

FACTSHEET 2

After lodging your appeal

Contents:

- What happens after you submit your appeal?
- Getting Support with Your Appeal
- The Local Authority's Initial Response to Your Appeal
- Your Attendance Form and Your Witnesses
- Your Evidence and How to Submit It
- Appeals against a Refusal to Assess for an EHCP
- Appeals against a Refusal to Issue an EHCP
- Appeals against Sections B and/or F of the EHCP
- Appeals against School Placement (Section I of the EHCP)
- Seeking Further Directions from the Tribunal Judge
- Telephone Case Management Hearings
- Tribunal Orders
- Requests for Changes
- Less Common Occurrences (including information on how to withdraw your appeal)
- After the Final Evidence Deadline
- At the Hearing
- After the Hearing

What happens after you submit your appeal?

Within ten working days of submitting your appeal you will receive a confirmation email from the Tribunal Service that your appeal has been successfully lodged. At this point the Tribunal service will also make the LA aware you that have lodged your appeal against them.

The email will have some attachments to it, namely the “parent registration letter”, and advice on how to communicate with the Tribunal Service

The “parent registration letter” will explain the Tribunal process and give dates by when actions need to be taken by yourself and the Local Authority (LA)

After your appeal has been acknowledged, any further correspondence and/or paperwork you send in, **MUST** be sent to **BOTH** the Tribunal service send@justice.gov.uk and to the Local Authority kentsendtribunal@kent.gov.uk

Getting support with your appeal

The SEND Tribunal is designed to enable parents to go through the appeal process without the need to use lawyers.

IASK can help with this subject to availability (though we are not legal representatives).

You could also try IPSEA for support.

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

Local services who can also support are SEN SOS <https://www.sossen.org.uk/> - please be aware there might be a charge.

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>

You could also ask the Citizens Advice Bureau for further advice on this:

<https://www.citizensadvice.org.uk/>

The Local Authority's initial response to your appeal

- 30 days after lodging your appeal the LA will give a written response to your appeal. This response should include a summary of the facts, and may be very brief; the LA will address the issues in detail at the hearing
- Sometimes their response can make extremely negative and disheartening reading for parents. It may even include information you consider inaccurate or misleading. You can send a counter-response addressing these issues

Your Case Review form and your witnesses

- You will have a deadline for submitting this form, which is included with the parent registration letter
- You may want a family member or friend to attend with you
- Your child can attend, although this is not common practice. If your child attends, the Judge will be happy for them to speak first so that they can then leave. (They would need to have a responsible adult to look after them outside of the court).

Representatives:

- You may pay for legal representation from a solicitor/law firm. They will prepare and present your case at the hearing.

Helper:

- You can take a family member or friend as a helper to support you at the hearing
- IASK can support you through the appeals process and if you feel you need support at the hearing, you can ask for them to be named as a "helper" subject to availability of staff. (Please note IASK's role is to support you to express your views and wishes and would not normally speak on your behalf).

Witnesses:

- You must ask anyone you wish to attend as a witness before you complete and submit your attendance form
- You can ask a professional who has been engaged in assessing or working with your child/young person to attend as a witness
- You might ask the SENCo, or another teacher at your child's/young person's current school, to be a witness. They may be cautious because the local authority is their employer. (They might instead consider writing a witness statement for you). Also the LA is likely to ask school staff to attend as their witnesses. This of course means that you will also be able to ask questions of them at the tribunal hearing

- If you intend to have more than three witnesses, you will need to request this via a *Request for Changes* form. You should explain why you need these other witnesses
- If you are seeking a placement at a specific school, then requesting a representative from that school to attend as a witness is a good idea. (They will probably be familiar with this type of request)
- If a witness is unable to attend, you could ask them to contribute a Witness Statement
- If at the deadline for the submission of the attendance form, you are still uncertain who will be attending with you, you can write “to be confirmed” and then update later using a *Request for Changes* form.

Witnesses are not perceived to be for one party or the other; both parties and the Tribunal can ask them questions. They will not be put on the spot, but instead will be asked for information which helps everyone to gain a clearer picture of the situation

Your evidence and how to submit it

You will of course have submitted evidence when you lodged your appeal, but you may subsequently wish to submit further evidence.

Both parties must submit evidence they wish to rely on, as soon as it becomes available, and not hold onto it until the last minute. The other party will then have the opportunity to review their position. This helps to resolve issues ahead of the hearing. **Please remember to send any further evidence or information to both LA and Tribunal.**

- All further evidence **must** be sent to both the Tribunal and the LA, together with a covering email or letter explaining the relevance of each piece of new evidence. You could say something like:

“This is further evidence we wish to be considered. We believe it is a clear example of.../it highlights.../it identifies a need.../it recommends ...”

- Evidence might include school progress reports, school incident records, emails from the school, minutes from meetings, and medical reports or letters. (If appropriate, it could even include a video or audio recording of your child)
- If you are finding it difficult to obtain a very relevant document that has been produced about you child, you can ask the Tribunal Judge to order or direct the relevant body to provide that document. (You would need to do this via a *Request for Changes* form).

Final evidence deadline

- You will have a deadline for submitting final evidence. You can find the deadline date in the parent registration letter which you received from the Tribunal Service after lodging your appeal
- It is important that you keep to the deadline for final evidence because any late evidence might not be accepted
- If evidence is late coming in, do not request a delay in the evidence deadline because that would delay the hearing date.

Late evidence

If you have **late** evidence, you may seek permission for it to be included. **You must first ask the LA if they are happy with this, and then ask the Tribunal. All this must be done via a *Request for Changes* form**

- If you know that you will have late evidence (perhaps a report that is yet to be finished) you will need to alert the Tribunal and the LA to this before the deadline for final evidence. You should identify what this late evidence will be, why it will be late and roughly when you expect it to be available. You do this using the *Request for Changes* form and procedure
- If, after the final deadline, you receive new evidence that you were **not** anticipating, you simply need to explain this using the *Request for Change* form and procedure
- Note: The LA is required to go through the same process should they wish to add late evidence.

Very late evidence (less than two weeks before the hearing):

- If you have very late evidence, you will need to bring it with you on the day and ask the clerk of the court if it might be permitted. Bring **five** copies to hand to the clerk. The Judge will only permit the evidence if there are very good reasons for its delay, and if it is sufficiently valuable

Keep a log of all the additional evidence you submit, and the dates on which you submit it, so that when all the evidence is all compiled and sent out to you, you can check that your evidence has all been included.

Appeals against a refusal to issue an EHCP

If you lodged an appeal against the LA's decision not to issue an EHCP following an EHC needs assessment of your child, you will want to consider the following:

- You might be confident there is enough evidence (within the professional assessments undertaken) about your child and the support he or she needs, but the LA has failed to identify this. In this case you will be relying on this alone for your appeal, and you may wish to simply wait for the appeal date
- You may believe the evidence is very clear, in which case you can seek a telephone case management hearing (TCMH) (see below) in order to help draw this to the attention of the LA
- You might believe the LA failed to secure specific professional assessments which were necessary as part of the whole EHC needs assessment. In this case it would be extremely helpful to request a TCMH.

Appeals against Section B and/or F of the EHCP

Working Document

If you are appealing B and/or F you and the local authority will be required to work together on making amendments to these sections of your child's EHCP.

- The LA will send you your child's/young person's EHCP as a 'working document' with a 'key' to show you how to highlight changes you are seeking. The LA might initiate the working document in response to the details of your reasons for appeal; or they may send it unaltered and invite you to initiate it
- To begin with, you might find it helpful to look at your original reasons for appeal
- You will need to make full use of the professional reports in the appendices to your child's/young person's plan, along with any further professional reports you have included as evidence
- Go through the working document, making your proposed amendments (following the key). For section B, pull out descriptions of your child's/young person's learning difficulties from the professional reports; for section F, pull out any recommendations for provision that is required to meet the educational needs of your child
- When you add things to section B or section F, you should quote from the professional reports you are drawing from, and you should reference the relevant report and page with each proposed amendment
- If you seek amendments that are not supported by professional evidence, the LA should still consider those proposed amendments
- The working document will go backwards and forwards (ideally quite promptly) between you and the LA, with the aim of reaching further agreement each time
- If both parties engage fully in this process the final working document should have far fewer areas of outstanding dispute when it is sent to the Tribunal

- Ten working days before the hearing, the LA must send the final working document to the Tribunal (and to you) so that everyone knows what remains outstanding
- A well-prepared Working Document should enable the Tribunal hearing to focus on just the more difficult areas of dispute (which may of course concern information that is missing or assessments that have not been made).

NOTE: Though this section has concentrated on B and F you can also use the same approach with sections C, D, G and H (Health and Social Care). (This is currently a national trial, and the Tribunal cannot order an LA, but they can direct them.)

Appeals against school placement (Section I of EHCP)

- You might agree that the LA's named school can meet needs (*i.e.* is the right **type** of school) but instead wish to have your chosen school named. In this case you will need to demonstrate that there is a minimal difference in cost to the tax payer
- If you believe the named school cannot meet your child's/young person's needs, you will need to demonstrate this. Your appeal must be based on evidence which robustly demonstrates that the school named by the LA cannot meet needs; and you will need to gather evidence which demonstrates how your chosen school can meet your child's needs
- You will need to have visited both schools so that you can be clear about what each can provide
- Make full use of the information in the prospectus and Ofsted reports for both schools. You might also find the school's School Information Report helpful. You are required to submit the Ofsted report for your chosen school; the LA will submit the Ofsted report for theirs.
- Make use of evidence in reports about your child which demonstrate the extent of your child's/young person's difficulties and/or the extent of provision required to support your child/young person
- Identify any important information that is missing including any assessments that have not been carried out. Missing information may prevent the full extent of your child's/young person's needs being known and understood
- **You must** formally notify the school which you have chosen
 - You must provide written notification to the Head Teacher stating that you are seeking (through appeal) to have their school named on your child's EHCP
 - The letter should include something to the effect that having visited the school and met with staff, you have learnt more about the types of pupils they have, and how the school meets their needs, and that you firmly believe it is the right school for your son or daughter
- **You must** send a copy of this notification to Tribunal and to the LA. This should be done **within ten days** of receiving your **initial** response from Tribunal

- If you have yet to decide which school you wish to have named, you will need to alert the Tribunal and LA to this. You will also need to update them both as soon as you have identified a school
 - Note: If your decision-making means you do not identify a school until after the 'final evidence' deadline then this must be done via a *Request for Changes* form
- Once the LA is aware of the school you are seeking to have named they will consult with that school
- **Be alert to the fact that the LA will be sending the EHCP and its appendices to your chosen school. If you are appealing B and/or F as well as I, the information the school receives may not be full and accurate. You may wish to alert the school to your concerns about inaccuracies and incompleteness in the current EHCP**
- If the school is an Independent Special School, you will need a letter from them confirming that they can meet needs and that a place is available, and how long it will be kept open for
- **Note:** some Independent Special Schools are on the *Section 41 List*. These schools have agreed with the government that if their school is named in a pupil's EHCP by an LA or by Tribunal, they will admit that pupil. This means if you have chosen a Section 41 school you will not be required to seek a letter from the school confirming they have space
- The Head Teacher of your chosen school or their representative may decide to visit your child/young person in their current school
- **Costs:** If you are seeking an independent school, you need to submit the full costs of your chosen school, together with a full breakdown of what they provide. You also need to communicate with KCC's School Transport department and ask them for their costs for transporting your child to and from that school. You will need to send written proof of all this to both Tribunal and the LA. The LA will also be required to do this for the school they have named.

Seeking further directions from the Tribunal Judge

From any point after the LA has sent their response to the lodging of your appeal, either party may seek further directions from the Tribunal Judge. This allows you to seek clarity and guidance from the Judge when things have become stuck or confused.

- You must always seek directions via a *Request for Changes* form
- You might need to use this mechanism to draw the Tribunal's attention to, for example, your concern that the LA is failing to respond to your working document, or failing to provide essential evidence
- Note: The Judge may issue further directions without either party seeking them. This will often be because the Judge can see that things are not progressing smoothly.

Telephone Case Management Hearing (TCMH)

This is one way of receiving directions, and it can be very helpful in the appeal process. The purpose of a TCMH is to seek and gain clarity and direction from the Judge when things have become stuck or very confused. This is in no respect a final hearing.

If a TCMH is arranged, you will be sent details of how it works and what to do. Everyone is given a Freephone number to call and a code to enter. The Judge will give everyone an opportunity to speak, and the call will last approximately 30 minutes.

- Either party can seek a TCMH. For example, you might seek one if you believe the LA is not doing what is required of them within the appeal process
- Parents can ask for a TCMH as early as they like after successfully lodging their appeal
- This route can be particularly helpful when the appeal is mostly about evidence gathering. If your appeal is at least in part about the LA's failure to commission specialist assessments for the purpose of identifying the extent of your child's educational needs, then a TCMH may be very helpful in getting these assessments started
- Often, the Tribunal Judge calls a TCMH because they can see that things are unclear and not properly ready for the hearing
- Occasionally a TCMH may lead the Judge to determine there is still so much work to be done, that he or she decides to postpone the hearing
- Following the TCMH the Tribunal will send a statement to both parties confirming what the Judge has ordered each party to do and by when.

Tribunal Orders

It is quite common for the Tribunal to send an Order or set of Orders, set out by the Judge, directing one or both parties to undertake particular actions.

It is important that you attend to any such Orders as a priority.

Request for Changes (RfC)

- This is a very helpful form (and process) which you are quite likely to make use of during the appeal process
- **The RfC provides the means for you to communicate anything to the Tribunal**
- The RfC form can be found on:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728334/send7-eng.pdf
- An RfC can be used as many times as needed during the appeal process
 - Examples: adding further evidence; asking Tribunal to direct LA to provide essential evidence; requesting a change in witnesses or attendees; informing the Tribunal if the LA has missed a deadline set out by the Tribunal
- With any RfC, you will **ALWAYS** need to seek the other party's response first:
- To begin a RfC, you must first complete a RfC form and send it to the LA **only**
- Make sure you that what you are requesting is clear and explicit on the RfC form. You might need to write more than can be fitted into the box on the form. In this case, make it clear that you are including an additional sheet.
- Give the LA reasonable time to respond (5 working days, unless the hearing is within 2 weeks, in which case 2 working days)
- After you have a response from the LA, send the completed RfC form, **with the LA's response**, to **both** the Tribunal service **and** the LA
- The Tribunal Judge will look at your request and the LA's response to your request, and then decide whether it is reasonable to grant your request
- The Judge will expect both parties to be reasonable in their requests and responses
- If the LA fails to respond, send your RfC form to Tribunal and the LA, making it clear that this has happened. Provide evidence if possible.
- NOTE: The LA must use the same process if it is seeking changes.

Less common occurrences

- **Changing your appeal:** you may decide that you need to alter your original appeal reasons or add to them. For example, you may decide that you need to appeal more sections of the EHCP. Do this via the RfC process. Be clear about what you are requesting and the reasons for your change in appeal
- **Subpoenaing a witness:** suppose that you have asked someone to attend as a witness, and you believe that they would be a very valuable witness, but they are reluctant to attend. You could write to the Tribunal explaining why you believe this witness must attend in person. Should the Judge agree, a witness summons would be issued to you. It would then be your responsibility to hand the summons to your witness in person
- **Seeking a delay in the hearing:** if you need to seek a delay to the hearing you will need to complete a RfC form in the usual way, and you will need to include possible alternative dates which you and the LA have agreed. The Tribunal service will then do its best to accommodate the request. (If you cannot find agreed dates the Tribunal will decide a date).
- **Seeking an earlier date (Expedited Hearing):** there is an **Expedited Hearing Form** which you can obtain from the Tribunal Service (**SENDIST, 01325 289350**). As with seeking a delay, you will need to consult with the LA before approaching the Tribunal
- **'Joint Position Statement':** when both parties are seeking the same thing (such as a delay in the hearing date) the LA will write the statement and the parents will sign it. The LA will then send it to the Tribunal service (copying in the parents)
- **Parents seek permission for a professional (whom they have engaged) to visit their child's school:** this will be for the purpose of gathering sufficient evidence about the child for the tribunal:
 - There is no automatic right of access, and the Head Teacher may refuse. If this happens you could use the RfC process to ask the Tribunal Judge if they would consider issuing directions to the Head Teacher to allow this request
- **Consent Order:** this comes from the Judge, and orders the LA to formalise something which has been agreed between you and them during the appeal process. For example, if you and the LA have made enough agreed changes to the working document to allow your appeal (or part of your appeal) to be withdrawn, then you would probably want the agreed changes to be confirmed by the Tribunal
- **Withdrawing your appeal:** you may have decided not to continue with your appeal, or perhaps you and the LA have reached an agreement before the hearing:
- You can withdraw your appeal at any time up to **three weeks before the hearing** (after that, the Judge is likely to refuse). You must complete a withdrawal form
- If you want to withdraw less than fifteen working days before the hearing, you must put the request in writing using a RfC form. (This may lead to a Telephone Case Management Hearing where you may be asked to explain your late decision)

- If you seek to withdraw less than five working days before the hearing, you are likely to be called (along with the LA) before the Judge, to explain. (It will not be necessary to bring witnesses)
- The hearing will probably take less than fifteen minutes, and the Judge will issue an order disposing of the appeal
- It is your responsibility to withdraw (because it is your appeal and not the LA's)
- NOTE: If you have reached an agreement with the LA, **we advise you not to withdraw until you have had all your agreements in writing from the LA (e.g. an amended and reissued EHCP)**
- We would usually recommend that you seek a Consent Order first, and withdraw later.

After the final evidence deadline

The Bundle: this is the full collection of evidence submitted by both parties

- It is the LA's responsibility to put the evidence in order, number the pages and send it out as *the bundle* to the parents and Tribunal
- It must be sent to you two weeks ahead of the hearing
- **It is very important that you go through the whole *Bundle*:**
 - **Make sure, as best you can, that all the evidence you submitted has been included (especially any additional evidence and emails pertaining to it)**
 - Familiarise yourself with the whole of the *bundle*, **including** the LA's evidence and argument
 - Highlight evidence which you think you will be likely to draw on at the hearing

- **Time and meeting link:** Most hearings are virtual and the Tribunal will usually send this information to both parties about two weeks ahead of the hearing. If it is a face-to-face hearing, you will be informed of the venue at this stage.
- When you receive the time, meeting link/venue and have your *bundle*, it is your responsibility to share these with your witnesses.
- **Opening/Closing statements:** It is helpful if parents prepare an 'Opening/Closing statement' which can be read out at the hearing. This statement gives the details of what you believe to be the issues; and (vital) a description of your child and what you want for him or her. If you are appealing the named school, make sure you speak about your chosen school and what it provides and specialises in.
- **Description of Child/young person:** It is helpful to prepare a short description of your child/young person as the panel might wish to learn more about your child/young person. This only needs to be a short paragraph and can include information about interests, likes and dislikes. You may wish to include a picture.

At the Hearing

- The Tribunal Panel comprises a Tribunal Judge and one or two experts in the field of SEN
- Although the proceedings are formal, the Judge will not be wearing a gown or wig
- The Judge will usually give parents the opportunity at the beginning or the end of the hearing to read out their statement
 - If you read out a statement at the beginning, you may wish to say something else in summary at the end (perhaps in response to what has been raised in the hearing)
- The Judge does not expect parents to make their case and then argue points. The Judge will want parents to be familiar with what they are seeking. For example, parents should know if their chosen school's Ofsted is outstanding
- The Judge will determine how the hearing will be held. Parents and the LA take their lead from him or her
- At the start of the hearing the Judge will ask for views on the disputed points
- The hearing mostly takes the form of a formal conversation, with the Judge directing. It is important that no one interrupts when someone else is speaking
- **Keep notes throughout the hearing of anything you wish to raise in response to something that is said by someone else**
- Both parties can put questions to each other and to any witnesses
At the hearing the parents can tell the Judge if they feel they've been pressurised by the LA at any time leading up to the hearing. Parents can say if they believe the LA has blocked or stalled, or been in any way uncollaborative
- A well prepared **Working Document** should enable the Tribunal hearing to focus on real areas of dispute
- Witness evidence will be confined to those areas not agreed on the Working Document
- It is worth remembering that if sensible amendments are proposed (**and referenced with evidence**), then the Tribunal will be more willing to adopt them
- The Tribunal Panel may ask parents and the LA to go into another room to continue working on the working document. Keep notes on what has been agreed, and ensure that the wording is right
- The Judge will usually give both parties an opportunity to briefly state their position at the end of the hearing.

After the Hearing

- You will receive the Tribunal decision (and reasons for the decision) by post ten working days after the hearing or on a date agreed at the hearing
- The LA must carry out any Tribunal orders within a specific time after the Tribunal decision is issued. The requirements would be as follows:
 - Start an EHC needs assessment/reassessment within four weeks
 - Make an EHC plan within five weeks
 - Make changes to an EHCP within five weeks
 - Change the school named in line with the parents' wishes within two weeks
 - Continue an EHCP immediately
 - Cease an EHCP immediately.

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.