](#).

Mental Capacity

Young people over compulsory school age have the right to appeal to the Tribunal, although there is nothing to stop them asking their parents, or others, to help them. However, some young people, and possibly some parents, will not have the mental capacity to bring an appeal to the Tribunal.

The Special Educational Needs and Disability Regulations 2014 specify that when the young person is appealing to the Tribunal, a representative or a parent has to act on behalf of a young person who lacks capacity. If the young person's parent also lacks capacity, they should have a representative. In these cases, the LA and Tribunal must

consider the views of the representative instead of the parent or young person that lacks capacity.

Under the Children and Families Act 2014, lacking mental capacity has the same meaning as in the Mental Capacity Act (MCA) 2005. The Mental Capacity Act Code of Practice provides guidance on how the MCA works on a day-to-day basis. Professionals and anyone who is paid for the work they do with someone who lacks capacity has a duty to 'have regard' to that Code. The Code is available from the [GOV.UK website](#).

4 Support and further information

Support for families

Information, Advice and Support Services (IASS)

If parents or young people require further information, support or advice, they should contact their local IASS, which can provide impartial advice about resolving disagreements, appealing to the Tribunal, the law on SEN, local SEN arrangements and support for their child's needs. The service can also help parents and young people prepare for meetings with the school, LA or other agencies including the Tribunal. Parents and young people can find the contact details for their local service through this [weblink](#).

There is also a separate [website](#) for children and young people who have SEND, to help them understand what rights they have for accessing information, advice and support across education, health and social care. The website also contains full contact details for IASS across England.

Tribunal service

Advice on making SEND appeals to the Tribunal is available from the [GOV.UK website](#).

Further guidance from the Tribunal can be found in the [toolkit](#).

Local Offer

All LAs in England are required to publish details in their Local Offers notifying parents and young people of their right to appeal a decision of the LA to the Tribunal and this includes their rights through the extended appeals. Your LA's Local Offer will contain further information, including links to other organisations that can support parents and young people.

Further support

There are a range of other voluntary sector organisations that can help parents and young people with preparing for and attending the Tribunal, including IPSEA, SOS!SEN and the National Autistic Society. Parents and young people should contact their local IASS to find out more.

Online resources

Key information and resources are available as part of the [toolkit](#).

Support for LA SEND teams, health and LA social care commissioners

Mott MacDonald are the trial facilitators and will continue to be on hand to support SEND, health and social care commissioners until March 2022.

The support options available are as follows:

Advisers

The SEND advisers will continue to provide on-going support for LAs. They will also act as a conduit for information exchange and problem-solving between the Department for Education and LAs.

Each link SEND adviser will continue to be available as a second opinion on the necessary LA documentation – letters, Local Offers, information leaflets.

Toolkit and online resources

Key information and resources are available as part of the [toolkit](#).

This includes further guidance, the relevant Regulations, Local Offer and decision letter templates, forms and a FAQ document.

Funding

To support with the implementation of the National Trial, LAs and responsible health commissioners were able to claim for reasonable costs incurred in preparing for trial cases. As the trial period has now concluded, LAs and responsible health commissioners will no longer be reimbursed for costs incurred in preparing for extended appeals cases and this should be factored into local budgets as appropriate. This means that any extended appeals registered on or after 1 September 2021 will not qualify for funding via the National Trial grant. Further guidance about claiming for costs can be found on the [SEND pathfinder website](#).

5 Implications of not following recommendations

Although any recommendations made by the Tribunal on health and social care elements of an EHC plan are non-binding and there is no requirement to follow them, the LA and/or responsible health commissioning body are generally expected to follow them. They are recommendations made by a specialist Tribunal and should not be ignored or rejected without careful consideration. Any reasons for not following them must be explained in sufficient detail and set out in writing in the response to recommendation letters.

It is important to be aware that, should an LA or responsible health commissioning body decide not to follow the recommendations of the Tribunal, parents and young people can use a range of alternative routes of complaint, including complaining to the Ombudsmen or seeking to have the decision judicially reviewed. Further information on each of these options is included below.

If there has been a significant change in circumstances relevant to the recommendations made by the Tribunal since the decision was made, parents and young people may request a review on that basis pursuant to Rule 48 of the Tribunal Procedure Rules. Additionally, the Tribunal may be asked to review a decision and/or give permission to appeal to the Upper Tribunal if there is an error of law, and this will include errors relating to health and social care issues considered by the Tribunal.

Ofsted and the Care Quality Commission (CQC) local area inspections

Ofsted and the CQC are incorporating the extended appeals into their area SEND inspections, which assess local areas to see how well they are fulfilling their responsibilities for children and young people with SEND. Further details on the inspections and the published reports are available on the [GOV.UK website](https://www.gov.uk).

Other routes of complaint and redress

The Tribunal extended appeals lie alongside other health and social care complaint routes. Disagreements about SEND that are not directly related to those parts of an EHC plan that can be appealed to the Tribunal can be resolved via a number of local complaints procedures. Complaints about the way an LA or responsible health commissioner has carried out its statutory duties can be made using the LA's or responsible health commissioner's own statutory complaints procedure and escalated to the Ombudsmen (either the Local Government and Social Care Ombudsman (LGSCO) or the Parliamentary and Health Service Ombudsman (PHSO), as appropriate), if necessary. There is also a range of other avenues for complaint in the NHS, depending on which part of the service the complaint refers to.

Going to the Tribunal about the health and social care elements of an EHC plan does not prevent a parent or young person also complaining about other aspects of the disagreement through other complaint procedures. Parents and young people should seek advice about the different routes available, including from IASS.

NHS Complaints

The NHS complaints arrangements cover the health services that a child or young person receives under an EHC plan. A complaint may be made to a service provider (for example, the NHS Hospital Trust) where there are concerns about the service provided, or to the responsible health commissioner where there is a concern about the way in which a service is commissioned or provided, and this might include concerns about the appropriateness of the services in an EHC plan.

Further detail on how to submit a complaint to the NHS can be found through this [weblink](#).

Local Healthwatch has a statutory role to provide patients with advice on how to take forward a complaint or resolve an issue (local Healthwatch may also notify Healthwatch England of concerns which need to be considered at a national level). Contact details for local Healthwatch are available on the [Healthwatch for England website](#) and should also be made available in LAs' Local Offers. Each responsible health commissioner will have available information about its complaints arrangements and will deal with complaints about any of its functions. Providers of NHS services will have patient advice and liaison services (PALS), and handle complaints about the services they provide. Support in making a complaint about health services can be provided by PALS and also the NHS Complaints Advocacy Services (each LA will have details of services in their own local areas).

If a complainant is dissatisfied with the way in which the NHS has dealt with their complaint, they can contact the PHSO, though usually the NHS will need to have had a chance to resolve it locally.

Complaints about social services provision

The Children Act 1989 promotes the welfare of children and young people and places a duty on children's social care services to safeguard and protect children. Someone who is unhappy with the way in which they or their family have been treated by these services, including during EHC needs assessments and the drawing up of plans, has the right to make a formal complaint under [the Children Act 1989 Complaints Procedure](#). They can refer their complaint to the LGSCO.

The Ombudsmen

The Ombudsmen take a different approach than the Tribunal – they do not investigate matters which can be appealed to the Tribunal (the merits of a decision which has been properly taken), including for health and social care cases under the extended appeals, but do look at the decision-making process, the delivery of provision set out in EHC plans and any maladministration, including delays or failure to provide a service which has been agreed to be provided. For example, a parent or young person may wish to go to the Tribunal regarding the special educational provision specified in the EHC plan and

also to the Ombudsman for a delay in issuing the plan or in delivering the provision set out in the plan.

The LGSCO can investigate complaints about LAs, all adult social care providers (including care homes and home care agencies) and some other organisations providing local public services. It is the final stage for complaints. Any person wanting to raise a complaint with the LGSCO must have complained to the organisation involved first to give them a chance to put things right and must have gone through all stages of their local complaints procedure (unless the complaint is about an LA's refusal to agree to carry out recommendations made by the Tribunal in relation to social care – see below). Further information can be found on the [LGSCO's website](#).

The PHSO can make final decisions on complaints that have not been resolved by the NHS in England and UK government departments and other UK public organisations. They look into complaints where someone believes there has been injustice or hardship because an organisation has not acted properly or has given a poor service and not put things right. The PHSO can consider complaints about a responsible health commissioner's failure to adequately assess or implement the health component of an EHC plan. It can also investigate complaints about the commissioning and provision of healthcare. The PHSO will generally expect the individual to have completed the organisation's own complaints procedure first. Further information can be found on their [website](#).

The LGSCO and PHSO have an agreed procedure that if either Ombudsman receives a complaint where a potential joint working element is identified, with the relevant consents the case will be considered by the joint working team and a decision made on whether a joint investigation should proceed or whether the matters complained of are separable and should be dealt with by either the PHSO or LGSCO. This agreement means that the complainant is not passed from pillar to post and re-signposted to the other Ombudsman scheme if they have approached the incorrect one or have not themselves appreciated the complaint crosses LA and health functions. It is intended to be as seamless as possible. The agreement allows for matters to be considered by the joint working assessment team if, for example, the LGSCO has started an investigation into an LA and then identifies a health element to the complaint further down the line.

Complaints to the LGSCO relating to the extended powers of the Tribunal

Parents and young people will be able to complain to the LGSCO about an LA's failure to agree to implement a Tribunal recommendation or, where a recommendation has been agreed, a failure to deliver on the recommendation in respect of the social care aspects of EHC plans. Parents and young people will also be able to complain to the LGSCO if the LA takes longer than 5 weeks to reach a decision about whether or not to agree to implement a recommendation.

If the LA fails to agree to implement a Tribunal recommendation a complaint could be made to the LGSCO, who could recommend that the LA takes the decision again. If the LA refuses or remakes the decision and the LGSCO considers the decision remains flawed, then the LGSCO may take action, including issuing a public report. If the LA remakes the decision and accepts the Tribunal's recommendations, the LGSCO could look to remedy the loss of provision if they are satisfied that the provision would have been in place sooner had the LA accepted the Tribunal's recommendations (for example, by recommending the LA awards compensation).

If an LA agrees to implement the Tribunal recommendations but then fails to do so, the LGSCO would look into any maladministration and loss of provision in the usual way.

The LGSCO will consider each case on its individual merits. It will exercise discretion to accept complaints about refusals to accept a non-binding recommendation at the point the decision is made – the LGSCO would not expect a complainant to go through the LA's own complaint procedures first. If there is delay in making the decision, the LGSCO would also exercise discretion to accept complaints early, before the decision is made.

If there has been an agreement to accept the recommendations and there is then delay or a failure to provide, the LGSCO would in most cases expect a complainant to complain to the LA in the first instance. This is in accordance with the way the LGSCO deals with binding decisions and is based on the premise that the LA is best placed to put things right at the earliest opportunity if things have gone wrong. However, if the LA delays in dealing with the complaint, the LGSCO would then consider exercising discretion to accept the complaint.

Complaints to the PHSO relating to the extended powers of the Tribunal

Parents and young people will be able to complain to the PHSO about a failure to agree to implement a non-binding Tribunal recommendation or, where a non-binding recommendation has been agreed, a failure to deliver on the agreement in respect of the health aspects of EHC plans. The PHSO will consider each case on its individual merits and could recommend a range of remedies if they uphold a complaint, including apologies, reconsideration of decisions and financial remedies (for either loss of provision or emotional distress).

The PHSO will exercise discretion to accept complaints about refusals to accept a nonbinding recommendation at the point the decision is made – the PHSO would not expect a complainant to go through the responsible health commissioner's own complaint procedures first.

If there has been an agreement to accept the recommendations and there is then delay or a failure to provide, the PHSO would in most cases expect a complainant to complain to the responsible health commissioner in the first instance.

Judicial review

Judicial review is the process used for holding public bodies to account. Judicial review is not just about actions and decisions by public bodies but also omissions. Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

Parents and young people can seek to have the health or social care commissioner's response to the Tribunal recommendation decision judicially reviewed, depending on the reasons given for refusing to implement the Tribunal recommendations.

Other options for remedy should be exhausted where possible before an application for judicial review is brought, although any application for judicial review is time limited – the applicant has three months from the date of the relevant decision.

Parents and young people should get legal advice if they are considering applying for judicial review and may be eligible for legal aid.

Further information can be found on the [GOV.UK website](https://www.gov.uk).

6 Useful links and supporting resources

Links to key legislation and regulations:

[Special Educational Needs and Disability \(First-tier Tribunal Recommendations Power\) Regulations 2017](#)

[Tribunal Procedure \(First-tier Tribunal\) \(Health, Education and Social Care Chamber\) Rules 2008](#)

[0-25 Special Educational Needs and Disability Code of Practice](#)

[Children and Families Act 2014](#)

[Special Educational Needs and Disability Regulations 2014](#)

[Care Act 2014](#)

[Section 2 of the Chronically Sick and Disabled Persons Act 1970](#)

[Tribunals, Courts and Enforcement Act 2007](#)

Links to further information, advice and support:

[Information, Advice and Support Services](#)

Information on making an appeal on the [GOV.UK website](#)



Department
for Education

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