SEND Tribunal Procedure

Learning Aims

The learning aims of this briefing are to enable you to understand the practice and procedure of bringing an appeal against a decision by a local authority in England ("LA") about a child or young person with special educational needs ("SEN") to the Special Educational Needs and Disability Tribunal ("SEND" or "the Tribunal"), including who may bring an appeal.

This will include a brief comparison with the procedure for claims of disability discrimination against the responsible body of a school, which may also be brought to SEND.

Level: Introductory

1. Introduction

This legal briefing looks at the basics of running a Tribunal appeal or claim, from the time when the case is registered to the case being determined. In the case of an SEN Appeal, this will also be looked at in the context of the provisions relating to mediation in the Children and Families Act 2014 ("the Act").

References in this briefing to sections refer, unless otherwise stated, to sections of the Act.

For the impact of the transition into the new system upon the Tribunal and how appeals which were lodged before 1st September 2014 will be dealt with, see our separate briefing on transition.

2. Law

**Statute:**

**Section 51** of the Act sets out the rights of appeal against a decision by an LA concerning a child or young person’s SEN;

**Sections 52, 53, 54, 55 and 56** of the Act sets out the position in relation to mediation across different sections of an EHC plan;

The Equality Act 2010 ("the EqA") contains the provisions dealing with claims of disability discrimination (for more detail see our legal briefing on the EqA).
Regulation
The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, as amended, set out the procedure in the Tribunal and the powers of the Tribunal ("the HESC Rules"). Note

The Special Educational Needs and Disability Regulations 2014 ("the SEN Regs") contain detailed provisions re:

The requirement to consider mediation when appealing to the Tribunal: SEN Regs 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42;

The Tribunal’s powers: SEN Reg 43;

Compliance with the Tribunal’s orders: SEN Reg 44; and

About unopposed appeals: SEN Reg 45.

3. Practice Directions

In addition to the statute and the Rules and Regulations, the Tribunal issues practice directions ("the SEND PDs"):

Practice Direction; Health Education and Social Care Chamber, Special Educational Needs or Disability or Discrimination in Schools Cases

4. Registering an SEN appeal – obtaining a mediation certificate

The process to start an appeal will be different if the decision being appealed is one to which compulsory consideration of mediation applies. The obtaining of a mediation certificate is required for all appeals with the exception of an appeal where the only issues are:

(i) The school or other institution named in the Plan or the type of school or institution; or

(ii) If no school or other institution is named, that fact.

This type of appeal is relatively rare given that most appeals are likely to concern the contents of the Plan as well. For most appeals therefore before an appeal can be registered the parent or young person making the appeal will need a certificate from

---

Note
The HESC Rules have been amended several times. You will find in the resources the original rules, a consolidation of the HESC Rules with all of the amendments up to April 2014 and the Tribunal Procedure (Amendment No. 3) Rules 2014 which amended the HESC Rules in anticipation of the Children and Families Act 2014.

Copyright © IPSEA 2014
a mediation adviser. There are two types of certificate:

- Where the parent or young person has participated in mediation and it has completed (under section 55 (5)); or
- Where the parent or young person has taken advice about mediation and decided not to pursue mediation (under section 55 (4)).

The first step therefore before lodging an appeal will be to check that a mediation certificate has been issued. Within 2 months of receiving the notice of the local authority’s decision which the parent or young person wishes to appeal, they should have contacted a mediation advisor to inform them whether or not they wish to pursue mediation (SEN Reg 33). For more details about mediation, see our briefing about Appeals and Mediation.

The requirement for compulsory consideration of mediation does not apply to an EqA claim.

During the transition period it will still be possible, until October 2017, to lodge an appeal under the Education Act 1996 for a child who still has a statement who has not transitioned into the new system. The requirement for compulsory consideration of mediation does not apply to such appeals and there is no need therefore for a mediation certificate in these cases.

5. **Who can appeal/Claim?**

For an SEN appeal about a child from 0 to the ending of compulsory school age (usually 16) the person with the right of appeal is the parent. Over compulsory school age the right of appeal automatically transfers to the young person.

Where a young person lacks the mental capacity to make the appeal and has a representative, the representative will be able to bring the proceedings in the Tribunal on behalf of the young person. “Representative” in this context usually means a deputy appointed by the Court of Protection under the Mental Capacity Act 2005. If there is no representative the parent will be able to bring the appeal on behalf of a young person lacking capacity.

EqA claims (which are only made at the Tribunal against the responsible body of a school (“RB”)) are made in the name of the child by the parent.

The remainder of this briefing goes through the time line of a typical case. There have been suggestions by the Tribunal that the timetable will be shortened. This is already happening with secondary transfer cases where the timetable is shortened to 12 weeks. This has not yet been implemented for other types of appeal and the time line below is the current time-table for most cases based on the standard directions which are issued. Where different time tables are imposed by directions in a particular case (quite likely in EqA cases) these must be complied with.
## 6. The timeline

<table>
<thead>
<tr>
<th>For SEN Appeal: Within 2 months of date on decision letter (or one month from end of mediation if sought)</th>
<th>Obtain Section 55 (5) mediation certificate OR Section 55 (4) certificate (see paragraph 4 above) and check the time limits</th>
<th><strong>Step 1:</strong> Time limits for making an SEN appeal or EqA claim to the Tribunal (Prior to start of appeal/claim)</th>
</tr>
</thead>
<tbody>
<tr>
<td>For EqA claim: within six months of discriminatory act</td>
<td>Prepare and send in appeal or for EqA claim, prepared and lodge claim</td>
<td><strong>Step 2:</strong> (Prior to start of appeal/claim)</td>
</tr>
<tr>
<td>Within two weeks of appeal/claim being received by Tribunal</td>
<td>Parent/young person receives notice of registration and all dates, including those for LA/RB response, the hearing, and intervening actions: these are ‘directions’.</td>
<td><strong>Step 3:</strong> Week 0 of timeline</td>
</tr>
<tr>
<td>Within 30 working days of LA/RB receiving appeal/claim from Tribunal</td>
<td>LA/RB must deliver response to parent or young person and Tribunal. Parties may ask for changes to directions.</td>
<td><strong>Step 4:</strong> Weeks 6 - 8</td>
</tr>
<tr>
<td>Within 3 weeks from date for LA/RB response</td>
<td>Parent/young person should review LA/RB response, submit attendance form and any requests for information. They should at this stage request active case management if the case requires it. At week 12, Case progression checklist must be completed.</td>
<td><strong>Step 5:</strong> Weeks 9 - 16</td>
</tr>
<tr>
<td>Final hearing minus 4 weeks</td>
<td>Last date by which evidence should be submitted. (BUT parties must comply with directions if different dates specified)</td>
<td><strong>Step 6:</strong> Week 16</td>
</tr>
<tr>
<td>10 working days prior to hearing</td>
<td>Pre-hearing preparations; Tribunal notifies parties of time and venue and sends them the bundle.</td>
<td><strong>Step 7:</strong> Week 17</td>
</tr>
<tr>
<td>Final hearing minus 2 weeks</td>
<td>Finalise working document (for appeals on contents of a Plan); send as e-doc to Tribunal.</td>
<td><strong>Step 8:</strong> Week 18</td>
</tr>
<tr>
<td>Within 20 weeks of registration of appeal</td>
<td>Hearing should be held</td>
<td><strong>Step 9:</strong> Week 20</td>
</tr>
<tr>
<td>Within 2/3 weeks of hearing</td>
<td>Decision should be sent to all parties. Parent/young person to check.</td>
<td><strong>Step 10:</strong> Week 22</td>
</tr>
<tr>
<td>Within 28 days of decision sent</td>
<td>Parent/young person can apply for set aside, review or appeal of decision</td>
<td><strong>Step 11:</strong></td>
</tr>
</tbody>
</table>
## Step 1:

### Time limits for making an SEN appeal or EqA claim to the Tribunal

| **An SEN appeal** has to be received by the Tribunal within 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). | **Prior to starting an appeal or a claim** |

This time limit does not start running if the letter that the LA sends parent informing them of LA decision does not:

1. tell parent/young person of their right of appeal to the Tribunal
2. the time limit within which the appeal must be made
3. the availability of dispute resolution arrangements
4. the fact that use of such arrangements does not prejudice the right to appeal

**Legal reference: SEND PD 12 and 13**

If the parent or young person has taken part in mediation the time limit will be one month from the conclusion of the mediation or two months from the decision notice whichever if the later. **Note**

In either case the **mediation certificate** will need to be obtained and lodged with the appeal papers unless the appeal is not one to which compulsory consideration of mediation applies (see paragraph 4 above).

**An EqA claim** must be sent to the Tribunal within 6 months of the alleged discrimination. (There is no requirement for compulsory consideration of mediation for an EqA claim; If a parent has used the EHRC conciliation service the time limit for making a claim is extended to within 8 months of the alleged discrimination).

**Exceptions** to these time limits are:

- if the time for starting proceedings ends on a day from 25th December to 1st January inclusive or on any day in August the appeal form will be in time if it arrives at the Tribunal on the first working day after 1st January or 31st August, as appropriate;
- the days from 25th December to 1st January inclusive and any day in August must not be counted when calculating the time by which any other act must be done
- **BUT HESC Rule 12(4):** if the Tribunal orders something to be done in August or Christmas holiday, then time does count.

**Legal reference: HESC Rule 12(3) and 12(4)**

---

2 The HESC Rules were amended to allow for this by the Tribunal Procedure (Amendment No. 3 Rules 2014.

Copyright © IPSEA 2014
Step 2:
Completing the application form to make an appeal or claim

<table>
<thead>
<tr>
<th>Prior to starting an appeal or a claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>For both SEN and EqA cases, the form should be completed in <strong>paper form</strong> to successfully register with SEND as the Tribunal must have an original of the signature of the parent or young person. Once the appeal is registered all other correspondence can be submitted in electronic form if the parent or young person wishes.</td>
</tr>
<tr>
<td><strong>Deadline for submission:</strong> whenever there is a time limit to submit documents to the Tribunal, the last possible time for the Tribunal to receive the documents is 5pm on the last day of that period. <strong>Legal reference: HESC Rule 12(1).</strong> [Although always check the actual order – the Tribunal is bringing in a practice of requiring documents to be filed by noon, and if this is the time on the order this will override the general rule].</td>
</tr>
<tr>
<td>If there is both an SEN appeal and EqA claim to SEND, there will still need to be a separate form for each one. (The SEN appeal and EqA claim can later be consolidated so that they are both heard at the same hearing.)</td>
</tr>
<tr>
<td><strong>Contents of appeal form</strong>&lt;br&gt;&lt;br&gt;<strong>SEN appeals at SEND PD 5; EqA claims at SEND PD 6</strong>&lt;br&gt;Note: <strong>SEND PD 5(b) &amp; (d)</strong></td>
</tr>
<tr>
<td>In the case of an appeal by a parent, if the parent shares parental responsibility or care of child with others, supply the names and addresses of those persons or bodies – but only if possible; if the parent has a reason for not wishing to include this information, this must be stated. This form will be copied to the LA and distributed as part of the documents for the hearing (the ‘bundle’).</td>
</tr>
<tr>
<td>A list of all the documents enclosed with the application must be included.</td>
</tr>
<tr>
<td><strong>Grounds of appeal: SEND PD 5(e)</strong>&lt;br&gt;If the appeal includes Sections B and F of an EHC Plan (the special educational needs of a child/young person and the provision to meet those needs), this must be made clear and the detail of the amendments requested given. The Tribunal may refuse to register an appeal if no grounds for the appeal to be made are properly identified on the appeal form.</td>
</tr>
<tr>
<td><strong>Parties to an appeal: HESC Rule 9(2)</strong>&lt;br&gt;The Tribunal can give a direction adding an LA or person to the proceedings as a party. In an appeal by a parent, the child has the right to attend and so does not normally need to be added as a party. In the case of an appeal by a young person, the parent may wish to be added as a party as they will not have an automatic right to take part in the proceedings where the young person has capacity. Where the LA which maintains the school or other institution the subject of the appeal is different from the home LA, the respondent LA may well apply for it to be joined as a party.</td>
</tr>
</tbody>
</table>
**Time issues** - if there is any question that the appeal is out of time check:
- the decision letter complies with **SEND PD 12** and the envelope that the decision letter came in;
- if time exceptions apply and whether there are reasons for making an application for an extension of time.

**Information relating to a school or institution to be named in Section I**
In the case of a school which is wholly independent (i.e. not a school listed in Section 38 (3) which includes most schools other than wholly independent schools), the parent or young person will need to include with their appeal the consent of the school to be named. The Tribunal has no power to name a wholly independent school against its wishes because there is no duty in the Act on such schools to admit a child or young person where they are named in Section I.

For schools listed in Section 38 (3) this is not required but the parent or young person will have to file the letter by which they notified the school or institution they wish to have named in Section I of their wishes.

In any event where the appeal concerns Section I, the parent or young person should include relevant information about the school or institution they want with their appeal, including the Ofsted report, any prospectus and any reports or assessments about the child which the school or other institution has produced and the costs of the placement.

**Enclosing a copy of the Plan**
Where the appeal concerns the contents of the Plan, the Plan and its appendices should be attached to the appeal documents. However failure to provide a full set of appendices is not a reason for not registering an appeal as long as the parent or young person has provided what they have or could reasonably obtain. If appendices are missing the parent or young people should send what they have and then during the course of the appeal process, copies of the missing documents can be requested from the local authority.

**Step 3:**
**SEND registers and acknowledges appeal**

<table>
<thead>
<tr>
<th>The Tribunal should register the appeal/claim within 10 working days.</th>
<th>Week 0</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SEN appeal:</strong> the registration letter should inform parent or young person of the:</td>
<td></td>
</tr>
<tr>
<td>• hearing date</td>
<td></td>
</tr>
<tr>
<td>• standard directions that apply to the type of appeal registered</td>
<td></td>
</tr>
<tr>
<td>• fact they have a right to request the appeal be actively case managed by a member of the judicial team</td>
<td></td>
</tr>
<tr>
<td><strong>EqA claim:</strong> the registration letter should inform parent or young person of the:</td>
<td></td>
</tr>
<tr>
<td>• hearing date</td>
<td></td>
</tr>
</tbody>
</table>
individual case management directions decided by a Tribunal chair (judge) on review of the papers – this may include a date for a telephone case management conference

In either case the Tribunal should also send the parent or young person copies of:
- an Attendance Form to return to Tribunal within 9 weeks;
- a Request for Changes Form

At the same time the Tribunal send to LA:
1. copy of notice of appeal
2. date of appeal hearing
3. case management process & any co-ordination dates
4. an Attendance Form
5. Request for Changes Form

The appeal or claim is either registered or it is returned to the appellant/claimant.
If it is NOT registered because key information and/or documents are missing, it will be sent back to the appellant or claimant with a list of what is required and a reminder that an extension of the deadline for making the appeal/bringing the claim may be required.

Note under HESC Rule 20 – documents to be provided are those which a party has or could ‘reasonably obtain’

Failure to register an appeal: if the Tribunal registrations team has rejected an appeal the reasons should be checked carefully.

Hearing date: an application can made for this to be changed although it is not in the interests of justice for cases to be delayed and so a long delay is likely to be refused. The parties should always seek agreement first if possible and go back to the Tribunal with an agreed date.

Case management process: If the case is complex and needs case management, this can be requested at this stage – see below under step 5

Request for Changes Form: This is a very useful form, although misleadingly named. It is the way to communicate with the Tribunal on any issue, including asking for a direction to make the LA provide information. It can be used as many times as needed during the process.

Step 4:
Respondent (LA or Responsible Body) sends response

<table>
<thead>
<tr>
<th>HESC Rule 21 and Schedule to Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Within 30 working days after the respondent received the application notice</strong></td>
</tr>
<tr>
<td>Note: same Christmas and August exclusions.</td>
</tr>
</tbody>
</table>

Copyright © IPSEA 2014
HESC Rule 21 (5)
The respondent must send or deliver a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal

The LA must send a copy of their response to SEND & the parent or young person so that it is received within the 30 working day time limit. If they do not then they are not complying with a Tribunal direction and can suffer the consequences under HESC Rule 7.

What the response should include is set out in HESC Rule 21(2)(d) and PD 9 (SEND PD 10 for EqA claims):

whether the respondent opposes the applicant’s case and, if so, any grounds for such opposition which are not contained in another document provided with the response

SEND PD 9: The LA must give:
• details of what parts of the application are agreed
• details of what parts of the application are resisted
• details of any legal points that will be relied on at a final hearing

HESC Rule 21(2)(e): The LA must provide:
the views of the child concerning the issues raised by the proceedings, or the reasons why the respondent has not ascertained those views

Obtaining the child’s views – In a case brought by a parent for a child, the LA is obliged to seek the child’s views. If the parent does not want the LA to do so then they can refuse, although they should be prepared to say why and perhaps obtain the child’s view through an independent person to be submitted as the parents’ evidence. The child’s views are especially important if they are looked-after.

Overriding objective – at any point in the appeal the parent or young person is being dealt with by the LA or in the case of an EqA claim, by the responsible body, in a way which can be seen as “not fair or just” – or particularly co-operative – then they should let the Tribunal know.

Funding costs
Where an appeal concerns Section I, the Tribunal will expect the Tribunal to include information about the costs of placements in their response.

---

**Step 5:**

**After the LA response/ Case Management**

<table>
<thead>
<tr>
<th>Parent/young person sends in completed attendance form to indicate who will attend from their side, including representatives_helpers and witnesses.</th>
<th>Week 9 to week 16</th>
</tr>
</thead>
</table>

Copyright © IPSEA 2014
**Witnesses:** now is the time for the parent or young person to identify witnesses on the Attendance Form. If the parent or young person wants more than 3 for an SEN case, or 5 for a EqA case, then an application will need to be made for the additional witnesses with reasons. The parent or young person can apply to the Tribunal for a witness summons where the witness is willing but feels constrained unless ordered to attend (using the Request for Changes Form).

On reviewing the LA response, the parent or young person may find that more evidence or a different witness is required to respond to a point which has been made and so changes can be notified later but the attendance form should still be sent in within the time limit.

If necessary the parent or young person can **ask the Tribunal to direct** that the LA provides more information (using the Request for Changes Form) at this point or later. Typically this may need to be done where:

- Section F, special educational provision, is vague and the LA has not responded to a request to specify and quantify
- There is no recent information on one of the child or young person's main areas of difficulty and the provision they need
- An independent school the parent or young person wants want is offering free assessment but the LA will not permit the child or young person to attend
- The maintained school the parent or young person wants will not respond on whether it can meet the needs of the child or young person
- The parent or young person needs details of availability of therapies or specialist teaching, costs of staff, schools and transport, etc.
- The parent or young person wants clarification of the LA’s reasons for resisting the appeal.
- The LA’s case is unsustainable but they are not negotiating.

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. **Power to hold case management hearing found at:**

**HESC Rule 5 (3) (f)**

*Power to hold a hearing to consider any matter, including a case management hearing; Case management is intended to clarify the issues involved in the case and the evidence needed to ensure that the Tribunal hearing the case has all the information needed to reach a fair and just decision. Case Management hearings are usually conducted by the parties dialing into telephone conference.*

**Issues on evidence and submissions that can be considered:**

**SEND PD 15**

- clarification of the issues in the case
- additional evidence or legal basis to be relied on at the final hearing
• the views of the child concerning the issues in the case
• the name and field of expertise of any expert who is to provide a report

Plus administrative details:
• confirmation of whether any proposed hearing date is convenient to the party and, if not, details of their availability
• the name, description and address of any witnesses the party wishes to attend the final hearing
• the name, occupation or any other description that shows their relevance to the proceedings and address of any other person the party wishes to attend the final hearing
• confirmation of whether the party wishes to attend and/or be represented at the final hearing
• whether the party or any witness will require the assistance of an interpreter or signer at the final hearing and, if so, details of the language, dialect or type of signing skill required
• whether the party has any disabilities that may require adjustments to be made
• details of any other person (including the child) the party wishes to attend the whole or any part of the final hearing (other than as a representative).

Provision of evidence:
HESC Rule 5(3)(d)
The Tribunal can permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party.

HESC Rule 16(1)(b)
The Tribunal can order any person to answer any question or produce any document in that person’s possession or control which relate to any issue in the proceedings.

Provision of evidence: further powers
HESC Rule 15(1)
The Tribunal can give directions as to:
   a) issues on which it requires evidence or submissions
   b) the nature of the evidence/submissions
   c) the number of witnesses for a party
   d) the manner in which the evidence is to be given

Examination of the child
HESC Rule 15(4)
In a special educational needs case the Tribunal may require that —
(a) the parents of the child, or any other person with care of the child or parental responsibility for the child (as defined in section 3 of the Children Act 1989), make the child available for examination or assessment by a suitably qualified professional person; or
(b) the person responsible for a school or educational setting allow a suitably
qualified professional person to have access to the school or educational setting for the purpose of assessing the child or the provision made, or to be made, for the child.

**HESC Rule 15(5)**
Failure to comply, **without good reason**, may be seen as a failure to cooperate with the Tribunal (See Rule 2, above) and could result in an adverse result.

**Delivery of Documents:**
Once the appeal has been registered any further communications with the Tribunal, whether this be a Request for Changes or further evidence, must be filed at the same time with the Local Authority.

---

### Step 6: Deadline for evidence

<table>
<thead>
<tr>
<th><strong>Final deadline for submission of evidence</strong> (BUT parties must ensure that they are complying with the dates given in any directions from the Tribunal).</th>
<th><strong>Week 16 or hearing minus 4 weeks</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The final submission of evidence deadline is set by the initial automatic directions, but may be varied by a direction from the Tribunal. It has some flexibility. If arrangements have been made for a particular assessment beyond that deadline then an application can be made to the Tribunal to extend this deadline – which will usually result in a postponement of the hearing.</td>
<td></td>
</tr>
<tr>
<td>The Tribunal will not be happy with a parent or young person who does not tell them when a report is due and has known about the delay for some time. Therefore full disclosure should be made to the Tribunal when an assessment is to be carried out, including the date the report is due and any delays encountered.</td>
<td></td>
</tr>
<tr>
<td>This Rule applies to LAs as well and should put a stop to the practice of last-minute assessments being carried out.</td>
<td></td>
</tr>
<tr>
<td><strong>NB Now is the time to start on the working document if the Appellant has not already done so</strong> – see Step 8 for further details.</td>
<td></td>
</tr>
<tr>
<td>It is possible to apply for late evidence to be submitted after this deadline, including bringing late evidence on the day but it will be up to the Tribunal as to whether or not this should be accepted. <strong>HJ v London Borough of Brent (SEN) [2010] UKUT 15 (AAC)</strong> deals with the tests which should be applied. If a Tribunal refuses to accept late evidence it must give its reasons to comply with the overriding objective. The ‘overriding objective’ is that detailed in Rule 2 (‘to deal with cases fairly and justly’), and the judge in this case set out how the FTT should decide whether to admit late evidence:</td>
<td></td>
</tr>
<tr>
<td>i. Consider why the evidence was submitted late and whether it could have been submitted earlier.</td>
<td></td>
</tr>
<tr>
<td>ii. Decide whether the evidence was relevant, which may mean viewing/reading the evidence.</td>
<td></td>
</tr>
</tbody>
</table>
iii. Decide whether the evidence was in dispute, whether it could be offered orally, or other factors.
iv. Finally, applying the overriding objective, decide whether it was fair and just to exclude the evidence. It should then explain why it made that judgment.
( paragraphs 13–17)

Summary of points/Skeleton
A representative may put in a summary of points before the hearing. The summary should be short and take the form of bullet points. In no way should it resemble a re-hash of the grounds of appeal (or a case statement under the previous system). If the representative is legally qualified they may put in a skeleton argument, which is intended to assist the Tribunal by bringing to their attention the legal issues arising in the appeal. This should be done by the evidence cut-off date although it can happen that they will be produced on the day of the hearing which is not good practice.

<table>
<thead>
<tr>
<th>Step 7: Pre-hearing preparations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• At least 10 working days before the hearing the parent or young person will be informed of the venue and exact time.</td>
</tr>
<tr>
<td>• The bundle is sent to both parties by the Tribunal and a check should be carried out to ensure that all of the evidence sent is in the bundle.</td>
</tr>
<tr>
<td>• Now is the time for the Appellant to make sure that the witnesses know the venue and the time and that they have a copy of the bundle</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 8: Working documents and Pre hearing settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working documents</td>
</tr>
<tr>
<td>The parties should finalise any working document by week 18 and, if possible, submit as an email attachment to facilitate subsequent amendments by the Tribunal</td>
</tr>
<tr>
<td>A working document is just that – the sections of the Plan under dispute worked on by both parties so as to indicate requests by a parent or young person for amendments outstanding and where agreed.</td>
</tr>
<tr>
<td>The LA should initiate the process by sending parents an e-copy of the EHC Plan under appeal with their response. This can then be marked up appropriately with the amendments parent or young person is seeking and sent back to the LA. It is important to check each version of the document to ensure that:</td>
</tr>
<tr>
<td>• LA agreements are consistently shown in each version</td>
</tr>
<tr>
<td>• the LA do not amend the wording of the Plan for their own purposes – remember this is the parent or young person’s appeal of a Plan the LA had finalised. If they want to change a mistake they made they can only</td>
</tr>
</tbody>
</table>
do so if the parent or young person agree

- all deletions requested/agreed are left in the document but struck through (no actual deletions are made using ‘cut’ or the delete key)
- no colour is used on a working document – SEND does not have colour printers therefore the Tribunal cannot see the changes requested/agreed.

The Tribunal’s guidance suggests the following as the format (remember to include a key):

<table>
<thead>
<tr>
<th>Normal type</th>
<th>Original EHC Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Underlined type</td>
<td>Amendments agreed by both parties</td>
</tr>
<tr>
<td><strong>Bold type</strong></td>
<td>Parents’ proposed amendments</td>
</tr>
<tr>
<td><strong>Bold struck through</strong></td>
<td>Parents’ proposed deletions</td>
</tr>
<tr>
<td><em>Italic type</em></td>
<td>LA’s proposed amendments</td>
</tr>
<tr>
<td><em>Italic struck through</em></td>
<td>LA’s proposed deletions</td>
</tr>
</tbody>
</table>

Note that LA should not be proposing its own insertions and deletions other than in response to the parent or young person’s amendments.

Withdrawal

**HESC Rule 17(1) and (2):**

A party can withdraw its case at any time before the hearing by writing to the Tribunal using a withdrawal form BUT the withdrawal will take effect ONLY if the Tribunal consents and the Tribunal is unlikely to consent if the hearing is within two weeks of the withdrawal taking place – the parties may be required to attend to explain why they have not been able to reach agreement sooner.

The Tribunal is currently piloting refusing to consent to any withdrawal within five working days of a hearing.

**HESC Rule 17(4):**

A party who has withdrawn its case may apply for the case to be reinstated using the Request for Changes Form within 28 days but a parent or young person should only withdraw their case if they have reached an agreement with the LA confirmed in writing. In the case of an appeal about the contents of a Plan, this should include a signed and dated Plan containing the amendments the parent or young person sought

**Consent Orders**

**HESC Rule 29**

The Tribunal may make a consent order disposing of the proceedings and making other “provision” as the parties have agreed. There is no need to hold a hearing or give reasons if a consent order is made.
Step 9: Hearing

Entitlement to attend hearing
HESC Rule 24
- Each party to the proceedings is entitled to attend the hearing (subject to Rule 25(4))
- In the case of an appeal about a child being brought by a parent, the child is entitled to attend the hearing and the Tribunal may permit the child to give evidence and to address the Tribunal.

Representatives
HESC Rule 11 (5)
At a hearing a party may be accompanied by another person who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

Witness evidence
There is now no set limit on number of witnesses in the Rules but under HESC Rule 15(1)(d) the Tribunal can limit the number of witnesses – its current intention is to limit the number of witnesses to 3 for each party for SEN appeals and 5 for EqA claims. If any more are required, you need to apply giving reasons why more are needed.

HESC Rule 15(3)
The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Observers
HESC Rule 26(4) and (5)
The Tribunal can determine who can attend the hearing (or part of it) The Tribunal can exclude someone from part or all of the hearing.

Costs
HESC Rule 10
The Tribunal can award costs on the application of a party or on its own initiative if circumstances justify – but the test is:
if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings

BUT costs will not be awarded without the Tribunal: considering that person’s financial means (if the paying person is an individual)
Rule 10 sets out a detailed procedure to be followed.
Step 10: 
Decision

**HESC Rule 30**
The Tribunal may give a decision orally at a hearing. But the LA is under no duty to comply until it receives written notice. The Tribunal must provide to each party as soon as reasonably practicable after making a decision:

- a decision notice stating the Tribunal’s decision;
- written reasons for the decision; and
- notification of any rights of review or appeal against the decision and the time within which application must be lodged

**Implementing the SEND decision**
The tribunal will make its decision following the hearing. In nearly every case the tribunal chair will tell you that parents will be notified by post of the decision and generally this should be about 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 SEN Regs (SEN Reg 44). They are:

- Where the Tribunal dismisses an appeal against a determination to cease an EHC Plan, the LA shall cease to maintain the Plan immediately;
- Where the Tribunal requires the LA to make an assessment or re-assessment, the LA must notify the parents that it will make an assessment (notification starts the process) within two weeks. Following the assessment or re-assessment:
  a. if the LA decides not to issue a Plan, they must so notify the parent or young person within 10 weeks of the Tribunal order; and
  b. if the LA decides to issue a Plan they must issue the finalised plan within 14 weeks of the Tribunal order;
- Where the LA has been ordered to make and maintain an EHC Plan, it must issue a draft EHC Plan within five weeks of the order;
- Where the LA has been ordered to reconsider, the LA shall do so within 2 weeks of the order;
- Where the LA has been ordered to amend the special educational provision, the LA must issue the amended EHC Plan within 5 weeks of the order being made;
- Where the LA has been ordered to substitute the name of a school or other institution the LA must issue the amended EHC Plan within two weeks;
- Where the Tribunal has ordered that a Plan shall be continued to be maintained, that LA shall continue to maintain the Plan with immediate effect;
- Where the Tribunal has ordered that a Plan shall be continued but also
amended, the Plan shall continue with immediate effect and the amendments shall be made within 5 weeks

The time limit in each case starts on the date of the order being made.

In those cases where the LA’s lack of opposition to the appeal has led automatically to success, (“Unopposed appeals”), the appeal is to be treated as if it was determined in favour of the Appellant and the Tribunal is not required to make an order. For Unopposed appeals:

- Where the appeal concerned assessment, review or re-assessment, the LA shall carry out the assessment, review or reassessment within four weeks of the notification by the LA;
- Where the appeal concerns the contents of an EHC Plan, the LA shall issue the amended EHC Plan within four weeks of the notification by the LA;
- Where the appeal concerns the name of the school or other institution or type the LA shall issue the amended Plan within two weeks of the notification;
- Where the appeal concerns the refusal to make a plan the LA must arrange to make a Plan within five weeks of the LA notification.

In both cases (i.e. either an order is made or there is an Unopposed Appeal) there are some very limited exceptions to the time limits reflecting the exceptions which apply during the course of a Plan being finalised (See SEN Reg 10 (4) and SEN Reg 44 (3)).

---

**Step 11:**  
Set aside, reviews and appeals

<table>
<thead>
<tr>
<th>HESC Rules 44–49</th>
<th>At any time</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HESC Rule 44:</strong></td>
<td>Clerical mistakes and accidental slips and omissions</td>
</tr>
<tr>
<td></td>
<td>• used to amend names, dates, schools</td>
</tr>
<tr>
<td></td>
<td>• NOT used for appeal points</td>
</tr>
</tbody>
</table>

**Application to set aside:** HESC Rule 45:  
Apply using Form C, Application to set aside a final decision.  
- Tribunal able to set aside and remake decision if *in the interests of justice to do so* AND  
- One or more of 4 conditions is met:  
  1. Document not sent or received in time by party or representative  
  2. Document not sent to tribunal at an appropriate time  
  3. Party or party’s representative not present at hearing  
  4. Some other procedural irregularity.

Copyright © IPSEA 2014
Application for permission to appeal: HESC Rules 46, 47 and 49
Apply using Form A, Application for permission to appeal
No later than 28 days after decision and identify
• Decision of tribunal
• Alleged error or errors of law in the decision
• the result that the party is seeking
• On receiving the application, the Tribunal will consider whether to review or not. If the Tribunal does not review, the Tribunal will consider whether or not to give permission to appeal. • Decision on these points is to be sent as soon as practicable and, if permission is refused, the Tribunal must give statement of reasons AND notification of right to make application to Upper Tribunals for permission to appeal.

Application for review of a decision: HESC RULES 48 and 49
SEN cases have two options for review
Either:
• Review because of error of law (Rule 49): apply using Form A, Application for permission to appeal. Or
• Review (Rule 48) if the circumstances relevant to the decision have changed since the decision was made (this is known as a Dean-type of review from the case Dean v East Sussex County Council and President of SENDIST [2005] ELR 388). An extension of the 28-day limit may need to be sought in this sort of case, because the change in circumstances may not be immediately apparent, as was the situation in Dean. Apply using Form B, Application for the Tribunal to review its decision because of a change of circumstances.

Step-by-step guide:
1. Apply for permission to appeal (Rule 46) or make a review application (Rule 48)
2. Where application to appeal, tribunal first considers whether to review (Rule 47(1))
3. It will either review because of error of law (Rule 49(1)) or because of change of circumstances (Rule 48)
4. BUT it must give the other party an opportunity to make representations, if not; the review can be set aside (Rule 49(3)).
5. If it decides NOT to review or it does review and decides not to take any action, it must consider whether to grant permission to appeal (Rule 47(2)) – the test is whether there is an ‘arguable case’
6. It must send a written record of its decision sent to the parties as soon as practicable (Rule 47(3))
7. If it refuses permission to appeal, it must give a statement of its reasons
<table>
<thead>
<tr>
<th></th>
<th>for refusal AND notification of the party’s right to apply for permission to appeal to the Upper Tribunal (Rule 47(4))</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Permission to appeal may be given on limited grounds (Rule 47(5)) but then it has to give notification of right of appeal to the Upper Tribunal on the refused grounds</td>
</tr>
<tr>
<td>9.</td>
<td>The Upper Tribunal has its own form to complete for an application for permission to appeal to it.</td>
</tr>
</tbody>
</table>