

SPECIAL EDUCATIONAL NEEDS and DISABILITY (SEND) - Single Route of Redress National Trial

Frequently asked Questions

This document provides answers to frequently asked questions about the two year national trial that extends the powers of the SEND Tribunal to make non-binding recommendations on the health and/or social care elements of Education, Health and Care plans. It is aimed at those who have an interest in, or are involved with, the national trial. The FAQs will be updated as required and notification of changes will be placed in the regular national trial newsletter.

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The Basics

What is the SEND single route of redress national trial?

The trial gives parents and young people who are making a SEND appeal the opportunity to request recommendations about the health and social care needs and provision sections in Education, Health and Care (EHC) plans, in addition to the educational aspects. This applies for all SEND appeals apart from those that are only about carrying out an EHC needs assessment. The trial began on 3 April 2018 and will run for two years.

What is changing from the existing system?

The trial extends the [SEND Tribunal powers](#) to make non-binding recommendations on the health and social care aspects of EHC plans.

This gives parents and young people a 'single route' to raise all their concerns about an EHC plan in one place. Parents and young people are now able to appeal to the SEND Tribunal about decisions concerning all three aspects of Education, Health and Care (EHC) plans – but only if there is an educational element to the appeal.

Before the trial they could only appeal about the special educational needs and provision sections, and the placement section of EHC plans – health and social care issues would only be able to be addressed through alternative routes.

In practice this will mean that parents, local authorities and health commissioners will need to provide evidence and arguments for the health and social care issues. More witnesses will be allowed to attend a hearing and these may now take two days instead of one. Health and social care commissioners will need to let parents and the local authority know what steps they have decided to take or their reasons for any decision not to follow the recommendations.

What can you go to the SEND Tribunal about?

[Regulations](#) set out the extended powers which explain that the Tribunal can make non-binding recommendations on:

- the health and social care needs specified in EHC plans
- the health and social care provision specified in EHC plans related to the learning difficulties or disabilities that result in the child or young person having SEN
- the social care provision specified in EHC plans that is made under Section 2 of the Chronically Sick and Disabled Persons Act 1970

This **needs to be part of a SEND appeal** by a parent or young person relating to:

- a decision by the LA not to issue an EHC plan
- a decision by the LA not to carry out a re-assessment for a child/young person who has an EHC plan
- a decision by the LA not to amend an EHC plan following a review or re-assessment
- a decision by the LA to cease to maintain an EHC plan
- 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

You can also go to the Tribunal about a decision by the LA not to carry out an EHC needs assessment but this is not part of the national trial.

What are the benefits of the new system being trialled?

- A key aim of the trial is to create a more holistic, person-centred view of the child or young person's needs at the Tribunal.
- The new system provides the opportunity to bring appeal rights in line with the wider remit of EHC plans – a 'single route of redress'.
- It should encourage joint working between education, health and social care commissioners.
- It should bring about positive benefits to children, young people and parents.

What are the limitations?

The extended powers mean the Tribunal can make non-binding recommendations about the health and/or social care aspects of EHC plans. Non-binding means that local authorities and clinical commissioning groups are not under a duty to accept the recommendations, but it is expected that they will. They are recommendations made by a specialist Tribunal and should not be ignored or rejected without careful consideration. Any reasons for not following them must be explained in sufficient detail and set out in writing in the response to recommendation letters. If the recommendations are not followed, parents and young people can complain to the [Local Government and Social Care Ombudsman](#) or the [Parliamentary and Health Service Ombudsman](#) or seek to have the decision judicially reviewed.

Will the decisions given by the Tribunal on education aspects of EHC plans still be binding under the trial?

Yes, the usual Tribunal orders (educational decisions) will remain binding.
<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

Health and Social Care

What does the trial do about health and social care issues?

For an appeal against a refusal to issue an EHC plan, if the Tribunal orders a plan to be made, it has the power to recommend that health and social care needs and provision be specified when the plan is drawn up.

Where health and social care needs and/or provision **are not** included in the plan, the Tribunal has the power to recommend they are specified in the plan.

Where health and social care needs and/or provision **are** included in the plan, the Tribunal has the power to recommend that the need or provision be amended.

How do I inform the Tribunal I want health and/or social care issues to be considered?

To make an appeal against a local authority decision on any of the grounds listed above and to request that the Tribunal also considers concerns about the health and /or social care aspects of an EHC plan, you should follow the normal process for bringing an appeal to the Tribunal and also tick the box on the form asking the Tribunal to make a recommendation on the health and/or social care elements of the plan. Advice on making SEND appeals to the Tribunal and appeal forms are available via <https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

Would the SEND Tribunal consider social care needs and/or provision that are already being addressed in a separate court process?

Yes. The Tribunal would still hear the whole national trial appeal. Social Care proceedings elsewhere do not stop the SEND appeal. The LA should inform the Tribunal what is happening and that can be taken into account, but other proceedings will not stop the Tribunal from looking at and recommending on the social care element under appeal.

Mediation

What are the requirements around mediation?

To take an appeal to the SEND Tribunal parents and young people must contact a mediation adviser within 2 months of the LA decision, unless the issue is solely about the naming of the school or educational institution. The mediation adviser will provide advice about going to mediation. Parents and young people may choose whether to raise their health and/or social care issues at mediation.

If a parent or young person decides to go to mediation, there is a duty on local authorities and health bodies to take part.

The LA must arrange the mediation through the mediation provider (even if the parent also wants to mediate about health). The health commissioning body or bodies must take part in the mediation arranged by the LA if the mediation is about the health element of the plan as well as either the education or social care parts of the plan.

The Tribunal process

Will there be health and social care experts on the panel at the Tribunal hearing?

Appeals are heard by a judge and a panel of Tribunal members who have been appointed because of their knowledge and experience of children and young people with SEND. Panel members for the trial will have a health and/or social care background and be trained in SEND law. The Tribunal has recruited and trained additional specialist health and social care members for this trial.

Is there a way to be an observer at a tribunal, and will this help support learning?

Either party can apply for an observer to attend the hearing. Because all hearings are in private, a party will need to apply for permission to bring an observer and explain why their presence is required. If permission is granted, the observer cannot take any party in the hearing, or take notes, only observe the hearing. Normally the only circumstances in which an observer can attend a hearing is where a representative is training someone on the tribunal process. Permission to attend as an observer must be sought in writing at least 10 working days before the hearing.

Do you have to apply to have an additional witness?

Yes. Parties must inform the Tribunal on the attendance form of the names of any witnesses they intend to bring to the hearing. The Tribunal has limited the number of witnesses who can attend the hearing to three for each party, and careful thought

should be given to the identification of the witnesses who are required at the hearing. As necessary, LAs will be able to request an additional witness from the health commissioning body or from social care to give evidence at any hearing (i.e. four, rather than the three witnesses usually allowed by the Tribunal), as will the parent or young person who has requested the recommendation. If a party wants to bring more than three witnesses they will have to ask permission in writing on the request form. If a party wants to change their witnesses, they should tell the SEND Tribunal and the other party immediately.

Could the Tribunal direct an assessment on a child if they thought there was not enough evidence to make a decision?

Yes. Under rule 15 (4)(a) of the Tribunal's rules the parents of the child, or any person with care of the child or parental responsibility for the child may be required to make the child available for examination or assessment. And under rule 15(4)(b) the person responsible for a school or educational setting may be required to allow a suitably qualified person to have access to the school or educational setting so that they can assess the child or the provision made, or to be made, for the child.

Will cases still be dealt with within 12 weeks?

Yes. The Tribunal has wide discretion to give case management directions and set a timetable for appeals. The standard timetable that the Tribunal will usually follow is the same as that for non-trial appeals and is:

Week 1 – the appeal is registered and the notice of appeal is sent. There will be a case management review of the appeal to:

- identify the issues, including the educational issues and any health and social care issues
- identify the evidence required
- clarify the recommendations being sought

Week 6 – the LA must send in their response, including the response from health and social care commissioners

Week 7 – final evidence deadline

Week 8 – telephone case management of appeal (if required)

Week 10 – evidence bundle produced by the LA and sent out to the Tribunal and all parties

Week 12 – the hearing takes place (if not resolved by case management)

Week 14 – the decision and recommendation (if applicable) is issued

Trial appeals

Will the trial trigger more SEN appeals, because people want to appeal the health and social care aspects of the plan?

Appeals can only be made if they have an educational aspect to them. So to request a health and/or social care recommendation to be made, an appeal about a special educational aspect of an EHC plan (including refusing to issue a plan and any placement) must be made at the same time.

If the education part of the plan is resolved, but not the health and/or social care aspects, where would the unresolved sit?

Where there is no educational element for an appeal, or the educational aspects of the appeal has been resolved before going to Tribunal (e.g. through mediation or disagreement resolution services), any concerns about the health and/or social care elements of EHC plans will need to be taken up via separate routes with the local health commissioner for health issues and the local authority for social care issues. If families remain unhappy they can take their complaint to the relevant ombudsman, once they have been through the complaints procedure with the LA or local health commissioner.

Duties and responsibilities

What exactly will health and social care partners need to write to parent carers and say, following a tribunal?

When the Tribunal makes recommendations about health or social care needs or provision, the responsible health commissioning body or LA social care team must respond in writing to the parent or young person, and for health commissioners to the LA, within five weeks of the date of the recommendation (or the date specified by the Tribunal, if different), and inform them of the steps they have decided to take following the recommendations. If they have decided not to follow the recommendations they must provide a clear reason for that decision, explained in sufficient detail. A sample letter can be accessed from the [Toolkit](#).

Health

Where will recommendations for health go?

Recommendations should go to the responsible commissioning health body/bodies. As this could be a CCG and/ or NHS England it will depend on the health part of the case in question and it may involve both bodies. As stated in the Guidance (Page 11) CCG colleagues are expected to work with specialised commissioning colleagues in NHS England.

What is the scale of the ask from health commissioners, to enable planning to put in timely preparation and help?

Every case will be different and will include the gathering of evidence, creating an outline argument, sending evidence to the LA and case management activity.

There will also be the expectation of sending a witness to a trial hearing if appropriate, and responding to parents and the local authority about recommendations from the SEND Tribunal.

If the health commissioner is part of a case study site they will be engaged in the research activity that will run alongside the trial.

Evaluation

How will you know if the trial of extended powers has made a difference?

DfE has contracted with IFF Research and Belmana to carry out an evaluation of the national trial that will provide evidence to help inform a government decision on the continuation of the powers.

The evaluation process will run alongside the trial, looking at implementation of the process and what the outcomes are for families and commissioners as well as the costs. Parents and young people will be interviewed for their views, and local area in-depth case studies and national surveys will also take place, as well as an assessment of the responses to recommendation letters.

Advice and Support

Mott MacDonald are facilitating the trial on behalf of the Department for Education and they will provide ongoing support through the national trial helpdesk (0207 651 0308, SENDdeliverysupport@mottmac.com)

- Regular newsletters will update on the progress of the trial including the numbers of appeals registered. To subscribe to the mailing list for the national trial newsletter please email SENDdeliverysupport@mottmac.com.
- DfE SEND adviser and NHS England support teams will provide ongoing advice and support to local areas.
- There is a Toolkit of support materials (<https://www.sendpathfinder.co.uk/send-single-route-of-redress-national-trial>) that includes:
 - Guidance document for education, health and social care professionals and parents and young people as well as one-page summaries
 - Webinar of the induction training events that took place in January/February 2018 for local areas
 - Training sessions as part of the DfE/IPSEA run SEND decision making and the law workshops
 - Template wording for local offers and decision/response to recommendation letters
 - Guidance and forms on claiming expenses
 - Parent's webinar (Autumn 2018)

Will there be further training events for local areas during the trial?

DfE SEND Advisers, together with IPSEA, are leading some workshops (Sept - early Nov 2018) on the Children and Families Act (C&FA) 2014: SEND Decision Making and the Law. The aim is to assist senior education, health, and social care decision-makers from local areas, plus a parent rep, to interpret and apply the legal requirements of the Children and Families Act 2014 to some key decision points.

There are also plans for regional workshops to take place in Spring 2019 to support LAs, health, and social care commissioners with the national trial. Further details of when these will take place and what they will cover will be shared in future national

trial newsletters. To be added to the mailing list for the newsletter, or for further information, please email SENDdeliverysupport@mottmac.com.

What support and information is available for parents and/or young people to get specific advice when going through the Tribunal process under the national trial?

Information, Advice and Support Services (IASS) can provide free and impartial advice about the law on SEND, local SEND arrangements and support, and the trial. This can include support with managing appeals such as the preparation of cases and attendance at hearings, as well as signposting to mediation and other areas of support.

The Tribunal website on GOV.UK gives advice on making SEND appeals to the Tribunal and links to the appeal form.

Every local authority will have Local Offers that contain further information on the trial, including links to other organisations that provide support.

A guide that explains how young people aged 16-25 who are unhappy with their SEND support can find help in resolving those issues has recently been published: [When people can't agree – Special Educational Needs and Disability Complaints: a guide for Young People in education](https://www.sendpathfinder.co.uk/send-complaints-a-guide-for-young-people-in-education) and is aimed at young people with SEND, their families and those that support them - <https://www.sendpathfinder.co.uk/send-complaints-a-guide-for-young-people-in-education>

Will local areas and health commissioners receive funding during the trial?

Local authorities and health commissioning bodies will be reimbursed for reasonable costs incurred while taking part in the trial. A grant will be awarded for SEND Tribunal trial activity up to the value of £4,000 per case for the period of the trial. Further detail can be found here: <https://www.sendpathfinder.co.uk/send-single-route-of-redress-national-trial>