

Appealing to the First Tier Tribunal about Sections B&F of an EHC plan



Guide No 45

September 2021

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Section Five - Preparing for the rest of the appeal process

Key to the colours in the text

Sections

Anything about law, case law and statutory guidance

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Issues you will need to consider and steps you need to take

Headings

Glossary

First Tier Tribunal for Special Educational Needs and Disability (“SEND Tribunal”) is independent of the local authority. The SEND Tribunal hears parents’ and young people’s (“YP”) appeals against local authority decisions about the special educational needs (“SEN”) of children and young people. The SEND Tribunal try to keep the appeal process as informal as possible although it is important to keep in mind appealing is a legal process.

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Local Authority (“LA”) is the body who is responsible for the EHC plan and can make various decisions about EHC plans. These decisions carry a right of appeal to the SEND Tribunal.

The Children and Families Act (“C&FA”) 2014 is the law which sets out what EHC plans must contain.

Case law is law which has been made by the courts and decided by judges. In this area of law, it is typically made through the Upper Tribunal. This happens when one of the parties involved in an appeal to the SEND Tribunal has successfully appealed the decision to the Upper Tribunal. The Decision from the Upper Tribunal then becomes binding and creates case law.

The Special Educational Needs and Disability Code of Practice 2015 (“The SEND Code”) is statutory guidance which explains the duties which various professionals, including LAs, have towards children and YP with SEN. When guidance is ‘statutory’ this means all the professionals it applies to must have regard to it. Put simply, they are expected to follow the guidance unless they have a good reason to depart from it.



Section One - Purpose of this guide and how to use it

The purpose

This document will give you a step-by-step guide to the appeal process. Appealing is typically a 12–14-week process from registering the appeal through to the hearing takes place. Therefore, the length of the guide reflects this step-by-step process but we don't

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expect you to read it all at once! This guide will explain the law and guidance which is relevant to the decision being appealed and can be used as a resource for challenging the decision you have received.

How to use it

The guide contains some practical tips and next steps for starting the appeal process. Please read each section carefully. If you are coming to the guide after you have sent in your appeal to the SEND Tribunal, there is still information and guidance in **section 3** which will assist you in obtaining evidence which can be used for the rest of your appeal.

Section 2 deals with information you need to know before making your appeal including:

- Who has the right of appeal?
- Information in the decision letter and time limits.
- Legal help.
- How IAS can help.
- The law relating to the contents of EHC plans which is explained further using case law.
- What you need to do now to start building your reasons for appealing.

Section 3 deals with evidence and identifying evidence which could help your case. You may need to re-visit this section at different stages throughout your appeal.

Section 4 deals with consideration of mediation and starting the appeal process.

Section 5 deals with preparing for the deadlines once the appeal has been registered including the hearing. This section will also deal with considering whether there may be further evidence or witnesses that could be sought to strengthen your case.

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Section Two – Essential information you need to know and some frequently asked questions

Frequently asked questions

When do Section B&F appeals arise and when can you appeal?

You have the right to appeal the contents of an EHC plan in the following circumstances:

- On receipt of a finalised EHC plan following an EHC assessment or a re-assessment.
- When an EHC plan is amended, typically after an annual review (and when you receive the final amended plan).
- On receipt of a decision from the LA not to amend the plan following an annual review or re-assessment (and you think the plan should be amended).
- When the LA inform you that they will cease to maintain the plan, which means they believe an EHC plan is no longer necessary for your child/YP (see factsheet no 47 on how to appeal a cease to maintain decision).

When a parent/YP receives one of the above and believes there is incorrect or missing information in sections B&F, they may wish to consider appealing.

Note: When appealing the contents of the EHC plan, Sections B, F & I are the only Sections of the plan which can be appealed, and these are often appealed together as a B, F & I appeal (see fact sheet number 44 on Section I appeals). However, under the SEND Tribunal single route of redress, you can request the Tribunal looks at health and

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social care issues as part of a contents appeal (see guide 46 which explains the SEND Tribunal's extended powers).

Who can appeal to the SEND Tribunal about the contents of an EHC plan?

Parents (in relation to children from 0 to the end of compulsory schooling) and/or a YP (over compulsory school age until they reach age 25).

What information must the decision letter contain?

You should have been sent a letter from the LA when they made their decision. This letter must contain the following information on your rights of appeal:

- Your right to appeal that decision
- The time limits for doing so
- Information about mediation
- The availability of—Disagreement resolution services and
- Information and Advice Support Service information, who can advise you about the process, your options and about matters relating to the special educational needs of children and young people.

The Timings - The date of the LA notification letter is the date from which the time frame for making an appeal starts to run. You must send the appeal form to the SEND Tribunal within **two months** of the date of the decision you are appealing or **one month** from the date you obtain a mediation certificate, whichever date falls latest.

Example

Alice receives the decision letter and it is dated 10th April. She requests and receives her mediation certificate just before the 2-month deadline on the 7th June. The mediation certificate extends Alice's right of appeal by 1 month therefore her deadline for appealing is now 7th July.

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Considering mediation – Before bringing an appeal to the SEND Tribunal, mediation must be considered. This does not mean that mediation is compulsory, but it must be considered. There is a telephone number on your decision letter from the LA which provides the details of the mediation service. You must contact this service to obtain a mediation certificate if you do not want to participate in mediation.

What if I have missed my deadline?

If you have missed the deadline, you can ask the SEND Tribunal to accept your appeal late and they have the power to register the appeal. If you need to do this, IAS recommends you seek advice first. There may be reasons for this e.g. family crisis/relationship breakdown/ housing issues/illness within the family/ financial issues/problems in the workplace/exclusion of your child and/or other difficulties your child is experiencing.

Example

Alice received the decision letter and intended to make an appeal. However, during the appeal window she broke her leg and her son was permanently excluded from school which meant she was incredibly stressed and could not make the appeal in time.

What is Legal Help and do I qualify?

Under the Legal help scheme, parents/YP may qualify to receive free legal help from a solicitor firm. There is a legal aid checker here: [legal help](#). It is important to check whether this is available even if you suspect you or your YP may not qualify. If you do qualify this means a solicitor's firm will do your case work free of charge. B&F appeals may require independent reports and funding for these reports may be available through legal aid.

IAS expect parents/YP to check to see whether they are eligible for legal help and take up this help if it is available so that IAS can support those families who are not eligible.

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What IAS can do to help parents and YP

- IAS can help parents/YP to explore their options and rights and can provide information to help them make informed decisions/responsibilities and own any decision.
- IAS can keep the appeal focused on the legal test and ignore historical aspects of the case.
- IAS can support parents/YP to plan regarding facts and evidence.
- IAS can check the LA decision letter is compliant and consider parent/YP circumstances if they are out of time for making the appeal. (See above).
- IAS can explain the practical considerations of mediation.
- IAS can explain the use of Legal Aid, but it is always the parent/YP's responsibility to check if they are eligible.
- If IAS are supporting you through the appeal we can check your draft reasons for appeal (time limits permitting).

IAS will expect that:

- The parent/YP to follow any guidance.
- The parent/YP attempt to draft their reasons for appealing.
- All information is given/available on time.

What IAS cannot do?

- Give personal opinions.
- Solve problems and make decisions for the parent/YP.
- Do things that parent/YP can do for themselves or could do with encouragement/support.
- Jointly support a parent/YP whilst a solicitor is advising on their case.
- Chase up the LA to ensure deadlines are adhered to.

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The law

To help you identify whether Sections B&F should be appealed it is important to have a some understanding of what the LA is required to put in these Sections in law.

The LA has a duty to 'specify' SEN in Section B and the special educational provision required to meet the SEN in Section F. This is set out as follows:

Section 37 (2)

For the purposes of this Part, an EHC plan is a plan specifying—

- (a) the child's or young person's special educational needs;
- (b) the outcomes sought for him or her;
- (c) the special educational provision required by him or her;

What does specify mean?

The question as to what exactly 'specify' means has been frequently examined by the courts. We have chosen 3 decisions to highlight some of the issues the courts have considered. Although the decisions below relate to special educational provision, the same principle will apply to SEN (Section B); in other words, the description of the needs must be clear.

Case law

In the case of **EC v North East Lincolnshire LA (HS) [2015] UKUT 0648 (AAC)** the Upper Tribunal criticised the description of the child's special educational provision stating it was:

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“...vague on the ‘who, what, when and how long’ details that are meant to spell out the local authority's duties...”

Although this case was decided under older education legislation, it applies to EHC plans as the duty to ‘specify’ special educational provision under both the old legislation and the C&FA 2014 is identical.

The issue of specificity and has been considered in relation to children/YP who are attend specialist placements. In **B-M and B-M v Oxfordshire County Council (SEN) [2018] UKUT 35 (AAC)** the child in question was attending a mainstream school with a specialist resource base. The parents appealed the decision of the SEND Tribunal as they claimed, among other things, that the provision detailed in Section F had not been properly specified. The LA had argued that specificity was not necessary when a child attended specialist provision. The parents were not successful with their appeal. They went to the Upper Tribunal who concluded that a placement in a ‘resource base’ was not the same as a placement in a special school. The Upper Tribunal also said that the case law quoted by the LA did not support the principle that specificity was **not** required for children in special schools. The Upper Tribunal stated:

“I would lean towards finding that provision was not being made at the equivalent of a special school. However, it is not necessary for me to decide the point because, as Ps [the parents] point out, the authorities do not suggest that, even for children in specialist provision, the requirement of specificity can be abandoned where detail could reasonably be provided”.

This does not mean that ‘flexibility’ in Section F is not permitted. In **IPSEA v Secretary of State for Education and Skills 2003 EWCA Civ 7, (2003) ELR 393** the Court of Appeal held:

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“Any flexibility built into the Statement (now EHC Plan) must be there to meet the needs of the child and not the needs of the system...It remains the case that the statements (now EHC plans) which do not specify the provision appropriate to the identified special educational needs of the child will not comply with the law.”

The SEND Code supports the principle in law that EHC plans must be clear and states:

EHC plans should be clear, concise, understandable and accessible to parents, children, young people, providers and practitioners. They should be written so they can be understood by professionals in any Local Authority.
Paragraph 9:51

What does this mean for Section B of my child/YP’s EHC plan?

- Every SEN should be included, regardless of whether it will be provided for by the LA, health, school, college or social care.
- If a child has a broad area of need requiring more than one type of provision, then this must be split into more than one need and each should be recorded in section B.

Example

A child with Autism Spectrum Condition may have SEN in the following areas: learning, communication, social interaction and sensory processing.

Section B should not simply state the diagnosis of Autism but include a description of all the needs separately.

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What does this mean for Section F of my child/YP's EHC plan?

- All special educational provision required to be put in place to support a child/YP in education or training must be specified. If it is needed, it must be included regardless of cost or convenience.
- Provision must be specified for each and every SEN detailed in section B. It should be clear how the provision will support the outcomes (Section E).
- Provision must be detailed, specific and normally be quantified, for example in terms of type, hours, frequency of support and level of expertise. It should be clear what provision is being put in place.
- Preparing for adulthood provision must be specified for all pupils in or beyond year 9 (approx. age 14yrs and over) – this could include any provision which assists the Child/YP prepare for adulthood such as support in finding employment, preparation for independent living and for participation in society.

Example of specified provision

Adam will take part in 20 minutes of sensory circuit exercises daily, at the start of the school day, supported by a TA trained and experienced in delivering Occupational therapy interventions. Exercises will include those listed in the OT report to develop gross and fine motor skills.

What about provision such as therapies or social care provision?

This is explained in the C&FA 2014

Section 21 (5)

Health care provision or social care provision which 'educates or trains a child or young person is to be treated as special educational provision (instead of health care or social care provision).

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Consider the following examples:

Example

Emily has a language disorder which affects all areas of her learning. A report from the Speech and Language Therapist recommends she needs weekly therapy. Speech and Language Therapy, whilst provided by health, is a provision which clearly educates or trains. Therefore, any speech and language provision in Emily's EHC plan must be recorded in section F and not in the health Section.

Example

Adam is in year 13 and has had a social care assessment as part of his transition to adulthood. As part of Adam's 'preparing for adulthood', provision has been identified for him requiring a weekly independent living/life skills session which will include targeting cooking, household appliances and maintaining his environment safely. Although this is provision which would typically be provided by Social Care, the purpose of the provision is to 'train' Adam to do these things independently. Therefore, the provision must be recorded in Section F of his EHC plan and not the Social Care Section.

Why appeal Sections B&F together?

As mentioned above, Sections B&F are linked and there must be provision in Section F for each SEN listed in Section B. Any amendments or additions to one Section would likely require amendments or additions to the other Section so they match. Therefore, it is important to address these Sections together.

Why is 'specificity' of needs and provision important?

Your child/YP has an enforceable right to the special educational provision in Section F regardless of a school or service's capacity/ability to deliver it. This is because the LA

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has an absolute duty to make sure your child/YP receives their provision, even if the LA is relying on someone else to deliver it.

Vague wording is meaningless and can be misinterpreted – it could result in provision not being delivered in the right quantity or by the right person. It could even result in the provision not being delivered at all. Most importantly, vague words are unenforceable, therefore making it very difficult to challenge if the provision is not being delivered.

Some common examples of use of “weasel words” which may appear in Section F:

- “Opportunities” – Alice will have opportunities to develop her social communication skills (‘opportunities’ is vague and meaningless, having the opportunity to do something doesn’t mean it will happen)
- “Access to” – Nicolas will have access to speech and language therapy (Effectively this could mean he accesses it once a year for 1 minute)
- “Benefit from” – Jane will benefit from fine motor skills interventions (this is stating she would benefit from it, not that it will be delivered)
- “Regular” – Caden will have regular reading interventions (Regular could mean twice a term or once a year).
- “As required” – Ellie will be supported by a teaching assistant as required (who will be deciding if it’s required? Impossible to challenge this if school or staff decide it is not required)

Example vague provision in section F vs the legally compliant version

Vague: Regular speech and language therapy input as required

Legally compliant: One-hour direct individual speech and language therapy session per week delivered by a speech and language therapist with knowledge and experience of the communication profile of children with Down’s syndrome

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What you need to show and do next

Appealing is an evidenced based process. The SEND Tribunal will need evidence that the changes you are requesting to Sections B&F are supported by evidence. Evidence is considered below.

Read through the reports about your child/YP and highlight with a marker pen all their SEN. Afterwards, check that these are included in section B and that they fully and accurately describe your child/YP. Make a note of any amendments or additions you want to Section B.

Now do the same for Section F. Also, check that there is provision to meet each need Identified in Section B. Pay particular attention to the 'weasel words' as you should be asking for vague language to be removed. When looking at the provision ask yourself whether it details the following:

What exactly is being delivered – is it a therapy? One to one support?

Who is delivering it – and do they require particular skills or training?

When will this happen – weekly/monthly/daily/twice daily?

How long will it be for – a particular number of hours per week as a minimum?

If Section F does not specify the answers to these questions, then it is unlikely to meet the legal requirements of specificity.

Doing this now will help you build up your reasons for appealing which you will need to tell the SEND Tribunal about in your appeal application.

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Section Three - Evidence

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Evidence

Any document which describes your child/YPs SEN and the support they require can be considered as evidence and it will be important to use these documents to your advantage. Key evidence about SEN and provision to meet SEN will usually be found in reports from professionals.

Useful sources of expert opinions can be found in:

- Health reports – any specialists your child/YP is seeing. For example, Child and Adolescent Mental Health, Speech and Language, Occupational Therapy, Physiotherapy.
- Reports from the education setting (including early years provider or post 16 setting).
- Educational Psychology reports.
- Privately obtained independent reports (by parents).

Reports can come from a variety of professionals including private professionals you have commissioned to carry out an assessment. The SEND Tribunal is entitled to attach a greater degree of 'weight' on one report over another; regardless of who has written the report (private or LA professional). Although there is no statutory 'age' to a report before it can be said to be outdated, it is important to bear in mind that the older a report is, the less 'weight' the SEND Tribunal is likely to attach to it, especially if there reports which are more up to date.

Common problems with some reports:

- The report used is out of date and no longer relevant
- The report is vague and not specific and does not make required recommendations
- The report is incorrect /has missed out crucial information

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Vague reports

Assessments/reports which do not have specific recommendations will lead to a vague and unspecific section F. Appealing to the SEND Tribunal and requesting changes will require evidence to back up why you believe the changes are necessary and this will require trying to get more detail/specificity into the reports which inform the EHC plan.

Parents/YP are advised to go back to the LA in writing and request they contact those who have contributed reports to form the EHC plan and request more detail. For example, contacting the Educational Psychologist requesting an explanation of their recommendations: what do they mean by 'access to', 'regular', 'as appropriate'? Can they be more specific in what provision they child/YP must receive? The following example should help:

Example letter

"The report from XYZ fails to specify the special educational provision X requires. The report contains phrases such as (DELETE/ADD) 'access to' 'opportunities to' 'a high level of support' 'regular' 'may benefit from' – none of which meet the requirements of the LA's duty to 'specify' the special educational provision in my child/YP's EHC plan. Case law has clarified that the duty to specify means detailing the 'who, what, when and how long' details of each and every special educational provision required. Please go back to XYZ and ask him/her to properly specify his/her recommendations for my child so you, as the LA, can meet your legal duty to specify the provision my child/YP requires. If the LA is unable to do this, then I may need to seek a Direction from the SEND Tribunal to obtain specification of the provision my child requires which the Tribunal panel will require in order to make a decision".

Other evidence

- School progress reports – yearly (plus termly summaries).
- Any diagnostic reports e.g. ADHD/ASC if available.

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- Formal exclusion letters/disciplinary record/attendance record.
- Any report/record if your child/YP has spent time in a “hub” or in a “resourced provision” or any alternative provision due to their behaviour.
- Remember, progress is not just academic – note all areas of difficulty your child/YP has.
- Your child/YP’s views – preferably taken by a third party

Example of how school reports/records can support your case:

- Academic reports showing little or no progress can demonstrate that provision in place is not correct or sufficient
- Behaviour records/exclusion records could demonstrate an unmet need and this could be evidence for missing SEN in section B / missing provision in Section F

Getting evidence from your child/YP’s education setting

Your child/YP’s education setting may hold further information you do not have which could help your appeal such as:

- Internal and external communication with other professionals about your child/YP’s SEN
- For behaviour and/or absences – any information such as emails between staff/records of meetings/behaviour logs/attendance record

If you are having difficulties in obtaining this information or the education setting is reluctant to provide it then you could consider making a formal request for the information. There is a model letter you can use [here](#). For children over 12 it would be desirable to have a short letter from them (if appropriate) saying they consent to you requesting their information.

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The key point is to consider when looking for evidence is what changes you want to make to Sections B&F and what evidence/information is required to show that the changes are necessary.

Other issues to consider which could be used as reasons/evidence

- Whether your child/YP have a transition coming up e.g., transfer to secondary, which is impacting on their needs
- Is going to school/college easy for them? Do you need to do much to prepare them each day?
- Does your child/YP have low self-esteem and incidents of self-harm at home and has happened immediately before they were expected to attend school?
- Do they have sensory needs and/or behaviours at home may happen on return from school?

If any of the above are relevant to your child/YP it will be important to refer to this in your appeal reasons and if available, provide evidence.

Evidence dos and don'ts

The Tribunal can order the LA to make changes to the EHC plan but cannot deal with issues such as any disagreement you've had with the LA or your child/YP's school or college. For this reason, it is important not to focus on issues which are not relevant to the question in law as to what amendments are required to Sections B&F. It is important to keep your reasons and evidence relevant to the test as this is what the SEND Tribunal must look at.

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You may not have all the evidence you would ideally like at this stage but don't worry and more importantly, **don't hang on waiting for evidence** before sending your appeal in as it is vital you do not miss your deadline for appealing. Once the appeal is registered you will have an opportunity to send further evidence in. Therefore, if you have sent the model letter referred to above and/or have requested further information from anyone else to support your appeal don't wait for the responses to send in your appeal as you can send them at a later date once the appeal is registered.

Make a note of what reports/evidence supports the changes you are requesting to Sections B&F. Make a note of the reports/information you are waiting for as you can refer to this in your appeal form/reasons.

4

Section Four - Mediation and the SEND Tribunal appeal form

Mediation

If you wish to enter mediation, make sure you request it before your appeal time window runs out. Speak to IAS for further advice around this if you need to. If mediation goes ahead, you meet with the LA at mediation with a mediator (the current list is on the back of the LA letter). During mediation the parent/YP meets with the LA representative with a mediator present. Your child does not need to be present.

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The case will be discussed in an informal, conversational manner and the mediator will lead the discussion. In B&F appeals, you will be able to state what changes you want and why. Bring your evidence/reports along with you. The LA representative must have the power to decide on behalf of the LA.

If mediation is successful and the LA agrees to make all the proposed changes – there will be a mediation outcome form which all parties sign. This is legally binding and the LA must comply with the actions agreed.

If mediation is unsuccessful, you must be issued with a mediation certificate which will enable you to go on and appeal. Once you have your mediation certificate (whether you have chosen to mediate or not) the following steps are important for starting the appeal.

SEND Tribunal appeal form

The SEND 35 form is the form you need to use for this type of appeal and it can be obtained [here](#). This is not to be confused with the SEND 35a form which is for a refusal to carry out an EHC needs assessment appeal.

An additional sheet to the appeal form can be included. Remember the SEND Tribunal will only know your child/YP from the information you put on the form and the evidence you send in with the appeal. You could use this additional sheet to write a summary of your child/YP's history; when and how their needs were first identified; their education so far and any significant events with dates leading to the current appeal. You can also copy the 'reasons for appeal questions' (see below) from the form and answer them on your additional sheet rather than the form as the form doesn't have a lot of room for you to type your answers. You need to mention if you are still waiting for further reports and/or evidence.

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The appeal form questions

Section 3 - I am bringing the appeal because (to be completed in all appeals):

This question gives you the chance to explain why you are appealing. You could say something along the following lines:

Example

“The LA are required to specify all of my child’s SEN and the special educational provision required to meet those needs. At present, Sections B and F are not as specific as they could be. This means it is not clear to anyone working with my child what exactly will be provided to meet his needs”.

I disagree with the description of special educational needs (Section B of the EHCP) because:

This is the part where you outline the changes you want and/or what you disagree with. You should have this ready if you have followed the steps outlined in **section 2** of this guide under the heading ‘**what you need to show and do next**’.

Example

“My child has SEN around mental health and has severe anxiety in large group settings. I am requesting that this SEN be added to Section B of his plan. The report from school describes this need and how it affects my child at school. This is the wording I want detailed in Section B”.

I disagree with the specification of special educational provision (Section F of the EHCP) because:

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This is the part where you outline the changes you want and/or what you disagree with. You should have this ready if you have followed the steps outlined in **section 2** of this guide under the heading '**what you need to show and do next**'.

Example

"The report from the Education Psychologist recommends X requires a printed timetable on which he can record, on a scale of 1-10, his levels of anxiety before and after each lesson, and discuss his scoring with his support assistant. A visual timetable will also be provided. This is the provision we request is detailed in Section F."

Section 3 - The LA have not considered

Note here anything you believe the LA has not considered when making their decision. It could be evidence which clearly describes your child/YP's SEN and provision which is not reflected in Sections B&F of the EHC plan.

Example

"The LA do not seem to have considered the report from XYZ which clearly outlines the difficulties in anxiety our child experiences. As XYZ has expertise in children with anxiety we believe their evidence is key to understanding our child's difficulties and the provision he requires".

Now conclude your reasons for appeal. They could be different in every case.

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Example

“The LA must properly specify all of X’s SEN and the provision required to meet his needs; the details of which are contained in the current evidence. We request the Tribunal upholds our appeal and makes the requested changes to Sections B&F of the EHC plan. We are waiting for further reports and information to support our case and will make this available when we receive it later”.

Section 4 of the form – Single Route of Redress

The SEND Tribunal now represents a single right of redress and allows the Tribunal to look at health and social care as well as education issues. There must be an educational component to the appeal for it to be considered.

Using the single route of redress allows the SEND Tribunal to make non-binding ‘recommendations’ to health and social care about your child/YP’s needs and provision. Although these are non-binding but there is an expectation they will be followed. If they are not going to be followed, then the LA (for social care) or the Clinical Commissioning Group (for health) will need to write to the parent/YP and the SEND Tribunal within 5 weeks of the decision explaining why they have decided not to follow the recommendations. We have a separate guide on the SEND Tribunal’s extended powers (Guide 46) if you want to know more about this. For the purpose of this guide, we will keep the information brief and limited to why you may want to consider using the single route of redress as part of your appeal.

Why use the Single Route of Redress?

There are several reasons to consider. For example, advice not obtained as part of the EHC needs assessment or outdated advice from a professional where there is a waiting list to access a further assessment. This could be from a health care professional such

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as an Occupational Therapist, a professional from children and young people's mental health services or a Speech and Language Therapist. Although these are healthcare professionals, their findings after an assessment may identify needs which leads to provision for your child/YP which 'educates or trains' them. Remember, any health or social care provision which 'educates or trains' becomes special educational provision. This may lead to further evidence that your child/YP requires such provision to be properly detailed in Section F of their EHC plan.

Consider the examples answers below. If any of these reflect your circumstances, then you may want to ask the SEND Tribunal to list your appeal under the single route of redress.

Question - I disagree with the health care needs and health provision (Section C and G if concerning an EHC plan) because:

Example

"X continues to have difficulties with his fine motor skills and has significant sensory issues such as (give examples) which are impacting on his life and education. X saw an Occupational Therapist 3 years ago but he was discharged after several sessions. We have asked the Occupational Therapy department to see X again but they have advised there is a waiting list"

Question - I want the Tribunal to make a recommendation about the health care needs and health provision (Section C and G if concerning an EHC plan) follows:

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Example

“Although X has yet to have a full and comprehensive Occupational Therapy assessment, we believe he will require support from an Occupational Therapist to meet his ongoing needs. We also believe school staff will require training from Occupational Therapy, so they are able to properly understand and implement a programme which they can deliver with oversight and review from Occupational Therapy”

The above examples could also relate/be adapted to other therapies such as Speech and Language, Child and Adolescent Mental Health and/or Physiotherapy.

Once the form is complete

Have the information the Tribunal requires in Section 12 of the appeal form and have any evidence you wish to send with the form ready. Your appeal and documentation can be sent by email to the address specified in Section 12 of the form - write in the subject line of your email 'New Appeal' to ensure it is dealt with quickly. The document limit for each email is 14MB so if your documents amount to more than this you will need to spread them over more than one email making sure you note in the subject bar 'New Appeal email 1 of 1; then in a new email making sure it is marked as email 1 of 2' - so on and so forth.

Tip – There are page limit numbers for all types of appeals so it is important to ensure the evidence you plan to send reflects the Section B&F issues. The form asks specifically 'why' the evidence you are sending is relevant to the appeal. Guidance on the page limit for each type of appeal can be found [here](#).

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Section Five - Preparing for the rest of the appeal process

What happens next

The SEND Tribunal will write to you – typically by email. **Always** check your junk mail as sometimes their emails will go to a junk folder.

The SEND Tribunal will register your appeal and send a timetable of what should happen next and when.

Key Dates- this is an example of the key actions and dates applicable.

Action and party required to respond	Date for compliance
The LA must send its response so that it is received by:	12 noon on 20/10/2019
The Parent(s) and LA must send to each other and to the Tribunal any further written information, including professional reports, upon which they intend to rely as soon as it is available and at the latest, it must be received by:	12 noon on 14/11/2019
No further evidence without express permission of the Tribunal from either party will be accepted after:	12 noon on 14/11/2019
The LA must produce and send to the Tribunal either four copies of the bundle in hard copy, or one copy electronically and at the same time send one copy to the Parent(s) so that it is received by:	12 noon on 20/11/2019
The date of the final hearing	09/12/2019

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Put your deadlines in a calendar/diary/smart phone straight away so you do not miss these important dates.

It is very important to comply with tribunal directions such as sending in any missing information and responding to deadlines. Otherwise, you risk the appeal being struck out (ended). If you are having difficulties with this, please contact us.

If IAS are assisting you with the appeal, you need to keep them informed as and when you receive instructions from the SEND Tribunal or communications from the LA. If you are continuing to receive advice/support and leave it to the last minute to share the information and get advice, it may not be possible for IAS to support you before the next deadline.

Communicating with the SEND Tribunal

Once an appeal is registered the SEND7 form is the tool to use if you need to communicate with the SEND Tribunal for certain issues. (Click [here](#) or search SEND tribunal forms). Examples include:

- Applying for more time to comply with a tribunal direction
- Order for the other side to provide more information or documents
- Adjournment of the hearing
- Asking for appeal to be extended to the single route of redress if you did not ask for this when making your appeal

Before making an application, the parties must contact the other side for their views - if this has not been done the application will be **rejected**. The form does explain this clearly.

LA's response to the appeal

The LA's response to the appeal is the very first deadline which must be complied with. At this stage the LA may well concede (agree to make the amendments you requested). If

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this is the case, it is treated as an ‘unopposed appeal’ meaning the LA **must** issue the amended EHC plan within 5 weeks of the date it notified the SEND Tribunal it was not opposing the appeal.

If the LA do decide to defend the appeal then they must give their reasons. It will be important to read their reasons carefully and share the information with IAS if we are supporting/advising you. The LA’s reasons for defending the appeal are likely to point to any further evidence and/or information you may need for your evidence deadline.

This is also the LA’s deadline to send their attendance form although this is likely to be replaced soon with a ‘case review form’. The LA must send you an electronic version of the EHC plan at this stage which will form the ‘working document’.

What if the LA’s response to the appeal is late?

If the LA is late, it is important for you to chase this as soon as possible as there is the potential to request that the LA is barred from taking part in the appeal further. You could use the following example wording to send in an email to the LA:

“We have not received the LA’s response to our appeal on the deadline set by SEND Tribunal. We are considering asking the SEND Tribunal to bar the LA from the remainder of the proceedings. Therefore, we request the response within 5 working days. If there is no response or an inadequate response, we will request that the LA is barred from the proceedings”.

Attendance form and witnesses

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The next deadline is the attendance form although this is likely to be replaced soon with a 'case review form'. Only bring/list witnesses if they can give evidence about your child/YP's needs and the type of provision they will require. This will help the SEND Tribunal decide what amendments are needed to Sections B&F. It is not vital to have witnesses. However, if you do decide to bring witnesses it is important to keep liaising with them at each stage of the appeal, so the witness is fully informed and prepared if the hearing goes ahead.

The information the SEND Tribunal sends about your appeal will only be sent to you and the LA, not the witnesses. Therefore, they will be relying on you to keep them informed about what is happening with the appeal.

Further/final evidence deadline

The next deadline is for you to send in any further evidence and/or further information/reasons to support your appeal – the LA has the same deadline if they wish to send in further evidence/reasons they are relying on to defend the appeal.

You can use this to respond to any reasons the LA has given in their response for saying the amendments you are asking for are not needed. If you have a response from the model letter we recommend you send when reports are vague (see **Section 3** of this guide) you can send this in as your additional evidence. Although you can use this opportunity to send any evidence in which you did not have at the start of the appeal – only send it in if it is relevant to what you are asking for in Sections B&F.

If you have come to use this guide **after** you have sent in your appeal, please look at the types of evidence we recommend you get which is detailed in **Section 3** of the guide – this includes links to a model letter you can use in circumstances where professional reports are vaguely worded.

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Tribunal bundle

This contains all the documents the parties to the appeal (you and the LA) have sent into the SEND Tribunal as part of the appeal. The LA is responsible for preparing the bundle and must send a copy to you and the SEND Tribunal by the deadline. If you do not receive it by the deadline or receive it but there is information missing it will be important to telephone the SEND Tribunal.

The Working Document

The working document is an important part of a Section B&F appeal. It is an electronic version of the EHC plan which can be amended by both parties in the run up to the hearing.

You should have been given a Word version of the final EHC plan at the time the LA issued their response to your appeal (if not, ask the LA to send you one). The SEND Tribunal directions will include a deadline for when the working document with both parties' amendments needs to be submitted to the SEND Tribunal, although you can continue to negotiate it after that date.

It usually makes sense to wait until all the evidence has been filed by both parties and then work through the evidence to see what amendments are needed.

Mark up your suggested amendments to the EHC plan on the working document using the recommended key set by the SEND Tribunal (see below). The LA should then come back to you accepting anything that they agree with; they may also suggest other amendments. In this way the document will go back and forth between you and the LA before the hearing.

The reason for doing this is to try and narrow down the key issues which you and the LA disagree about. This will make the hearing more efficient.

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The Key for amendments to the working document:

Normal type	Original EHC plan
<u>Underlined type / underlined strikethrough type</u>	Amendments agreed by both parties
Bold type	Parent's proposed amendments
Bold strikethrough	Parent's proposed deletions
<i>Italic type</i>	LA's proposed amendments
<i>Italic strikethrough</i>	LA's proposed deletions

Sending in evidence once the final evidence deadline has passed

It is possible to apply for late evidence to be submitted after your deadline, including bringing late evidence on the day of the hearing. It will be up to the SEND Tribunal whether this should be accepted. It is always best to tell them in advance and any late evidence must be sent to the LA as soon as you have it. Reasons must be given for why the evidence is late. There is no guarantee that the evidence will be accepted by the SEND Tribunal hearing your appeal, it is important to make sure you detail your reasons carefully. Seek advice if you are not sure.

Pre-hearing

The LA may concede (agree to make all the amendments you have asked for to the EHC plan) after the response deadline but prior to the hearing. This **must** be done via a consent order, which is signed by both parties and sent to the tribunal by the LA and parent/YP. This is to ensure the deadlines for issuing the draft and then final EHC plan are protected. If you are unsure about this process, please seek advice. The form used for withdrawing the appeal is the SEND8 withdrawal form which can be found [here](#). The SEND Tribunal will not normally allow an appeal to be withdrawn when there are less than 5 working days before the appeal hearing.

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The hearing

An important point to bear in mind is the SEND Tribunal process is going to be less formal than typical courts and **Tribunals should be accessible and parent friendly.** They are presided over by judges who are trained in this area of law and specialist panel members who are experts in SEND. Our experience is that whilst there is some formality to the process, the SEND Tribunal understand that most parents attending do not have any form of legal representation. Whilst it is important for you to have an idea of what you are arguing you will not need to refer to points of law. Currently due to COVID, all appeals are being undertaken remotely, which is enabling the SEND Tribunal to carry on hearing appeals.

Having a quiet and private space, including a good wi-fi connection is essential. If you don't have either, then ask the SEND Tribunal about this prior to your hearing as they may be able to help with access issues.

Tips:

- Keep off other equipment/apps such as XBOX/Netflix
- Use Google Chrome – not Explorer or Firefox
- Test connection and link to the hearing beforehand – this is contained in your 'notice of hearing' letter
- Give this information to witnesses so they can access the hearing

There is a You Tube video which shows what a Tribunal hearing is like. Although it is a little out of date, it provides a good example of what a hearing looks like in terms of structure. The video can be accessed [here](#).

The judge will start by explaining the procedure to the parties and what the issues are. The Tribunal panel will have already decided the order of the issues prior to the hearing and they will ask the witnesses questions. Make a list of your important points but make sure they are relevant to the issues the SEND Tribunal needs to decide. Have all your paperwork, evidence and the latest version of the working document to hand and organised – it's essential to know where your key information/evidence is and be able to

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access it quickly. The more prepared and familiar with ‘the bundle’ the more confident you will feel.

The decision

You will receive a decision around 2 weeks following the hearing. The decision made will reflect both the written evidence and the oral evidence the SEND Tribunal panel hears on the day.

What happens if my appeal is successful?

The LA **must** issue the amended EHC plan within 5 weeks of the SEND Tribunal’s decision.

What if my appeal is dismissed?

If the appeal is dismissed, then you may wish to come back to the service for advice and information.

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Contact details for (IASS) Manchester

Parent Confidential Helpline: **0161 209 8356** (Monday to Friday 8.30 am-4pm)

Answer phone available when lines are closed: 0161 209 8356

Email: parents@manchester.gov.uk

Website: www.iasmanchester.org

Address:

Information, Advice and Support Service (IASS) Manchester
Hulme District Office
323 Stretford Road
Hulme
M15 4UW

If you are looking for advocacy support for the SEND Tribunal there is a short guide to this [here](#).