

Step by Step Guide - Appealing a refusal of an Educational Health and Care (EHC) Needs Assessment



First-tier Tribunal (Special Educational Needs and Disability)

Before you start the appeal, you could try speaking with your LA (Local Authority) EHC Plan Co-ordinator informally, but bear in mind the time-scales below. Ask the SENCO to gather more information for another EHC Needs Request at the same time as appealing to the Tribunal. If it is a parent request, you could consider gaining further information to send in another EHC Needs Request at the same time as appealing.

The legal test in agreeing to assess is found in section 36(8) of the Children & Families Act 2014, which says: "The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted..., the authority is of the opinion that- (a) the child or young person has or **may** have special educational needs, and (b) it **may** be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan."

This easy use step-by-step guide is designed to help you with your appeal to the Tribunal.

However, if you want to look at a full guide, see the government guidance - **SEND 37, guide to appealing:**

<https://www.gov.uk/government/publications/how-to-appeal-a-special-educational-needs-sen-decision-send37>

It explains that "*even after an appeal has been made, parents or a young person and the LA should continue to try to reach agreement by discussing the case*". Additionally note that although the SEND 37 guide mentions attending a Tribunal building or family court room, now **all** refusal to assess hearings only are heard on the papers, without parents or the LA attending the Tribunal.

Step 1: Mediation Certificate

You will need to obtain a mediation certificate from the mediation service below without delay, as you **must** send this with your appeal as evidence that you have contacted them. There is no charge for this service and you do not have to agree to a meeting. If you prefer, you can just request the certificate to be emailed to you:

KIDS Mediation Service: Tel: 03330 062 835
<https://www.kids.org.uk/mediation-home/for-families/>

Email: senmediation@kids.org.uk

Important! You must send your appeal to the Tribunal **no later than 2 months from the date of the Local Authority's decision letter** or **within one month of the date of a mediation certificate**.

Need more time – ask for the mediation certificate just before the end of the 2 months deadline, which will then give you an extra 30 days to appeal. Otherwise you could try a late appeal, giving reasons on the form.

Example: Mrs H receives a letter from the Local Authority with the final plan for her son, dated 10th January. Therefore, 2 months from the date on the letter will take her to the 10th March. The mediation certificate is dated 5th March, so Mrs H would then have until 5th April to send her appeal request to the SEND Tribunal.

January							February							March							April							
S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	
				1	2	3							1	1	2	3	4	5	6	7					1	2	3	4
5	6	7	8	9	10	11	2	3	4	5	6	7	8	8	9	10	11	12	13	14	5	6	7	8	9	10	11	
12	13	14	15	16	17	18	9	10	11	12	13	14	15	15	16	17	18	19	20	21	12	13	14	15	16	17	18	
19	20	21	22	23	24	25	16	17	18	19	20	21	22	22	23	24	25	26	27	28	19	20	21	22	23	24	25	
26	27	28	29	30	31		23	24	25	26	27	28	29	29	30	31					26	27	28	29	30			

- Decision letter sent by LA (10th Jan)
- 2 months from letter sent (ends 10th Mar)
- — Mediation certificate (5th Mar) extends deadline to 5th April

For further information visit our website or contact SEND IASS on 02476 694307:
<https://www.covsendiass.co.uk/advice-support/resolving-disagreements>

Step 2: The Decision Letter

You **must** include all pages of the LA decision letter with the reasons why they are not agreeing to assess. The LA **must** inform you of your right to appeal in a dated letter, six weeks after the EHC Needs Request was sent to the LA. You should receive this letter from your EHC Plan Co-ordinator.

I haven't received my letter from the LA informing me of my right to appeal.



Email or write to your EHC plan Co-ordinator to make a formal request for this information:

SEN@coventry.gov.uk

Statutory Assessment and Review Service
PO Box 15
Council House
Coventry CV1 5RR

Tel 024 7683 1614



What should I do if I still haven't received my letter informing me of my right to appeal?

You cannot appeal to the Tribunal without sending a copy of this Local Authority letter to the SEND Tribunal, therefore if necessary you can make a complaint to the Coventry City Council:

https://www.coventry.gov.uk/info/5/contact_the_council/545/comments_compliments_and_complaints/2

If this has not resolved the problem, you can then contact the Local Government Ombudsman: <https://www.lgo.org.uk/make-a-complaint>

Step 3: Legal Aid

You do not need a solicitor to appeal, as it is not a complicated form. However, you could try the on-line Legal Aid Checker by clicking onto the link below, to find out if you are eligible for Legal Aid. For young people aged 16 and 17 who live at home with their parents, the parents are regarded as the client and so the parents' income will be taken into account. Where a young person aged 18 or over who is in receipt of Employment Support Allowance, he or she will be the client and only his or her means will be considered:

<https://www.gov.uk/check-legal-aid>

Step 4: Completing the Appeal Form

The Tribunal prefer you to email your appeal if you can, so download the appeal form and save it on your device. When completing it, save it as you go along (see below for link):

Form SEND35a: Special Educational Needs and Disability Tribunal appeal a refusal to secure an EHC Needs Assessment:

<https://www.gov.uk/government/publications/form-send35a-special-educational-needs-and-disability-tribunal-appeal-a-refusal-to-secure-an-ehc-needs-assessment>

For further information, go to the First-tier Tribunal (Special Educational Needs and Disability):
<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

Step 5: Sending the Appeal

Write in the subject heading of your email 'New Appeal' to ensure it is dealt with quickly. If your child is moving to Reception, Year 7, post 16 or only in school part-time/ out of school, then add this to the subject heading, as this may help with priority. Make sure your completed appeal form is signed and dated (just enter your name if you do not have an electronic signature).

Your email **must** include the following:

1. Completed Appeal form
2. Local Authority decision letter (all pages)
3. Mediation certificate

Additionally, you can include any other reports/documents you may have, such as the paperwork that went originally with the request for an EHC Needs Assessment and email to: send@Justice.gov.uk

The Tribunal prefer emails but the postal address is: *HM Courts & Tribunals Service Special Educational Needs and Disability Tribunal 1st Floor, Darlington Magistrates Court Parkgate Darlington DL1 1RU*

If you need to contact the Tribunal Helpline then phone: 01325 289350/ 0300 303 5857

What if it is a late appeal? If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter or one month after the date of the mediation certificate, you must set out in writing the reasons for the delay in the section on the appeal form. Explain why you think the appeal would succeed if time for making the appeal is extended. If you don't do that then it will be returned to you without being registered or seen by a Tribunal Judge.

Step 6: What happens next?

How long does the appeal take?



You should receive an automatic response from the Tribunal immediately, so if that is not the case, check your junk mail/ the email address is correct or phone the Tribunal Helpline: 01325 289350/ 0300 303 5857. Next you will receive the registration notification (which is usually within 20 working days, so contact the tribunal if it is later than that). The letter will inform you of the timetable of dates for actions for all parties, including the date of the final hearing.

To make any changes: If you would like to make a request for any changes regarding your original appeal eg amend dates/ **request an earlier hearing date**, you can do so by using the **Request for Change Form (SEND7)**, stating your reasons why. (You **must** obtain the LA's response to your request before sending this form to the Tribunal):

<https://www.gov.uk/government/publications/form-send7-request-for-change>

You will receive a time-table with Key Dates. See below an example, showing parents' dates highlighted in **yellow**:

Key Dates, Timetable for appeal (Tip: you could add the dates to your diary with 'to do' reminders beforehand)

Action and party required to respond	Date for compliance
The LA must send its response, so that it is received by:	12 noon on 04/09/2023
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: <i>[You may wish to respond to the LA's first response and add your own further report. You may have more professionals reports to attach also. At the very least you could ask for a short summary for you to send eg SENCO. Add in your email subject heading: the hearing date, subject matter, case number and child's name eg: HD 23/10/2023 Further Information from Parent EH321/24/00068 J Bloggs. Then send to the Tribunal: send@justice.gov.uk and cc the LA EHC Plan Co-ordinator if you have their email or to sen@coventry.gov.uk if not]</i>	12 noon on 13/10/2023
No further evidence without express permission of the Tribunal from either party will be accepted after: https://www.gov.uk/government/publications/form-send7-request-for-change	12 noon on 13/10/2023
The LA must produce and send to the Tribunal and the parent(s), young person or alternative person an electronic copy of the bundle (plus a paper copy if reasonably required) so that it is received by: <i>[It is the LA's role to collate all information that the parent and LA have already sent to the Tribunal, together in one document electronically. Check all the relevant documents are included. Coventry LA usually only offer a paper copy to collect on request if reasonably required]</i>	12 noon on 20/10/2023
The date of the paper hearing will take place between: <i>[If you request an earlier hearing (see Step 6 above), it may help to choose a period that is a month following the above 'bundle' date. Then the other action dates on this table are not affected & the LA are more likely to agree. Eg in this case, you could request a new date period, "anytime from 20/11/23, up to the end of the Autumn term"]</i> SEND 7 Request for change form:	07/03/2024 and 21/03/2024

Step 7: The Hearing



Do I attend the hearing?

Refusal to Assess is a paper hearing only, so neither party would attend a hearing. All appeals against a **refusal to secure an EHC needs assessment** are decided by the Tribunal on consideration of the written evidence only. When the Tribunal send you a time-table of actions (as above), this will include an opportunity to send further information/evidence for the hearing. The Tribunal will inform you and the LA of their decision, usually 10 days after the hearing.

Useful contacts/ information:

Statutory Assessment and Review Service (Local Authority EHC Plan Co-ordinator from the council)
SEN@coventry.gov.uk Tel 024 7683 1614

SEND Information Advice and Support Service: <https://www.covsendiass.co.uk> Tel 024 7669 4307

SEND Code of Practice: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

Coventry Family Hubs and SEND Local Offer: <https://www.coventryfamilies.co.uk/?page=send-home>



IPSEA

Independent Provider of Special Education Advice (known as IPSEA) is a registered charity. IPSEA offers free and independent legally based. They also provide training on the SEND legal framework to parents and carers, professionals and other organisations. www.ipsea.org.uk

<https://www.ipsea.org.uk/appealing-to-the-send-tribunal>

IPSEA Refusal to Assess Pack: <https://www.ipsea.org.uk/refusal-to-assess-appeals>



LawWorks is a charity working in England and Wales to connect volunteer lawyers with people in need of legal advice who are not eligible for legal aid and cannot afford to pay. If you are being helped by a not-for-profit organisation they can also support them.

www.lawworks.org.uk



**National
Autistic
Society**

The NAS, a leading national charity supporting people with autism and their families, maintains a list of solicitors in the Advocacy (legal) section of its comprehensive Autism Services Directory.

<https://www.autism.org.uk/>

Tel **0808 800 4104**.

SOS!SEN

SOS!SEN is a national charity aiming to empower parents and carers of children with SEN to tackle successfully themselves the difficulties they may face regarding their children's rights.

https://www.sossen.org.uk/useful_tips_for_parents.php Tel **0300 302 3731 or 0208 538 3731**



This website helps parents of children with special educational needs and/or disabilities living in England to get the right educational provision for their child or young person. They have a number of downloadable resources including template appeal forms with examples of how to complete them. Documents also include research, caselaw, and model letters:

<https://www.sen-help.org.uk/>



Parents in Need is a charity which supports families of children with Special Educational Needs by funding professional's reports.

<https://www.parentsinneed.org/>

Contact: info@parentsinneed.org