



Guidance notes for applications to the First-tier Tribunal following a decision in special educational needs or disability discrimination case

When you have received a decision from the First-tier Tribunal you may consider that the decision is wrong in law or that there is another reason why the tribunal should look again at its decision. If you think it is wrong in law you can appeal to the Administrative Appeals Chamber of the Upper Tribunal but you must first apply to the First-tier Tribunal for permission to appeal.

Applications for permission to appeal and the other applications you can make following a tribunal decision are explained below.

Who can make an application?

You can make an application if you have been a party to an appeal or claim before the First-tier Tribunal in a special educational needs or disability discrimination case. This includes a parent, or person having parental responsibility, a local authority or a responsible body for a school.

What applications can I make?

Following a decision of the First-tier Tribunal it is possible to make the following applications:

A – you can apply for **permission to appeal** if you think that the tribunal's decision was wrong in law. This is explained in more detail in **Section A**.

B – you can ask the tribunal to review its decision because there has been a **change in relevant circumstances** since the decision was made. This is explained in **Section B**.

C – you can ask the tribunal to **set aside** its decision in certain circumstances. These are explained in **Section C**.

How do I know which sort of application to make?

The reasons for making each type of application are explained in Sections A, B and C. If you are unsure which sort of application you should make you should read the guidance carefully before completing the application form. There is a separate form for each type of application. If you make one sort of application but the tribunal considers that it is in fact an application to do something else, it will deal with it as if you had made that other type of application.

When can I make an application?

An application must be made so that it is received by the tribunal no more than 28 days from the date on which the tribunal sent you the decision. This will be the date of the letter which the tribunal sends to you with its decision.

If you are applying more than 28 days after the decision was sent, you will need to ask for an extension of time, giving the reasons why you are late, with your application. If the tribunal does not agree to extend the time, your application will not be considered.

Section A – Application for permission to appeal to the Upper Tribunal

When you have received

- a decision from the tribunal
- an amended decision following a review by the tribunal, or
- notification that your application for a decision to be set aside has been unsuccessful (provided that the application was made in time)

you may apply to the tribunal for **permission to appeal** against that decision if you think that it was **wrong in law**. Examples of where the tribunal may be wrong in law include:

- the tribunal did not apply the correct law or wrongly interpreted the law
- the tribunal made a procedural error
- the tribunal had no evidence, or not enough evidence, to support its decision
- the tribunal did not give adequate reasons for its decision

These are only examples and the tribunal might be wrong in law for some other reason not mentioned here. If you have a representative they may be able to advise you about the grounds for appealing.

How to apply for permission to appeal

If you want to apply for permission to appeal you should complete **form SEND20A** and send it to the tribunal **within 28 days** from the date the decision was sent to you. This form is available from the website at <http://hmctsformfinder.justice.gov.uk> or by contacting us on 01325 289350.

If you are applying more than 28 days after the decision was sent you will need to apply for an extension of time explaining why you are applying late with your application.

If the tribunal refuses an extension of time it will not consider your application. However you may then apply to the Upper Tribunal for permission to appeal. Information about applying to the Upper Tribunal will be sent to you with the tribunal's decision.

What happens next?

If your application is received in time, or the tribunal has agreed to extend the time, you will be sent an acknowledgment and an explanation of the next steps the tribunal will take.

Before deciding whether to give you permission to appeal the tribunal will first consider whether it should review its decision on the ground that it is wrong in law. This may involve a hearing. If it decides to review its decision and as a result amends the decision, a copy of the amended decision will be sent to you.

You or the other party can apply for permission to appeal against the amended decision by completing **form SEND20A**.

If the tribunal decides not to review its decision, or reviews it but takes no action, it will then decide whether to give you permission to appeal to the Upper Tribunal.

If the tribunal gives you permission to appeal you will need to complete a Notice of Appeal to the Upper Tribunal. This will be sent to you with the tribunal's decision. The Notice of Appeal must be sent to the Upper Tribunal **no later than one month after the date that the tribunal sends you its decision**.

If the tribunal does not give you permission to appeal you can ask the Upper Tribunal for permission to appeal. Information about applying to the Upper Tribunal will be sent to you with the tribunal's decision. If you apply to the Upper Tribunal for permission to appeal you must do so **no later than one month after the date that the tribunal sends you its decision**.

Section B – Application for the tribunal to review its decision because of a change of circumstances

In a special educational needs case, if there has been a change of relevant circumstances since the case was heard, and you think that the decision should be looked at again because of that change, you can ask the tribunal to review its decision. To do so you should complete **form SEND20B**. This form is available from the website at <http://hmctsformfinder.justice.gov.uk> or by contacting us on 01325 289350

You must send the form to the tribunal within 28 days of the decision being sent to you. This will be the date on the letter the tribunal sends you with its decision.

If you are applying more than 28 days after the decision was sent you will need to apply for an extension of time explaining why you are applying late with the application. If the extension is not granted, your application will not be considered.

What happens next?

If your application is received in time, or the tribunal has agreed to extend the time, you will be sent an acknowledgment and an explanation of the next steps the tribunal will take.

The tribunal will then decide whether it can deal with your application on the papers it has received or whether it is necessary to hold an oral hearing. If an oral hearing is necessary both parties will be notified of the time and place and will have the right to attend.

If the decision is amended because of the change of relevant circumstances a copy will be sent to both parties. Either party may apply for permission to appeal against the amended decision if they consider it is wrong in law. To do so, they should follow the guidance in Section A and complete **form SEND20A**.

If the tribunal decides not to amend the decision there is no right of appeal to the Upper Tribunal against the decision not to amend it.

Section C – Application to set aside a final decision

When you are sent a final decision following a hearing in a special educational needs case or a disability discrimination case you may in certain circumstances apply for that decision, or part of it, to be set aside and for the tribunal to remake it.

The grounds on which a decision may be set aside

The reasons for setting aside a decision are set out in the Tribunal's Rules and are limited. A tribunal can only set aside its decision if it considers that it is in the interests of justice to do so **and** one or more of the following applies:

- a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or party's representative;
- a document relating to the proceedings was not sent to the tribunal at an appropriate time;
- a party, or party's representative, was not present at a hearing related to the proceedings, or
- there has been some other procedural irregularity in the proceedings.

If you want to make an application for a decision to be set aside on one or more of these grounds you should complete **form SEND20C**. This form is available from the website at <http://hmctsformfinder.justice.gov.uk> or by contacting us on 01325 289350.

You must send the form to the tribunal within 28 days of the decision being sent to you. This will be the date on the letter the tribunal sends you with its decision.

If you are applying more than 28 days after the decision was sent you will need to apply for an extension of time explaining why you are applying late with the application. If the extension is not granted, your application will not be considered.

What happens next?

If your application is received in time, or the tribunal has agreed to extend the time, you will be sent an acknowledgment and an explanation of the next steps the tribunal will take.

The tribunal will then decide whether its decision or part of it should be set aside.

If your application is unsuccessful and the tribunal decides not to set aside the decision, it will notify you of this. If you think that its decision is wrong in law you may apply for permission to appeal by following the guidance in Section A and completing **form SEND20A**.

If the tribunal agrees to set aside the decision or part of it, it will usually hold a hearing before remaking the decision or that part of it. Both parties will be notified of the time and place and will have the right to attend.

Copies of the new decision will be sent to both parties following the hearing. If you consider that that decision is wrong in law and you want to apply for permission to appeal against it you should follow the guidance in Section A and complete **form SEND20A**.