



The Single Route of Redress for EHCPs

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Introduction

From 3rd April 2018, parent carers and young people will have new rights to appeal decisions about their Education, Health and Care Plans (EHCPs).

In line with Schedule 2 of the [Special Educational Needs and Disability Regulations 2014](#) all local areas in England are required to publish details in their local offers for 'notifying parents and young people of their right to appeal a decision of the local authority to the Tribunal' and this includes their extended rights as part of the single route of redress national trial.

There is more information about appeals and mediation on the EHCP page of the SEND Local Offer website - <http://devon.cc/ehcplans>

This guide will tell you all about the new national trial, which starts on 3rd April 2018.

What is the National Trial? -

The Government is extending the powers of the First-tier Tribunal (SEND), sometimes referred to as the 'SEND Tribunal', to make non-binding recommendations about the health and social care aspects of Education, Health and Care (EHC) plans as part of a two-year trial. The trial will apply to decisions made or EHC plans issued/amended from 3 April 2018.

To date, you have only been able to appeal the educational aspects of EHC plans. The trial gives you new rights to request recommendations about the health and social care needs and provision specified in EHC plans, in addition to the educational aspects, when making a SEND appeal. This gives you the opportunity to raise all your concerns about an EHC plan in one place.

It is only possible for the Tribunal to consider the health and/or social care aspects of the EHC plan where you are already making an appeal in relation to the education aspects of the EHC plan and the education aspect must remain live throughout the appeal.

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What does this mean for parents and young people? -

If you are unhappy with a decision not to issue an EHC plan, or with the special educational content or placement in the plan, you can make an appeal to the SEND Tribunal. This trial now gives you the opportunity to also request recommendations about the health and social care content of the plan at the same time. This will mean the Tribunal will take a more holistic, person-centred view of the needs of the child or young person.

This does not prevent you also complaining about other aspects of your disagreement through other complaint procedures. You should seek advice about the different routes available, including from your local Information Advice and Support Service (IASS).

If the SEND Tribunal makes a recommendation about health or social care elements of an EHC plan, this is non-binding. The local authority and/or health commissioner is generally expected to follow such recommendations, but they are not legally binding. Where they are not followed, the reasons for not following them must be explained and set-out in writing to you and to the Department for Education through the evaluators. If they are not followed, you can complain to the [Local Government and Social Care Ombudsman](#) (LGSCO) or [Parliamentary and Health Service Ombudsman](#) (PHSO) or seek to have the decision judicially reviewed. Further information on the roles of these bodies can be found on their websites.

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When can a parent or young person request recommendations about the health and social care elements of an EHC plan? -

You can request the Tribunal makes recommendations about the health and/or social care aspects of 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 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

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What does this mean for local areas? -

The Trial places responsibility on local authority SEND teams to:

1. Inform parents and young people of their new rights through decision letters and the local offer
2. Provide evidence to the Tribunal from the health and social care bodies in response to any issues raised within the timeframe set by the Tribunal, seeking permission to bring additional witnesses to the hearing as necessary
3. If a recommendation has been made, send the health and social care response letters to the evaluators at SENDletters@IFFResearch.com.

It also places responsibility on health and social care commissioners to:

1. Respond to any request for information and evidence within the timeframe set by the Tribunal
2. Send a witness to attend the hearing as required
3. Respond to the parent/young person and the LA SEND team within 5 weeks of a recommendation being made, setting out the steps they have decided to take or giving reasons why they are not going to follow the recommendation.

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How can a parent or young person request a health or social care recommendation? -

If you wish to appeal against a local authority decision on any of the grounds above and want to request that the Tribunal considers your concerns about the health and /or social care aspects of the EHC plan, you should follow the normal process for bringing an appeal to the Tribunal and tick the box on the form relating to a health and/or social care appeal. Advice on making SEND appeals to the Tribunal and the appeal form is available on the GOV.UK website and further guidance can be found in the trial toolkit of support.

Taking part in the evaluation

There will be an independent evaluation of the trial to inform a decision on whether the new tribunal recommendation powers should be continued after the trial. The evaluation will run alongside the trial, from January 2018 to March 2021.

It is important that the evaluation is based on robust evidence, and the evaluators are therefore strongly encouraging participation from parents and young people. This could include taking part in a telephone or online interview just after the appeal hearing (or when the appeal process has been completed, if earlier), and then a follow-up interview 6 months later. These interviews will help the evaluators to gather the views of parents and young people on the appeal process, as well as identify how recommendations have been implemented and what the (early) impact has been.

Parents and young people that take part in the trial will receive a letter from the Tribunal explaining more about the evaluation and how their personal data will be stored confidentially and how it will be protected.

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As a parent or young person, do I have to consider mediation as part of the trial? -

Before you can register an appeal with the Tribunal, you must contact a mediation adviser within two months of the LA decision you wish to appeal and consider whether mediation might be a way to resolve your disagreement with the LA. If you want to appeal only about the school or other institution named in the EHC plan you do not have to contact a mediation adviser.

You can go to mediation about the health and social care elements of an EHC plan, but this is not compulsory. You can request recommendations about health and social care issues without having to receive mediation advice or attend mediation about those issues, provided there is also an education issue about which you are appealing.

Once a mediation adviser has been contacted, or once you have taken part in mediation, you will be issued with a certificate. This will be necessary if you are still unhappy and wish to progress to an appeal with the Tribunal. An appeal to the Tribunal must usually be made within two months of the decision about which the appeal is being made or one month following the issuing of the mediation certificate, whichever is the later.

If mediation resolves the educational issues, you will not be able to appeal to the Tribunal on any health and/or social care aspects of the EHC plan. However, mediation provides an opportunity for us to resolve disagreements and it can be completed more quickly than an appeal. It does not affect your right to make an educational appeal, and some aspects of the disagreement can go to appeal even when other aspects are resolved.

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How can I get help with this? -

- A guidance document on the national trial is published as part of a [toolkit](#) of support
- Contact [Devon Information, Advice and Support for SEND](#) (DIAS) who can guide you through the process
- The evaluation of the trial is led by IFF Research working with Belmana. For any questions or to get involved please get in touch with them at SENDtrial@IFFResearch.com, freephone: 0800 035 6051.

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