



SEND TRIBUNAL

Bolton IAS Support *Guide for parents and carers*

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Bolton IAS Support

Guide for parents and carers

This guide will support you to understand how Bolton Information Advisory Service (IAS) can advise and support you should you be considering lodging an appeal with HM SEND Tribunal.

it is broken down into 2 sections: How Bolton IAS can support you, and then a guide to SEND Tribunal so that you can understand more about the process that you are considering taking on.

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How can Bolton IAS help?

Our role

IAS minimum Standards tell us that for families considering a SEND Tribunal, we are to provide free information, advice and support to you, before, during and following the SEND Tribunal.

Our primary aim is to ensure you have the **information** you need to help you with your appeal, and to support you through the process. It will always remain your/ your child's appeal, and so we are **unable to make decisions for you or run the appeal on your behalf.**

IAS are not solicitors, but we are well placed to give you advice and support in relation to your appeal

Your assigned IAS Officer is

Their email address is

Their work mobile number

Their working days/hours

What can IAS do for me to help with SEND Tribunal?

IAS will provide you with a time limited package of support that runs alongside the Tribunal process.

Working in line with what our Minimum Standards tell us, we will offer support to you before, during, and after the hearing.

You will be allocated a dedicated IAS officer who will be your point of contact throughout the appeal who will provide the following:



An initial two hour face to face meeting to discuss with you what to expect from the process, and to assist you with your appeal form to start the process. At this meeting, we will provide you with this printed guide to take away, detailing how to run your appeal and the types of things you'll need to gather as evidence.



A second two hour face to face meeting before the final evidence deadline, to support you with preparing your evidence/ witnesses, and completing an evidence tracker to help you think about things you may wish to raise at the hearing, based on the Local Authorities evidence and witnesses.



Then either, a third two hour face to face meeting to help you prepare for the hearing if we aren't attending with you, **or**, our **attendance at the hearing** to support you, if we have determined that you need us to attend to help you convey your views and wishes. (This will be discussed with you at the initial meeting).



Throughout the process, you will have a **30 minute telephone meeting once per fortnight** (as needed) with your IAS officer, to discuss the progress of the case and any matters arising.



A **one hour call following the hearing**, after the Tribunal decision has been issued, to advise you of your rights/ options at that

By working with Bolton IAS you are not committing to the SEND Tribunal process, it may be that after the first meeting you decide not to lodge your appeal. You may also decide to withdraw later in the process. Our advice will support you with this.

What Bolton IAS cannot do

Although we will try our utmost to commit to the dates set by the court for the hearing, we cannot fully guarantee attendance if the reason is outside of our control (ie date changed by Tribunal, staff sickness etc)

As a free service for all families in Bolton, **we cannot offer more support than we have outlined in our package of support**. This is to ensure that all families have equal time and access to the support they need.

We are unable to run the appeal on your behalf, make decisions on your behalf, or send documents to Tribunal on your behalf.

We aren't able to advise you whether your appeal will be successful or not, and have no additional power or influence, but we will support you to put your best case forward.

If you think the support you require is over and above what we are able to offer, you may wish to seek other sources of support to help with your case.

IAS will cease support if at any time, you enlist the support of a solicitor, lawyer, or other SEND type consultant, as per our usual policy.

What you will need to do

Ensure you **read all the guidance that we give you at the initial appointment** so that you understand what you need to do throughout the appeal

Make yourself aware of all the deadlines that Tribunal send you, to ensure you meet them and comply with any requests Tribunal ask of you

Arrange your own witnesses and any evidence you may need to rely on

Send us copies of information sent to you by Tribunal and/or the Local Authority

Be aware that the hearing will most likely be held online, therefore **ensure you have access to a suitable setting and computer for the hearing**. If we are joining you for the hearing, it may be possible to use our office.

All the above is detailed further on in this guidance

Tribunal support checklist

Parent name	Designated IAS officer
Childs name	Signed by parent and IAS officer

Support	Discussed	Comments	✓
Provided family with a copy of this IAS package of support document, including the Guide to Appeal.			
Initial appointment completed and sent Tribunal application form		<i>2 hours, availability?</i>	
Discussed attendance at the hearing		<i>Based on family needs</i>	
30 minute fortnightly calls where needed		<i>before hearing, this may include discussing case management form and bundle</i>	
Second face to face appointment and evidence tracker		<i>2 hours, availability</i>	
Final face to face meeting to prep for hearing if not attending		<i>2 hours</i>	
Attended hearing		<i>Full Day, what we can and cannot do</i>	
Call following Tribunal decision to discuss options moving forwards			

Evidence Submitted	By Who	Date submitted	What does this tell the Tribunal/Judge	Is there a witness attending the hearing linked to this evidence	What questions would you want to ensure this witness is asked regarding the evidence
(For example) Private EP report	Parents	12th June	X's level of need, the provision needed to meet need	Mrs Jane Doe- EP	<p>Her report says xx should be educated in a group of no more than x6. Does she feel special school is needed?</p> <p>She notes sensory needs that haven't been assessed. In her opinion, does she feel a sensory assessment is needed?</p>

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Guide to Appeal

This guide will help you to better understand the process of SEND Tribunal, and what you need to do. It will explain some of the terminology you might hear as you move through this legal process and will hopefully help you to build the best appeal you can for your child.

Some of the information in this guide has been taken from our colleagues over at IPSEA. IPSEA are the leading charity in England in the field of SEN Law, and train all IAS services around the country.

What is SEND Tribunal?

SEND Tribunal is an independent national tribunal which decides appeals against local authority (LA) decisions regarding the special educational needs (SEN) of children and young people. Its full name is The First-tier Tribunal (Special Educational Needs and Disability).

You can appeal to the SEND Tribunal if you're unhappy with a decision your LA has made in relation to an education, health and care (EHC) needs assessment or an EHC plan. This includes naming of educational settings. There are no fees for making an appeal or a claim, and you may be eligible for legal aid to provide legal help in preparing your case. The SEND Tribunal has the power to order LAs to carry out EHC needs assessments, issue EHC plans, and amend existing EHC plans, including the school that is named in your child's plan. Your LA must comply with orders made by the SEND Tribunal.

Initiating an appeal

In your initial appointment at Bolton IAS, we will help you to complete the form you need to lodge your appeal. **You will need to bring the following** to our appointment, as this must be sent with the form in order for the appeal to be accepted.

- A copy of the letter the LA sent you that told you of its decision
- Your mediation certificate
- The evidence supporting your arguments
- Your child's latest EHC plan and all the appendices that were used to make it.

Don't send original documents, send photocopies or scans. Keep a copy of everything you send, including the form. ***If you don't have electronic copies of this information, the SEND assessment service at the LA will send these to you.***

Timescales

The SEND Tribunal is stretched at present, and, despite trying to keep up with demand, timescales are much lengthier than they used to be. Current timescales are up to 1 year from submitting an appeal until the hearing date.

The SEND Tribunal will try to prioritise hearing dates for those out of education or approaching phase transfer. This means many other appeals could be rescheduled. When you submit your appeal, you should refer to the fact your child or young person is out of education or approaching a phase transfer in your appeal form, and within the subject line of the email in which you submit your appeal form. If you have other exceptional circumstances that require an urgent hearing, then also make this clear in your appeal form and email.

What happens after you send off the appeal form?

After you send in your appeal form, the SEND Tribunal will register your appeal and will write to you and the local authority (LA) to tell you and the LA what steps need to be taken and when by. At the same time, the SEND Tribunal will send to the LA a copy of your appeal documents.

Although the SEND Tribunal aims to reply within 10 working days (working days do not include Saturdays, Sundays, bank holidays, any day between 25 December to 1 January, or any day in August) of registering your appeal, this is taking longer due to the pressures of the SEND Tribunal currently.

In its registration letter, the SEND Tribunal will tell you about important dates. It will tell you when the LA are required to respond to your appeal, give you a deadline to send further evidence and tell you when the hearing date will be.

- It may be possible to seek a change to the hearing date. It's not likely that a long delay will be in the interests of justice so the SEND Tribunal is unlikely to agree to this.
- Similarly, it may be possible in cases where a child or young person has been permanently excluded or it is a phase transfer to have the hearing date brought forward.
- A hearing date change is more likely to be agreed if you can show that it is in the interests of justice and the LA has agreed in advance.

You should read the registration letter very carefully and write down the important dates.

Once the appeal has been registered, any further communications with the SEND Tribunal must also be sent to the LA at the same time.

On registration, you should also expect to receive a Case Review form and a copy of a Request for Changes form.

Local Authority response

After the SEND Tribunal has sent the local authority (LA) the registration letter, the LA will need to send its response to the SEND Tribunal, and you, by the deadline set out in it. The deadline for the LA response to your appeal is usually within 30 working days of receiving your appeal documents from the SEND Tribunal.

The LA must say whether it opposes your appeal and why. The SEND Tribunal requires detailed information from the LA in its response.

All of this information must be received by you and the SEND Tribunal by the deadline for the LA's response and not the later evidence deadline. You should tell the SEND Tribunal if any of the information the LA was required to send to you is missing, or if you did not receive it on time.

Key Dates

The LA must respond to the parents and the tribunal by

Final evidence deadline for parents and LA

Case review form due by

LA bundle due by

Hearing date

Your evidence

After your appeal has been registered with the SEND Tribunal, you will want to make sure the local authority (LA) and SEND Tribunal has a copy of all of the evidence which supports your appeal. **You can continue to send in evidence after your appeal has been submitted.**

You should make sure that any evidence you didn't send in with your appeal form is sent to the SEND Tribunal by the deadline set in the registration letter.

If you decide to obtain **independent expert reports**, make sure they are compliant with the SEND Tribunal guidance for expert witnesses. It's best if this type of report complies with this guidance because this is a reason for the SEND Tribunal to give it more weight. However, if you got an independent expert report before you knew you were going to appeal and it remains relevant but doesn't comply with everything in the guidance, you can still use it as evidence in an appeal.

If you think you will need to **send in evidence after the deadline** (for example, a report from an assessment not taking place until this time), then you need to let the SEND Tribunal know and seek an extension (using the Request for Changes form). You need to tell the SEND Tribunal what you expect to obtain and when, and submit it by any extended evidence deadline you are given.

It is possible to apply for late evidence to be submitted after the final evidence deadline, including bringing late evidence on the day. It will be up to the SEND Tribunal as to whether or not this should be accepted, not the LA. It is always best to tell the SEND Tribunal in advance.

There are limits on how much information you can send. This will be detailed in your registration letter. If you want to submit evidence which is more than the bundle page limit (see 'the bundle' section below), you must make use the Request for Changes form (having sought the LA's view first) explaining why the additional pages are necessary. If you are eligible for legal aid, this could cover the cost of obtaining independent assessments and reports.

Always send a copy of your evidence to the LA at the same time. The LA must send to you a copy of all its evidence too. This is because the parties are meant to be sharing information in order to resolve the dispute.

If the LA writes to or sends documents to the SEND Tribunal using a system which you cannot access, you should tell the LA not to and let the SEND Tribunal know. The SEND Tribunal has confirmed that the party sending communication has to make sure it is copied to the other party in a way that they can access and that LAs can use non-encrypted email to do this. The Case Review form will also be due by the final evidence deadline.

Evidence you may wish to consider if you are appealing about a school place (Section I appeal)

A parent or young person has a right to request any of the following types of school or college:

- A **maintained school or nursery** (mainstream or special)
- An **academy** (mainstream or special)
- An institution in the **further education** sector
- A **non-maintained special school**
- A **section 41 school/college** (these are independent settings which have 'opted in' to be able to be requested by parents/young people – you can find a list of section 41 schools here). These are listed in section 38(3) of the Children and Families Act (CFA) 2014.

The only reason the LA can refuse the above request is if:

- The setting is unsuitable for the age, ability, aptitude or special educational needs (SEN) of the child or young person; or
- The attendance of the child or young person would be incompatible with the provision of efficient education for others; or
- The attendance of the child or young person would be incompatible with the efficient use of resources.

The LA has to prove that at least one of these conditions applies in order to dislodge the parent or young person's preference.

If the LA says that the school you have asked for is not suitable for your child, using one of the above reasons, you will need to:

- Gather evidence about the type of children who are admitted by the school you want. Look at the OFSTED report and prospectus of the school.
- Look at the evidence that you have about your child's needs and, if necessary, consider seeking evidence from elsewhere.

If the LA says that the attendance of your child at the school you want will be incompatible with the provision of efficient education for the other children in there, you will need:

- Evidence of exactly what the incompatibility will be - the 'incompatibility' has to be a real concrete thing that stops the other children being educated, for instance a behavioural challenge that can't be dealt with and which is constantly interfering with others' learning. It's not something trivial or avoidable. If your child has a behavioural challenge, is it still a challenge if they get the right support.

If the LA says the attendance of your child at the school you want would be incompatible with the efficient use of resources, you will need:

- Exact details of the costs the LA says it will incur at the school of your choice, including transport.
- Exact details of the cost of a place at the school the LA has named, including transport and any external support (such as therapists coming into the school). Often LAs say it will not cost them anything to send a child to a particular school but investigations can prove otherwise

Once you have challenged the reason(s) the LA has given for **not naming** your choice of school or institution, as a second stage you could go on to explain why you object to the school the LA has named. Note, there may be additional pieces of evidence that the Tribunal registration letter sets out you need to send.

If applying the law above, the LA decides not to name your choice of school or institution, it must name a school or institution it considers would be “appropriate” (or specify the type of school or other institution which it thinks would be appropriate). You should explain, and if possible provide evidence to show, that the school or institution the LA has named is inappropriate. **It is most effective if you can do this by referring to special educational provision in section F of the EHC plan that the named setting is unable to provide.**

In most cases it will be important to appeal against sections B and F of your child's amended EHC plan, as well as section I. This is because the school named in section I of a plan should be a logical conclusion to what sections B and F say. Section B of a plan should fully describe your child's difficulties and section F should specify the provision he or she needs.

In practice, the most important point to prove is not that your preferred setting is ‘better’ than the LA’s proposed school, but that the setting offered by the LA cannot meet the child or young person’s needs.

Is the school wholly independent? (not section 41)

Where a parent or young person is appealing for an independent setting, they will generally need evidence from a professional as to why the independent setting is the only school/college which can meet the child or young person’s needs. Additionally, there must be an offer of a place from the independent setting. Unlike the section 38(3) schools listed above, an LA cannot order an independent school to accept a child or young person.

Witnesses

Both parties will need to notify the SEND Tribunal who will be attending the hearing using the form the SEND Tribunal sends them (usually the Case Review form, unless the SEND Tribunal has asked them to use an attendance form instead).

The SEND Tribunal has indicated that witnesses will only be permitted to attend the hearing if they have previously submitted a report or written witness statement.

You should call witnesses who will be able to give evidence relevant to your case. It will normally be helpful to have someone from the child or young person's school or college (such as the SENCO or head teacher).

If you want a particular school to be named in the EHC plan, it will be helpful to have someone from that school to attend.

If there is a dispute about the level of the child or young person's needs, it may be helpful to have a professional witness such as, for example, a speech and language therapist who has worked with the child or young person.

All witnesses will be asked by the SEND Tribunal about the facts of the case. They are not meant to be arguing one 'side' or the other. You shouldn't worry if someone from the child or young person's school or college is asked to attend as a witness by the LA; it does not mean that they are on the LA's side.

Parties may appoint a representative (whether a legal representative or not), who can act as a representative or otherwise assist in presenting the party's case at the hearing. This person will not count as a witness, but you should include them on the same form (either the Case Review form or attendance form) and explain they will be representing or assisting you at the hearing.

Bolton Council do not use legal representation. The person representing the LA at the hearing will be the SEND assessment officer from Bolton Council.

The Bundle

At least 10 working days before the hearing, the LA will send you and the SEND Tribunal the 'bundle'. This is a page-numbered set of the documents the SEND Tribunal has been sent in the case.

It will include all your evidence and the LA's evidence together with any forms, SEND Tribunal orders or other relevant documents.

There are limits to how long the bundle can be depending on the type of appeal. This is set out in the SEND Tribunal's bundle guidance. If you send evidence which goes above the page limit, the LA must still include it in the bundle and the SEND Tribunal will decide whether or not to consider it.

It's always worth checking the bundle before the hearing in case anything has been left out. If any evidence is missing you should contact the LA promptly and remind the LA it must include all of your evidence, even if it is over the page limit.

You should make sure you have the bundle at the hearing, and you should provide a copy of it to any witnesses attending for you.

Case review forms

The SEND Tribunal has introduced a Case Review form to assist with case management. It's to help the SEND Tribunal manage cases as efficiently as possible, by getting an update on the case and to see if there has been any progress on agreeing the disputed issues ahead of the hearing.

It will tell you if you need to use this form – if you do, you need to complete it by the bundle deadline.

You will also use it to update the SEND Tribunal and LA about who is attending the hearing (instead of an Attendance Form). This will be anyone from your side, including representatives or helpers and witnesses. The LA will need to do the same for its side. If you are not sure if you need to use the form, check the letter and any directions you have received from the SEND Tribunal.

Request for change

If you want to make changes to your appeal or to communicate with the SEND Tribunal during the appeal, then you should use the Request for Changes form.

It can be used as many times as needed during the process of appeal. You can use this form to, for example:

- request that a deadline is extended
- ask the SEND Tribunal to make an order
- change any information you previously submitted (for example, if you want to bring another witness), or
- ask the SEND Tribunal to make reasonable adjustments if you feel these are needed for you to participate in the appeal. You should explain what adjustments you need and why. Depending on your needs, they could range from being given extra time to ask and answer questions or locate documents, to having a face-to-face rather than virtual hearing.

If the Request for Change concerns widening the appeal, for example to include sections B and F of the EHC plan where you have only appealed against section I, you should give the LA plenty of warning of your intention and the request should explain the reasons for the changes.

Before submitting a Request for Change form you must seek the other party's response and this should be included on the form. You do not need their agreement, but you must give them a chance to respond.

If the request is urgent, and you are still waiting for a response from the LA, you should make clear on the form that you have asked the LA for its views and include a copy of your email to the LA if possible.

The hearing

At least 10 working days before the hearing you will be informed of the venue (or dial-in details if it is to be held remotely) and exact time of the hearing. If you can't make the date or time of the hearing, you should tell the SEND Tribunal. A hearing date change is more likely to be agreed if you can show that it is in the interests of justice and the LA has agreed in advance.

There are videos explaining what a SEND Tribunal hearing is like and films explaining video hearings at the SEND Tribunal on YouTube.

Tribunal hearings can take place face-to-face but are much more routinely offered remotely. If you require an in-person hearing or a hybrid remote/ in-person hearing as part of any reasonable adjustments you need, let the SEND Tribunal know as soon as you can.

You should bring the bundle of paperwork you received from the LA to your hearing.

The hearing will be led by a 'panel'. For most hearings, this will be two people – a judge and a specialist member with substantial experience of SEN and disabilities. In some cases there may be a third member of the panel. **The panel will have read the bundle and have spent time reviewing the case together before you arrive/ join online.** They will have identified the key issues and decided which panel member is going to ask the questions about which issue.

The panel will ask questions and take the lead. The panel will give each party a turn to speak and ask witnesses questions. You will find it helpful to take notes while others are talking and to record useful things to mention at the end when you are asked to briefly sum up your case.

Although the SEND Tribunal is not as formal as many court hearings, there are certain formalities, for example you should call the judge on the panel Judge and the lay panel members Sir/Madam.

If your hearing is face-to-face, be aware that hearings will not necessarily be held in a venue which is local to you so do check the location and travelling times if you are attending in-person.

In the case of an appeal about a child being brought by a parent, the child can attend the hearing and the SEND Tribunal may allow the child to give evidence and to address the SEND Tribunal.

You **must** inform the SEND Tribunal in advance if you intend to bring your child. Usually the child will come in and see the panel with one person from each side for a chat prior to the hearing. The panel probably won't want to discuss the case with the child in attendance.

The SEND Tribunal does not have facilities to look after children so parents must make arrangements for the child to be looked after or taken home once they have met the panel.

After the hearing

Very occasionally the SEND Tribunal may give a decision orally at a hearing, but generally it provides you with the decision in writing later. Either way, the SEND Tribunal must provide the parties with:

- a decision notice stating the SEND Tribunal's decision
- written reasons for the decision
- notification of any rights of review or appeal against the decision, and the time within which an application must be lodged, as soon as reasonably practicable after the hearing.

Generally, you will receive the decision and reasons in writing within ten working days of the SEND Tribunal considering your case.

Glossary of terms and what they mean

Appeal form (SEND 35 form- SEND 35a if appealing refusal to assess)

This is the form that you use to initiate an appeal to the SEND Tribunal

The bundle

This is all the evidence combined for the case. It is completed by the LA and sent to you and Tribunal in readiness for the hearing- everything is then in one place together.

Case management

Case management is where the Tribunal check in and see how matters are progressing between you and the LA and which matters still need addressing at the hearing. Its like an update on how you have been getting on.

Request for Change (SEND 7 form)

This is used for a variety of reasons if you need to change anything about your case. The LA can also use this form if they want to change anything too.

Hearing Date or HD

This is the date which has been agreed by the Tribunal as to when your case will be heard. This is usually done online, but can also be in person.

Final evidence deadline

This is the date set by the court for when they want all the remaining evidence that you and the LA have to share with them about the case.

Attendance form (SEND 11 form)

This is sometimes replaced by the case management form, but is sometimes still used. It details who you are bringing to the hearing with you (and the LA's will detail who they are bringing to the hearing with them.

LA

Stands for Local Authority. In this case, Bolton Council.

Witnesses

People who you are calling to give evidence on your case. The LA can also call witnesses. They must meet the witness guidelines as set out by the Tribunal.

Wholly independent school

A school that is not a section 41 school, and who have to agree to be named. Much like a private, fee paying school.

Section 41 school

A private school who have been awarded section 41 status from the Department for Education, meaning they can be named in a child's EHC plan, even if they don't agree to be named.

Legal representation

Refers to solicitors, barristers, SEND consultants etc- anyone qualified within the area of SEND Law who is putting the case forward on your behalf.

Registration letter

This is the letter you will receive back from SEND Tribunal once your appeal has been registered. This is a very important letter and will set out all your key dates. If you receive yours on email, it is useful to print this out to refer to.

First Tier Tribunal

The court arena in which your child's case will be heard.

Phase Transfer

This refers to those moving to a different phase of education, ie, those in Nursery moving to primary school, those in primary school moving to secondary school, and those in secondary school moving to college.

