



# Social Care and the SEND Tribunal: Extended Appeals

## Information Resource for DSCOs

### Introduction

The aim of this quick guide is to inform you, as a Social Care practitioner or Designated Social Care Officer (DSCO), about your role in the Special Educational Needs and Disability Tribunal (the SEND Tribunal) process. The SEND Tribunal is part of the First-tier Tribunal (FTT) Health, Education and Social Care Chamber.

Changes made under Part 3 of the Children and Families Act (C&F Act), 2014 introduced the replacement of Statements of Special Educational Needs (SEN) with Education Health and Care Plans (EHC plans) which must be coproduced with children and young people (CYP), parents & carers, education, health and social care commissioners.

### 1. What is an EHC Plan and the process for resolving disagreements?

An EHC plan is a legal document that supports CYP by identifying their educational, health and social care needs and outcomes, and specifying the additional special provision that is required to meet these needs. All CYP in a specialist setting will have an EHC plan, as well as some CYP in mainstream settings.

The views and advice of the DSCO will be sought when an EHC needs assessment is being conducted and, if required, in preparing and/or reviewing EHC plans as part of the annual review process. You will be requested to provide advice that contributes to sections D (social care needs), H (social care provision) and J (personal budget).

The C&F Act 2014 also introduced the option for parents or young people to seek mediation around the education aspects of the plan as a means of dispute resolution. Mediation is an informal, structured process, facilitated by an independent and impartial person, that aims to reach resolutions to disagreement. If parents or young people request mediation then the LA and the health provider, if the disagreement includes health aspects of the EHC plan, must attend. Parents are not required to engage with mediation in relation to the social care or health elements of the plan before asking the Tribunal to make recommendations. If they choose not to use mediation, then parents and young people must request a mediation certificate before they can register an appeal with the Tribunal. This [factsheet](#) provides further information about mediation.

### 2. Legislation

#### Primary

- [The Children and Families Act 2014 \(Part 3\)](#).

#### Regulations

- [The Special Educational Needs and Disability \(First-tier Tribunal Recommendations Power\) Regulations 2017](#)



- [Tribunal Procedure \(First-tier Tribunal\) \(Health, Education and Social Care Chamber\) Rules 2008 \(the 'Tribunal Procedure Rules'\)](#)
- [The Special Educational Needs and Disability Regulations 2014](#)

The 2017 Regulations explain that the Tribunal can make non-binding recommendations on:

- the child or young person's health care needs which relate to their special educational needs (section C);
- the child or young person's social care needs which relate to their special educational needs or to a disability (section D);
- any health care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs (section G);
- any social care provision which must be made for the child or young person as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 (section H1);
- any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs (section H2)

### Statutory Guidance

- [The SEND Code of Practice](#)

Chapter 11 of the SEND Code of Practice sets out the general principles for resolving disagreements which should be considered.

- [DfE Guidance on SEND tribunal: Extended powers](#)

The DfE have produced guidance for local authorities and health providers in relation to SEND tribunals and the extended powers.

## 3. National Trial and extended powers

Prior to April 2018, parents and young people were only able to appeal the educational aspects of EHC plans at SEND tribunal. The [National Trial](#) extended SENDIST powers and gave new rights to request recommendations about the health and social care needs and provision (section C, G and D, H1 and H2) specified in EHC plans in addition to the educational aspects. This gives young people, parents and carers the opportunity to raise all their disagreements about an EHC plan in one place. The National Trial ended in August 2021. Following an [independent evaluation](#) of the National Trial, the DfE confirmed that the extended powers given to the SEND Tribunal would continue and is now referred to as 'extended appeals'.

The aims of the extended powers are:

- to create a more holistic, person-centered view of the child or young person's needs at the Tribunal
- bring appeal rights in line with the wider remit of the EHC plans
- encourage joint working between education, health, and social care commissioners and providers
- bring about positive benefits to children, young people, and parents



### **When can a young person or parent/carer request the health and social care element to be included in a tribunal?**

A young person or parent/carer can request the Tribunal makes recommendations about the health and/or social care aspects of the EHC plans as part of an appeal relating to:

- the description of the child/young person's special educational needs in an EHC plan
- the special educational provision specified in an EHC plan
- the school or other educational institution named in an EHC plan
- a decision by the local authority not to assess for an EHC plan
- a decision by the local authority not to issue an EHC plan
- a decision by the local authority not to carry out a re-assessment for a child/young person who has an EHC plan
- a decision by the local authority not to amend an EHC plan following a review or re-assessment
- a decision by the local authority to cease to maintain an EHC plan

Where there is no educational element for an appeal, or the education aspect of the appeal has been resolved before going to Tribunal, any concerns about the health and/or social care elements of the EHC plan will need to be taken up via separate routes. For social care, the parents or young people would need to discuss any issues with the local authority. If the parent or young person remains unhappy, they can take their complaint to the relevant ombudsman, once they have been through the local authority's complaints procedure.

### **What recommendations can the SEND tribunal make in regards to other types of appeal?**

Where there is no EHC plan in place or where health and social care needs and/or provision **are not** included in the plan, the Tribunal has the power to recommend they are specified in the plan. Where health and social care needs and/or provision **are** included in the plan, the Tribunal has the power to recommend that the need or provision be amended.

## **4. Requirements for Social Care**

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The DfE guidance on the SEND Tribunal outlines the duties of local authority social care commissioners in relation the extended appeals process.

If parents/carers or young people seek a recommendation from the Tribunal about the social care elements of an EHC plan, the LA social care commissioners **must**:

- Respond to any request for information and evidence from the Tribunal within the timeframe specified
- Send a witness (if required) from social care to attend the hearing and give evidence
- Respond in writing within 5 weeks following a recommendation to the parent or young person and the LA setting out the steps they will take or giving the reasons for any decision not to follow the recommendation

Additional expectations of local authority social care commissioners include:

- Ensuring both adult and children's social care services are fully informed and prepared
- That staff are trained, and any key information and guidance is disseminated to those who may be involved in the extended appeals process



- That local processes are reviewed to ensure a clear communication system and understanding of any previous learning points around complaints, Tribunal appeals and mediation
- Arrangements are in place to consider recommendations in detail, to enable clear and full evidence to be drafted and to implement any recommendations agreed
- Drafting responses to recommendation letters

You can download the full guidance at [Extended Powers SEND Tribunal: Online Toolkit](#)

## 5. Effective practice

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### Pre-tribunal – preparing and submitting written evidence

Depending on the nature of the appeal, the LA social care team will be required to coordinate assessments of CYP with SEN and disabilities and respond to requests from the SEND Tribunal for information and evidence that may be required. The LA social care team will need to ensure the relevant evidence and information is in order and is sent to the LA SEND team by the deadline provided to be included as part of the Tribunal evidence bundle. Whether the social worker will need to attend the Tribunal hearing will largely depend on the individual circumstances of the appeal and whether the social care assessment is uncontested evidence.

It is important to note that, if the EHC needs assessment or final EHC plan subject to the appeal contains no social care advice and information, or that reads as ‘not known’, it is likely that the Tribunal will rule that authority has failed in its duty to provide the required advice and information.

In preparing evidence for the Tribunal, LA social care teams should consider:

- The social care needs assessment that was carried out as part of the EHC needs assessment when deciding whether an EHC plan should be issued
- The social care advice provided with respect to the contents of the EHC plan
- Any evidence that justifies the decision-making process during the EHC needs assessment and/or development of the EHC plan

Practitioners should provide an up to date assessment of the CYP or adult’s needs (up to the age of 25).

In addition, the Tribunal may want a witness statement if, for example, a witness is unable to attend. The witness statement should include:

1. The witness’s name, qualifications, witness’s Social Work England registration number, experience, and office address
2. Background history/chronology
3. CYP impact analysis which includes consideration of:
  - Is the child/Young Person in need under the Children Act 1989/Chronically Sick and Disabled Persons’ Act 1970/Children and Families Act 2014 and is he/she considered to be a disabled child? Or for a young adult aged 18+, or coming up to 18 and in transition does he/she fulfil the criteria for a Care Act 2014 assessment?
  - A description of the social care needs of the CYP with analysis of the CYP Person’s daily life and experience.
  - The proposed plan for how the social care needs of the CYP will be met, including the

outcomes expected, as a result of the social care provision being made. Provision will need to be specific and include costs. Information on local social care options may be asked for.

4. Statement of Truth
5. Signature and date report completed.

The witness statement along with the assessment are sent to the person in the LA responsible for SEND Tribunals. This may be a member of the SEND team or a Tribunal Team/Officer.

### What kind of information might be asked for?

“Evidence from all professionals should clearly specify a child or young person’s special educational, health or social care needs and the provision required to meet each of those needs. It should also identify the outcomes expected if that provision is put into place over time. Specification means being specific about what needs a child or young person has and quantifying and qualifying what provision they require, including who will deliver that provision, when, how often, for how long and the arrangements that should be in place to monitor its effectiveness” (SEND Tribunal: extended appeals Guidance for local authorities, health commissioners, parents and young people, 2021).

Requirements for evidence and information will vary based on individual circumstances, but in some instances the Social Worker will not just be submitting a previously completed Child and Family or Care Act assessment. Although the latest assessment is likely to be submitted as part of the bundle, the evidence provided should be an assessment that is looking specifically at the special educational needs of the child. This information may come from several sources, for example, the Child in Our Care Review, Personal Education Plan document or Child in Need (CIN) review document. The information provided should clearly confirm the legal status of the CYP e.g., CIN/LAC/ Care Act eligible and give a clear plan with the desired outcomes.

The parent or young person will be provided with a copy of the evidence bundle submitted to the Tribunal. Therefore, as with all documents, the parent or young person should have seen the evidence prior to it being submitted and their views invited. Where evidence is in dispute, you may be asked to attend the hearing to answer questions arising from the other party and/or Tribunal panel. It is important therefore to ensure that your evidence is sufficiently detailed and specific to the issues of the Tribunal.

### Prior to the Tribunal hearing

Processes will vary depending on local practice, but you should consider whether a pre-meeting could take place to bring together all agencies involved to prepare for the hearing itself. This will help to ensure that any outstanding issues are addressed and that all parties are working together to achieve the best outcomes for the CYP.

### What to expect at the Tribunal

#### Who sits on the panel?

Panels of the SEND Tribunal will be formed three members. The panel always has a legally qualified chair (Judge). The other panel members are professionals with a health and/or social care background who are experienced in SEN and disability issues.

#### How do I address the Judge?

- In correspondence it would be Dear Judge



- In the Tribunal hearing call them 'Sir' or 'Madam'

### **Will I have legal representation at Tribunal?**

The Tribunal differs from Family Court and is not as formal. The process of appealing and attending the Tribunal hearing has been designed to be as user friendly as possible for parents and young people. Whether the LA chooses to have legal representation at the hearing is usually dependent on the complexity of the case and/or the individual practice of your LA. However, legal representation at the Tribunal is not a formal requirement and as such, consideration should be given to how legal counsel may impact on proceedings for all parties.

### **Who else will usually attend the Tribunal?**

The Tribunal has limited the number of witnesses who can attend the hearing to three for each party, and careful thought should be given to the identification of the witnesses who are required at the hearing. As necessary, LAs will be able to request an additional witness from the health commissioning body or from social care to give evidence at any hearing (i.e., four, rather than the three witnesses usually allowed by the Tribunal), as will the parent or young person who has requested the recommendation. Where a fourth witness is required because of health or social care issues, then the party seeking to bring an additional witness will need to make an application to the Tribunal for permission to bring them explaining why their attendance is required.

### **What is the Social Worker role as a witness at a Tribunal?**

- Be familiar with the evidence submitted to the Tribunal and be able to explain and justify the decisions made by Social Care
- Have a good understanding around processes for decision making in respect of short breaks, support for SEND, Care Act 2014 eligibility
- Give full, frank, and honest evidence
- Be fair, impartial, and independent

HMCTS have produced a [series of videos](#) for parents and young people to provide an overview of what to expect on the day of the Tribunal. These videos include an outline of who is who at the Tribunal and their role, as well as an overview of what takes place during the hearing.

You can also find a more detailed overview of what witnesses need to do at [SEND Tribunal: if you're asked to be a witness - GOV.UK \(www.gov.uk\)](#).

## **Remote Tribunal Hearing tips**

### **Before the Hearing**

- Test your laptop/equipment so you know that it works.
- Check that you have the right software for your device, if needed, and that you know how to join.
- Make sure the device(s) you will be using are fully charged or plugged in, so you do not get cut off during the hearing.
- Turn off your mobile phone/ensure it is on silent mode and remove anything else that could distract you.
- Have any documents you will need for the hearing ready beforehand. Have the Tribunal evidence bundle/your witness statement (if attending as a witness) available to you on a separate device such as a tablet, if available, or in a paper format.



- Dress as if you were coming into a court or tribunal building.
- Have a plain/neutral/ background behind you.
- Make sure you are sat in a private, quiet place where you won't be interrupted.
- Be ready at least 15 minutes before the hearing.
- Make sure your head and shoulders are visible and that the lighting is good (for example, that your face isn't in shadow).
- Talk direct to the camera and not to your own picture when speaking to the Judge.
- If there are colleagues that you think you may need to seek additional information or advice from on the day of the Tribunal, ensure that you notify them in advance and that they are on standby to respond to a query promptly. This could also include a senior decision-maker should the query require a decision on support or provision.

### During the Tribunal

- When not speaking, all participants except the judge should be on mute.
- When your video is on, you will be seen at all times so be mindful of your body language and behaviour whether you're speaking or not.

### After the Tribunal

A conclusion will not usually be provided during the hearing, the outcome will be confirmed later by the Judge through a formal written decision (normally issued within 10 working days of the hearing being concluded). The decisions and recommendations made by the Tribunal are shared with both the LA and the parent or young person who registered the appeal.

Recommendations made by the Tribunal in relation to the social care elements of an EHC plan are non-binding. There is no requirement on the LA social care team to follow the recommendations, however, there is a general expectation that recommendations are followed.

If the Tribunal makes any recommendations about social care needs or provision, the LA social care team **must** respond in writing to the parent or young person within five weeks of the date of the recommendation (the Tribunal has discretion to amend this timeframe if deemed necessary depending on the case).

The response from the LA social care team must be provided in writing and state the steps it has decided to take with regards to the recommendations. If a decision is taken not to follow any of the recommendations made, this decision should be sufficiently detailed in the written response.

A toolkit has been created to provide resources to LAs and health commissioners in relation to the SEND Tribunal. This toolkit includes [sample letter templates](#) that can be used to draft responses to recommendation letters.

## 6. Where to get more advice

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1. [SEND Code of Practice](#)
2. [HMCTS SEND Tribunal pages](#): Guidance on what to expect and how to prepare for a tribunal
3. [HMCTS video series](#): an overview of what to expect during the Tribunal hearing
4. [The appeal process](#) – HMCTS guidance on how to appeal an SEND decision
5. [SEND Tribunal extended powers online toolkit](#): Collection of tools, templates and guidance
6. [DSCO Handbook](#): produced by the Council for Disabled Children
7. [SEND tribunal Case Law Series](#): Written by Barrister Steve Broach for Council for Disabled Children

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