FIRST-TIER TRIBUNAL (SEND) EXTENDED APPEALS

The Government has extended 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.

You are able 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.

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). See the end of this leaflet for details of your local service.

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) and/or the Parliamentary and/or 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.

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

What does this mean for local areas?

This places responsibility on **local authority SEND teams** to:

1. Inform parents and young people of their 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

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.

How can a parent/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.

As a parent/young person, do I have to consider mediation before registering an appeal?

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.

Help and further information

- Guidance on extended appeals can be found on the GOV.UK website.
- Ask Us Nottinghamshire are your local Information, Advice & Support Service (IASS). They can provide impartial advice about a range of SEND-related matters, including resolving disagreements and appealing to the Tribunal. They can be contacted via:

  Telephone: 0800 121 7772
  E-mail: AskUs@futuresforyou.com
  Website: www.askusnotts.org.uk.