

Preparing for Refusal to Assess Appeal

When you're appealing a **refusal to carry out an EHC needs assessment**, your job isn't to prove everything your child needs yet — it's to show there is **enough evidence that they *may* have SEND and *may* need an EHCP**. That's a lower legal threshold, and many appeals succeed when parents focus on that.

You'll be appealing to the First-tier Tribunal (Special Educational Needs and Disability).

What You Need to Prove

The legal test is within Section 36 of the Children & Families Act 2014, part 3:

The child *may have* special educational needs, and *may require* special educational provision via an EHCP?

So your evidence should show:

- Needs are **significant and/or complex**
 - Support already in place is **not enough**
 - The child is **not making expected progress** – this isn't just around attainment, remember there are four areas of Special Educational Needs:
 - Cognition and learning
 - Communication and interaction
 - Physical and sensory
 - Social, emotional and mental health
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What Counts as Strong Evidence

1. School Evidence (Core Foundation)

Gather:

- SEN Support plans / IEPs
- “Assess–Plan–Do–Review” cycles
- School reports
- Behaviour logs / incident records
- Attendance data
- Suspension information

💡 What strengthens your case:

- Evidence that **support has already been tried**
- Clear notes saying it **hasn’t worked or isn’t enough**
- A **graduated response** over time

2. 📉 Evidence of Lack of Progress across the relevant SEND domains (as appropriate)

- Cognition and learning
- Communication and interaction
- Physical and sensory
- Social, emotional and mental health

This is critical.

Include:

- Attainment data (below age-related expectations)
- Reports showing **slow or no progress**
- Gaps widening over time, between peers and child

👉 Strong phrasing examples:

- “Progress remains significantly below peers despite intervention”
- “Requires ongoing adult support to access learning”

3. 🧠 Professional Involvement (Even if Limited)

You do **NOT** need full diagnoses.

Useful evidence:

- GP or paediatrician letters
- Referrals to CAMHS or specialists
- Speech & Language Therapy (SALT) assessments or reports
- Occupational Therapy involvement
- Physiotherapy support
- Educational Psychology assessment or report
- Other therapies provided

💡 Even a **waiting list letter** helps — it shows concerns are such further assessment is needed.

4. 🗣️👤 **Parent/Carer Evidence (Very Powerful)**

Your voice matters a lot at this stage.

Include a statement describing:

- Daily struggles (before, during, after school)
- Emotional impact (anxiety, distress, exhaustion, EBSA)
- Differences between home and school
- What happens **without support**

👉 Be specific:

“Needs 1:1 support to start any written task”

“Becomes overwhelmed after 20 minutes in class and shuts down”

5. 🔄 **Evidence Over Time**

Show this isn't new or temporary.

Include:

- Early concerns (nursery/primary)

- Previous reports
 - Long-standing difficulties
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6. Evidence SEN Support is Not Enough

This is often the **winning point**.

Show:

- Interventions tried (and frequency)
- Limited or no impact
- Increasing need for adult support

 The tribunal is asking:

“Can this child realistically be supported from existing school resources?”

Your evidence should suggest: **no**

7. Compare to Peers

Helps show the level of need.

Examples:

- “Working 3 years below expected level”
 - “Needs constant adult prompting unlike peers”
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8. Communication Evidence

Include:

- Emails raising concerns

- Requests for help
- School acknowledging difficulties

This shows:

- You've raised concerns
 - The issues are recognised
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How to Structure Your Evidence

A simple way to organise it:

Section 1: Overview

- Short summary of your child and key concerns

Section 2: Needs

- Learning
- Communication
- Social/emotional
- Physical/sensory

Section 3: What Has Been Tried

- Interventions
- Support in school

Section 4: Why It's Not Enough

- Lack of progress
- Increasing needs

Section 5: Conclusion

- Why an assessment is needed
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Common Mistakes to Avoid

- Trying to prove the **final EHCP content** (too early)
- Submitting only diagnosis-based evidence

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