

# SEND Tribunal: Extended Appeals

## Frequently asked Questions

This document provides answers to frequently asked questions about the SEND Tribunal: Extended Appeals that continues the powers of the SEND Tribunal to make non-binding recommendations on the health and/or social care elements of Education, Health and Care plans. It is aimed at those who have an interest in, or are involved with, SEND Tribunal: Extended Appeals.

## Contents

---

|   |    |
|---|----|
| The Basics .....                                      | 2  |
| Health and Social Care.....                           | 4  |
| The Tribunal process.....                             | 6  |
| National Trial appeals.....                           | 8  |
| Responding to recommendations.....                    | 8  |
| Evaluation .....                                      | 9  |
| Single Route of Redress National Trial Expenses ..... | 9  |
| Advice and Support.....                               | 10 |
| Helpful Documents and Information.....                | 11 |

## The Basics

---

### What was the SEND single route of redress national trial?

The trial gave parents and young people who are making a SEND appeal the opportunity to request recommendations about the health and social care needs and provision sections in Education, Health and Care (EHC) plans, in addition to the educational aspects. This applies for all SEND appeals apart from those that are only about carrying out an EHC needs assessment. The trial began on 3 April 2018 and ran until 31 August 2021. The Department for Education has it will be continuing the extended powers given to the SEND Tribunal following the end of the National Trial.

### What are the SEND Tribunal's extended powers?

The SEND Tribunal's extended powers enables the Tribunal to make non-binding recommendations on the health and social care aspects of EHC plans.

This gives parents and young people a 'single route' to raise all their concerns about an EHC plan in one place. Parents and young people are able to appeal to the SEND Tribunal about decisions concerning all three aspects of Education, Health and Social Care – but only if there is an educational element to the appeal.

In practice, this means that parents, local authorities and health commissioners will need to provide evidence and arguments for the health and social care issues. More witnesses are allowed to attend a hearing, and they may take two days instead of one. Health and social care commissioners will need to let parents and the local authority know what steps they have decided to take or their reasons for any decision not to follow the recommendations.

### What can you go to the SEND Tribunal about?

[Regulations](#) set out the extended powers which 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

This **needs to be part of a SEND 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 re-assessment
- 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

You can also go to the Tribunal about a decision by the LA not to carry out an EHC needs assessment, [but this is not part of the SEND Tribunal: extended appeals.](#)

### What are the benefits of the SEND Tribunal: extended appeals?

- It creates a more holistic, person-centered view of the child or young person's needs at the Tribunal.
- It brings appeal rights in line with the wider remit of EHC plans – a 'single route of redress'.
- It encourages joint working between education, health and social care commissioners.
- It brings about positive benefits to children, young people and parents

### What are the limitations?

The extended powers mean the Tribunal can make non-binding recommendations about the health and/or social care aspects of EHC plans. Non-binding means that local authorities and clinical commissioning groups are not under a duty to accept the recommendations, but it is expected that they will. 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. If the recommendations are not followed, parents and young people can complain to the [Local Government and Social Care Ombudsman](#) or the [Parliamentary and Health Service Ombudsman](#) or seek to have the decision judicially reviewed.

### Will the decisions given by the Tribunal on education aspects of EHC plans still be binding under the extended appeals?

Yes, the usual Tribunal orders (educational decisions) will remain binding.

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

## Health and Social Care

---

### What do the extended powers do about health and social care issues?

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 are 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.

### How do I inform the Tribunal I want health and/or social care issues to be considered?

To make an appeal against a local authority decision on any of the grounds listed above and to request that the Tribunal also considers concerns about the health and/or social care aspects of an EHC plan, you should follow the normal process for bringing an appeal to the Tribunal and tick the box on the form, found on the [Gov.uk](https://www.gov.uk) website, asking the Tribunal to make a recommendation on the health and/or social care elements of the plan.

Advice on making SEND appeals to the Tribunal and appeal forms are available via <https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

### Would the SEND Tribunal consider social care needs and/or provision that are already being addressed in a separate court process?

Yes. The Tribunal would still hear the whole SEND Tribunal: extended appeal. Social Care proceedings elsewhere do not stop the SEND appeal. The LA should inform the Tribunal what is happening and that can be taken into account, but other proceedings will not stop the Tribunal from looking at and recommending on the social care element under appeal.

### What will be expected of health commissioners in order to prepare and plan for an appeal to the tribunal?

Every case will be different and will include the gathering of evidence, creating an outline argument, sending evidence to the LA and case management activity.

There will also be the expectation of sending a witness to a trial hearing if appropriate and responding to parents and the local authority about recommendations from the SEND Tribunal.

## Mediation

---

### What are the circumstances for choosing to use mediation?

Mediation is an informal structured process that aims to reach resolutions to disagreements. It is specifically for decisions related to EHC needs assessments and plans, therefore parents and young people can choose to use mediation in the following circumstances:

- Following a decision by a local authority not to carry out an EHC needs assessment.
- Following a decision by a local authority not to draw up or amend an EHC plan, but only if the refusal to amend follows an Annual Review.
- Where there is a disagreement about the needs and/or provision set out in an EHC plan.
- Following a decision by a local authority not to amend an EHC plan or a decision to cease an EHC plan.

### What is the process for initiating mediation?

The parents and young people must contact a mediation adviser within 2 months of the LA decision, unless the issue is solely about the naming of the school or educational institution. Parents and young people may choose whether to raise their health and/or social care issues at mediation.

The mediation adviser will provide advice about going to mediation and will inform the local authority that the parent or young person wants to go to mediation. The local authority must then ensure that a mediation session is arranged within 30 days.

Contact details of the mediation arrangements are set out on the local offer.

Full details of the statutory duties of local authorities in relation to mediation can be found in [chapter 11 of the SEND Code of Practice](#).

## Do local authorities and health bodies have to take part in mediation?

If a parent of young person decides to go to mediation, there is a duty on local authorities to take part. If the mediation is about the health element of the plan as well as either the education or social care parts of the plan then the health commissioning body or bodies must also take part.

## Is mediation compulsory for going to SEND tribunal?

To take an appeal to the SEND tribunal the parent and young person must consider mediation first. If after speaking to a mediation advisor the parent or young person decides not to use mediation the mediation advisor will issue a certificate within 3 working days to confirm that mediation information has been provided.

## The Tribunal process

---

### Will there be health and social care experts on the panel at the Tribunal hearing?

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 the trial will have a health and/or social care background and be trained in SEND law.

### Is there a way to be an observer at a Tribunal, and will this help support learning?

Either party can apply for an observer to attend the hearing. Because all hearings are in private, a party will need to apply for permission to bring an observer and explain why their presence is required. If permission is granted, the observer cannot take any part in the hearing, or take notes, only observe the hearing. Normally the only circumstances in which an observer can attend a hearing is where a representative is training someone on the tribunal process. Permission to attend as an observer must be sought in writing at least 10 working days before the hearing.

### **During COVID-19:**

Open justice is continuing as HMCTS increase the use of audio and video technology during the Covid-19 pandemic. When considering the use of telephone and video technology at tribunal, the judiciary will abide by the principles of open justice as usual.

As they do now, judges may also determine that a hearing should be held in private if they feel it is necessary.

More information on this can be found at: <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#open-justice>

### Do you have to apply to have an additional witness?

Yes. Parties must inform the Tribunal on the attendance form of the names of any witnesses they intend to bring to the hearing. 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. If a party wants to bring more than three witnesses, they will have to ask permission in writing on the request form. If a party wants to change their witnesses, they should tell the SEND Tribunal and the other party immediately.

### Could the Tribunal direct an assessment on a child if they thought there was not enough evidence to make a decision?

Yes. Under rule 15 (4)(a) of the Tribunal's rules the parents of the child, or any person with care of the child or parental responsibility for the child may be required to make the child available for examination or assessment. And under rule 15(4)(b) the person responsible for a school or educational setting may be required to allow a suitably qualified person to have access to the school or educational setting so that they can assess the child or the provision made, or to be made, for the child.

### Will cases still be dealt with within 12 weeks?

Yes. The Tribunal has wide discretion to give case management directions and set a timetable for appeals. The standard timetable that the Tribunal will usually follow is the same as that for non-trial appeals 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

## SEND Tribunal: extended appeals

---

### Can a health and/or social care aspects be appealed without an educational aspect?

Appeals can only be made if they have an educational aspect to them. So, to request a health and/or social care recommendation to be made, an appeal about a special educational aspect of an EHC plan (including refusing to issue a plan and any placement) must be made at the same time.

### If the education part of the plan is resolved, but not the health and/or social care aspects, where would the unresolved sit?

Where there is no educational element for an appeal, or the educational aspects of the appeal has been resolved before going to Tribunal (e.g. through mediation or disagreement resolution services), any concerns about the health and/or social care elements of EHC plans will need to be taken up via separate routes with the local health commissioner for health issues and the local authority for social care issues. If families remain unhappy, they can take their complaint to the relevant ombudsman, once they have been through the complaint's procedure with the LA or local health commissioner.

## Responding to recommendations

---

### What will health and social care partners need to write to parent carers and say, following a tribunal?

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, and for health commissioners to the LA, within five weeks of the date of the recommendation (or the date specified by the Tribunal, if different), and inform them of the steps they have decided to take following the recommendations. If they have decided not to follow the recommendations, they must provide a clear reason for that decision, explained in sufficient detail. A sample letter can be accessed from the [toolkit](#).

## Evaluation

---

### How was the independent evaluation of the national trial undertaken?

DfE contracted IFF Research and Belmana to carry out an evaluation of the national trial that provided evidence to help inform a government decision on the continuation of the powers.

The evaluation process ran alongside the trial, looking at implementation of the process and what the outcomes are for families and commissioners as well as the costs. Parents and young people were interviewed for their views, and local area in-depth case studies and national surveys also took place, as well as an assessment of the responses to recommendation letters. Stakeholder and steering group views and opinions were also taken into account when deciding upon the success and future of the extended powers.

The evaluation has been published in full and can be found on the [Gov.uk website](#).

## Single Route of Redress National Trial Expenses

---

Relating to appeals against local authority decisions and EHC plans issued or amended between 3 April 2018 and 31 August 2021, local authorities can be awarded a grant of up to £4,000 per case for SEND Tribunal trial activities under the national trial. This grant is to reimburse the reasonable endeavors of the local authorities and health commissioning bodies to achieve the following:

- LAs informing the social care team and health commissioning body of the appeal.
- LAs collecting evidence from all parties to be presented at the Tribunal.
- Attending an extended trial hearing if necessary.
- LAs to make payments to the social care teams and health commissioning body for costs incurred in relation to:
  - Gathering and sending evidence to the LA, and case management activities relating to the trial.
  - Sending a witness to the trial hearing.
  - Responding to the LA and parents about the recommendations of the Tribunal.

## Where can I find all the resources required to make a National Trial expense claim?

All expense claim guidance and resources can be found on the [disagreement resolution online toolkit](#).

## Is there a deadline for claiming National Trial expenses?

Local authorities must submit all expenses claims within 3 months of the appeal conclusion, this can be at a hearing or an agreement reached through Tribunal casework.

Claims submitted outside of these timeframes will not be accepted, unless the LA can provide evidence of exceptional circumstances. DfE will consider whether to accept such claims on a case-by-case basis.

*For appeals heard before 4th November 2019, local authorities had 3 months from the 4th November to submit any outstanding expense claims.*

The full guidance can be found on the [disagreement resolution online toolkit](#).

## Advice and Support

---

DfE SEND adviser and NHS England support teams will provide ongoing advice and support to local areas.

There is a Toolkit of support materials ( [Extended Powers SEND Tribunal: Online Toolkit - Mott MacDonald \(sendpathfinder.co.uk\)](#)) that includes:

- Guidance document for education, health and social care professionals and parents and young people as well as one-page summaries
- Template wording for local offers and decision/response to recommendation letters
- Checklist and template wording for local authority decision letters
- Guidance and forms on claiming expenses and all associated expense claim documents

## What support and information is available for parents and/or young people to get specific advice when going through the Tribunal process under the national trial?

Information, Advice and Support Services (IASS) can provide free and impartial advice about the law on SEND, local SEND arrangements and support, and the trial. This can

include support with managing appeals such as the preparation of cases and attendance at hearings, as well as signposting to mediation and other areas of support.

The Tribunal website on [GOV.UK](https://www.gov.uk) gives advice on making SEND appeals to the Tribunal and links to the appeal form.

Every local authority will have Local Offers that contain further information on the trial, including links to other organisations that provide support.

A guide that explains how young people aged 16-25 who are unhappy with their SEND support can find help in resolving those issues has been published, 'When people can't agree – Special Educational Needs and Disability Complaints: a guide for Young People in education' and is aimed at young people with SEND, their families and those that support them. It can be found [here](#) on the online toolkit.

## Helpful Documents and Information

---

### Factsheets

A series of factsheets that have been prepared to give local authorities key information, advice and top tips for preparing for, mediation and disagreement resolution services.

This can be found in the [SEND information packs and resources section](#) of the online toolkit.

### Q&A Webinar

In the [event materials and webinars section](#) of the online toolkit, you can find a Q&A webinar hosted by DfE SEND Adviser, Andre Imich. This covers a wide range of the most frequently asked questions about the SEND Single Route of Redress National Trial.

### Young Persons Guide to Complaints

A guide for young people aged 16 to 25 has been produced for those who want to know who to talk to if you they unhappy with the help they are getting for their special educational needs or disability at school or college. You might also find this guide useful if you are an organisation supporting young people.

This can be found in the [SEND information packs and resources section](#) of the online toolkit.