

Independent adjudication

This factsheet explains:

- what independent adjudication is
- when it can be used to help resolve disagreements
- how to request independent adjudication
- how independent adjudication works.

What is independent adjudication?

Independent adjudication is when a neutral and independent person (an adjudicator) looks at information about a disagreement about additional support for learning, and then makes recommendations for how to resolve it.

You have the right to request independent adjudication, and your child may also be able to ask for it if they are aged 12 or older.

Independent adjudication involves both you and the local authority responsible for your child's education providing information to the adjudicator explaining what has led to the disagreement and what you think should happen to resolve the situation.

Independent adjudication is a paper-based exercise in most cases. You will not usually have a chance to meet or talk to the adjudicator.

After reviewing all the information about the case, the adjudicator will write a report with their recommendations. It is expected that both parties will accept the outcome, but local authorities have no legal duty to apply the adjudicator's recommendations.

The local authority is responsible for paying the costs of the independent adjudication.

Who are the independent adjudicators?

Scottish Ministers appoint the independent adjudicators. They all have knowledge and experience of additional support for learning and the local authority's legal duties. The adjudicator must be independent of the local authority.

When can I use independent adjudication?

You will be able to resolve most disagreements about your child's additional support for learning by working with the school, nursery or the local authority, either directly or through mediation. Find out more in our factsheets on [Working together with your child's school](#) and [Mediation](#).

If this has not worked or if you or the local authority do not want to try mediation, you can request independent adjudication.

You can use independent adjudication if you disagree with a local authority's decision about:

- 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 of your child's support needs
- the person doing an assessment of your child's needs, 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, support to meet your child's needs
- request help from another agency (for example, the NHS) to help meet your child's needs.

My disagreement is about something else, what can I do?

There are several different options for resolving disagreements about additional support for learning. Our factsheet on [Avoiding and solving problems](#) summarises the different options and when you can use them.

How do I apply?

The adjudication will be between you and the local authority that is responsible for your child's education. This will usually be the local authority where you live and where your child goes to school. If you made a placing request and your child now attends a school that is managed by a different local authority, that local authority will be responsible for your child's education.

The local authority should have up to date information about how you can apply. They can also help you apply, but do not have to. An advocate, supporter or someone from a voluntary organisation may be able to help you complete your application.

You can apply for independent adjudication in any permanent format. This will usually be a letter or email but can also be a video or audio recording.

You must send your application to Scottish Ministers at the following address:

**Independent Adjudication
Scottish Government
Directorate for Learning
Support and Wellbeing Unit
Area 2C North
Victoria Quay
Edinburgh
EH6 6QQ**

Once you have applied and the process has started, you can stop it at any point if you would like to – for example if you and the local authority come to an agreement in another way.

What should I include?

Your application must contain:

- Your name and address.
- The name and address of your child.
- What the disagreement is about. This must be from a list of 'specified matters'.
- The 'grounds' for your application. You need to refer to the part of the law that is relevant to your disagreement. See the table on page 9 for help working out what your 'specified matter' and 'grounds' are.

- Why you are applying for independent adjudication, giving a summary of the circumstances that have led to the disagreement.
- A copy of any advice, information or requests that are relevant to the application. This could be copies of emails or letters between you and the school, nursery or local authority, school progress reports, minutes of meetings, your child's support plan, or anything else you feel is relevant.
 - If your request is about a local authority decision, you must include a copy of the decision you received.
- How you think the disagreement should be resolved.
- Your child's views, if you know what they are.

As you are unlikely to meet or speak to the adjudicator, it is very important to include all relevant information and documents in your application.

When will I know if my application has been accepted?

Within five working days of receiving your application, the Scottish Ministers will contact the local authority to refer your application on to them. The local authority will then decide whether to accept the application.

Within 10 working days of the local authority receiving your application, the local authority must write to you to tell you either that:

- They accept your application and will ask the Scottish Ministers to choose an independent adjudicator for the case, or
- They cannot proceed with your application. The local authority must tell you the reasons why – this could be because:
 - it does not relate to a 'specified matter'
 - you have not included enough information with your application
 - the request is unreasonable.

If the local authority does not accept your application because you have not included enough information, you can provide further information so that they can reconsider your application.

If your application is refused, there is no right of appeal, but there are other routes for resolving disagreements that you can try. Find out more in our factsheet on [Avoiding and solving problems](#).

What happens next?

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

- a copy of the local authority's summary of why the disagreement has happened
- their response to the information you provided in your application
- their views on how the disagreement should be resolved
- a copy of any further advice, information, requests or decisions that the local authority wants the independent adjudicator to consider when making their decision.

You and the local authority then have a further 10 working days to provide each other with any further supporting information or observations on your own or the others' application that you want the adjudicator to see.

The local authority must then send the adjudicator:

- your application and the supporting materials you submitted
- their response and supporting materials, and
- any further information or observations you and the local authority have provided.

This must all happen within a maximum of 25 working days from the date they accepted your application.

How and when will the adjudicator make their recommendations?

Once the adjudicator has received all the information, they will consider the circumstances and the available options for resolving the situation. In most cases their decision will be based on all the documentation that you and the local authority provided, rather than through meetings.

However, the adjudicator can ask for further observations, information or advice from you, the local authority, or any other relevant agency (for example social work or the NHS). If they ask you to provide further information, they will tell you how and when you should provide it.

If they think it is necessary, they may ask to meet you or others involved in the case, but this is rare. If this happens, you can take a supporter or advocate along to the meeting.

Within 15 working days of receiving all the necessary information, the adjudicator will provide a written report to the local authority with their recommendations for how the disagreement should be resolved. They will also write to you, and anyone else they think appropriate, to let you know that they have sent the report to the local authority. They will also tell you the date by which the local authority must decide if they will accept the recommendations of the report.

If the adjudicator cannot meet the 15-day deadline, they must write to you to explain why and set a new date for completing the process.

Once the adjudicator has sent their report to the local authority, their involvement in the process ends.

The local authority's decision

Once the local authority receives the adjudicator's report, they must decide whether to accept the recommendations. The local authority must send you their decision in writing within 10 days of receiving the report. They must tell you:

- the facts they have based their decision on
- the reasons for their decision
- how they think this will affect your child.

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

If the local authority cannot meet this 10-day deadline, they must tell you why and set a new date.

The whole process of independent adjudication should take no more than 60 working days. This begins the day the local authority sent you the letter telling you they will accept your application and ends the day they send you their decision.

It is expected that you and the local authority will accept the recommendations and decision.

Summary of the process

Step	Process
1	Check that independent adjudication can be used for the disagreement you are in
2	Send your application to Scottish Ministers
3	Scottish Ministers will refer the case to the local authority
4	The local authority will decide whether to accept the application
5	The local authority will ask Scottish Ministers to appoint an adjudicator
6	The local authority will send you copies of the information they are submitting to the adjudicator
7	You and the local authority can both submit further information
8	The local authority will send all the paperwork to the adjudicator
9	The adjudicator will consider all the information they have received, asking for further detail if they need it
10	The adjudicator will send their written report to the local authority, and write to you to tell you that they have done so
11	The local authority will decide whether to accept the adjudicator's recommendations
12	The local authority will send you their decision plus a copy of the adjudicator's report.

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

You cannot appeal the local authority's decision to the adjudicator. However, there are further routes available for resolving disagreements. For example, you can make a formal complaint to the local authority.

If you think there has been a failure under education law, you can also make a complaint to the Scottish Ministers. This is called a 'section 70 complaint'. Find out more in our factsheet on [Section 70 complaints](#).

The local authority can give you information about these options and other ways that may help resolve your disagreement. You can also contact the Enquire helpline for advice, see contact details at the bottom of each page.

You cannot apply for independent adjudication again for the same issue within 12 months of your original application.

Where can I find out more?

Govan Law Centre Education Law Unit www.govanlawcentre.org/education-law-unit

Tel: 0141 445 1955 Email: advice@edlaw.org.uk

The Govan Law Centre can provide free legal advice and may be able to help you submit an independent adjudication application.

The 'specified matter' and 'grounds' for your application

To use independent adjudication, your disagreement with the local authority needs to be about one or more of the 'specified matters' listed below. You also need to explain what the legal basis of your disagreement is. This is known as the 'grounds' for your application. You need to reference the part of the law that you think the local authority has not followed for your child.

'Specified matter' What your disagreement is about	Grounds The relevant section of the Education (Additional Support for Learning) (Scotland) Act 2004
A decision that your child has, or does not have, additional support needs	Section 1(1) definition of additional support needs Section 6(1)(a)(i) the local authority must identify which children and young people have additional support needs
A decision that your child has additional support needs of a type that you do not think accurately reflects their needs	Section 6(1)(b) the local authority must identify the particular needs of children and young people with additional support needs
A decision to refuse a request to establish whether your child has additional support needs	Section 6(2)(a) the local authority must comply with requests to assess whether a child or young person has additional support needs, unless the request is unreasonable
A decision to refuse a request for a specific assessment, such as an educational, psychological or medical assessment or examination	Section 8(1) the local authority must comply with requests for specific assessments when deciding whether a child has additional support needs, unless the request is unreasonable Section 8A(1) the local authority has a duty to comply with requests for specific assessments at any time, unless the request is unreasonable
A decision about the person, or the method used (or due to be used) to carry out an assessment or examination of your child's support needs	Section 8(3), Section 8A(5) assessments must be carried out by a person the local authority considers appropriate
A failure to provide (or make arrangements for providing) the additional support required by your child (whether relating to education or not)	Section 4(1)(a) the local authority must make adequate and efficient provision for such additional support as is required by the child or young person
A failure to request help from an 'appropriate agency' (an NHS board, another local authority, Skills Development Scotland, or a further or higher education institution)	Section 23(1) where a local authority thinks that an appropriate agency could help in the exercise of any of their functions under the ASL Act, they can request the help of that agency



How Enquire can help

Enquire can help you understand your child's rights to additional support for learning and how to work in partnership with their school or nursery to make sure your child gets the support they need.

Enquire can:

- explain your child's rights to additional support for learning
- listen to any questions and concerns
- advise you on the way forward
- help you find local education and support services.

You can contact our helpline on **0345 123 2303** or info@enquire.org.uk
Access to interpreters is available.

You can also find lots more information about additional support for learning, including our full range of publications, at www.enquire.org.uk

The information on our website is available in over 100 languages and with a range of accessibility tools, such as text-to-speech.

Reach is our website for children and young people. Reach helps pupils to understand their rights to feel supported, included, listened to and involved in decisions at school: www.reach.scot

Enquire is also a partner in the My Rights, My Say service. My Rights, My Say supports children aged 12-15 with additional support needs to exercise their rights to be involved in decisions about their support in school:
www.myrightsmysay.scot

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