

# **FACTSHEET 1**

## **Lodging an appeal**

### **Contents**

Appeal forms

When can you lodge an appeal?

Types of appeal:

- Refusal to Assess for an Education Health and Care Plan (EHCP)

- Refusal to issue an EHCP

- Appealing Educational aspects of a final EHCP

- Appealing Health and Social Care aspects of an EHCP

Completing the appeals form:

- Reasons for appeal

- Representatives

- Advocates

- Earlier hearing

- Paper hearing

- Submitting your appeal

## Appeal forms

**Appeal forms can be found on the HM Courts and Tribunal Service website:**

<https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>

- **Use SEND35a for a 'Refusal to Assess' appeal:**  
<https://www.gov.uk/government/publications/form-send35a-special-educational-needs-and-disability-tribunal-appeal-a-refusal-to-secure-an-ehc-needs-assessment>
- **Use SEND35 for all other appeals:**  
<https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>
- **Read SEND37 for additional information about appeals:**  
<https://www.gov.uk/government/publications/how-to-appeal-a-special-educational-needs-sen-decision-send37>

Note: This guidance document does not cover information about mediation and its role in the appeal process. If you have not already had guidance about mediation you are welcome to contact us, or you can contact the mediation service directly:

Global Mediation 0800 064 4488

## When can you lodge an appeal?

### Appeals must be lodged

- Within 2 months of receiving your 'Right of Appeal' (your letter from the local authority)
- OR within a month of receiving your mediation certificate, whichever is the later date
- If there are exceptional circumstances for missing the deadline you can apply to the Tribunal for an extension.

## Refusal to Assess Appeals

The Tribunal will hear the appeal on paperwork alone, without either you or the local authority being present.

Note: You may make a written request for the Tribunal to be heard orally (section 4 of the SEND35a form) and your reasons will be considered by the Judge. The date for an oral hearing may be set later than that for a paper hearing.

Note: The appeal form for a Refusal to Assess is different to the form used for all other appeals (see appeal forms section).

## Appeals against a refusal to issue an EHCP

If you lodge an appeal against the local authority's decision not to issue an Education Health and Care Plan (EHCP) following an EHC needs assessment of your child, consider the following:

If you are confident there is enough evidence (within the professional assessments undertaken) about your child and the support he or she needs, but believe the local authority has failed to identify this

- *you should attempt to show the strength of evidence which has been overlooked as you will be relying on this alone for your appeal.*

If you believe the local authority failed to secure specific professional assessments which were necessary as part of the whole EHC needs assessment of your child

- *It is important that you explain this in your appeal and state clearly what assessments you believe need to be secured. (You might have a recommendation from within another professional report that further assessment is advised).*

If you are concerned that assessments and reports which have been completed have simply not been sent to the local authority special educational needs (SEN) department, either because the department did not seek them, or because the issuing body has failed to send the necessary information.

- *you will need to include this in your reasons for appeal, explaining what is missing.*

## Appealing the educational elements of a final EHC plan

The educational aspects are found in sections B, F and I.

Your grounds for appeal must be based on at least one of these sections.

### **SECTION B** - A child's or young person's special educational needs

Look closely at Section B to make sure your child's needs (difficulties) are clearly and fully described. You will need to look through the professional evidence (Appendices) which were sent to you with your EHCP. These reports should identify and describe your child's needs, as it is from these 'needs' that everything else is determined.

If you believe that your child has not had all the assessments he or she requires for the local authority to know the full extent and full range of needs, you need to state this in your reasons for appeal. As part of your appeal you can ask for specific assessments such as OT sensory or speech and language, but try to show evidence that they're required.

### **SECTION F** - Special educational provision

Look closely at section F to make sure provision is made for each of your child's needs. Provision must be specified for each and every need shown in section B. The provision must be clearly specified with respect to what it is, how often it is provided and for how long each time, and also who will be providing it (and what training/supervision that person will have).

### **SECTION I** - The name and type of the school, maintained nursery school, post-16 institution or other institution to be attended

- You may only want to appeal the name of the school (Section I). You are within your rights to do this but you must be confident that sections B and F are full, accurate and clear
- A local authority is duty bound to place a child in a school which can meet his or her needs. Therefore they must refer to sections B (child's needs) and Section F (provision that must be in place for the child's needs to be met) when determining the correct placement
- If either B and/or F are not full or accurate then a local authority may inadvertently place a child in a school which cannot meet needs - so you may need to appeal against sections B and/or F as well as I
- If you think the named school cannot meet needs or is the wrong type of school for your child, then it is likely you need to appeal sections B and F as well as I

- It may be that the school named on the EHCP is the right type of school but your wish is that your child is placed in a school of your choice. In this case you need only appeal section I. (*If you are only appealing section I you are not required to have considered mediation, and therefore you will not need a mediation certificate*).
- It may be that you are happy with the named school and only want to appeal B or F because you feel they're inaccurate or incomplete.

### **If you are appealing against the named school**

- If at the time of lodging your appeal you know which school you wish for your child to attend then name the school you are seeking
- If you are not yet sure (and are still visiting schools) then describe the type of school you wish your child to attend
- If you believe that your child's needs are still not fully known and do not know what type of setting they need, then say just that.
- If you wish for an independent school to be named in the plan you will need to prove that the independent school can meet the child's/young persons needs and that they have a place available. You will need to get this in writing before being able to appeal.

### **Appealing Health and Social Care elements of a final EHC plan**

Until April 2018 parents and young people have only been able to appeal the educational aspects of EHC plans i.e. sections B, F and I.

A national trial is now underway which also gives parents and young people the right to appeal about health and social care issues relating to SEN decisions, or contents of an EHC plan via a single route.

**Note:** the appeal must be based on the *educational* content of the plan i.e. your *reason(s)* for appeal must be related to sections B, F or I.

The SEND Tribunal only has the power to *recommend* that health and social care needs and provision are specified or amended in EHC plans. The Tribunal must send a copy of their recommendations to health commissioners as well as the local authority. Although the recommendations are non-binding, they are made by a specialist Tribunal and should not be ignored or rejected without careful consideration. Any reasons for not following them must be set out in detail and in writing, and sent to the parent/young person and the evaluators.

Health and social care commissioners *must*:

- respond to any request for information and evidence within the timeframe set by the Tribunal
- send a witness to the hearing if required
- respond to the parent/young person and the local authority within 5 weeks of a recommendation being made, setting out the steps they have decided to take or giving reasons why they are not going to follow the recommendation.

If recommendations are not followed, parents and young people will be able to complain to an Ombudsman or, in very exceptional circumstances, seek to have the decision judicially reviewed.

## Completing the appeal form

### Reasons for appeal

Be as full and clear as possible about the reasons for your appeal and include the issues you want the Tribunal to decide.

Explain why you disagree with the decisions taken and what you are seeking. Failure to do so may result in the Tribunal refusing to lodge the appeal.

If time is short, you can be brief, but you must be clear about your grounds. If need be, more information can be supplied at a later point once your appeal has been successfully lodged.

**Note:** The 'reasons for appeal' boxes on the form are quite small, and it's likely you will need to use an additional sheet of paper. Make this clear on the form, and ensure you have your child's name and DOB on the supplementary paper.

### Representative

A representative is someone who will give advice on the issues in the appeal, prepare the paperwork and represent the person making an appeal to the Tribunal. You may pay for legal representation from a solicitor/law firm. They will prepare and present your case at the hearing.

**Legal Aid:** Some parents are eligible for Legal Aid. Legal Aid will help with certain elements of the preparation for appeal. It will not provide a lawyer for the hearing (except in very exceptional circumstances).

You can check if you are eligible for Legal Aid by visiting the following government website:

<https://www.gov.uk/check-legal-aid>

IASK provides information, advice and support before, during and following a SEND Tribunal appeal in a range of different ways, dependent on the needs of the parent or young person and subject to availability. This may include representation during the hearing if the parent or YP is unable to do so. Please be aware we are not legal representatives.

You can also contact IPSEA or SOS SEN for information, advice, support and possible representation.

IPSEA <https://www.ipsea.org.uk/tribunal-support-service>

Note: If you are using our service, please **do not** tick the box on the appeal form (SEND35 at the end of section 7) which allows documents to be sent to the representative. It is important the documents come to you; you can then share them with us.

If you are yet to decide about representatives, you can state this on the form - you will have a second opportunity when you complete your Attendance form later in the process.

### **Advocate**

If you are a young person, going to appeal in your own name, you have the right to have an advocate. An advocate means getting support to help you express your views and wishes and help you understand and exercise your rights.

Your parents can be your advocate or IASK can attend the appeal with you subject to availability.

### **Consenting to an earlier hearing (SEND35 form only)**

You might choose to tick this box (in section 9) but be mindful that you need to feel prepared. Furthermore, if you're using a representative or advocate they may not be available at short notice

### **Paper hearing (SEND35 form only)**

On your appeal form (section 9) there's a box you can tick, if you are happy not to have a face-to-face hearing. We advise parents not to rely on a paper hearing as it is only by attending that you will be able to have your full views heard. The Tribunal will be able to ask all those present further questions to gain a fuller picture and better understanding of the situation. (This does not apply to 'refusal to assess' appeals as a paperless hearing is the default).

## Submitting your Appeal

### Documents to include:

- Your completed appeal form
- A signed and dated letter from the local authority giving you the right of appeal to HM Courts & Tribunals Service. (This letter will have been sent with the final EHC plan or notification of refusal to assess/issue)
- Your Mediation Certificate (sent to you after your contact with the mediation service). A mediation certificate is not required if you are only appealing section I).

If your appeal is about a 'refusal to assess' also include:

- Your original 'Our Story'. (You can also send any updated 'Our Story' as additional evidence).

If your appeal is about your child's final EHCP also include:

- All the appendices (these were sent to you with your child's draft EHCP)
- All supporting evidence you currently have. (Don't worry if you don't have it all at this point; you will have the opportunity to submit further evidence later)
- Include a 'contents' page which lists and numbers all the documents/paperwork you are sending – see table at the end of section 12 in the appeal form. (This will also help if you go on to send later evidence as you can give that piece of evidence the next number on your list and so minimise confusion)
- Supporting Evidence: This can be important and very helpful to your appeal. Think carefully about it. Supporting evidence may include:
  - Any evidence that you believe supports your appeal that is not already included in the appendices
  - Letters from professionals such as CAMHS, school progress reports, reports you might have asked others to write such as after-school activities leaders etc.). You could ask your child's current teacher/SENCo if they would be willing to write a statement.

Notes: Ideally the evidence should be reasonably recent

In the case of any lengthy reports you are sending it might be helpful to include a statement drawing attention to specific information that might be 'hidden' deep within the report

Resist the temptation to submit excessive evidence which is not truly relevant



**Lodge your appeal by recorded delivery.** Please **do not** send original documents other than the appeal form. (Make sure you keep a copy of the appeal form with your copies of all the other paperwork you are submitting).

You should receive a response from the Tribunal Service 10 working days after lodging your appeal. They will confirm to you that the appeal has been registered, and they will give brief guidance about what happens next.

### **Disclaimer:**

Information, Advice and Support Kent (IASK) has made all reasonable efforts to ensure that the information contained in this leaflet is accurate and up to date at the time of publication. It does not constitute legal advice and IASK cannot accept any responsibility for any loss or damage suffered as a consequence of any reliance placed upon it.