

Resolving disputes using independent adjudication

Under the law¹, disagreements about the support provided for a child with additional support needs can be resolved through independent adjudication when other procedures for resolving disagreements have failed. This factsheet explains the process and when and how it should be used.

What is independent adjudication?

Independent adjudication is a way of resolving disagreements using an independent party (an adjudicator) when all other routes have failed. Normally, disagreements will be resolved with the school or the local authority, and there will be procedures for doing this. However, if this has failed, you can consider independent adjudication.

With independent adjudication, an adjudicator will formally review all the circumstances surrounding the dispute and will recommend how it should be resolved. The person reviewing each case will have expertise in dealing with children who have additional support needs.

After reviewing all the information about the case, the adjudicator will make a written report with recommendations

for both parties. It is expected that both parties will accept the outcome, but local authorities have no legal duty to apply the adjudicator's recommendations.

What disputes can be resolved through independent adjudication?

You can use independent adjudication if you disagree with the local authority's decision about any of the following:

- whether your child has additional support needs
- the kind of additional support needs your child has
- refusing a request to find out whether your child has additional support needs
- refusing a request for a specific type of assessment or examination (but not a request for an assessment or examination by a specific individual)
- the person doing an assessment or examination or the way it is done.

You can also use independent adjudication if you think the local authority has failed to:

- provide or make arrangements to provide for your child's additional support needs. This could be, for example, a way of teaching or an adaptation of the curriculum or support from a learning assistant

¹ The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

- request help from another agency such as social work or an NHS Board for your child's additional support needs.

What disputes cannot be resolved through independent adjudication?

You cannot use independent adjudication for disputes about exclusions or the refusal of placing requests to mainstream schools. These are dealt with by Education Appeal Committees.

Also, you cannot use independent adjudication for the following disputes, which are dealt with by the Additional Support Needs Tribunal:

- co-ordinated support plans, including a failure to provide the support identified in the plan
- refusal of placing requests to special schools
- whether the local authority has fulfilled certain duties towards your child when they leave school.

Who can apply for independent adjudication?

You (or your child if they are aged 16 or over) can apply for independent adjudication.

The adjudication would be with:

- the local authority where you live and your child goes to school, or
- the local authority responsible for the school your child attends as a result of a placing request.

You have the right to apply on behalf of your child if they are over the age of 16 and lack capacity (which generally means they cannot do it themselves, for example because of disability or illness).

Your child may also be able to use independent adjudication. For more information, see **Enquire factsheet: Children's rights to education and additional support in school.**

When should I apply for independent adjudication?

After you have tried, or considered, other routes open to you, such as mediation (see **Enquire factsheet: Mediation**). Local authorities are encouraged to work with and involve parents, through discussions with them and the school, to avoid the need for independent adjudication.

A step-by-step guide to independent adjudication

How do I apply?

Your local authority should have up-to-date information about how to apply. They can also help you apply, but are not legally obliged to do so. Many local authorities have a standard application form you can complete, but you can also apply in any permanent format, such as letter, email, video or audio tape. If you wish, an advocate, supporter or member of a voluntary organisation may help you complete your application.

You must apply to Scottish Ministers (the address is at the end of the factsheet) and your application must contain:

- your name and address and the name and address of the child involved
- details of what the dispute is about (for example, refusal of an assessment request), and why you are applying for independent adjudication (give all the relevant circumstances)

- a copy of any advice, information or request relevant to the application, such as local authority letters, school progress reports, individualised educational programmes and a copy of any local authority decision that you wish to be taken into account
- the grounds for you applying. You must refer to the relevant section of the Additional Support for Learning Act. For example, if your disagreement is about the refusal of an assessment request, you must refer to Section 8 of the ASL Act, which states that the local authority must agree to an assessment request unless the request is unreasonable. If you are unsure which grounds you are using, contact the local authority or an advice agency like Enquire
- how you think the dispute should be resolved
- the views of the child or young person, if you know what they are.

When will I know if my application has been accepted?

Scottish Ministers will refer your application to the relevant local authority within 5 working days of receiving it.

The local authority must write to you within 10 working days of receiving your application to tell you if:

- it accepts your application and will write to Scottish Ministers to ask them to choose an independent adjudicator to consider the case
- it cannot proceed with your application and why. This may be, for example, if they do not have enough information to go ahead.

If you are asked to send more information and the local authority is happy with the extra information you send, it will write to tell you that it has accepted your application.

If the local authority accepts your application

Within 10 working days of accepting your application, the local authority must give you:

- a copy of a written summary of its views on why the dispute has happened
- its response to the information you provided in your application
- how it thinks the dispute could be resolved
- a copy of any further advice, information, request or decision not included with your application that the local authority wants you and the independent adjudicator to take into account when considering the dispute.

You and the local authority then have a further 10 working days to provide each other with any more observations or supporting papers on your application or on the local authority's response.

What papers go to the independent adjudicator and when?

The independent adjudicator will receive copies of:

- your application and any supporting material
- the local authority's response
- any further observations or supporting papers that you or the authority have submitted (as mentioned in the previous section).

The local authority must send all the documents to the independent adjudicator within 25 working days of accepting your application.

Who pays for the independent adjudicators?

The local authority pays the costs of the independent adjudicators.

How and when will the independent adjudicator make their recommendations?

The independent adjudicator will make their recommendations once they have all the information they need to do so. In most cases the adjudication process will be a paper-based exercise. This means the decision in most cases will be based on the documents you as parents and the local authority provide, rather than through meetings. Therefore, it is important to make sure that all the relevant documents are included in your application.

However, the adjudicator can ask for further observations, information or advice from you, the local authority, or any other agency such as a health board. The adjudicator will say how they want the information, and by when.

Exceptionally, they can also arrange to meet you or others involved in the case, if they think this is needed to resolve the dispute. You will be able to have a supporter or advocate at this meeting.

Within 15 working days of receiving all the paperwork they need, the independent adjudicator will provide a written report to the local authority with their recommendations, setting out how the dispute should be resolved. They will also

write to you, and any other person they think appropriate, to let you know that the report has been sent to the local authority and the date by which the local authority must give its decision.

If they cannot meet the 15-day deadline, the adjudicator must provide you and the local authority with reasons in writing and set a new date for completion of the process.

Once the adjudicator's written report and recommendations have been sent to the local authority, the independent adjudicator's involvement in the dispute ends.

The local authority's decision

Once the local authority has received the adjudicator's report, it must give you its decision in writing. The local authority's decision will set out:

- the facts it has based its decision on
- the reasons for its decision
- how it thinks this will affect your child.

The local authority must also send you a copy of the adjudicator's report and recommendations.

Once you have received the decision letter, this is legally the end of the process.

The expectation is that both parties will accept the recommendations and decision.

When will I know the local authority's decision?

The local authority should issue its decision to you within 10 working days of receiving the adjudicator's report. If it cannot do this, it must explain why in writing and set a new date for completing the process.

The whole process of independent adjudication should take no more than 60 working days. This begins with the day the local authority sent you its letter accepting your application through to sending you its final decision.

What if I am unhappy with the local authority's decision?

The local authority's decision on your application is final. However, if you are still dissatisfied, you can complain to the Scottish Ministers under section 70 of the **Education (Scotland) Act 1980** if you think the local authority has failed to carry out a statutory duty. If you think the local authority has failed in a part of its service or the way it has managed your case, you may be able to complain to the Scottish Public Services Ombudsman. You may also be able to take the local authority to court, if this is appropriate.

The local authority can give you more information about these and other ways that may help resolve your disagreements. More information can also be found in **Enquire factsheet: Resolving disagreements**.

If I have already made an application, can I apply again?

You cannot apply again for the same thing within 12 months of the date of the original application.

What if I don't want to use independent adjudication?

You do not have to use independent adjudication.

Even if you have already applied, you can stop the process at any time.

More about independent adjudication

Who are the independent adjudicators?

The Scottish Ministers appoint a panel of people to act as independent adjudicators. They all have knowledge and experience of children with additional support needs and the local authority's duties under the law. When an local authority accepts your request, it will ask Scottish Ministers to choose a suitable adjudicator from the panel. This person must be independent of the local authority.

Where to get more information

To ask for independent adjudication, write to:

Scottish Government
Support and Wellbeing Unit
Learning Directorate
Area 2-C South
Victoria Quay
Edinburgh
EH6 6QQ

Publications

Enquire factsheet: Children's rights to education and additional support in school (2018)

Enquire factsheet: Resolving disagreements (2018)

Enquire factsheet: Mediation (2018)

Enquire factsheet: Section 70 complaints (2018)

Supporting children's learning code of practice, Scottish Government (2010)
www.gov.scot/Resource/doc/348208/0116022.pdf

Websites

Enquire www.enquire.org.uk

Additional Support Needs Tribunal
www.healthandeducationchamber.scot

Scottish Public Services Ombudsman
www.spsso.org.uk

ENQUIRE

Helping you understand additional support for learning

Enquire is the Scottish advice service for additional support for learning. We provide independent and impartial advice to parents and carers, to practitioners in education, social work and health services, and to children and young people themselves.

www.reach.scot offers advice to young people struggling at school. With practical tips on what can help and young people sharing their views and experiences on all sorts of life issues, Reach offers the 'go-to' source of advice to help pupils make the most out of their education.

This factsheet has been awarded the Clear English Standard.



Contact details

Enquire, Children in Scotland, Level 1, Rosebery House,
9 Haymarket Terrace, Edinburgh EH12 5EZ

Helpline: **0345 123 2303**
(Access to interpreters through Language Line)

Office: 0131 313 8800

Email: info@enquire.org.uk

www.enquire.org.uk

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