

Appealing to the SEND Tribunal:

The aim of this guide is to help you through the appeal process in the First-tier Special Educational Needs and Disability (SEND) Tribunal.

The SEND Tribunal hears cases which involve:

- appeals against decisions of local authorities about children and young people with special educational needs; and
- claims of disability discrimination by a school against a child or young person

What can I appeal?

You can appeal if the local authority:

- **refuses to arrange an EHC needs assessment** of the child or young person's special educational needs, following a request by a child's parents, young person or early years setting, school, or college;
- **refuses to issue** an EHC Plan for the child or young person after completing an EHC assessment;
- **refuses to arrange an EHC reassessment** of the child or young person (following a request by the child's parent, young person's or school, college) if the local authority has not carried out an EHC assessment in the last six months;
- decides to **stop maintaining** an EHC plan;
- decides **not to amend** the EHC plan following an annual review;
- decides **not to change** the EHC plan after carrying out an EHC reassessment; or
- has finalised, or has changed a previous EHC plan, and **you disagree** with one or all of the following:
 - The section which specifies the child or young person's special educational needs in Section B of the EHC Plan.



- The section which specifies special educational provision in section F of the EHC Plan.
- The school/college/institution or type of school/college/institution named in section I of the EHC Plan or type of school named in section I of the EHC Plan.
- The local authority not naming a school/college/institution in section I of the EHC Plan.

On 3rd April 2018 the SEND Tribunal launched a 2-year National Trial which extends the power of the SEND tribunal to make non-binding recommendations on the health and social care aspects of Education, Health and Care (EHC) plans.



The SEND Tribunal only has the power to do this if it is part of an educational appeal. There must be an educational component to the appeal for it to be considered under the SEND Tribunal National Trial. If your concerns about your child or young person's EHC plan are only around health and/or social care, you still have the option of mediation.

When can I appeal?

The deadline for making appeals is **two months** from the date of the letter from the local authority giving their final written decision. If you want to appeal after the two months deadline and the circumstances are exceptional you can apply to extend the time.

In most cases you will need to consider whether you want to go to mediation before you make your appeal. If you go to mediation or decide that you don't want to go to mediation you will need a mediation certificate issued by a mediation provider before you can make an appeal.

You will have two months to request a mediation certificate from the date of the letter from the local authority giving their final decision. The letter must give contact details for a mediation provider. This deadline cannot be extended by the mediation provider. You will then have an additional 30 days from the date of the mediation certificate to make an appeal to SEND Tribunal.



You do not need to explore mediation if appealing:

- The school named in the plan

- The type of school named in the plan
- The fact that no school is named in the plan

If you are required to consider mediation you will be issued with one of three types of mediation certificates:

- Parent has participated in mediation and completed
- Parent taken advice but decided not to pursue mediation
- Local Authority failed to arrange mediation within 30 days (certificate will be issued that mediation was completed)

The mediation provider that BCP Council use are [Global Mediation](#).

[Can I get help if I decide to make an appeal?](#)

You may be entitled to public funding (Legal Aid) in preparing your appeal. You can check eligibility for Legal Aid support by [clicking here](#).

SENDiass can also support you with your appeal.

The SEND Tribunal's service is free. Unlike going to court, there are no fees involved. A contribution can be made towards any out-of-pocket expenses you incur from attending the tribunal hearing, such as travel costs.



[How do I start an appeal?](#)

The SEND Tribunal must receive the appeal within two months of the date on the letter from the local authority giving you their final decision. You must identify the decision appealed and give the date of the local authority letter giving you the decision.

You will need to complete the correct appeal form:

SEND 35A: Appeals about refusal to assess – [click here](#)

SEND 35: Any other appeals – [click here](#)

You must give the reasons for the appeal including the issues that you want the tribunal to decide. These are the 'grounds of appeal'.

The reasons don't have to be lengthy or written in legal language, but need to say more than just 'I disagree'.

Explain why you disagree with the decision and what you would like the SEND Tribunal to do. If you have information or evidence supporting the appeal, enclose it with the appeal.

Do I have to send original documents?

Only send photocopied documents and keep the original documents yourself. Ensure that all documents which you provide to the SEND Tribunal are single sided.

How long does an appeal take?

From start to finish, the process of making an appeal can take up to five months depending on the type of case. Usually, there will only be one hearing where you need to visit the tribunal. Hearings normally start at either 10am or 2pm. Occasionally, in a complicated case, it may need to be adjourned to another day for the SEND Tribunal to hear all the necessary evidence.

What happens after I send my appeal?

The appeal will be registered within 10 working days of receipt. The SEND Tribunal will tell you that the appeal has been registered and the date of the final hearing of the appeal. The appeal number should be used whenever you contact the SEND Tribunal about your appeal.

When the appeal is registered, case directions, an attendance form and a case management questionnaire are issued. The directions will set dates by which you must take action and send the local authority and the SEND Tribunal information which will be considered at the hearing. It will also set a date by which you need to tell the local authority and the SEND Tribunal about the witnesses (if any) that you will bring and anyone else you want to come to the hearing.



The local authority will have the same timetable to send further information and evidence as is set out in your directions. The response must say whether or not they oppose the appeal and, if they do, they need to explain why.

What happens if the local authority does not oppose my appeal?

This will depend on the issues in your appeal. If the local authority agrees to change the contents of the EHC Plan and you are satisfied with the outcome, you can withdraw the appeal or ask the tribunal to order the local authority to change the EHC Plan in the way you have agreed by making a consent order.

If the appeal is about a decision not to carry out an EHC Needs Assessment or reassessment, not to issue an EHC Plan, not to change the school named in an EHC Plan that is over one year old or to no longer maintain an EHC Plan, and the local authority does not oppose it, the appeal will automatically come to an end. The local authority will have to do what they have agreed to do within a fixed time limit.

What if I find it difficult to get hold of a document that is important to my case?

The SEND Tribunal has power to order the production of a document. If you apply well before the hearing using the request for changes form, an order may be made directing the local authority or anyone else who may have relevant information to release it.

What is a telephone case management hearing?

Sometimes, if there is an issue that a party has raised that is not easily resolved 'on the papers', a registrar or tribunal judge will direct for a telephone case management hearing to be arranged. This is a hearing that takes place by means of a conference call where the tribunal judge, the local authority representative and you or your representative (or both of you) will be able to discuss the case over the phone.

You will be provided with a telephone number and an explanation of what you should do to join the hearing. Telephone hearings usually last between 20 and 30 minutes, and the tribunal judge will either give you a decision immediately or reserve the decision. In all telephone hearings, the orders made will be confirmed in writing within a few days.



Can I withdraw my appeal?

The appeal can be withdrawn with the SEND Tribunal's agreement. If you inform the SEND Tribunal that you want to withdraw, permission will usually be given if it is more than three weeks before the hearing. The application to withdraw must be made on the request for changes form and explain why you wish to withdraw. A

request to withdraw the appeal very near to the date of the hearing may be refused and both parties may be required to attend before a judge to explain the reasons for the late settlement of the appeal.

What happens at the hearing?

[Click here](#) to access videos explaining SEND Tribunal hearings:

Appeal hearings are held at tribunals buildings and in family court rooms as close as possible to your home. The SEND Tribunal aims to limit travel to no more than one and a half hours in each direction. Hearings are fixed to start usually at 10am but some start at 2pm. The length of your hearing will depend on the issues in the appeal and the number of witnesses coming to the hearing. Sometimes where the appeal is very complex, it may be necessary to adjourn the case to another day so that the tribunal panel can hear all the relevant evidence.

The appeal will be heard by a tribunal panel consisting of a legally qualified tribunal judge (who acts as the chair), and, depending on the type of appeal, up to two specialist members who have been appointed because of their knowledge and experience of children with special educational needs and/or disabilities.

You do not have to come to the hearing, but it is helpful if you do. The panel will want to hear anything you have to say, and you may want to ask questions of the local authority and any witnesses they may bring. If you do not come, the questions may not be asked on your behalf.

The appeal can, however, be considered 'on the papers' if both parties agree. If you consider that your appeal is suitable for a paper hearing, where neither of the parties attend, then you can tick the box on the notice of appeal form. If both parties consent to a paper hearing, the appeal will be placed for consideration by the first available panel after the final evidence date and your appeal may be decided sooner than if it goes to an oral hearing.



[Can my child come to the hearing?](#)

Your child can come to the hearing and can give evidence if they want to. However, bear in mind that it is unlikely that the child will stay for the full hearing and you must arrange for someone to look after the child when they are not in the hearing. The tribunal clerk will not be able to look after your child and it is unlikely that there will be a child-friendly place for them and their carer to use in the building.

[Can I bring someone else to support me at the hearing?](#)

You can bring another person with you for support, but they will not be able to take part in the hearing, and the attendance form must show who they will be.

[What expenses can I claim?](#)

You and your witnesses can claim travel expenses to attend the hearing. If you bring a friend or a relative to look after your child, you will be able to claim their travel expenses as well.

You should use public transport where possible (bus, tram, standard-class rail travel). If you travel by car, you can claim a fixed amount for mileage. The SEND Tribunal will only pay for taxi fares if public transport is not available, or if you have particular needs (you must tell SEND Tribunal about these before making your claim for expenses).

[How do I get a decision following the hearing?](#)

You should receive the decision and reasons by post within 10 working days of the hearing. The decision is sent to the nominated contact and the local authority.

Once the SEND Tribunal's decision is issued, the local authority must carry out the order within a fixed period, beginning with that date.

If we order the local authority:	The local authority must:
<ul style="list-style-type: none"> to start the assessment/EHC assessment or re-assessment process 	<ul style="list-style-type: none"> write to you within 2 weeks to say that it will make the assessment
<ul style="list-style-type: none"> to make and maintain a statement or an EHC Plan 	<ul style="list-style-type: none"> send you a proposed statement within 5 weeks
<ul style="list-style-type: none"> to change a statement or an EHC Plan 	<ul style="list-style-type: none"> amend the statement/EHC Plan within 5 weeks
<ul style="list-style-type: none"> to continue to maintain a statement or an EHC Plan 	<ul style="list-style-type: none"> continue to maintain the statement or EHC Plan with immediate effect
<ul style="list-style-type: none"> to change the name of the school named in your child's statement or EHC Plan with a school named by you 	<ul style="list-style-type: none"> specify the school specified by the parent within 2 weeks
<ul style="list-style-type: none"> to cancel (no longer) maintain an EHC Plan 	<ul style="list-style-type: none"> with immediate effect

[SEND Tribunal Contact:](#)

SEND Tribunal's contact details are:

Phone: 01325 289350

Fax: 0870 739 4017

Email: send@justice.gov.uk

Write to:

First-tier Tribunal Special Educational Needs and Disability
1st Floor, Darlington Magistrates Court
Parkgate
Darlington DL1 1RU

[Where can I get more information, advice or support?](#)

You can read more about the SEND Tribunal by [clicking here](#).

SENDiass4BCP can:

- provide you with advice and support in preparing for an appeal
- accompany you to the appeal
- provide you with details of other organisations, support groups and services that may be of help

Providing Information, Advice and Support for Children & Young People with Special Educational Needs and/or Disability (SEND) and Parents/Carers of Children with SEND who live in Bournemouth, Christchurch, and Poole.

Office: 01202 451970 (Bournemouth and Christchurch)
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