

Middlesbrough Council

Education, Health & Care (EHC) Plans Resolving disputes, mediation, appeals and tribunals

2019 -2020

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1. INTRODUCTION

Middlesbrough Council support many children and young people with a special educational need and/or disability in line with Special Educational Needs and Disability (SEND) reforms and associated regulations. This guidance is intended to be an easy guide regarding the process involved for dispute resolution, the appeal process and Tribunals.

2. COLLABORATIVE APPROACH

Middlesbrough Local Authority (LA) will try to provide the best possible outcome for any process relating to a child or young person's special educational needs and disability. If a parent, carer or young person is not satisfied with a decision made in relation to any Education, Health and Care (EHC) process, there are a number of steps that can be taken, including:

- i. Further discussion between a SEND Case Officer, parent(s), carer(s) or young person and/or refer parent(s), carer(s) or the young person to the Special Educational Needs and Disability Information, Advice & Support Service (SENDIASS);
- ii. Follow up discussions with parent(s), carer(s), the young person and professionals to inform of the support available through Mediation Services, should there still be disagreement;
- iii. If an agreement still can't be reached, parent(s), carer(s) or the young person have a right to appeal to the First-Tier Tribunal, Special Educational Needs and Disability (SENDIST).

3. DISAGREEMENT RESOLUTION AND MEDIATION

Disagreement Resolution is a process that is most useful in situations when relationships are strained, possibly following disagreement over a period of time. Disagreement Resolution may help rebuild relationships in a more formal setting. Parent(s), carer(s) or the young person can access disagreement resolution services about any aspect of the SEND assessment or review planning during any stage of the process.

Mediation is a structured process where an independent, third party assists with disputing parties in resolving issues, through the use of communication and negotiation. All parties in mediation are encouraged to actively participate in the process. Mediation is a process that is focused upon the needs, rights, and interests of all parties.

Dispute Resolution and Mediation is available across Education, Health and Social Care both individually and together as necessary. The SEND Assessment Team (0-25) has commissioned an independent provider who can provide parent(s), carer(s) or a young

person with a range of support. For Mediation relating to an Appeal under SEND there are no costs incurred for parent(s), carer(s) or the young person. Mediation is impartial and confidential and will not affect any decision to appeal later on.

The SEND Assessment Team may also accommodate for specific expenses (in line with Government guidance) in connection with parent(s), carer(s) or a young person attending mediation. Parent(s), carer(s) or the young person and the LA will need to agree on any expenses that can be claimed.

Parent(s), carer(s) or the young person will need to provide supporting evidence/ receipts of expense for a claim. Mediation can also be undertaken during a lodged appeal. If parent(s), carer(s) or the young person wish to consider mediation, they must contact Mediation Services within **2 months** from when written notice of the LA decision was sent. Mediation Services can be used by parent(s), carer(s) or the young person who are unhappy with a decision where:

- The LA has decided not to initiate an Education, Health and Care (EHC) needs assessment
- The LA has decided not to draw up an Education, Health and Care (EHC) plan
- The LA has decided to cease to maintain an EHC plan, or; where parent(s), carer(s) or the young person don't agree with the content in a final EHC plan or an amended EHC plan following a review

Parent(s), carer(s) or the young person should inform their SEND Case Officer if they wish to use mediation. Parent(s), carer(s) or the young person don't need to go through mediation if the disagreement is regarding the name and type of an education setting, named in an EHC plan (**Section I**).

In this case parent(s), carer(s) or the young person have a right to lodge an appeal directly to the Tribunal however it is recommended that they first seek opportunities to have a further discussion with their SEND Case Officer to try and resolve a disagreement without the need for a Tribunal.

If a parent(s), carer(s) or the young person express a wish to take up mediation, this service will aim to respond via telephone contact within **2 days** of a request.

The LA is duty bound to ensure a representative from the SEND Assessment Team (0-25) is involved.

If after talking to Mediation Services, parent(s), carer(s) or the young person do not wish to use mediation, they will be issued with a Certificate of Mediation from the independent provider, should parent(s), carer(s) or the young person request one, confirming their decision, which will allow any appeal to the Tribunal to be lodged.

4. THE FIRST-TIER TRIBUNAL (SEND)

The First-Tier Tribunal (SEN and Disabilities) is overseen by Her Majesty's Courts and Tribunal Service.

THE ROLE OF THE TRIBUNAL

The Tribunal hears appeals by parent(s), carer(s) and young people who are in dispute with an LA, specific to EHC needs' assessments or an EHC plan. Appeals can be made in relation to:

- A decision not to carry out an EHC needs assessment / re-assessment
- A decision not to issue an EHC plan following an assessment or transfer review
- A description of the child's/ young person's special educational needs in a EHC plan
- The special educational provision written into an EHC plan
- The educational setting named in an EHC plan i.e. school, college
- A decision not to amend an EHC plan following review / re-assessment
- Decisions made to cease to maintain an EHC plan

HOW PARENT(S), CARER(S) AND YOUNG PEOPLE APPEAL

Before making an appeal parent(s), carer(s) or the young person **must** make contact with the Mediation Service to see if there is a way to resolve a dispute prior to lodging an appeal, to lodge an appeal or to secure a Mediation Certificate.

To date, parent(s), carer(s) and young people have only been able to appeal the educational aspects of EHC plans. This trial gives parent(s), carer(s) or the young person new rights to request recommendations about the health and social care needs and provision specified in EHC plans, in addition to the educational aspects, when appealing.

Although there is currently no right of appeal to the SEND Tribunal about the health and social care elements within an EHC plan, the Government have extended the powers of the First-tier Tribunal (SEND), sometimes referred to as the 'SEND Tribunal', to make non-binding recommendations about the health and social care aspects of Education, Health and Care (EHC) plans as part of a two-year trial. For more information please visit: www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability.

This applies to decisions made for EHC plans issued/amended from April 2018. This gives parent(s), carer(s) or the young person the opportunity to raise concerns relating to an EHC plan in one place. **Please note:** it is only possible for the Tribunal to consider the health and/or social care aspects of the EHC plan where an appeal is already being made in relation to the education aspects of the EHC plan. The education aspect must also remain live throughout the appeal.

Any ongoing disputes for health and/or social care will need to be managed through the health complaints procedure or social care complaints procedure. Parent(s), carer(s) and young people cannot register an appeal to the Tribunal without a Certificate. If they wish to make an appeal to the Tribunal they need to:

- Lodge an appeal with SENDIST within **2 months** of the LA's original decision or send a Certificate of Mediation to SENDIST within **1 month** of receiving it, whichever is the latest
- Send a copy of the decision if appealing against and the date the LA made the decision or the date of the Certificate of Mediation was sent to SENDIST
- Provide reasons for the appeal and include any relevant documents i.e. Assessments/ EHC plan

The Tribunal will inform all parties of the date of the Hearing and will ask for evidence from all parties. The appeal will be heard by a judge and a panel of two or sometimes three tribunal members. They will look at the evidence and decide whether to:

- Dismiss a parent(s), carer(s), or young person(s) appeal
- Direct the LA to carry out an assessment
- Direct the LA to make or maintain a EHC plan
- Direct the LA to make an amendment to an EHC plan

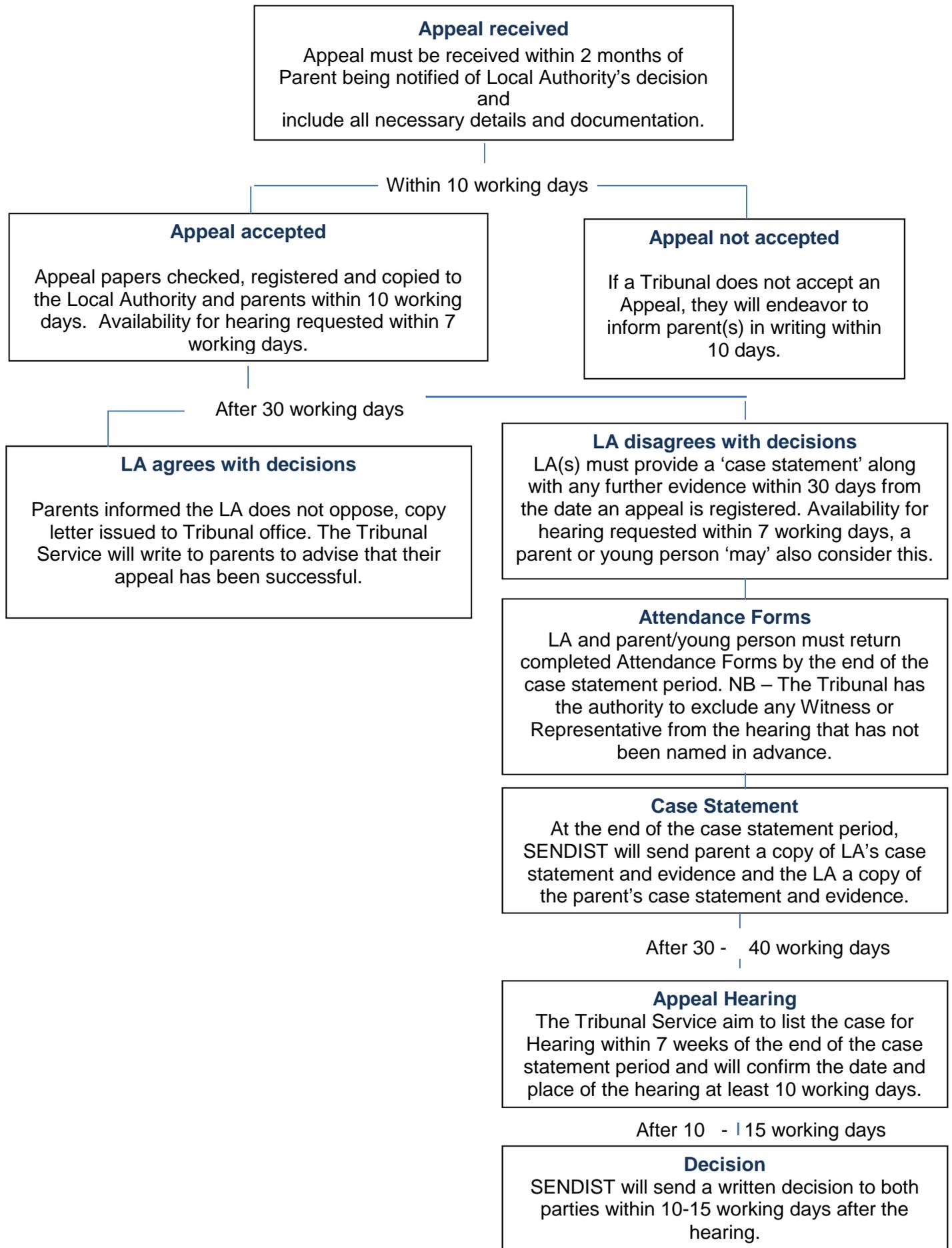
If parent(s), carer(s) or young people decide to appeal, under the legal help scheme, a parent, carer or young person on low income may be able to get limited free legal help from a solicitor. For a parent or young person preparing for a Tribunal, this could cover a second expert opinion and preparing a written case, but not providing a representative. Further information is available by contacting the Independent Panel of Special Education Advice (IPSEA) Service on [0845 602 9579](tel:08456029579).

For impartial information, advice and support, contact SENDIASS on [01642 608012](tel:01642608012) or by email: MAIN_SENDIASSMiddlesbrough@iammain.org.uk. SEND information related to

Tribunals and Appeals, along with Appeal forms are available at:

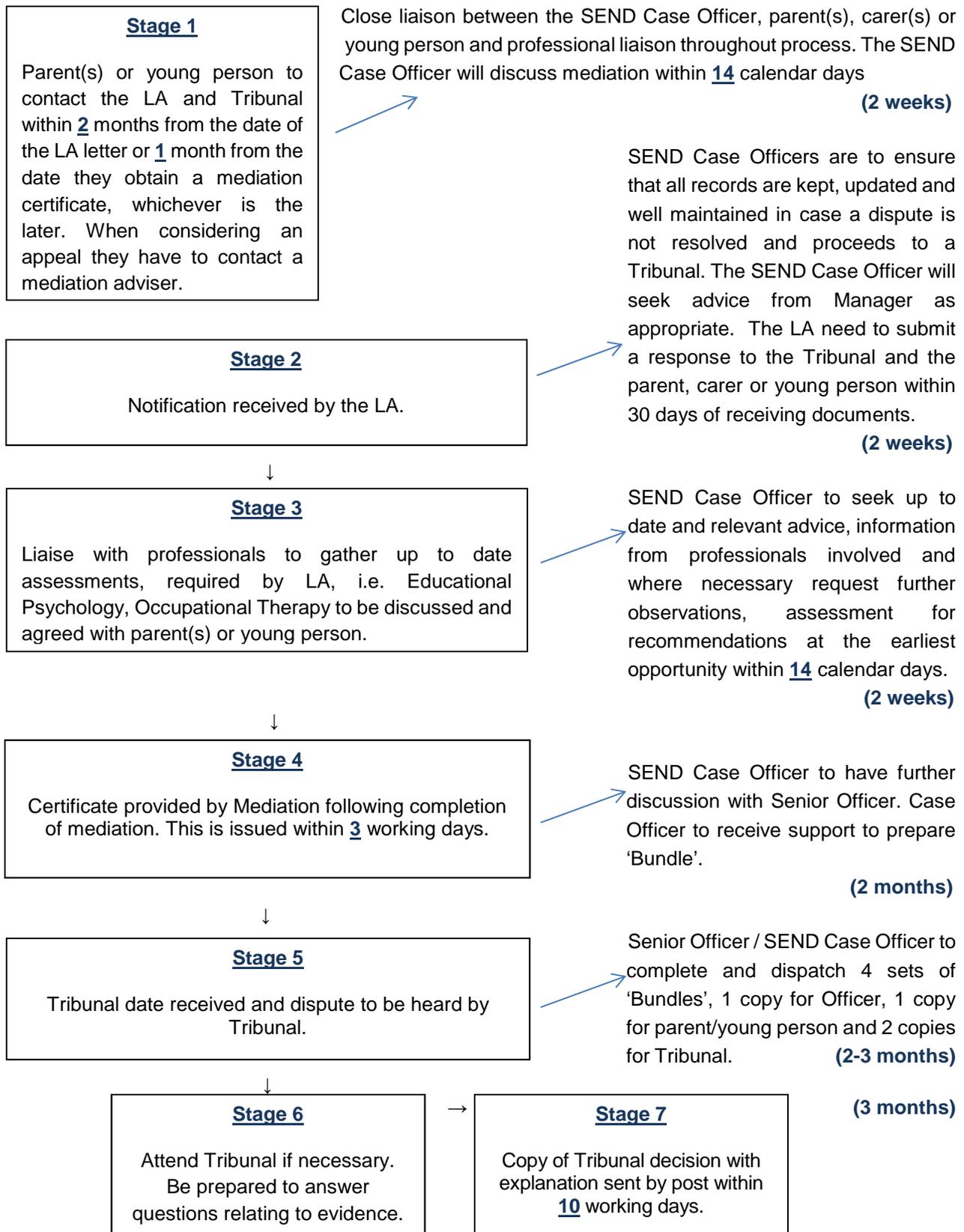
<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>.

FIRST – TIER TRIBUNAL, SPECIAL EDUCATIONAL NEEDS AND DISABILITY (SENDIST) TIMETABLE



5. LA PROCESS

The SEND Assessment Team 0-25 chart, adheres to guidance, as set out in the SEND Code of Practice 0-25 years: (2015). Please note, this chart shows the time scale it would take to register an appeal to the Tribunal, with or without Mediation and to have the appeal heard. Registrations for appeal, even when a case goes through mediation may often vary in time frames. Appeals often take **12 - 14** weeks to be heard however may take longer on occasion.



6. FURTHER INFORMATION

Further information relating to Special Educational Needs and Disability, provision, services and resources can be accessed via Middlesbrough's Local Offer at: <https://www.middlesbrough.gov.uk/localoffer>



<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

<https://www.gov.uk/government/publications/extended-powers-send-tribunal-national-tribunal>

<https://www.specialeducationalneeds.co.uk/a-guide-to-the-send-tribunal.html>

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

<https://www.iammain.org.uk/services/sendias/>