



First-Tier Tribunal SEND National Trial

Power to make Recommendations: Health and Social Care

What is the National Trial?

The National Trial extends the powers of the Tribunal not only to make a decision concerning a child or young person's Special Educational Needs (SEN) but also to make recommendations on health and/or social care issues arising in an appeal.

When can an appeal be made under the National Trial?

If you appeal to the Tribunal against a decision made by the LA dated 3 April 2018 or later and it is not an appeal against a decision not to secure an EHC assessment, then during the National Trial, you can also ask the Tribunal to make a recommendation concerning a child or young person's health or social care needs or provision.

The Tribunal can only make a recommendation on health and/or social where there is an appeal concerning SEN.

You can ask the Tribunal to make recommendations that:

- health care and/or social care needs are specified when the EHC plan is made
- health care or social care provision or provision of a particular kind is specified when the EHC plan is made
- the health care needs specified in the EHC plan are amended (Section C)
- the social care needs specified in the EHC plan are amended (Section D)
- health care and/or social care needs are specified in the EHC plan where such needs have not been specified (Section C and Section D)
- the health care provision specified in the EHC plan is amended (Section G)
- the social care provision specified in the EHC plan is amended (Section H)
- health care or social care provision or provision of a particular kind is specified in the EHC plan where such provision has not been specified (Section G and Section H)

In the appeal form, you must set out details of the issues in the appeal and provide as much information as possible about the changes that you are seeking to the EHC plan and the health and/or social care issue or issues on which you are seeking a recommendation. Where particular changes to the wording of the EHC plan are sought, please set out those changes and refer to the evidence that supports the wording.

When the local authority has received your appeal and request for recommendations, they will, where appropriate, provide a copy to the health commissioner and/or social care team and the local authority will submit written health and/or social care evidence with their response to the appeal. The local authority may seek permission to bring an additional witness to the hearing to give oral evidence about the issue. You will be able to ask questions of that witness and can ask permission of the Tribunal to bring a witness of your own to cover the issue.

In some cases, the Tribunal may decide that it should make recommendations even if you have not asked for them. If the Tribunal takes that step, then it will provide the parties and the health commissioner with an opportunity to respond to the proposed recommendation and may have to adjourn the hearing to another day.

Once the appeal has been concluded, the Tribunal will make its decision in the usual way and will send you a written decision setting out the reasons for its conclusions. At the same time as you are sent the decision, if a recommendation is made, a copy will also be sent to the LA and the health commissioner and/or social care team. The health commissioner and/or the social care team will be required to respond to the recommendations in writing to you, the local authority and the Tribunal within five weeks or such other period as the Tribunal directs. In the case of social care recommendations, the local authority will be required to respond to you and the Tribunal within five weeks or such other period as the Tribunal directs.

The Tribunal will take no further action on receipt of the response to the recommendation, other than to retain the document for analysis as part of the National Trial.

If you consider that the response to the recommendation from the health commissioner and/or local authority social care team affects the outcome of the appeal, then you can make an application to the Tribunal for the decision to be reviewed under Rule 48 of the Tribunal Procedure Rules 2008, on the basis that there has been a change of circumstances.

Applications for a review under rule 48 must normally be made within 28 days of issue of the decision, but if you make the application within 28 days of receiving the response to the recommendations, and explain the position to the Tribunal in your application, it is likely that time will be extended to accept the application.

If an application for review is received, the Tribunal Judge will consider what further action is necessary to conclude the appeal.