

Appealing to the First Tier Tribunal when the Local Authority wishes to bring an EHC plan to an end



Guide No 47

September 2021



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



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



Section Three - Evidence



Section Four - Mediation and the SEND Tribunal appeal form



Section Five - Preparing for the rest of the appeal process

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Key to the colours in the text

Sections

Anything about law, case law and statutory guidance

Any quotes from another text, examples, including examples of what to write

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.

Local Authority (“LA”) is the body who has made the decision to bring the EHC plan to an end, a decision which carries a right of appeal. LAs have particular legal duties towards children and YP who have SEN.

The Children and Families Act (“C&FA”) 2014 is the law which sets out the test for the LA being able to bring an EHC plan to an end. This is typically referred to as a ‘cease to maintain’ decision.

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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 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.

How to use it

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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 refusal decision letter and time limits.
- Legal help.
- How IAS can help.
- The legal test relating to 'ceasing to maintain an EHC plan' decisions which is explained further using case law.

Section 3 deals with evidence and identifying evidence which could help your case. You may need to re-visit this section as your appeal progresses.

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.



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

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Frequently asked questions

Who can appeal to the SEND Tribunal when the LA issues a ‘cease to maintain’ decision?

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 can be appealed?

As well as asking the SEND Tribunal for the continuation of the EHC plan, this type of appeal also allows you to make changes to other sections of the plan. This means you can ask for changes to Sections B (description of SEN), F (special education provision) and I (placement). If Sections B&F are outdated or vague in detail, it is advisable to appeal these Sections. Guide 44 (Section I – placement) and 45 (Sections B&F) detail the process including the types of evidence which would be beneficial to have for these types of appeals.

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.

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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.

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.

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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.

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.

What happens to the EHC plan once I make the appeal?

The LA must keep the EHC plan in place until the appeal is finished. This means they must continue to make sure your child/YP can receive the special educational provision in Section F of the plan and the education setting named in Section I must continue to admit your child/YP until the appeal is concluded.

Why has the LA decided to cease the EHC plan?

The law is clear on the circumstances when LAs can cease to maintain an EHC plan and we will look at the legal test below. Every case is different. For YP, the LA may claim their needs can be met by another service such as social care or health. If your child/YP is continuing in an education or training setting the LA may be expecting the setting to meet your child/YP's needs without an EHC plan. The LA may have wrongly applied the test as to why they do not need to continue the EHC plan. If you are in doubt as to whether you should appeal it will be important to seek advice.

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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

The legal test relevant to ceasing to maintain an EHC plan is contained in the C&FA 2014.

Section 45 C&FA 2014

(1) A local authority may cease to maintain an EHC plan for a child/YP only if-

(a) the authority is no longer responsible for the child/YP

(b) the authority determines that it is no longer necessary for the plan to be maintained

(2) The circumstances in which it is no longer necessary for an EHC plan to be maintained for a child/YP include where the child/YP no longer requires the special educational provision specified in the plan.

(3) When determining whether a young person aged over 18 no longer requires the special educational provision specified in the plan, a LA must have regard to whether the educational or training outcomes specified in the plan have been achieved.

This explains that the LA can cease to maintain an EHC plan, but only in certain circumstances. Firstly, they may cease the plan if they are no longer responsible for a child/YP. This could happen for several reasons such as:

- The child or young person moves to another country (note – if they moved to another area within England the LA would have to ‘transfer’ their EHC plan to that LA)
- A YP starts higher education
- A YP aged 18 and above has left education **and following an annual review** state they no longer wish to continue in education or training
- A YP reaches the age of 25
- A YP takes up paid employment (excluding apprenticeships which can continue with an EHC plan)

Secondly, the LA can cease to maintain the EHC plan if it is no longer necessary for them to maintain it. This would arise in circumstances where your child/YP no longer

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requires the special educational provision in Section F of the EHC plan. In other words, they no longer need an EHC plan to have their special educational needs met.

The legal test requires that for YP person over 18, the LA must have regard to whether the educational or training outcomes in the EHC plan have been achieved.

Case law

In the case of **B & M v Cheshire East Council** [2018] UKUT 232 (AAC) the LA had ceased the YP's EHC plan as they claimed she had met her outcomes and said formal education would not assist her in preparing for adulthood. The YP appealed and the SEND Tribunal agreed with the LA and dismissed the appeal. The YP (through her parents) appealed to the Upper Tribunal who said that the test for ceasing to maintain an EHC plan does not mean that where outcomes have been achieved, it is no longer necessary to maintain the Plan. They said equally, outcomes not being achieved does not automatically mean the EHC plan must continue.

Importantly, the Upper Tribunal said there is a likeness between the test for deciding whether to cease to maintain an EHC plan and the test for deciding whether an EHC plan is to be prepared and maintained in the first place (this question would arise after an EHC needs assessment). Both tests look at the necessity for special educational provision to be made by way of an EHC plan. The Upper Tribunal stated:

"It would serve no one's interests for children and young people to lose their EHC plans only to regain them following a fresh request for an assessment and the carrying out of an assessment".

As a result of this decision LAs will need to adhere to the following principles when deciding to cease to maintain an EHC plan:

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- Outcomes being achieved or not is **not** the primary consideration in the test
- Would the child/YP meet the test for preparing and maintaining an EHC plan in the first place?
- Is there sufficient up-to-date information about a child/YP before deciding to cease to maintain?

What you should do now

It is important to keep in mind that the test for ceasing an EHC plan means the LA is required to show the EHC plan is not needed. However, it is likely to strengthen your case if you can obtain evidence to support your appeal.

If your appeal also concerns the 'contents' of the EHC plan (Sections B, F&I) then you should look at **sections 2 and 3 of guides 44 and 45** as they will help you through the steps of what you need to do for these types of appeals and the steps you need to take next.

Please now read the 'evidence' section below.

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Section Three - Evidence

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.

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What evidence has the LA used to make the decision?

This is very important because the case law referred to in **section 2** refers to whether the LA has had sufficient and up-to-date information to base their decision on. If you are not clear about what evidence the LA has used you could send them the model letter referred to below.

"We are appealing the decision from the LA which is ceasing to maintain the EHC plan. We understand that LAs are expected to have sufficient and up-to-date information about a child/YP's needs before deciding to cease to maintain their EHC plans. We would be grateful if you could provide us with the list of evidence and professional reports you have used to inform your decision. We will be submitting the response to the SEND Tribunal as part of our appeal".

Examples of other evidence you may have

- School/college progress reports – yearly (plus termly summaries).
- The latest annual review report
- Information from health such as speech and language/occupational therapy/nurse practitioner reports.
- Remember, progress is not just academic – note all areas of difficulty your child/YP has.
- Your child/YP's views

Evidence of the resources available to your child/YP's education setting

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If the LA is expecting your child/YP to remain in their school/college without an EHC plan, the SEND Tribunal will need to know what resources are available to your child/YP's education setting and the resources the LA gives to it. The responses you receive to the model letters below can be used as part of your evidence. The responses should show whether the education setting can comfortably meet your child/YP's needs without an EHC plan.

- Model letter you can use to send to the education setting is available [here](#).
- Model letter you can use to send to the LA is available [here](#).

Evidence of alternative service provision for YP

If the LA is expecting another service such as social care or health to meet your YP's needs as they are expected to leave their education/training setting, then it will be important to ask exactly what provision will be provided to your YP and whether this will happen over 5 days or less.

Evidence dos and don'ts

The SEND Tribunal can order the LA to maintain an EHC plan and make changes to it 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 whether your child/YP requires their EHC plan to continue. 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 any of the model letters referred to above don't wait for the responses to send in your appeal as you can send them at a letter date once the appeal is registered.

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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). The LA may change their decision at mediation and decide maintain EHC plan/make changes to it. 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

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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.

The appeal form questions:

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

This question is about you explaining that you believe the EHC plan should continue and if you are appealing the contents, this fact. Consider the following examples:

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Example 1

“Before X had her EHC plan the school struggled to provide her with the provision she needed. (Give examples). Without an EHC plan to guarantee her provision I believe the gaps in provision will be real risk in the future. Plus I believe X needs greater support in the following areas (give examples).and unfortunatley school is not able to provide this. As a result I am also appealing Sections B & F of her EHC plan. I am in the process of obtaining evidence about the resources available to X’s school and will submit this information as further evidence at a later date”

Example 2

“The LA say X’s needs can be met by social care/other now that he is over 18. We understand the must consider whether X needs extra time in education or training as a YP over 18. We understand the LA should carefully consider whether they have sufficient up-to-date information before deciding to cease to maintain an EHC Plan in accordance with case law. Although there is the annual review report this lacks any recent assessment of X’s needs, provision and outcomes, the last report by an Education Psychologist is from a long time ago therefore the LA did not have sufficient up-to-date information in order to cease X’s EHC plan.

Example 3

“X is unable to access her school/college on a regular basis as evidenced by her reduced attendance and inability to attend. There is no evidence to support non-attendance is through choice but in fact is due to her anxiety and other difficulties. Therefore, it is necessary for the LA to maintain her EHC plan to ensure she receives the necessary special educational provision to meet her complex special educational needs. We are also seeking changes to the contents of the EHC plan to ensure this happens.”

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Note - leaving education

If your child/YP is expected to leave their school or college then it will be important to detail at what the LA is proposing should happen in the alternative. If you do not consider the LA's alternative to be appropriate, then it is important to highlight this in the appeal form with your reasons. If you want your child/YP to continue in education or training, then you should make a note of this on the appeal form.

Section 3 - The LA have not considered

Note here anything you believe the LA has not considered when making their decision. It could be issues such as the following:

- Up-to-date evidence
- Any increase or changes in your child/YP's needs
- The capacity of other services to meet need without an EHC plan guaranteeing the level of special educational provision required

The questions on the form also ask about SEN (Section B) and special educational provision (Section F). If you are also seeking changes to these Sections, please refer to guide 45 as we have tips and examples on completing this part of the form. If you are also appealing Section I (placement), guide 44 will assist you.

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.

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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, outdated advice from a professional and/or a change in need where there is a waiting list to access a further assessment. This could be from a health care professional such 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. 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 their EHC plan to continue and for the 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:

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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:

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

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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 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](#).



Section Five - Once the appeal is registered and preparing for the 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

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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

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:

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- 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 National Trial 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 maintain the EHC plan/make changes). If this is the case, it is treated as an 'unopposed appeal' meaning the LA **must** continue the EHC plan and if they have agreed to make the changes you have asked for, they must issue the amended EHC plan within 5 weeks of the date they informed the SEND Tribunal they would not be 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'.

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:

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“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

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 whether your child/YP requires their EHC plan to continue and if so, with what changes if you have asked for changes. 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.

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You can use this to respond to any reasons the LA has given in their response for saying an EHC plan is not necessary. If you have responses from the model letters we recommend you send (see **section 3** of this guide) you can send these 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 the test.

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 model letters you can use.

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.

If your appeal is also about the contents of the EHC plan, then there will be a 'working document' – there is guidance on working documents in guides 44 and 45.

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

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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 maintain the EHC plan/make changes) 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 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.

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.

Practical tips:

- Keep off other equipment/apps such as XBOX/Netflix
- Use Google Chrome – not Explorer or Firefox

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- 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 and evidence to hand and organised – it’s essential to know where your key information/evidence is and be able to 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** continue the EHC plan. If the LA has been ordered to make changes to the EHC plan they must issue the amended EHC plan within 5 weeks of the SEND Tribunal’s decision.

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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.

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](#).

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