

## How to appeal to the Tribunal against a decision about your child's special educational needs (England)

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We use the term 'deaf' to refer to all types of hearing loss from mild to profound. This includes deafness in one ear or temporary hearing loss such as glue ear. We use the word 'parent' to refer to all parents and carers of children.

### Introduction

This factsheet will give families with deaf children in England:

- a basic understanding of the Tribunal appeals process, including the types of decision you can appeal against
- information about how to resolve disagreements without the need for a hearing
- tips from our appeals advisers on how to lodge, and prepare for, an appeal.

This factsheet might be useful for you if:

- you disagree with a decision made by your local authority in relation to your child's special educational needs. For example, your local authority is refusing to carry out an assessment for an Education, Health and Care (EHC plan) – known as a 'refusal to assess'.
- you want to find out more about your right to appeal if the need arises.

Appeals in Scotland, Wales and Northern Ireland are covered in separate factsheets on our website at [www.ndcs.org.uk/additionalsupport](http://www.ndcs.org.uk/additionalsupport).

This factsheet doesn't cover appeals about disability discrimination. For more information about disability discrimination appeals, visit our website [www.ndcs.org.uk/educationrights](http://www.ndcs.org.uk/educationrights).

Our other factsheets that may be helpful include:

- *Contributing to an Education, Health and Care (EHC) needs assessment and the production of an EHC plan (England)*
- *A Parent's Guide to Education, Health and Care Needs Assessments and Education, Health and Care (EHC) Plans (England)*
- *Annual Review of Education, Health and Care Plans (England).*

You can download these from our website at [www.ndcs.org.uk/sen](http://www.ndcs.org.uk/sen) or you can ask our Freephone Helpline for a copy.

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## Top tips

- Don't leave it until your child is about to move to another school before you check that their EHC plan is up to date and says what you want it to. Plans must be reviewed at least once a year and you can ask for changes to be made following the review. To get the plan ready for secondary school, you probably need to ask for changes at the Year 5 review, unless your child's review is early in Year 6.
- The deadline for issuing a final EHC plan for secondary transfer is 15 February and for post-16 provision, 31 March.
- Download a copy of *Special Educational Needs and Disability (SEND) Code of Practice: 0 to 25 years (2015)* which you can find at [www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25).
- If you're unhappy with a decision or with your child's EHC plan, try to discuss your concerns with the local authority first. You may reach full agreement or you may reach a partial agreement and narrow down the issues in dispute. A Tribunal hearing should be viewed as a last resort to address issues which can't be agreed.
- If you're uncertain about whether to appeal (perhaps because you're part-way through promising discussions with the local authority, for example) be mindful of the appeal deadline. If your appeal is late, the Tribunal may not accept it without a very good reason. If you're nearing the deadline you can lodge a very brief appeal to 'protect' the appeal right and submit updated grounds of appeal at a later date. You can always choose to withdraw an appeal you have lodged. If you go through mediation, this will affect the deadline. The deadline for submitting the appeal is one month from the date on the mediation certificate.
- Make sure you have a copy of all the appendices (reports from professionals) which are listed on your child's statement/EHC plan. You'll need these and a copy of the most recent statement/EHC plan to lodge an appeal.

## Section one: The appeal process

### How to appeal

The SEND Tribunal is an independent, national tribunal which hears appeals and makes decisions about children and young people's special educational needs (SEN).

The Tribunal is governed by the law, and has to follow the interpretation of that law by higher courts in judgments about previous SEN disputes. The Tribunal must 'have regard' to the *Special Education Needs and Disability (SEND) Code of Practice: 0 to 25 years (2015)*

[www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25). The Tribunal isn't bound to follow the code to the letter, but it generally accepts the code's guidance when making decisions.

The Tribunal looks at the evidence put before it and decides whether the local authority's decision followed the law and the code. It will also make a decision based on what is right for the child at the date of the hearing.

If you're thinking about making an appeal, you should visit the Tribunal website [hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk) where you can download all the relevant forms and guidance leaflets.

There are lots of documents on this site. To get you started, we recommend that you look first at the most relevant guidance leaflet and appeal forms.

- SEND37 – How to appeal a Special Educational and Disability (SEND) Decision leaflet
- SEND35 – EHC appeal form
- SEND35a – Appeal form – refusal to secure an EHC assessment

### Top tips

- When you register an appeal the Tribunal service will send you a list of dates (including the date of the hearing). Keep a careful note of these as they're important and you need to make sure that you get your documents in on time. You also need to make sure that you and your witnesses are available on the hearing date.
- You can request an interpreter if English isn't your first language.

### What you can appeal to the Tribunal about

- Refusal to carry out an Education, Health and Care (EHC) needs assessment (known as a 'refusal to assess').
- Refusal to issue an EHC plan after an EHC needs assessment has been carried out.
- The contents of sections B (special educational needs), C (health needs), D (social care needs), F (special educational provision), G (health provision), H1/H2 (social care provision) and/or I (placement) of an EHC plan.
- Refusal to carry out a re-assessment (i.e. a further EHC needs assessment for children who have already had one).
- Refusal to amend an EHC plan following an annual review.
- Refusal to amend an EHC plan following a re-assessment.
- Decision to stop an EHC plan (known as 'ceasing to maintain').

### What you can't appeal to the Tribunal about

- Sections A (parents' and child's views and aspirations), E (the outcomes sought for your child), J (personal budget) and K (list of the advice and information gathered during the EHC needs assessment) of an EHC plan.
- Failure by the school or other education provider to make education provision set out in an EHC plan. The local authority is responsible for ensuring that provision is made. You should contact them if your concerns aren't addressed to your satisfaction by the school. If the local authority then fails to ensure that provision is made, you may have a legal claim against the local authority. This is a different process to the Tribunal. For more information on this, please contact our Freephone Helpline on **0808 800 8880**.
- Failure by health services to make any health provision set out in an EHC plan. If this doesn't happen, you should make a complaint to the Clinical Commissioning Group and then to the Parliamentary and Health Services Ombudsman. This is a different process to the Tribunal. Legal action may also be an option. For more information on this, please contact our Freephone Helpline on **0808 800 8880**.
- Failure by the local authority to make any social care provision set out in an EHC plan. If this doesn't happen, you should make a complaint to the Clinical Commissioning Group and then to the Local Government and Social Care Ombudsman. This is a different process to the Tribunal. Legal action may also be an option. For more information on this, please contact our Freephone Helpline on **0808 800 8880**.

## Who can appeal?

The person making the appeal is as follows:

- For children from 0 to the end of statutory school age (usually the end of Year 11), parents make the appeal.
- For children after they have completed Year 11 and up to the age of 25: the young person makes the appeal. However, parents can be the representative if the young person wishes or if they lack the capacity to make the decision. Annex one of the *Special Educational Needs and Disability (SEND) Code of Practice: 0 to 25 years (2015)* has more information about how decisions on mental capacity should be made. The National Sensory Impairment Partnership (NatSIP) has also produced information for parents on mental capacity. Go to [www.natsip.org.uk](http://www.natsip.org.uk), enter the 'Document Library' and look for a folder on the Mental Capacity Act 2005. You'll need to sign up to the NatSIP website to get the document but membership is free.

## Time limits for appealing

The deadline is:

- two months from the date when the local authority sent the decision letter **or**
- one month from the date on the mediation certificate, whichever is later. For more information see the section on mediation in this factsheet.

## What decisions can the Tribunal make?

The Tribunal can:

- dismiss the appeal (this means that they're agreeing with the local authority's decision)
- order the local authority to carry out an assessment
- order the local authority to make and maintain an EHC plan
- order the local authority to amend the EHC plan
- order the local authority to reconsider or correct a weakness in the plan, for example, where necessary information is missing.

In relation to health or social care, the Tribunal can:

- Make a non-binding recommendation that the EHC plan be amended. This means that health or social care services do not have to follow any recommendations made by the Tribunal. However, it is hoped and expected that they will take it seriously. Following the recommendation, the health or social care commissioner must write to the family and the local authority within five weeks to tell them if they're going to follow the recommendations or not. If they decide not to follow the recommendation, they must set out what action they will take instead.

If you appeal against more than one part of an EHC plan, the Tribunal can either dismiss the whole appeal, uphold (agree with) the whole appeal or uphold the appeal against some parts but not others. For example, they may agree that changes need to be made to the description of your child's needs and the provision required to meet them, but dismiss the request to name your preferred school because they believe that the provision can be made in the local authority's preferred school and yours is significantly more expensive.

## Section two: How to avoid having to appeal to the Tribunal

It's very useful to have the right to appeal if you need to, but it can be a long process. The Tribunal service aims to deal with appeals within 20 weeks, but they can take longer. For example, sometimes the first hearing is adjourned for parties to gather new evidence to be presented at a second hearing.

It may be better to keep the right to appeal in reserve (bearing in mind the two-month deadline for lodging an appeal) and try to resolve disagreements in other ways. Here are some ways of avoiding an appeal.

- Knowing your rights.
- Presenting the local authority with compelling evidence.
- Disagreement resolution or mediation.

### Knowing your rights

Knowing your rights can be very empowering when it comes to working with public services. When making decisions about your child's education local authorities have to follow the law and respond to facts, not emotion. It's easy to become emotional and upset when discussing a subject as dear to your heart as your child's future, but knowing your rights and presenting the local authority with compelling evidence (see next section) are more likely to get you the result you want.

A good way to learn about your rights is to look at the same guidance as the local authority, the *Special Educational Needs and Disability Code of Practice: 0 to 25 years (2015)* which you can download here: [www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25).

The key chapters about assessments and EHC plans is chapter nine of the *Special Educational Needs and Disability (SEND) Code of Practice: 0 to 25 years (2015)*.

Here are some key points.

Note: in this factsheet, we have followed the code of practice and the guide's use of the words 'must' and 'should'. 'Must' means that the local authority is legally required to do something, whereas 'should' means that if it doesn't do something then it must have a good reason not to.

### Provision must be detailed and specific (paragraph 166, box F).

For example: "regular speech and language therapy" is unacceptable because it can't be enforced, as 'regular' could have several interpretations. A more appropriate wording might be: "one session of 45 minutes every two weeks with a specialist speech and language therapist who is experienced in working with deaf children." The code says:

- "Provision **must** be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise, including where this support is secured through a Personal Budget.
- "Provision **must** be specified for each and every need specified in section B. It should be clear how the provision will support achievement of outcomes."

### **All children are entitled to be educated in a mainstream school.**

The only exception to this is if the attendance of the child or young person would be “incompatible with the efficient education of others.” This means that their presence would have a bad effect on the education of the other children, perhaps because of lack of space or challenging behaviour.

For example, a child in a wheelchair who needs a full-time learning support assistant could potentially be refused a place in a small primary school where there is only one class in each year group and the class in which the child would be placed already has two other wheelchair users and three additional adult support staff. This is because the room is physically too small to fit another wheelchair and additional adult. However, before a place could be refused, the school/local authority would have to demonstrate that all reasonable adjustments had been considered which might have made it possible, such as using a different classroom for that class. It is a very difficult case for schools/local authorities to prove.

### **Parents (and young people under the new law) have the right to request a particular school.**

The general principle which applies here is that the local authority should name the school of parental preference unless doing so would amount to unreasonable public expenditure. In other words:

- If the school you want is significantly more expensive than the one the local authority is proposing, the local authority has a duty to name its own preferred school (assuming that it can meet your child’s needs).
- If both schools can meet your child’s needs and there isn’t a significant difference in cost, they should name your preferred school. Significant is difficult to define, and the Tribunal would look at the cost difference over the whole of your child’s time in the school, not just one year. As a rule, if the difference is a few thousand pounds per year most local authorities would probably agree to name the parents’ school. When considering the cost of a placement the local authority (and eventually the Tribunal if you get as far as a hearing) will have to take into account all costs including transport, if transport is needed.

If you’re making a case for a particular school to the local authority (or later to the Tribunal) and your preferred school is significantly more expensive, the point you have to prove to them isn’t only that your preferred school can meet your child’s needs (usually there’s no argument about this) but that it is the **only** school that can meet their needs (i.e. that the school or schools the local authority is proposing can’t meet their needs). Later in this factsheet we will look at how you might gather the evidence for your case.

### **The importance of evidence**

Good quality (detailed and up-to-date) evidence is vital if you’re going to convince the local authority to change their decision or win an appeal at Tribunal. Gathering evidence at an early stage will put you in a good position if you need to appeal at a later date, but in many cases an appeal can be avoided if the local authority receives compelling evidence.



### Top tip

Support any points you can with evidence. The evidence should specifically address concerns within the EHC plan and also any points raised in the local authority's assessments which you don't agree with and are relevant to your case. If you don't have any evidence, think about getting some from an independent expert with a relevant professional background (e.g. if you're questioning the amount of speech therapy, you need evidence from a speech and language therapist.)

### Case studies

The following case studies show the importance of detailed and up-to-date evidence.

#### **Case study one: Mary, aged three, whose parents' request for an EHC needs assessment had been turned down**

Mary was profoundly deaf and had had cochlear implants fitted about eight months earlier. Since then she had been learning to communicate verbally. She was making progress at nursery but her language was still delayed.

Mary's local authority refused to carry out an EHC needs assessment on the grounds that they had nursery documentation which showed she was making some progress with the support she had in place.

Mary then changed nursery and her parents gathered up-to-date information from her new nursery, including an assessment which showed that her current progress level was far lower than evidence from her old nursery suggested. It showed she hadn't yet attained the level which the original local authority decision was made upon.

The matter went to formal mediation and was resolved in Mary's favour, with the local authority agreeing to carry out an EHC needs assessment. While there was only a few months' difference between the reports, comparing them showed that the progress the local authority based their decision upon hadn't continued as they expected it to. It provided a new discussion point for negotiations with the local authority and provided expert opinion to support the parents' concerns. The local authority's decision to carry out an assessment of needs was based on the up-to-date information in the report.

#### **Case study two: Tom, aged 11, about to move to secondary school**

Tom was about to move to secondary school. He and his parents wanted him to go to a special school for deaf children, where pupils are taught using British Sign Language (BSL).

The local authority planned to place him in a local mainstream secondary school but Tom and his parents were unhappy with the decision and got an up-to-date report from the specialist team who were providing ongoing medical support. The report said that Tom wouldn't be able to develop spoken language and would always need to use BSL as his primary language. It also stated that it was necessary for him to have a deaf peer group who used BSL, to allow him to develop his social skills and form friendships. The local authority agreed to place Tom at the special school, because the report provided new evidence that his needs couldn't be met in the school the local authority had chosen.

### How to gather evidence – general points

If you've reached the point where you're thinking about making an appeal, you've probably already collected quite a stack of reports about your child. The important thing is to provide detailed and up-to-date evidence which is relevant to the point you're trying to make. For example, if you're trying to convince the local authority to include a set amount of speech therapy in an EHC plan, you must have evidence from a speech and language therapist that the amount you're asking for is required.

If you don't have the evidence you need or it is out of date (usually this means a year old or more, but in a very young child, even six months might make a report out of date), you may need to go back to the professionals who wrote the reports and ask them to update them. Sometimes, this alone will not be enough, perhaps because the professional is unable to change the report. You may need to consider having your child assessed by independent specialists in order to get the level of detail and specialist knowledge of deaf children which will be required to overturn a local authority decision or convince a Tribunal.

If you need information or advice about getting independent reports, contact our Freephone Helpline on **0800 800 8880**, email us at [helpline@ndcs.org.uk](mailto:helpline@ndcs.org.uk) or use our live chat service at [www.ndcs.org.uk/livechat](http://www.ndcs.org.uk/livechat). Bear in mind that it can take some time to arrange an assessment and get a report.

The evidence you need will differ, depending on the type of decision you're appealing against, as set out in later sections of this factsheet.

### Disagreement resolution and mediation

Local authorities must make disagreement resolution and mediation services available to parents and young people, as set out in chapter 11 of the code. Both disagreement resolution and mediation have the same goal, but the Children and Families Act 2014 makes a distinction between the two.

**Mediation** applies specifically to parents and young people who are considering appealing to the Tribunal about EHC needs assessments and the special educational elements of a plan, or who want mediation on the health and social care elements of a plan.

- Local authorities **must** give the contact details of a mediation adviser in their decision letter.
- Mediators **must** be independent of the local authority.
- Parents and young people **must** contact a mediation adviser **before registering an appeal** about an EHC needs assessment or the SEN elements of an EHC plan. You don't need a certificate if you're appealing only against part I (placement).
- Mediation is entirely voluntary for parents and young people. The only requirement is for you to contact the mediation adviser. You're not obliged to go ahead with mediation. If you've had a lot of discussions already with your local authority you may feel it would be of little use and you may want to save time, get your certificate, and appeal right away. However, if you haven't had a conversation with the local authority about why they have refused assessment, mediation may help. You might also consider it to give yourself more time to appeal.
- If you don't want to pursue mediation, the adviser **must** issue a mediation certificate within three working days of you informing them that you don't want to go ahead.

- If you do want to go to mediation, the local authority **must** ensure that a mediation session takes place within 30 days of the mediation adviser informing them that you want to go ahead.
- The local authority **must** attend the mediation.
- The mediation adviser **must** issue a mediation certificate within three working days once mediation is completed.
- You have one month from receiving the certificate to register an appeal with the Tribunal or two months from the original decision by the local authority, which is later. You must send the certificate to the Tribunal with your appeal.

**Disagreement resolution arrangements** apply to a wider range of situations than mediation.

- They cover all children and young people with special education needs, with or without an EHC plan, not just those to whom mediation applies (see above).
- You can use disagreement resolution services at any time, not just when you're considering an appeal. For example, they cover disagreements between parents and schools or other education providers.
- Early use of disagreement resolution might prevent the need for an appeal to the Tribunal, so it's worth contacting the service as soon as you suspect that there may be disagreement on any matter relating to your child's special educational needs. We may also be able to help with informal disagreement resolution at this stage.
- Local authorities **must** make disagreement resolution services available to parents and young people. Details should be available on your local authority's Local Offer website. To find your Local Offer, do an online search for 'Local Offer' plus the name of your local authority.

## Section three: Appealing a refusal to assess for an EHC plan

### Top tip

If the request for an assessment was submitted by the nursery/school/college, ask them for a copy of everything that was sent with the request. Sometimes requests are turned down simply because there isn't enough evidence.

### How to appeal

If you wish to lodge an appeal with the Tribunal about a refusal to assess for an EHC plan then you must submit the following:

- a SEND35a appeal form (go to <https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>)
- the letter you received from the local authority with the decision turning down the request for an EHC assessment (this will state that you have two months in which to appeal from the date of the letter)
- a mediation certificate – this is mandatory and you can get this by contacting the number in the local authority's decision letter. It should include information about alternative contacts if you can't use a phone. More information about mediation can be found on page 10.
- your grounds of appeal, which detail your reasons for appealing the local authority's decision. If there isn't enough space on the appeal form, you should submit this as a separate document
- your evidence that your child needs an assessment – this could be reports about your child from professionals plus yours and your child's views which should be submitted with the form.

The Tribunal usually uses email, but if you post your appeal make sure you send photocopies, not original documents, and you keep a copy of everything you send.

### Reasons for appeal

This is where you should set out the reasons why you think the local authority must assess your child's special educational needs. Evidence can be provided later if you don't have it at this time – in the form you just need to explain your reasons for appealing.

Section 36 (8) of the Children and Families Act 2014 states that the local authority must secure an EHC needs assessment for the child or young person if the child or young person has or **may** have SEN, and, it **may** be necessary for special educational provision to be made for the child or young person in line with an EHC plan. For young people over the age of 18, there's an additional requirement; the local authority must consider whether the young person requires additional time to complete their education or training compared to the majority of others the same age who don't have SEN. Further guidance is in Chapter 9 of the *Special Educational Needs and Disability (SEND) Code of Practice: 0 to 25 years (2015)*.

This means you might need to show the Tribunal that an EHC plan may be necessary to provide the right educational help for your child. You could explain that a full assessment is the only way to find out what the difficulties are and what help is needed.

If this applies, you need to explain that an investigation and advice from a number of different professionals is needed to fully understand your child's difficulties and to decide what support is needed.

You can also explain that:

- the school/college may not be able to supply all the educational support needed unless it receives extra help from the local authority
- the school/college has provided all the help that could be expected but the child/young person hasn't made enough progress.

For the above you need to explain that the needs may or may not be met without an EHC plan. **You don't have to prove that an EHC plan is necessary, only that it may be necessary.**

### Evidence

You need to back up your reasons for appealing with evidence. The Tribunal will decide your appeal on the evidence that you and the local authority put before it so it's vital that you give them the best possible evidence. You can send in evidence at any time in the appeal up until the final evidence deadline.

The crucial point here is that you need to persuade the local authority/Tribunal that your child isn't making expected progress in spite of the school/other education provider having taken "relevant and purposeful action to identify, assess and meet the special educational needs" of your child (see code, paragraph 9:14). The local authority/Tribunal will be looking for the following.

- Evidence of your child's academic attainment (or developmental milestones in younger children) and rate of progress. This means that you'll need to have evidence showing what your child was achieving previously and what they're achieving now. To give an accurate picture of progress using formal testing the same assessment or measure of progress needs to be used at intervals.  
Another way of assessing progress is to note your child's achievements on a given date, and then some time later, against a list of expected milestones, such as the Early Years Foundation Stage Profile, the Portage checklist or the National Curriculum programmes of study. We've produced an online resource to support professionals in assessing and monitoring the progress of deaf young people in communication, language and listening. You can download a copy of the resource at [www.ndcs.org.uk/assessments](http://www.ndcs.org.uk/assessments).
- Information about the type and extent of your child's special educational needs – this must include all their needs, not just deafness, and not just academic. Physical, social, emotional and health needs are also relevant.
- Evidence of the action already being taken by the education provider to meet your child's special educational needs. For example, how much support are they getting from the Teacher of the Deaf, learning support assistant or speech and language therapist and what strategies are being used?
- Evidence that, where progress has been made, it's only as a result of a lot of additional support, over and above that which is usually provided. Schools should record details of additional or different provision over time and the impact if any it has made on your child's progress. As parents, you should have been involved in discussions about your child's progress, expected outcomes from the support and planned next steps (see code, paragraph 6.73).

Note: if your child hasn't started school, you'll need to provide evidence from the other professionals already involved with your child such as the Teacher of the Deaf, speech and language therapist, occupational therapist, cochlear implant centre, health visitor or Portage worker. It will be more difficult to provide evidence of the interventions/support which have been put into place for very young children, but the professionals' reports will make it clear, if appropriate, that your child's needs are so significant that they're likely to need help over and above that which is usually provided.

When collecting evidence, start by looking at the evidence the local authority used to make its decision. If your decision letter doesn't give this information, you can request it from the local authority.

If the decision seems to disagree with the evidence used, you can look at the reports of the local authority's own professionals to support your case.

If the evidence available isn't supportive of your case you could explore the option of an independent assessment. These can provide you with a 'second opinion' by someone who is independent of the local authority. Our Helpline will be able to provide you with further information.

It may be helpful to quote paragraph 9.14–15 of the code:

"In considering whether an EHC needs assessment is necessary, the local authority should consider whether there is evidence that despite the early years provider, school or post-16 institution having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child or young person, the child or young person has not made expected progress."

The code mentions three potential triggers for assessment where additional resources are crucial.

- Evidence that where progress has been made, it has only been as the result of lots of additional intervention and support over and above that which is usually provided.
- where a young person is aged over 18, the local authority **must** consider whether the young person requires additional time, in comparison to the majority of others of the same age who don't have special educational needs, to complete their education or training.
- A young person who was well supported through the Local Offer while at school may move to a further education (FE) college where the same range or level of support isn't available. An EHC plan may then be needed to ensure that support is provided and co-ordinated effectively in the new environment.

Highlight and cross-reference particular points in reports that strengthen your case and back up your reasons for appeal. For example, if you want to show that your child isn't making expected progress, look for a statement in the reports from professionals that demonstrate this is the case and mention this when writing your reasons for appeal. Try not to focus on past events too much – give a brief summary and then concentrate on your child's future support needs. If the local authority hasn't taken into account your views or the views of the child or young person, make sure these are included in the evidence you provide.

Section 19 of the Children and Families Act 2014 makes clear that local authorities **must** have regard to:

- the views, wishes and feelings of the child or young person, and the child's parents
- the importance of the child or young person, and the child's parents, being involved as fully as possible in decisions, and being provided with the information and support necessary to make sure they can take part in those decisions
- the need to support the child or young person, and their parents, to support the development of the child or young person so that they may achieve the best possible educational and other outcomes, and so that they're prepared for adulthood.

The local authority may say that your child doesn't fit its criteria for making an EHC needs assessment. However, paragraph 9.16 of the code states that local authorities must be flexible in how they use any criteria and must consider the individual needs of a child. Local authorities also can't treat groups of children in the same way (sometimes called having a 'blanket policy') without, again looking at their individual needs.

### The appeal timetable

After you have lodged your appeal, it can take around two weeks for the appeal to be registered by the Tribunal. Once registered, there is usually a 12 week process.

- Week 0: The appeal is registered.
- Week 6: The local authority must respond to the appeal.
- Week 8: All further evidence is submitted.
- Week 12: The Tribunal hearing will take place or the papers considered.

Once the hearing has taken place, the Tribunal should issue a decision within two weeks.

Tribunals will consider appeals about a refusal to assess by looking at the papers provided. This means that you'll not normally have to attend yourself to say why you're appealing (known as an 'oral hearing').

### Lodging an appeal against a refusal to assess: Checklist

1. Read the guidance booklet *How to appeal against a SEND decision* (go to [www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms](http://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms)).
2. Decide if you wish to consider mediation. If not, make sure you get a mediation certificate.
3. Download the SEND35a appeal form go to [www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms](http://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms)).
4. Work out the last date to submit your appeal. This is either two months from the date on the local authority decision letter or one month after the date on the mediation certificate, whichever is later.
5. Complete the appeal form, including the 'reasons for appeal' section and sign.
6. If you're sending your appeal by post, make copies of your appeal form, the local authority's decision letter, your mediation certificate and any evidence you're sending.
7. Ask the school and local authority for any further information and reports you may need.



8. Send the appeal form, including 'reasons for appeal' section and any other documents to the Tribunal office by the deadline.
9. Make notes of the deadlines sent to you by the Tribunal.
10. Send any remaining evidence as soon as possible, at the latest by the deadline date received from the Tribunal.

Appeals are also often resolved at an early stage, so it's useful to keep communication with the local authority open and as friendly as is possible. It's also important to keep all documentation relating to your child, preferably in date order, as you may need some of it as evidence.

However, even if the local authority agrees to an EHC assessment this doesn't automatically guarantee an EHC plan will be issued. As set out in this factsheet, this decision can also be appealed. Contact our Helpline if you'd like advice of how to do this.

## Section four: Other types of appeal

### If you want the local authority to make changes to an EHC plan

It's important to understand how the different sections of a plan work together.

**EHC plans:**

- Section B: sets out your child's special educational needs.
- Section E: for every need described in Section B, there must be at least one outcome which is hoped for.
- Section F: for each of the outcomes set out in Section E, this section must detail the provision which will be provided to help your child to achieve that outcome.
- Section I: the school which is eventually named in this section must be able to make the provision which is set out in Section F.

This means that everything follows on from the description of your child's needs, so although your particular concern might be the school which will be named on the plan, it's vital to get an accurate and thorough description of your child's special educational needs in the first place. Our factsheet *Contributing to an Education Health and Care (EHC) Needs Assessment and the Production of an EHC Plan* provides more information about key information to be captured about your child's needs.

Once you're happy that your child's needs are properly described, make sure that there's appropriate provision to meet each of those needs. Then, consider whether the school you or the local authority want to name will be able to make the provision. Remember, if you want the local authority to name a particular school you must prove either that it is the only school where your child's needs can be met or – if both schools can meet their needs – that there isn't much difference in cost between that school and the one the local authority is proposing. We have worked with the National Sensory Impairment Partnership (NatSIP) to produce some model EHC plans which give you an idea of what a good plan might look like. You can find these on our website at [www.ndcs.org.uk/senprofessionals](http://www.ndcs.org.uk/senprofessionals). You might also like to look at another document produced with NatSIP, *Better Assessments, Better Plans, Better Outcomes*, which gives guidance to professionals carrying out assessments.



### **If you want your child to move to a different school**

Unless you're simply requesting a change from one mainstream school to another (which shouldn't require an appeal if there are no extra costs involved for the local authority), the local authority and the Tribunal will need to see evidence that the current school isn't meeting your child's needs (and that any alternative proposed by the local authority would also be unable to meet their needs).

For example, if your child is in a mainstream school, but you want them to move to a specially resourced unit or a special school, you'll need to have clear evidence about the measures the current school has put in place and the progress or lack of it that your child has made. You would then need evidence from a professional describing the provision required to meet your child's needs and you would have to show that this provision couldn't be made in the current school or any other proposed by the council.

### **Where to get help**

#### **National Deaf Children's Society**

If you need help with your child's special educational needs support contact our Freephone Helpline on **0808 800 8880**, email us on [helpline@ndcs.org.uk](mailto:helpline@ndcs.org.uk) or use our live chat service at [www.ndcs.org.uk/livechat](http://www.ndcs.org.uk/livechat). Depending on the type of support you need or the stage your discussions with the local authority have reached, you may be referred to a children and families' support officer or the Appeals and Disputes team.

#### **IPSEA (Independent Parental Special Education Advice)**

A registered charity which gives free advice to parents in England and Wales. They have a Tribunal Help Line: **0845 602 9579** for advice on Tribunal appeals and a General Advice Line: **0800 018 4016** for advice on other SEN matters. Their website: [www.ipsea.org.uk](http://www.ipsea.org.uk) provides factsheets and template letters for a range of issues.

#### **Information, Advice and Support Services (IASS)**

Should be available in every local authority. They used to be known as Parent Partnership Services. They should be impartial and confidential. To find yours visit [www.iassnetwork.org.uk/](http://www.iassnetwork.org.uk/).

## Summary checklist if you're thinking of appealing

- Have you got a copy of the decision letter from the local authority?
- Have you made a note of the date: you have two months from that date to register an appeal (or contact the mediation service)?
- Does the letter give you information about mediation? If not, it should!
- Have you got, if required, a mediation certificate to prove that you've considered or attended mediation?
- Have you downloaded the correct appeal forms and guidance from the Tribunal website?
- If the appeal is about an EHC plan, have you got a copy of the most recent final plan and all the appendices (professionals' reports on which the statement/plan was based)?
- Do you have enough evidence to support your appeal? If not, how will you gather the evidence? Consider any potential costs if you need to get independent reports.
- If you need to appeal in person, have you considered who would be the best witnesses to take with you to the hearing to give evidence in support of your appeal? Think about the costs of this. The Tribunal pays travel costs for parents' witnesses but not professional fees or accommodation costs.
- Once you've registered your appeal, have you made a note of the important dates the Tribunal Service have given you and checked that you and your witnesses are available for the hearing? (Remember that if you're appealing against a refusal to assess, the Tribunal will normally make a decision based on the papers provided, rather than asking parents to attend in person.)

This information can be requested in large print or as a text file.

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For resource references or to give us your feedback email  
[informationteam@ndcs.org.uk](mailto:informationteam@ndcs.org.uk).

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