

# Appealing to the SEND Tribunal

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Should I lodge an appeal to  
the SEND Tribunal?



S | E | N | D | I | A | S | S  
H E R T F O R D S H I R E

# Today's Webinar

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Welcome! Today's webinar is being hosted by HPCI (the parent carer forum for Hertfordshire) and delivered by Kären Edwards from the SENDIASS team

HPCI's main role is to influence the development and improvement of services for children and young people with SEND aged 0-25 years in

Herts by representing the views and experiences of their parents and carers at a strategic decision making level.

# Housekeeping

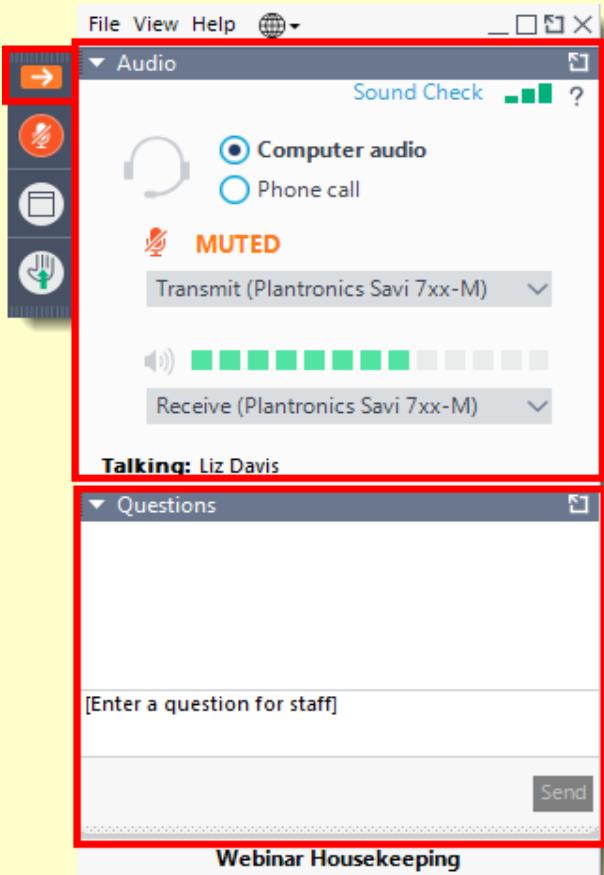
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Here are a few housekeeping items to help you during the webinar

The webinar will be recorded and may be made available for others online at a later date

You will be on mute during the session but you can ask questions in the control panel on the side

# The control panel



- Open and close your control panel using the orange arrow button at the top left.
- Audio: you will be muted so you won't need to use this section.
- Submit questions and comments via the Questions panel please don't name your child or their school/education setting

***If you don't want your questions shared more widely than the attendees today, please let the meeting organizer know.***

# What will we cover?

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What the SEND  
Tribunal is & what  
can or can't be  
appealed

The appeal  
process

Practicalities of  
lodging an appeal

What to consider  
for each type of  
appeal

How to go  
through your  
paperwork

How to access  
further support

# Webinar Jargon Busting

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- LA – Local Authority
- EHC NA – Education, Health and Care Needs Assessment
- EHCP – Education, Health and Care Plan
- SEND CoP – Special Educational Needs and Disability Code of Practice 2015
- CYP – Children & Young People
- FTT – First-Tier Tribunal
- SENDIST – Special Educational Needs and Disability Tribunal

# What is the SEND First-Tier Tribunal?

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- An independent national tribunal
- Where you'd appeal against a LA decision made about the SEND provision for a CYP
- Hears claims of disability discrimination against schools
- Makes decisions based on law and has regard to the SEND Code of Practice

# What decisions can you appeal?

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**Refusal to assess/  
re-assess**



**Refusal to issue  
an EHC Plan**



**Contents of an  
EHC Plan**



**School named in  
the EHCP, or no  
school named**



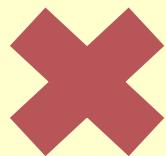
**Annual Review  
decisions**



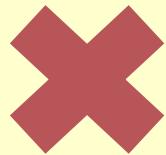
**Disability  
Discrimination**

# What decisions can't you appeal?

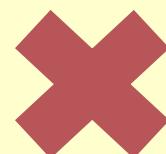
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**How the school is supporting your child without an EHC plan**



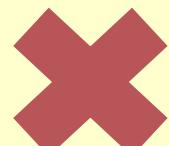
**Decisions about personal budgets**



**Failure to meet timescales or deadlines**



**Transport issues**



**LA failure to do what the tribunal ordered them to do**

# The Appeal Process

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- Who can bring an appeal
- The support you can access
- What you must first consider
- Your right to appeal to the SEND Tribunal
- The timeframe for lodging

# Who can bring an appeal to the SEND Tribunal?

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Parents of a child between 0-16

Young Person (YP) if you're over school leaving age (16) and under 25

If the young person **lacks capacity** to appeal (Mental Capacity Act 2005) a representative can appeal on their behalf

# What support can you access?

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Legal Aid

Witnesses

Parents

# Mediation

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- Mediation is free, impartial, independent and informal.
- In Hertfordshire, mediation is provided by KIDS Mediation London.
- If you decide mediation is not for you then you will be issued a certificate which enables you to appeal
- Although there is no obligation to take part in mediation, you must consider it

# Potential benefits of mediation

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- Less formal way to resolve disagreements
- Less pressure on parents
- Rebuild relationships
- Still have the right to appeal to tribunal
- Less paperwork
- Provides an opportunity to work together to find solutions that are right for the CYP



# Your right of appeal

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Your letter from the LA will state your right to appeal that decision

# Timeframe for lodging an appeal

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- You must lodge an appeal within 2 months of the date on the decision letter; OR
- One month after obtaining the mediation certificate
- Whichever is latest

For example:

- Date of Local Authority's decision letter 1 March 2019
- Last day to obtain a mediation certificate 30 April 2019
- You obtained the mediation certificate on the 30 April 2019
- Last day for your appeal to be lodged with the Tribunal 29 May 2019

- The Tribunal Judge may allow an extension if there are special circumstances which prevented the appeal being made in time and it is fair and just to do so.

# Types of appeals

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Refusal to  
assess

Refusal to  
issue

Content of  
an EHC plan

Health &  
Social Care  
section

# Refusal to assess for an EHC plan appeals

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- Heard on paperwork alone
- Can request it to be heard orally

## The Code states

“The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted..., the authority is of the opinion that- (a) the child or young person has or may have special educational needs, and (b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.”

# Appeals against a refusal to issue an EHCP

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- Consider:
  - Is there enough evidence?
  - Has the strength of the evidence been overlooked?
  - Has the LA failed to secure specific professional assessments?
  - Have the assessments and reports been sent to the LA?

The Children & Families Act 2014 states

“Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan:

- (a) the local authority must secure that an EHC plan is prepared for the child or young person, and
- (b) once an EHC plan has been prepared, it must maintain the plan.”

# **Appealing the educational elements of a final EHC plan**

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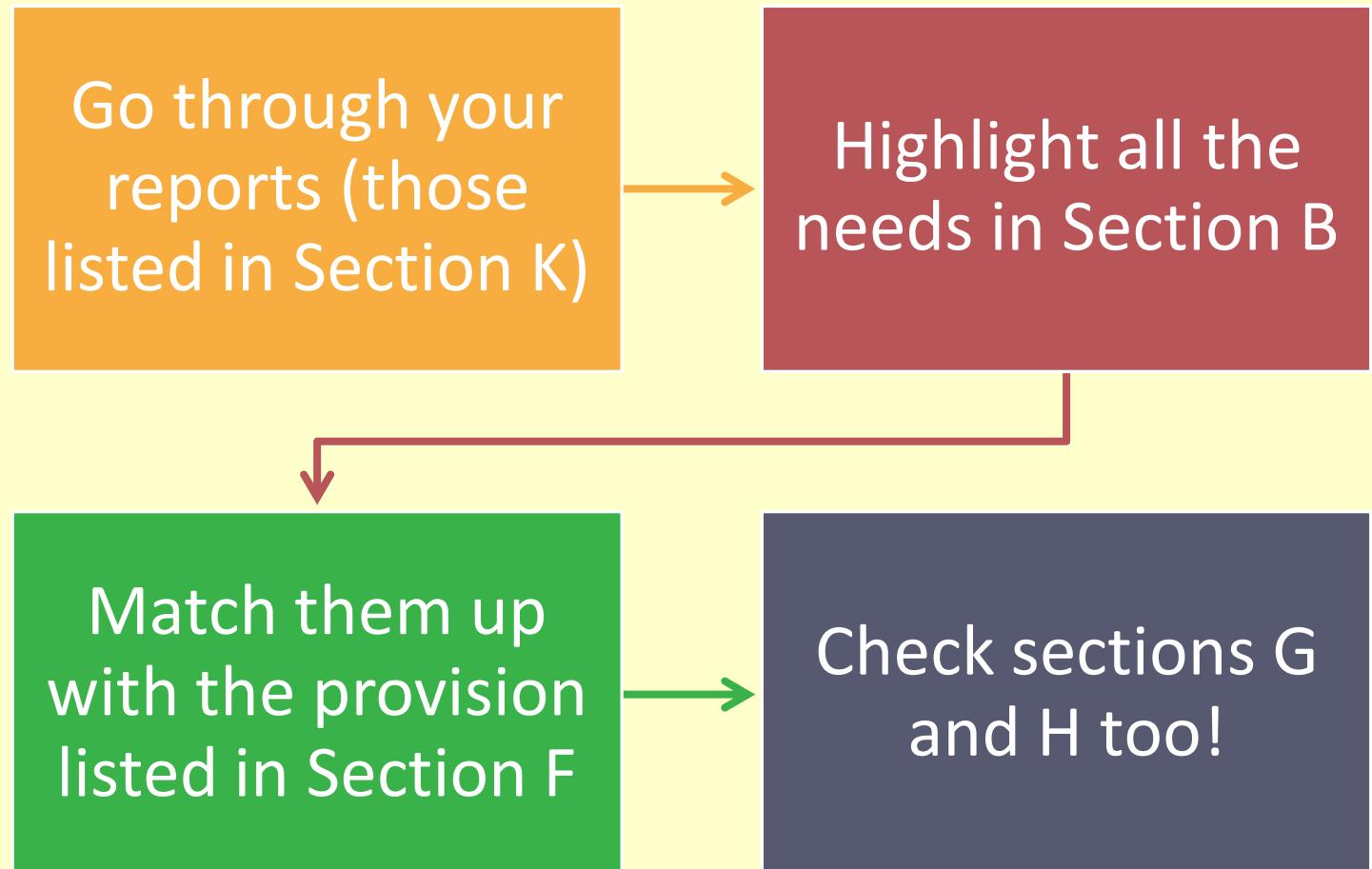
**B + F = I**

**Your Child's SEN**

**Special Educational  
Provision**

**Name of the school  
or other institution**

# Going over the EHC plan



# Needs (B) + Provision (F) = Placement (I)

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The EHCP needs to be Specific and quantified to highlight the correct placement for the child or YP

**Specify** = 'clearly define or identify'

**Quantify** = ' measure or judge the size or amount of something'

**e.g. Child X will have 30 minutes of one to one speech and language therapy twice a week for three months, provided by a trained speech and language therapist. To be reviewed after 8 sessions.**

# Appealing Health and Social Care

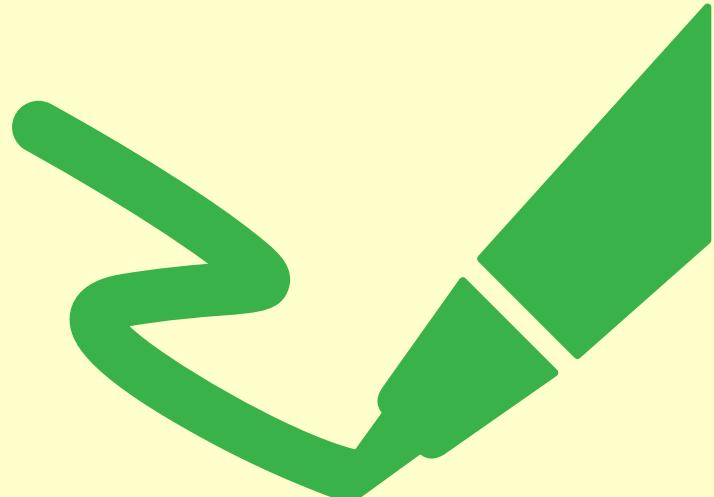
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- On 3rd April 2018, a new two-year national trial began, known as **the single route of redress**. This has been extended and is now referred to as '**Extended Powers**'
- Under the trial the health and social care aspects of the EHCP as well as the educational elements can be appealed
- SENDIST have powers to recommend that health or social care needs or provision are specified or amended in plans, and must send a copy of the recommendation to health commissioners as well as the LA.

# Writing your application

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- What to include on your forms
- How to write your application
- What documents to include in your application
- Top tips



# The appeal form

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Refusal to assess  
appeal



SEND35a Form

All other appeals



SEND35 Form

***Forms can be found: [www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms](http://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms)***

# Tips for writing your application

- Be sure to include the views of your child or young person.
- Organise your appeal so that it will be easy for the panel to read and understand your key points.
- Use paragraphs with headers and number your points, include a page which lists all your supporting documents (contents or appendices).
- Send copies of any documents, not the originals.
- Within your appeal refer to evidence that backs up your points.
- Link your points to relevant law where you are able.
- It can be helpful to write an opening summary or bullet point your key issues.

*Remember the panel do not know your child, so make sure you include all their needs but be as concise as you can, particularly with background history. Stick to needs that are still relevant*

# Documents to include

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- Your completed appeal form
- Your decision letter from the local authority
- Your signed mediation certificate
- Additional pages if your reasons for appeal do not fit in the boxes on the form.
- A copy of the EHC plan with all its appendices if your appeal is about an existing plan.



# Do vs Don't

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## DO

Keep it short and to the point.

Separate your points into paragraphs.

Number your paragraphs or organise them under headings.

Refer to any evidence that backs up your points.

## DON'T

Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself

# Useful Contacts and Information

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## Hertfordshire SENDIASS

[www.hertssendiass.org.uk](http://www.hertssendiass.org.uk)  
**Email:** [Info@hertssendiass.org.uk](mailto:Info@hertssendiass.org.uk)  
**Telephone:** 01992 555847

## IPSEA

[www.ipsea.org.uk](http://www.ipsea.org.uk)  
**Tribunal helpline:** 01799 582 030

## First-tier Tribunal (Special Educational Needs and Disability)

**Telephone:** 01325 289 350  
[send@hmcts.gsi.gov.uk](mailto:send@hmcts.gsi.gov.uk)

## Contact

**Phone:** 020 7608 8700  
**Email:** [info@contact.org.uk](mailto:info@contact.org.uk)

# Any questions?

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