

# IPSEA Webinar Series

## Tribunal Hints and Tips



**IPSEA**

[www.ipsea.org.uk](http://www.ipsea.org.uk)

# We are covering this topic to ....

- Help you understand tribunal procedure
- To explain tribunal terminology
- To prepare for a hearing
- To explain what happens after a hearing

# You should watch this if ....

You are considering, or have lodged, an appeal to the First Tier Tribunal (Special Educational Needs and Disability) about a decision of your local authority.



**IPSEA**

[www.ipsea.org.uk](http://www.ipsea.org.uk)

# After the webinar you will ....

- Be more confident about the Tribunal procedure
- Understand what happens before, during and after the Tribunal hearing

# What we will cover

(Note: this webinar deals with SEN appeals to the SEND Tribunal, not claims of disability discrimination)

1. What can be appealed
2. Before submitting the appeal
3. Submitting the appeal
4. LA response
5. Further submissions
6. Working Documents
7. Preparing for the hearing
8. The hearing
9. After the hearing

# The law that applies

- The Children and Families Act 2014 (“the C & F Act”)
- The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, as amended, which set out the procedure in the Tribunal and the powers of the Tribunal (“the HESC Rules”)
- The Special Educational Needs and Disability Regulations 2014, as amended (“the SEND Regs”)

# 1. You can appeal if your LA has:

- Refused to carry out an Education Health Care Needs Assessment or re-assessment
- Refused to issue an EHC plan
- Issued an EHC plan and you disagree with the contents
- Issued a notice that they intend to cease to maintain an EHC plan
- Refused to amend an EHC plan following an annual review
- Refused to amend an EHC plan following a reassessment

**NB** Refusal to Assess Appeals are now dealt with on the papers only unless a party requests an oral hearing and the Tribunal agrees

## 2. Before submitting the appeal

- Mediation has to be considered by the parent/young person at the beginning of the process unless appeal is about s.I only (it's very rarely advisable to only appeal s.I)
- You must contact the mediation adviser within 2 months of the decision being appealed
- The time limit for appealing will be extended by a further month following a mediation certificate being issued – can help to 'buy' time

# Out of time?

An appeal must be submitted 2 months after the written notice of the disputed decision was sent to the appellant by the LA (i.e. usually from the date on the decision letter) or 1 month from the date of the mediation certificate

But...if the letter that the LA sends the parent/young person informing them of the decision does not contain all the required information, then the Tribunal will be able to take that into account in any application to extend the time limits to allow an appeal to be lodged out of time

# 3. Submitting the appeal

Appeal forms can be downloaded from the Tribunal website at [www.hmctsformfinder.justice.gov.uk](http://www.hmctsformfinder.justice.gov.uk)

Or you can call the Tribunal on 01325 289 350 and ask them to send you the appeal form by post

The appeal form and supporting evidence can be submitted by post or by email



# Whose appeal and which appeal form?

- For an SEN appeal about a child from 0 to the ending of compulsory school age the person with the right of appeal is the parent
- Over compulsory school age the right of appeal automatically passes to the young person and young person appeal form must be completed
- Where a young person lacks the mental capacity to bring the appeal the right of appeal can be exercised by an 'alternative person', such as the young person's parent. It will still be necessary to use young person appeal form

# Completing the appeal form

- If you complete the appeal form electronically make sure you save it first and open it in an editable form so that the changes you make to the form are saved
- Send as much information with the appeal form as you can, but do not delay in submitting the appeal if you don't have all the evidence that you want at this stage. You can submit additional evidence once the appeal has been registered
- If you are not sure who you will bring as witnesses at this stage (or if you will have any witnesses) then you can put 'to be confirmed'
- You can do the same in relation to the question about your representative

# Appeal is registered by SEND

Parent / YP will receive:

- Confirmation that the appeal has been registered and the date of the final hearing (except in refusal to assess appeals)
- Case directions specifying dates by which actions must be taken. You can apply for these to be varied if necessary by submitting a request for change form (you must ask the LA first)
- Attendance Form (except in refusal to assess appeals)
- When appeal is registered a copy is sent to the LA, who are also issued with directions

# 4. LA Response

- If you do not receive the LA's response to your appeal by the date set in the Tribunal directions you should contact the LA and chase it up
- If you still don't receive a response you should inform the Tribunal
- Failure to comply could result in the LA being barred from taking any further part in the appeal

# If the LA doesn't oppose the appeal

- Where the LA notifies the Tribunal that it will not oppose the appeal, then no action is required on the part of the parent / YP and the appeal is treated as having been determined in their favour: **SEND Regs 45**
- Time limits are set out in SEND Regs 45 by which the LA must act
- BUT – this only applies if the LA informs the Tribunal that it does not oppose the appeal **before** filing a response: SEN Regs 45(1)

# If the LA does respond but subsequently concedes...

- If the LA concedes an appeal **after** they have submitted a response, then the time limits in SEND Regs 45 will not apply
- Do not withdraw an appeal without written confirmation of what has been agreed. In contents appeals this should include a copy of the signed, amended EHC plan
- You could also ask the Tribunal to issue a consent order in the terms of the agreement reached, including a timetable for the LA's actions

# Review LA response

- The response should provide further detail of the reasons behind the LA's decision and / or a response to the amendments to the EHC plan that have been requested
- This information should be read carefully as it is likely to point to further evidence that might be required
- In appeals about the name of a school this might be the first time the LA has referred to the reasons in law that it is relying on for refusing to name
- In appeals about the LA's refusal to assess the date for the LA response and the final evidence deadline are likely to be the same

# 5. Further submissions

- These may be made to rebut or challenge the LA's response, or because additional evidence has become available since the appeal was submitted. Anything submitted must be sent to the LA as well as the Tribunal
- The Tribunal might agree to direct a school or LA to provide information to help your case. You must have asked the LA first and should use a request for change form to make the request
- They must be made by the final evidence deadline. If you know some evidence is going to be available after that date you should submit a request for change form to ask for the final evidence deadline to be changed (you must ask the LA first)

# Attendance form

- Both parties are required to submit a completed attendance form to indicate who will attend from their side, including representatives/helpers and witnesses
- If not sure at this stage put “to be confirmed” and inform the Tribunal by email nearer to the hearing date
- Think carefully about who you would like as witness(es)
- Generally only helpful if they have knowledge of the child in a relevant professional context, and are willing to attend
- You do not need to have a representative, many parents do not

# Active Case management?

You can also ask that the Tribunal uses its powers of case management to hold a telephone case management hearing. These are useful where the case is complex, or where the LA has or can easily obtain information that would help to resolve the dispute

# 6. Working Document

- If your appeal includes the contents of an EHC plan a working document will be needed to show the areas of disagreement and any agreement that is reached between you and the LA before the hearing
- Avoid overly long WDs
- Ensure requested amendments are in the right sections i.e description of SEN in s.B and SEP in s.F
- Always use the key
- Must be submitted ten working days before the hearing but the Tribunal encourages parties to continue working on it right up to the hearing

# Working documents – the key

Normal type	Original EHC plan
<u>Underlined type</u>	Amendments agreed by both parties
<b>Bold type</b>	Parents' proposed amendments
<b><del>Bold struck through</del></b>	Parents' proposed deletions
<i>Italic type</i>	LA's proposed amendments
<i><del>Italic struck through</del></i>	LA's proposed deletions



**IPSEA**

# 7. Preparing for the hearing (1)

- LA must send you the indexed bundle containing everything submitted by both parties
- If they won't send you a hard copy ask the Tribunal for one
- Check very carefully that everything you submitted has been included
- Make sure you know exactly where in the bundle the evidence you are particularly relying on can be found (especially important for working documents)

# Preparing for the hearing (2)

Make sure you understand:

- What is the relevant legal test being applied?
- What is your evidence on a particular issue – positive and negative?
- What will the LA's position be on the key issues?
- What are the weaknesses in your case?

# 8. The hearing

- The Tribunal are likely to ask you some questions about your child as an ice breaker. They might ask if you have a photo of them with you
- You should address the panel as ‘Sir’ or ‘Madam’
- Remember that the Tribunal Panel will ask questions – let them take the lead, they will have read the bundle and spent time previewing the case together before you arrive
- Do not interrupt but record helpful things to mention when you sum up / points which are damaging which you need to counteract

# Summing up

The Tribunal will invite you to summarise your case at the end of the hearing

- Can be helpful to mention the key legal tests (especially if the LA are applying the wrong test!) and the burden of proof
- Do not give evidence – summing up should be the submissions about the evidence which has been heard
- Remind the Tribunal of helpful points or any inconsistencies which help your case

# 9 After the hearing

- The Tribunal will make its decision following the hearing
- Generally you will receive this within ten working days
- The decision must summarise their reasons for the decision
- Once received the LA have to comply with time limits within which they must carry out a tribunal order. These time limits are contained in the SEND Regs (SEND Reg 44)

# If you're not happy with the decision

Following a decision of the First-tier Tribunal, you can make the following applications:

- You can apply for permission to appeal if you think that the decision was wrong in law
- You can ask SEND to review the decision because there has been a change of relevant circumstances since the decision was made
  - You can ask for the decision to be set aside in certain circumstances

The three applications are explained in detail in the guidance sent with your decision

# Overview of Tribunal process

Week 0	Appeal registered
Week 6	LA response to the appeal
Week 7	Final Evidence deadline
Week 8	Telephone case management of appeal (if required)
Week 10	Evidence bundle produced by the LA
Week 12	Hearing
Week 14	Decision issued



**IPSEA**

[www.ipsea.org.uk](http://www.ipsea.org.uk)

# Visit [www.ipsea.org.uk](http://www.ipsea.org.uk) for more information on our work

[www.ipsea.org.uk/training](http://www.ipsea.org.uk/training)

- Enrol on our suite of online courses
- Find out more about face-to-face training events across the country
- Access our topical webinar series
- Sign up for updates on the latest SEN legal news

[www.ipsea.org.uk/supporting](http://www.ipsea.org.uk/supporting)

- Help us reach more families by fundraising
- From a sponsored swim to a bake off with your friends, there are plenty of ways you can help
- The money you raise will help us fund our advice services and support families of children with SEND



**IPSEA**

[www.ipsea.org.uk](http://www.ipsea.org.uk)