

**EDUCATION HEALTH AND CARE ASSESSMENTS AND PLANS  
WHAT CAN I DO IF I DISAGREE WITH A DECISION?  
APRIL 2018**

## **1. Introduction**

In Bury we are committed to working with parents, carers and young people to try to resolve any disagreements as quickly and as informally as possible. This information sheet sets out how we will do this in Bury and how you can get further advice and support if we cannot reach a satisfactory agreement.

The Children and Families Act (2014) and the Special Educational Needs and Disability Code of Practice (January 2015) introduced a new system that supports children and young people with special educational needs or disabilities (SEND). As a parent or carer or a young person (who is over statutory school age) there may be times when you do not agree with decisions that are made by organisations supporting you or your child and you may wish to challenge them. This information sheet sets out all the different ways that you can do this and where you can get further help and support.

## **2. What decisions can I disagree with within the Education, Health and Care Assessment and Plan Process?**

- If the Local Authority (LA) decide not to carry out an Education, Health and Care (EHC) assessment.
- If the LA decides not to carry out a reassessment for a child or young person who has an EHC plan.
- If the LA carries out an EHC assessment but decides not to issue an EHC Plan.
- If you disagree with the contents of the EHC Plan.
- If the LA decides not to amend an EHC Plan after an annual review or a reassessment.
- To cease an EHC Plan.

## **3. What can I do if I want to resolve my disagreement?**

In the first place we would like you to discuss your concerns with your SEN Caseworker or Senior Practitioner within the **SEN Team**. They will be able to explain the basis of any decisions and to will try to resolve your concerns as quickly as possible. They will also be able to signpost you to other organisations who can provide you with advice and support.

You may also wish to involve the **Bury SEND Information Advice and Support Service (IASS)**. This Service is independent of the Local Authority and can provide advice and support to parents of children and young people with special educational needs and disabilities. More information about the

Service is available at [Bury SENDIASS](http://Bury SENDIASS) They can also be contacted by e-mail at [bury.sendiass@barnardos.org.uk](mailto:bury.sendiass@barnardos.org.uk) or by phone on 01706 769634.

You do not have to engage with any local processes, but we would encourage you to do so as most issues can usually be resolved more quickly and without the need to go through more formal systems. However if your disagreements are not resolved through a local process then you can seek disagreement resolution and/or mediation, and appeal to the Special Educational Needs and Disability Tribunal (SENDIST).

#### **4. Disagreement Resolution**

Disagreement resolution services are for all parents of children and young people with SEND. The Service is free of charge and is voluntary for all parties and can consider disagreements about SEN provision as well as about disagreements about health and social care. There are three areas of disagreement that this service can help with:

- If you disagree with your LA, early years setting, school or college about how they are carrying out their education, health and care duties. This applies if your child has any kind of SEN, not just during the EHC assessment process or if they have an EHC Plan.
- If you disagree with your early years settings, school or college about the SEN provision they are making. This applies if your child has any kind of SEN, not just during the EHC assessment process or if they have an EHC Plan.
- If you disagree with the LA or the Clinical Commissioning Group (CCG) about the health or social care provision during your child's EHC needs assessment or about their EHC plan and any review or reassessment of the EHC plan.

You may use the disagreement resolution services at any time and it has no effect on your right of appeal to the SEND Tribunal. The Service is free to parents, carers and young people and is delivered in Bury by Global Mediation Services. For more information please contact the SEN Team, Bury SENDIASS or go to <http://www.globalmediation.co.uk/our-services/education/special-education-needs> or contact their SEN Case Manager on 0800 064 4488.

#### **5. Mediation**

Mediation is a voluntary process for parents and young people which you can use when it has not been possible to reach an agreement with the Local Authority over the EHC assessment process or the provision of or content of an EHC Plan. It covers the following areas of disagreement where the LA decides:

- not to carry out an EHC needs assessment or a re-assessment of you or your child;

- not to draw up an EHC plan for you or your child, once an assessment has been carried out;
- not to amend the EHC plan after the annual review or a reassessment;
- to cease to maintain the EHC plan.

When Bury LA has drawn up an EHC Plan mediation is available if you disagree with:

- the parts of the plan which describe your or your child's special educational needs (section B of the EHC plan);
- the special educational provision set out in the plan (section F of the EHC plan);
- the school or college named on the plan (part I of the EHC plan);
- that no health care provision or no health care provision of a particular kind is specified in the plan (section G);
- social care provision (section H1 & H2).

Mediation and disagreement resolution meetings aim to resolve your disagreements in a quick, informal way using a neutral third party, a mediator, to help you reach a resolution that is mutually satisfactory.

If you want to seek mediation then you must contact the SEN Team Manager (Carol Grunbaum) on 0161 253 5642 or by e-mail at [senteam@bury.gov.uk](mailto:senteam@bury.gov.uk) and let us know the issues that you wish to pursue through mediation. You will then be free to contact the Mediation Adviser directly on 0800 064 4488 or the SEN Team Manager will do this on your behalf. This service is free of charge and your conversation is confidential.

Once mediation is complete, the Advisor will issue a certificate within 3 working days. Where mediation does not lead to complete agreement between the LA and yourselves, then you can still appeal to the SEND Tribunal, but you must send the certificate to the Tribunal when you appeal.

Your right to Appeal is not affected if you do not have mediation first and no inference will be drawn by the Tribunal if you have not used the mediation services.

For more information speak to the SEN Team, Bury SENDIASS or go to <http://www.globalmediation.co.uk/our-services/education/special-education-needs>.

## **6. Appealing to the Special Educational Needs and Disability Tribunal**

If it has not been possible to reach an agreement with the LA over the assessment process or the provision of or content of an EHC Plan, you have the right to appeal

to Special Educational Needs and Disability Tribunal (SEND). SEND is an independent first-tier tribunal (Health, Education and Social Care Chamber) who hear and decide parents' or young peoples' appeals against the decisions of the Local Authority in relation to EHC assessments and EHC Plans.

You can appeal about any of the issues in relation to an EHC assessment or plan relating to:

- the description of the child/young person's special educational needs in an EHC plan (section B);
- the special educational provision specified in an EHC plan (section F);
- the school or other educational institution named in an EHC plan (section I);
- the health and social care needs and provision (sections C, D, G, H1 & H2) under the national trial (see below);
- a decision by the LA not to issue an EHC plan;
- a decision by the LA not to carry out a reassessment for a child/young person who has an EHC plan;
- a decision by the LA not to amend an EHC plan following a review or a reassessment;
- a decision by the LA to cease to maintain an EHC plan.

If you decide that you wish to appeal to the Special Educational Needs and Disability Tribunal then you **must** contact the mediation advisor who is commissioned by the LA (unless you are only appealing against part I of the plan).

**If you are going to appeal to the SEND Tribunal then you must do this within two months of the original decision that you are appealing about or within one month of receiving a mediation certificate from the Mediation Advisor, whichever is the later date.**

### **Single Route of Redress-National Trial**

From 3<sup>rd</sup> April 2018, the Government have extended the powers of the First-tier Tribunal (SEND Tribunal) to make non-binding recommendations about the health and social care aspects of the Education, Health and Care plan. This is a two year trial which applies to any decisions made or if an EHC plan is issued or amended from 3<sup>rd</sup> April 2018.

To date you have only been able to appeal the educational aspects of the EHC plan. The trial gives you new rights to request recommendations about the health and social care needs and provision (sections C, D, G, H1 & H2) that are specified in EHC plans, in addition to the educational aspects, when making a SEND appeal. This gives you the opportunity to raise all your concerns about an EHC in one place.

It is only possible for the Tribunal to consider the health and/or social care aspects of the EHC plan where you are already making an appeal in relation to the education aspects of the EHC plan and the education aspect must remain live throughout the appeal.

### **What this means for parents and young people?**

If you are unhappy with a decision not to issue an EHC plan or with the special educational content or placement in the plan, you can make an appeal to the SEND Tribunal. The trial now gives you the opportunity to also request recommendations about the health and social care content of the plan at the same time. This will mean that the Tribunal will take a more holistic, person centred view of the needs of the child or young person.

This does not prevent you from complaining about other aspects of your disagreement through other complaint procedures. You should seek advice about the different routes available, including from Bury SENDIASS.

If the SEND Tribunal makes a recommendation about the health or social care elements of an EHC plan, this is non-binding. However the LA and/or health commissioner is generally expected to follow such recommendations, but they are not legally binding. Where they are not followed the reasons for not following them must be explained and set out in writing to you and to the Department for Education. If they are not followed, you can complain to the Local Government and Social Care Ombudsman (LGSCO) or the Parliamentary and Health Service Ombudsman (PHSO) or seek to have the decision judicially reviewed. Further information on the roles of these bodies can be found on their websites.

### **When can a parent or young person request recommendations about the health or social care elements of an EHC plan?**

You can request that the Tribunal makes recommendations about the health and/or social care aspects of an EHC plan as part of an appeal relating to the issues described above.

### **How can a parent or young person request a health or social care recommendation?**

If you wish to appeal against a LA decision on any of the grounds above and want to request that the Tribunal considers your concerns about the health and/or social care aspects of the EHC plan, you should follow the normal process for bringing an appeal to the Tribunal and tick the box on the form relating to a health and/or social care appeal.

## **Where will I find further information about how to appeal and the SEND Tribunal process?**

You will find more information about the SEND Tribunal in the SEND Code of Practice sections 11.39-11.55 and at [Appeal to the Special Educational Needs and Disability Tribunal - GOV.UK](#), or by contacting the SEND Tribunal Service at the HM Courts & Tribunals Service Special Educational Needs & Disability Tribunal, 1<sup>st</sup> Floor, Darlington Magistrates' Court, Parkgate, Darlington DL1 1RU, Tel: 01325 289350

## **Independent Evaluation**

There will be an independent evaluation of the trial to inform a decision on whether the new tribunal recommendation powers continue after the trial. You are therefore strongly encouraged to participate with the evaluation and parents and young people that take part in the trial will receive a letter from the Tribunal explaining more about the evaluation.

## **Mediation Advice**

Before you can register an appeal with the Tribunal, you must contact a mediation adviser within two months of the LA decision you wish to appeal and consider whether mediation might be a way to resolve your disagreement with the LA. If you want to appeal only about the school or the institution (section I) named in the EHC plan you do not have to contact a mediation advisor.

You can go to mediation about the health and social care elements of an EHC plan, but this is not compulsory. You can request recommendations about health and social care issues without having to receive mediation advice or attend mediation about those issues about which you are appealing.

Once a mediation advisor has been contacted, or once you have taken part in mediation, you will be issued with a certificate. This will be necessary if you are still unhappy and wish to progress to an appeal with the Tribunal.

If mediation resolves the educational issues, you will not be able to appeal to the Tribunal on any health and/or social care aspects of the EHC plan. However mediation provides an opportunity for us to resolve disagreements and it can be completed more quickly than an appeal. It does not affect your right to make an educational appeal and some aspects of the disagreement can go to appeal even when other aspects are resolved.

In Bury, the LA has commissioned Global Mediation to provide our mediation service. If you want to seek mediation or you intend to appeal to SENDIST then you must contact the SEN Team Manager (Carol Grunbaum) on 0161 253 5642 or

by e-mail at [senteam@bury.gov.uk](mailto:senteam@bury.gov.uk). You will then be free to contact the Mediation Adviser directly on 0800 064 4488 or the SEN Team Manager will do this on your behalf. This service is free of charge and your conversation is confidential.

### **Health Provision**

If you wish to go to mediation purely about the fact that no health care provision or no health care provision of a particular kind is specified in the Plan then you must contact the SEN Team Manager (Carol Grunbaum) on 0161 253 5642 or by e-mail at [senteam@bury.gov.uk](mailto:senteam@bury.gov.uk) and tell her the health care provision which you want to be specified in the plan. If you want to go to mediation about the health care provision in the Plan then the LA will inform the commissioning body within 3 days of the matter being raised. If the issue raised is only about the health care provision then the Health Commissioning Board will arrange for the mediation to take place within 30 days of being informed by the LA.

### **Social Care Provision**

If you wish to go to mediation purely about the social care element of the EHC plan then the Local Authority will arrange the mediation meeting and you must contact the SEN Team Manager to tell her the Social Care provision which you want specified in the plan or contact Global Mediation who will make arrangements for a mediation meeting to take place.

## **7. Complaints**

### **Social Care (Children)**

If you are not satisfied with the outcome of the mediation process in relation to the Social Care provision in the EHC Plan then you can make a complaint through the LA's Children's Social Care complaints process. You can do this by contacting the Complaints Manager at Children's Social Care Complaints, Children's Services, 3 Knowsley Place, Bury BL9 0EJ, Tel: 0161 253 5488 or by using the online form which you will find at [www.bury.gov.uk](http://www.bury.gov.uk). An advocacy service is available to support children in making a complaint.

### **Social Care (Adults)**

If you are not satisfied with the outcome of the mediation process in relation to the Social Care provision in the EHC Plan, then you can make a complaint through the LA's Adult Care complaints process. You can do this by contacting the Customer Services Manager, Textile Hall, Manchester Road, Bury, BL9 0DG, 0161 253 5151 or by using the online form which you will find at [www.bury.gov.uk](http://www.bury.gov.uk). An advocacy service is available to support adults to make a complaint.

### **Local Government & Social Care Ombudsman**

If your complaints have not been resolved through mediation, disagreement resolution or the complaints process, then you can ask the Local Government Ombudsman (LGO) to investigate your complaint. The LGO will investigate the

process by which the LA's decision was made and whether there was maladministration, rather than examining the merits of a decision which has properly been taken. The LGO will decide if there has been an injustice to the complainant and/or there is evidence of maladministration. The LGO does not investigate the merits of a decision which has properly been taken but which the complainant thinks is wrong. It will, however, look at the decision making process and the delivery of provision set out in the EHC Plan.

The LGO will not investigate matters which can be appealed to the SEND Tribunal. However it will look into a case where the SEND Tribunal have made a recommendation about the social care aspects of and EHC plan and these have not followed. Complaints can be made to the Local Government Ombudsman via its website at [www.lgo.org.uk](http://www.lgo.org.uk) or in writing to PO Box 4771, Coventry, CV4 0EH. Help in making a complaint is available by ringing 0300 061 0614.

### **The Parliamentary and Health Service Ombudsman**

The role of the Parliamentary and Health Service Ombudsman (PHSO) is to investigate complaints that individuals have been treated unfairly or have received a poor service from the NHS in England. They can investigate complaints about the commissioning and provision of healthcare. The PHSO can carry out joint investigations with the LGO where a complaint includes concerns about the delivery of the health care provision in EHC plans. They will also be able to look into a case where the SEND Tribunal have made a recommendation about the health aspects of the EHC plan and these have not been followed. They will normally investigate a complaint only once the NHS organisation has had a chance to resolve the issue first, unless it is in relation to the recommendation by the SEND Tribunal which has not been followed. More information on the role of the PHSO is available on their website at [www.ombudsman.org.uk](http://www.ombudsman.org.uk).

### **NHS Complaints**

If you are not satisfied with the outcome of the mediation process in relation to the Health Care provision within the EHC Plan, then you should contact the Patient Services Team at St James' House, Pendleton Way, Salford, M6 5FW, 0161 212 6270, [patientservices.gmcsu@nhs.net](mailto:patientservices.gmcsu@nhs.net). If you need help and support to make a complaint then you can contact the Independent Complaints Advocacy service at 5<sup>th</sup> Floor, Arthur House, Chorlton Street, Manchester M1 3FH, 0808 801 0390, [manchesterica@carersfederation.co.uk](mailto:manchesterica@carersfederation.co.uk).



## 8. Where can I get more help and advice?

<b>Local Organisations</b>	<b>Phone No</b>	<b>Address</b>	<b>E-mail</b>
Bury SEND Information Advice and Support Service (IASS).	01706 769634	Blue Pit Mill Queensway Castleton Rochdale Lancashire OL11 2PG	<a href="mailto:bury.sendiass@barnardos.org.uk">bury.sendiass@barnardos.org.uk</a>
SEN Team	0161 253 5969	3 Knowsley Place Duke Street Bury BL9 0SW	<a href="mailto:senteam@bury.gov.uk">senteam@bury.gov.uk</a>
Children's Disabilities Services	0161 253 6076	3 Knowsley Place Duke Street Bury BL9 0SW	On line contact form on <a href="http://www.bury.gov.uk">www.bury.gov.uk</a>
Adult Care Services	0161 253 5151	Connect and Direct Textile Hall Manchester Road Bury Lancashire BL9 0DG	On line contact form on <a href="http://www.bury.gov.uk">www.bury.gov.uk</a>
Bury Clinical Commissioning Group	0161 212 6270	21 Silver Street, Bury, BL9 0EN	<a href="mailto:patientservices.gmcusu@nhs.net">patientservices.gmcusu@nhs.net</a>
Global Mediation Services	0800 064 4488		<a href="http://www.globalmediation.co.uk/our-services/education/special-education-needs">www.globalmediation.co.uk/our-services/education/special-education-needs</a>
Local Government and Social Care Ombudsman (LGSCO)	0300 061 0614	PO Box 4771 Coventry CV4 0EH	<a href="mailto:advice@lgo.org.uk">advice@lgo.org.uk</a>
Parliamentary and Health Service Ombudsman (PHSO)	0345 0154033		

<b>National Organisations</b>	<b>Phone No</b>	<b>Address</b>	<b>E-mail</b>
Contact a Family	0808 808 3555		<a href="http://www.cafamily.org.uk">www.cafamily.org.uk</a>
IPSEA	0800 018 4016		<a href="http://www.ipsea.org.uk">www.ipsea.org.uk</a>

SEND Tribunal,	01325 289350	HM Courts & Tribunals Service Special Educational Needs & Disability Tribunal, 1 <sup>st</sup> Floor, Darlington Magistrates' Court, Parkgate, Darlington DL1 1RU	<a href="http://www.justice.gov.uk/tribunal/send">www.justice.gov.uk/tribunal/send</a>
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<b>Publications</b>	
SEND Code of Practice 0-25	<a href="#">SEND code of practice: 0 to 25 years - Publications - GOV.UK</a>
Special Educational Needs and Disability: A guide for parents and carers	<a href="#">SEND: guide for parents and carers - Publications - GOV.UK</a>
SEN and disability support changes: information for young people	<a href="#">SEN and disability support changes: information for young people - Publications - GOV.UK</a>
SEND Tribunal and Appeals	<a href="#">Special Educational Needs and Disability guidance for Special Educational Needs and Disability Tribunal</a>
SEND Tribunal: single route of redress national trial	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686902/SEND_Tribunal-single_route_of_redress_national_trial_guidance.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686902/SEND_Tribunal-single_route_of_redress_national_trial_guidance.pdf</a>