

APPEALING THE HEALTH AND CARE PARTS OF AN EHC PLAN

SEND Tribunal is part of the court system. It hears cases which involve parents, carers and young people appealing against a decision a local authority has made about special educational needs and support.

From April 2018, the SEND tribunal was given new powers to look at health and social care as well as education. This factsheet tells you what these powers are and what they mean for you. These changes should mean the tribunal will be able to take a more complete, person-centred view of the needs of your child or young person.

You can appeal about the health part of the plan, or the social care part, or both together.

The government are trying this new process. At the end of this, in August 31st, 2021, they will look at how well it worked and make recommendations about what happens next.

You still need an education appeal to go to SEND Tribunal

To appeal the health or social care part of an EHC plan you must also appeal the education part of the plan. This means you can ask the tribunal to make recommendations about the health and/or social care parts of EHC plans **as part of an appeal** about:

- the description of your child's special educational needs
- the special educational support (provision)
- the school or other educational institution named
- issuing or ending (ceasing to maintain) an EHC plan
- a decision not to do a re-assessment for a child with an EHC plan
- changing an EHC plan after a review or re-assessment.

You need to think about mediation, but you do not need to do it

Because you must appeal the education part of the EHC plan to ask for the health and/or social care part to be looked at, you will still need to contact a mediation adviser about the education part.

If you decide to go to a mediation meeting for the education parts of the plan you don't need to do it for the health and/or social care parts.

If you go to a mediation meeting and it resolves the educational issues, you won't be able to appeal to the tribunal on any health and/or social care parts of the EHC plan.

After you've talked to a mediation adviser or had a mediation meeting, you'll be given a certificate. You'll need this if you want to appeal. There are timescales for doing this.

The Tribunal can make 'non-binding' recommendations about the health and social care support set out in an EHC Plan

Staff from health and social care organisations will be asked to give evidence and go to the tribunal hearing if needed.

The SEND tribunal can recommend that your child's health and social care needs and the support in your child's EHC plan are:

- made clearer or more detailed
- changed
- included if they are missing.

A copy of the tribunal's recommendations will be sent to health commissioners as well as the local authority social care service. These are the people who organise and deliver health and social care services. They must tell you whether they're going to carry out any of the recommendations the tribunal makes.

The judgments that the SEND tribunal makes about health and social care are "non-binding". This means that legally, health and social care organisations don't have to follow the judge's recommendations. But, even though they're non-binding, the local authority and health care commissioners are expected to follow them.

If a health or social care organisation decides not to follow a tribunal judgement, they must write to you and the local authority within five weeks to explain why they aren't. If this happens, you can still take your case to the Local Government and Social Care Ombudsman (LGSCO) or Parliamentary and Health Service Ombudsman (PHSO) and/or judicial review. Contact us to find out more about this.

Important to Know

If you want to appeal against the local authority's decision about your child's EHC plan and you want to ask them to look at your concerns about the health and/or social care parts too you must:

1. Follow the normal process for appealing to the tribunal.
 2. Tick the box on the form about a health and/or social care appeal.
- If you want more information about appealing, or need the forms to apply, go to the First-tier Tribunal (Special Educational Needs and Disability) website.

How to Appeal

Before you can register any appeal, you must contact a mediation advisor. The only exception to this is if you're appealing just the school or education setting named on the plan.

By talking to a mediation advisor, you can decide whether mediation could help you to sort out your disagreement about the EHC needs assessment or plan, without going to appeal. Mediation is independent of the local authority and free for you to use.

The Mediation Service in North Yorkshire is provided by Collis Mediation Ltd.

After you've spoken to them, if you decide to use mediation, a mediation meeting will be set up between you and the local authority. If you decide not to use mediation, you'll be given a certificate which will enable you to start your appeal.

To register an appeal, you must fill out a 'Notice of Appeal' form. You can find this online.

If you would like any further information please visit our website:

www.sendiassnorthyorkshire.co.uk

Alternatively, if you would like to speak with one of our coordinators you can call or email our Advice Line on 01609 536923 or info@sendiassnorthyorks.org.uk