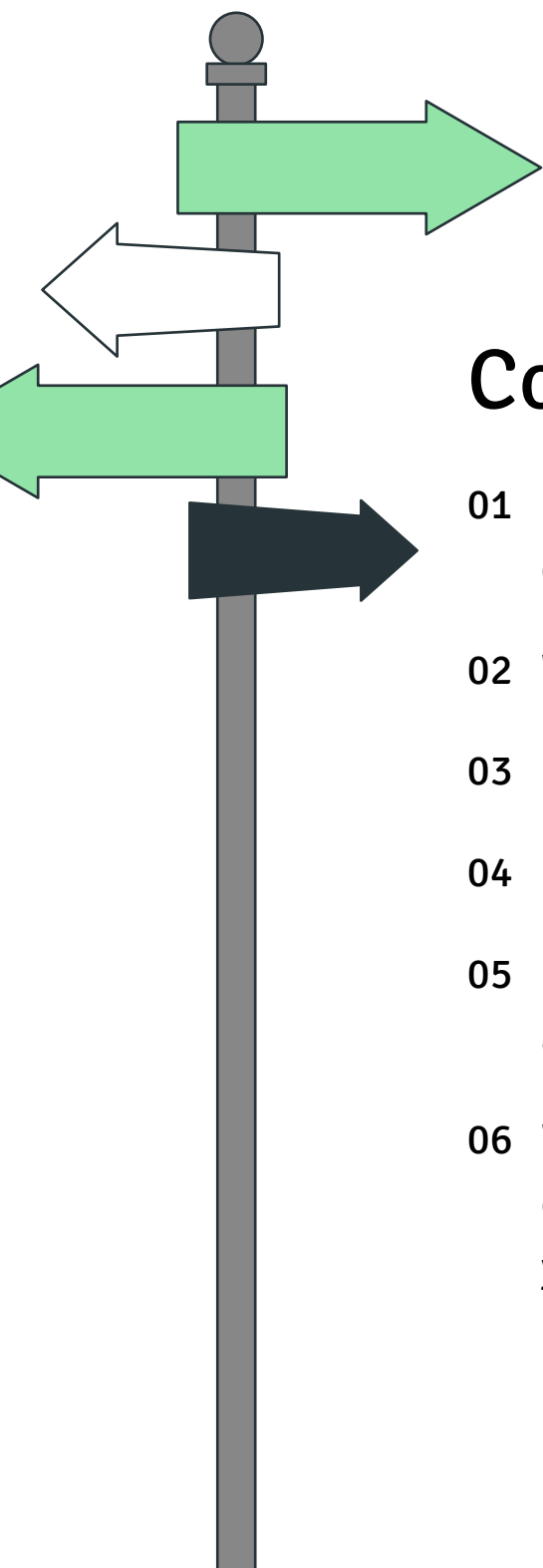


The use of representatives in SEND cases: a guide for parents



Co-produced by legal professionals,
SEND parents and non-legal representatives



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1.0 Introduction and Purpose of the Guidance

1.1. Advocates and representatives provide a vital service to parents/carers and young people in relation to special educational needs and disability (SEND) issues.

Their support can include attendance at meetings, assistance with paperwork, support with appeals/a claim to the First-tier Tribunal (also known as 'SENDIST' the Special Educational Needs and Disability Tribunal) and providing general advice and guidance.

Terminology used within this guidance

1.2. The terms 'advocate' and 'representative' are technically different and the SEND Tribunal has provided a definition for these in relation to SEND appeals. However, for parents/carers and young people they are terms that are often used interchangeably. Therefore, we have used the term 'representative' generally in the remainder of this guidance.

1.3. There is also a difference between 'legal representatives' and 'non-legal representatives'. Legal representatives usually refers to Solicitors, Barristers and Legal Executives. 'Representative' within this guidance includes both legal and non-legal.

1.4. Where non legal representatives provide legal advice, they are referred to in the legal sector as 'McKenzie friends'. The use of McKenzie friends has been criticised due to the lack of regulation.



1.5. Whilst within the area of SEND, non legal representatives provide an invaluable service, concern has been raised by parents/ carers, representatives and the SENDIST Tribunal itself, that some representatives lack the necessary experience and knowledge to deliver a high quality service for parents, carers and young people in SEND appeals.

Further concern has been raised in relation to the fees that some non legal representatives charge, and their lack of insurance, regulation and governance. In addition, that some representatives who are legally qualified do not themselves have the necessary knowledge or experience of SEND processes to deliver high quality representation for parents, carers or young people.

There is no general rule that the quality of advice and service from all legal representatives will exceed all non-legal representatives. There is variation within all sectors. The point of this guidance is to explain the difference to assist in the selection process.

1.6. There is no organisation which regulates the work of non legal representatives or the fees they charge; whereas legal representatives are regulated by the following:

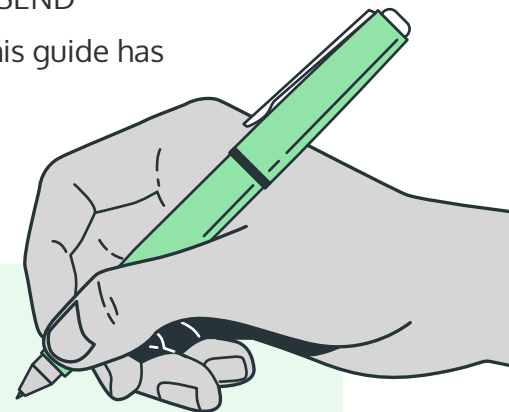
- The Solicitors' Regulation Authority: regulates a firm of Solicitors
- CILEX - regulates Chartered Legal Executives
- The Bar Standards Board – regulates Barristers



1.7. The SEND Tribunal has no powers to regulate the representatives who appear before the Tribunal. By contrast, for example, in the First-tier Tribunal (Immigration and Asylum), there is an accreditation scheme in place to ensure that representatives have achieved a 'required level of competence and knowledge in this area as defined by the Society' (i.e. the Law Society).

This applies to all representatives whether they are legally qualified or not, and therefore, does not restrict accredited representation to just those who are legally qualified.

1.8. With no regulatory body overseeing the work of all SEND representatives or Law Society accreditation scheme, this guide has been produced with the aim of assisting anyone who acts as a representative and those who use them.



1.9. This guidance has been co-produced by the following people who have expertise in the areas of SEND, education law and the use of representatives:

Barney Angliss, non legal representative & SEN Expert for Independent Review Panels

Steve Broach, KC, 39 Essex Chambers

Ed Duff, Education and care lawyer, Director HCB Widdows Mason Ltd

Samantha Hale, Education Lawyer, Director HCB Widdows Mason Ltd

Matt Keer, SEND Parent

Hayley Mason-Seager, Senior Solicitor, CEO SEN Legal Ltd

Claire Ryan, SEND Parent

Josie Ryan, Paralegal, Court of Protection, Simpson Millar

Qaisar Sheikh, Head of Education Law and Senior Solicitor, Coram CLC

Eleanor Wright, Education Solicitor, Legal Officer SOSSEN

2.0 Who is a representative?

2.1. There are a lot of options for support available to parents, carers and young people. This includes support provided through charities; advice agencies; companies; solicitors' firms; and by individuals (including barristers in private practice, who are self-employed although they will also be members of a Barristers' Chambers).

2.2. There are also numerous titles used by those providing support, including the following:

Solicitor

Consultant

Barrister

Representative

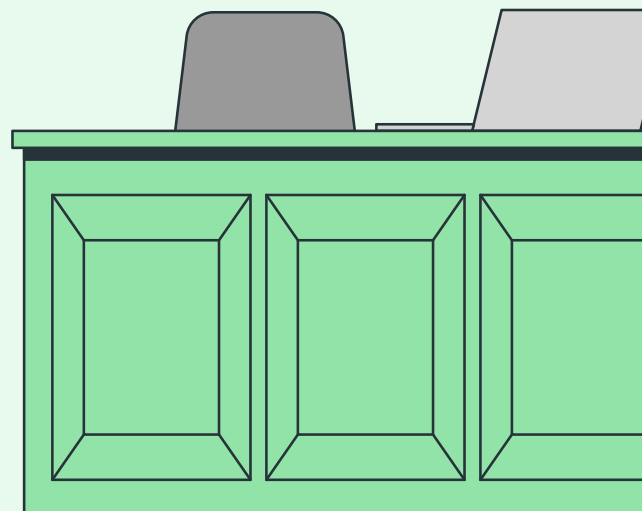
Legal Executive

Caseworker

Advocate

Parent Support Worker

2.3. Despite the various number of titles used to describe those helping parents, carers and young people, the SEND Tribunal simply refers to 'advocates' and 'representatives'.



2.4. The SEND Tribunal defines an **advocate** as:

‘Someone who knows the young person, who understands what they think about the issues in the appeal and so can speak on the young person’s behalf. They can be a parent, family member, friend or a paid advocate. They are not someone who can give advice on the issues in the appeal.’

2.5. The SEND Tribunal describes a **representative** as:

‘Someone who will give advice on the issues in the appeal, prepare the paperwork and represent the person making an appeal to the Tribunal. They can also be an advocate. They could be a volunteer from a charity, a paid representative, a solicitor or barrister.’

2.6. Therefore, based on the Tribunal’s definition of anyone who provides advice to a parent, carer or young person with their appeal, they would be deemed to be a ‘representative’ and not an ‘advocate’. They would also be described within the legal sector as a McKenzie friend, if they are not a legal representative.

2.7. As set out above, for the purpose of this guidance we are grouping the terms ‘advocate’ and ‘representative’ together and are referring to them collectively as ‘representatives’.





3.0 How to pick a representative

3.1 . With the huge variety of support available, it can be hard to know who to use for support or even where to begin looking.

3.2. Before you pick your representative we suggest that you think carefully about what you want them to do for you. For example, if you want support with an Education, Health and Care Plan (EHCP) Annual Review, consider if you just want someone to attend the meeting with you as moral support or if you want someone to talk on your behalf and advise you about what you should request during the Annual Review process and next steps if the Local Authority do not agree.

3.3. Once you know what it is that you want a representative to do, we recommend you research the various options available.

We also suggest that you consider the following points in this chapter which are designed to help guide you and help you to decide.

Their training, qualifications and experience

If you want someone to provide you with advice, it is particularly important to check they have the relevant experience and expertise in cases specifically like yours.

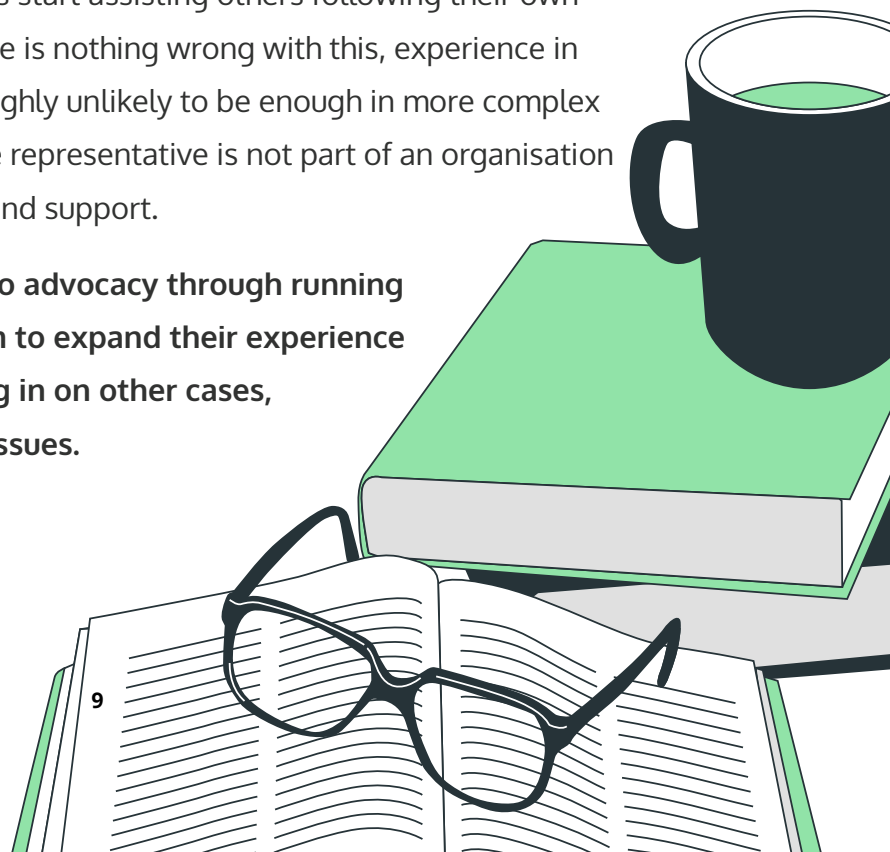
It is not uncommon for this information to be set out in a profile on a website belonging to the individual or the company they work for. However, if this is not available, a good representative should not mind you asking about their training, qualifications and experience.

Consider what exactly it is that you want the representative to help you with and check if their training, qualifications and experience cover this. Don't make assumptions that it will. For example, you might be looking to use a solicitor but you should bear in mind that the vast majority of solicitors have little or no experience and knowledge of education law: you need someone specifically practising in that area.

Alternatively, you could be looking to use a representative to help with, for example, an exclusion appeal. Although the representative might have lots of experience with Tribunal appeals they may have no experience of these types of appeals.

A number of representatives start assisting others following their own Tribunal appeal. Whilst there is nothing wrong with this, experience in only two or three cases is highly unlikely to be enough in more complex cases, and particularly if the representative is not part of an organisation which provides mentoring and support.

Ideally anyone coming into advocacy through running their own case, should aim to expand their experience by helping with and sitting in on other cases, covering a wide range of issues.



A good representative should always be prepared to have their work and procedures scrutinised

Therefore, any representative should be happy to tell you about their supervision arrangements, whether they have a complaints policy in place (preferably with someone independent to deal with any complaints), and what insurance cover they have (this is, for example in the event that the advice they give is negligent).

Solicitors' firms and Barristers are required to have these in place. Most charities offering help in this area also have such policies together with supervision arrangements for volunteers.

Who precisely will be representing you?

If you are discussing representation with an organisation, check which individual you will have day to day contact with, and who will attend meetings on your behalf or represent you at a hearing.

Since tribunal hearings are currently set several months / up to a year after appeals are registered (dependent on the type of Appeal), it may be a good idea to confirm this nearer to the hearing date. If you are using a legal representative you should also receive a letter of engagement confirming this for you.

Testimonials

These are useful ways to find out the type of work/outcomes a representative has achieved. However, keep in mind that you would expect them to only share positive testimonials on their website or social media account.

Similarly, other people's views of representatives on social media can also be moderated to only show the positives. Therefore, these are not a reliable methods and it might be more beneficial to look on independent review websites (e.g., Trustpilot, Google, Review Solicitors).

Personal / professional recommendations

These can be really useful when deciding who to use; however, we strongly suggest that you still ask questions to determine whether they are right for your case. For example, find out if they used or worked with the representative themselves and if so, did this involve the specific type of case that you want assistance with?

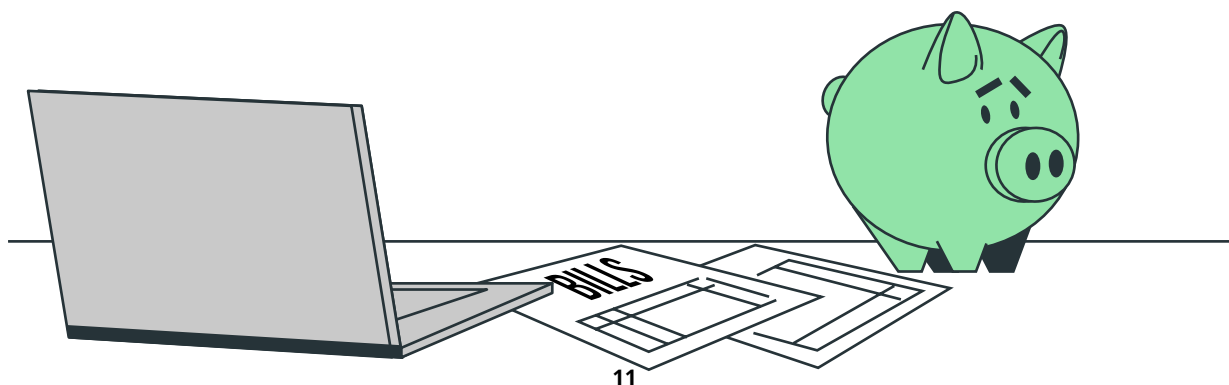
You should also find out about their approach; particularly if they are not legally qualified. For example, some advocates tend to take a very aggressive approach. While this might seem attractive if the parent has had a bad experience with their Local Authority/school, it is rarely a helpful approach to take. In general, a pragmatic, calm approach works best, especially with the Tribunal.

Fees

You should always ask about fees in advance and further advice on this is set out in Section 4. However, don't be afraid to raise concerns about fees, particularly if you think that the fee you are quoted is outside the usual range (based on what other parents/carers have told you, or based on our suggested fee range in Section 4).

Make sure you know whether the fee that you have been quoted is 'fixed' (payable no matter what the outcome is), 'capped' (the maximum amount you will have to pay, with perhaps an hourly rate up to the cap), determined by hours worked or set another way.

A good representative should always be completely upfront and clear about their fees.



Free advice

If you are considering using a representative who will not charge you for their help, you should still do the usual check to ensure that they have the relevant expertise to help you. We suggest that you are very cautious in following advice given on social media, without being certain that the person offering it has the necessary knowledge and experience to provide that advice.

Unfortunately, not all of the advice given to parents on social media is correct.

Prospects of success

If you are looking for a representative to help you with more than, for example, providing moral support in a meeting, you might want to know how likely you are to achieve the outcome that you want and might want to ask about their 'success rates'. However, we suggest that you exercise caution in using this to select your representative.

This is because a headline 'success rate' does not tell you how likely you are to win. Normally someone can only advise you of this once they have sufficient information about your case, which will normally mean they will need to consider the relevant documents you have.

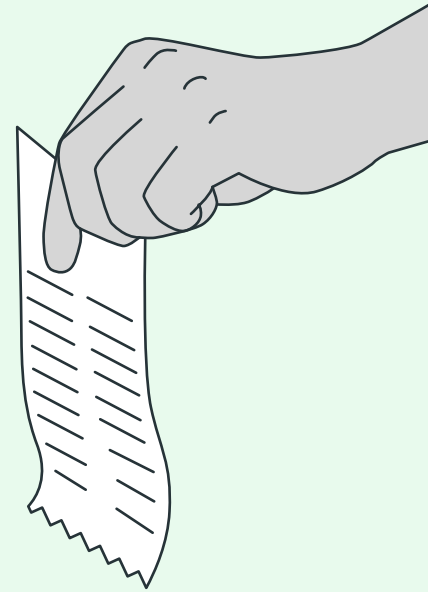
Appeal 'success rates' can also be misleading. Appeals can include multiple amendments to an Education, Health and Care Plan (EHCP); some of which may be secured and some refused. While a parent may view 'success' or 'failure' in terms of what they wanted most, a representative is likely to consider securing any amendment to be a 'success'. (The Tribunal would also conclude an appeal was successful if any amendments are made to an EHCP).

4.0 Paying for a representative

4.1. As explained in Section 3, when picking a representative you should ask whether or not you need to pay fees for their help and if so, how much.

If you do need to pay and have the funds to do so, we recommend that you request the following information before making a decision on who to use:

- **Always request confirmation of fees in advance in writing and check if this is a quote or just an estimate.** Make sure you are aware of the process for receiving revisions to this.
- **Check carefully what is and what isn't included in the fee so you are aware of any potential hidden extras.** For example, if a fixed fee for assistance with a Tribunal appeal also includes their travel costs and/or payment for witnesses to attend the Hearing?
- **Always query why a representative's fees are significantly more expensive or cheaper than others you have spoken to.** For example, it may be reasonable to expect a qualified legal representative to charge more than a non legal representative given that their fees include regulation, insurance etc., that protects you as their client.
- However, there may be good reason for a non legal representative to be more expensive, for example, if the non legal representative is a highly experienced SEND specialist, whereas the legal representative might be newly qualified and inexperienced.



There should always be a good reason to justify a high fee for a non legal representative, as this will not include the regulation, professional insurance etc., that protects you as their client.

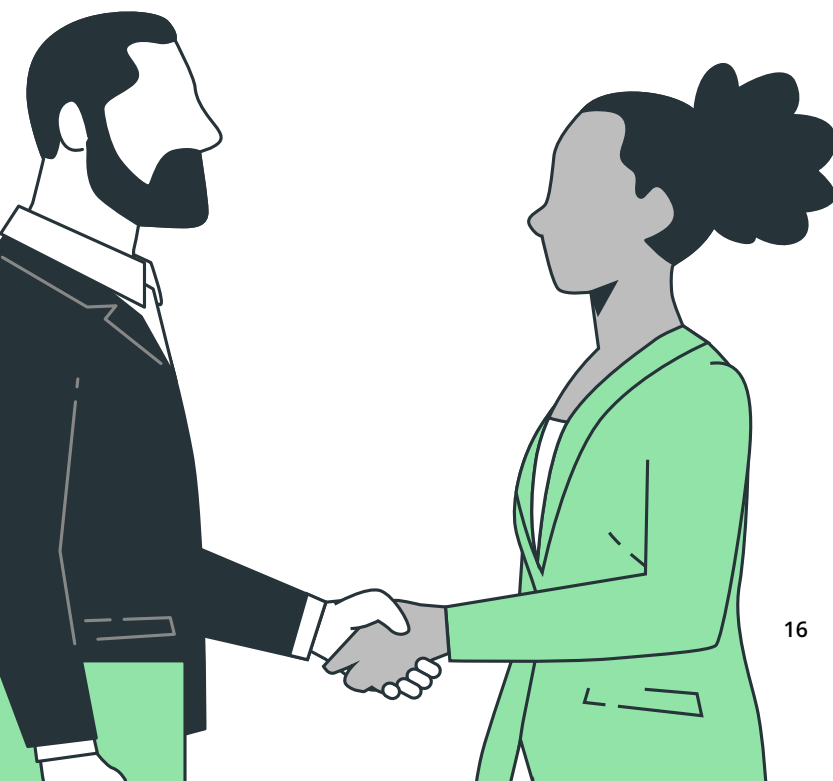
- **You should not be put off by seeking quotes from legal representatives.** These can often be lower than expected and sometimes are cheaper than non-legal representatives. Legal representatives will normally provide you with an estimate of fees for you to consider, and will not charge you to provide this.
- Solicitors can be approached for a quote by contacting them via their firms, whose websites should all be online. Barristers can either be instructed through a solicitor, or many barristers can also be instructed on a 'direct access' basis (i.e. without a solicitor involved). You can enquire about instructing a barrister on 'direct access' via their Chambers whose contact details should be online.
- **Check how you will be charged.** As summarised above, this is usually by the hour, fixed fee or a capped fee. If the quote is as part of a fixed fee or capped fee, we suggest you find out the hourly rate and the anticipated number of hours the work will take, so that you can make sure it is cheaper to pay in this way. If the fixed or capped fee is limited to a set number of hours, you will want to make sure you are aware in advance of how you will be charged once you reach that cap.
- **Check if you need to pay the full amount quoted in advance, or if you can pay in instalments.** It is not uncommon to be asked to pay some or all of the fees in advance; however, make sure that you are comfortable paying the person, in the same way you would, when paying someone to provide any product or service.

- **Check what the representative's or firm's policy is with regard to cancellation fees.** For example, if they have been reserved for a tribunal hearing that is adjourned or cancelled, will they charge a fee for that, and if so, what will it be?
- Legal representatives (apart from direct access barristers) are required to keep any money paid in advance 'on account' in a separate bank account. Those funds remain 'yours' until a bill is raised. It is worth checking with your representative about their arrangements.
- If you are asked to pay in advance, check that you will be reimbursed any remaining money paid. For example, if at any point you decide not to use the representative, or if your case is settled early so that the work covered by the payment has not after all been necessary.
- If you know from the outset what your budget is and the quote you receive does not cover all of the work you want help with, talk to your potential representative. They should be willing to discuss with you how best to help you and add value to your case within your budget.
- You might think that having a representative attend the Tribunal hearing is the best way to use your budget. However they can only work with what is in the evidence pack for the appeal (also known as a 'bundle') and can often add more value to your case by assisting you earlier on with the appeal to ensure that you have the necessary evidence in the bundle and by preparing you to attend the hearing yourself without representation.

If you have to decide between paying a representative or paying for good experts' reports, we strongly suggest you opt for the expert reports to ensure you have the necessary evidence to support your case.

You should consider whether you need to pay for a representative to represent you; if you only need to pay for a little advice along the way; or perhaps if it is something that you can do yourself.

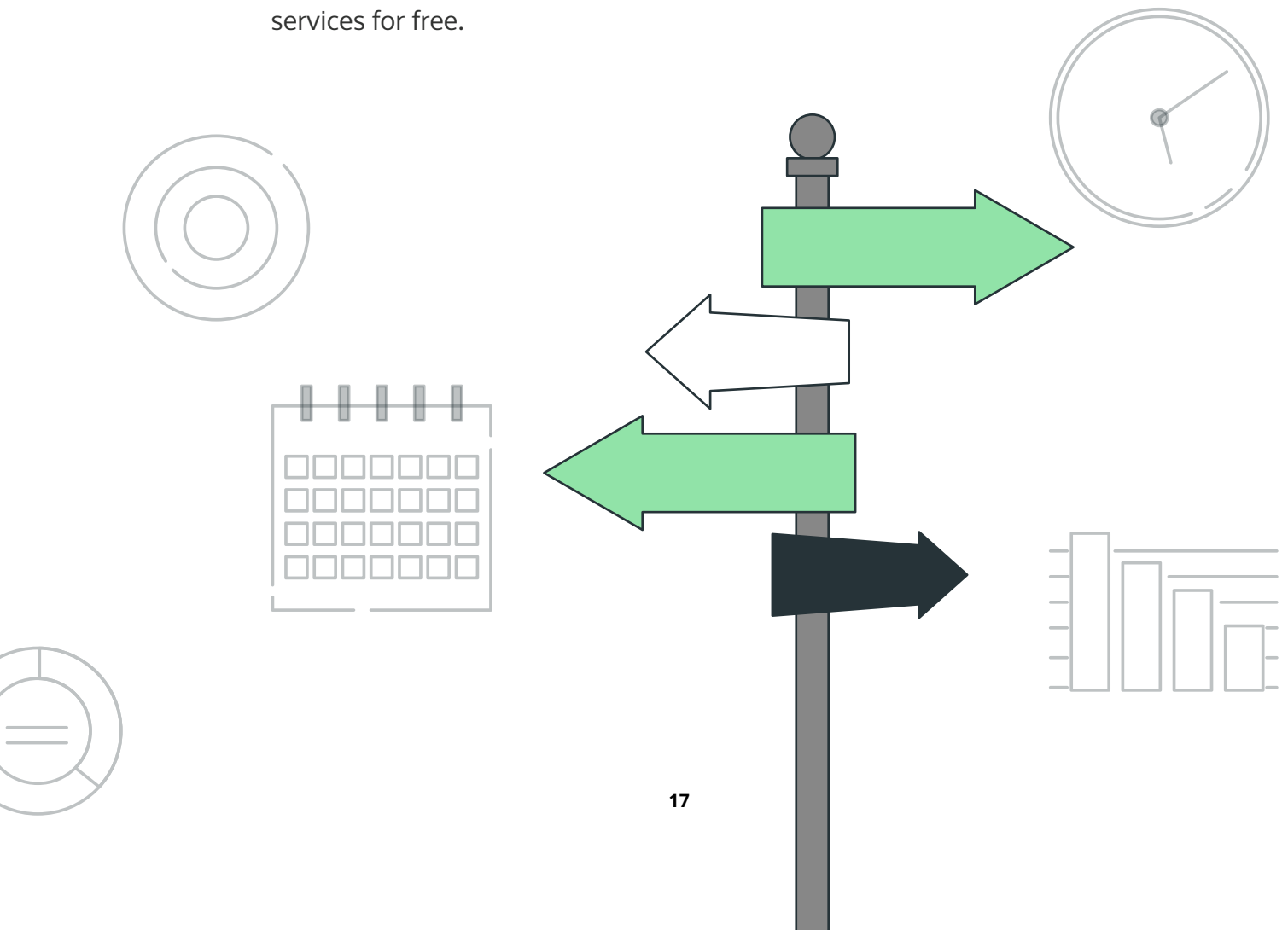
- Do not feel pressured to agree to use a representative on the spot. It is reasonable for you to want to have a think about who to use and the fees quoted. Therefore, a representative should not pressure you into making a decision to use them quickly and should give you time to consider this, so long as the work isn't so urgent that you need to make a decision quickly so it can be completed on time. Even then it is not unreasonable for you to take a short amount of time in private to make a decision.
- Any agreement for paid representation should be in writing and include details of the fees agreed. The fee estimated at the start of the case should be as accurate as possible, based on the available knowledge of the case. You should be updated throughout your case, and if the estimate needs to be revised, you should be informed of this in writing as well as why the estimate has changed.



The writers of this guide are aware of some representatives charging over and above what others charge, when this does not always appear to be justified. Therefore, it is particularly important to protect yourself from being charged an unreasonable amount by a representative.

4.2. Before you decide to pay for a representative, you should consider checking if the fees quoted are in line with what others charge for the same work. A representative should understand if you want to get a few quotes and consider your options before deciding, just as you might do in relation to any other paid for service.

4.3. Whilst a number of representatives will charge for their services, there are reputable representatives who are able to provide their services for free.



Legal Aid is available for those who qualify financially, although the types of cases that it covers is limited.

For example, although Legal Aid won't normally cover representation at a Tribunal hearing, it can cover the costs of all preparations beforehand in respect of SEND Tribunals and discrimination claims. It can also fund the costs of expert assessments provided a solicitor is able to demonstrate that the expense would be just and proportionate to your appeal. If you wish to challenge the decision of SENDIST, in some cases legal aid can fund an Upper Tribunal appeal.

Legal aid can also cover the costs of Judicial Review preparation and representation (see para 5.18 further)

4.4. If you think you might be eligible for Legal Aid, you should contact Civil Legal Advice for an assessment on 0345 345 4345. Further information available at: www.gov.uk/civil-legal-advice

Alternatively you could try contacting the solicitors listed on this link direct - find-legal-advice.justice.gov.uk

4.5. If you are not eligible, sometimes Legal Aid firms might be able to help secure pro bono representation from, for example, a junior/pupil barrister.

Furthermore IPSEA and SOS!SEN are examples of highly regarded organisations which are able to provide some services for free, such as the use of template letters as well as advice on their advice line and in a limited number of cases can offer representatives to help you with a Tribunal appeal.

The authors of this guide are also aware of other free services which may be 'condition specific' (The Council for Disabled Children have a list of [SEND Information and Advice Providers](#))

Some local SENDIASS services will also provide Tribunal representation free of charge.

Therefore, you do not necessarily need to pay for a representative to help you.

Although, in the experience of the authors of this guide, it can often be difficult to find high quality free representation as the demand for this massively outstretches the supply. It is, therefore, undoubtedly the case that those in a position to pay will inevitably have a greater choice of representation options.

4.6. To assist you in assessing whether or not a fee is reasonable, the table below sets out hourly rates (including VAT) for Paralegals and Solicitors following research from contributors of this guide.

Paralegal	£150 - £200
Junior solicitor (up to 5 years PQE)	£160 - £250
Senior solicitor (over 5 years PQE)	£250 - £350

'PQE' stands for 'Post qualification experience'

4.7. We also suggest the equivalent fees for barristers:

Junior barrister (up to 3 years' call)	£85 - £150
Junior barrister (3 to 8 years' call)	£135 - £250
Junior barrister (over 8 years' call)	£225 - £300
King's Counsel (KC)	£400 upwards

'Call' refers to the date barristers are called to the Bar

4.8. Many representatives charge fixed or capped fees for help with SEND Tribunal appeals.

Each appeal is unique and may require significantly different amounts of time. The following table shows an average amount of hours required by a representative for different Tribunal appeals to help you figure out what a good deal is



Type of appeal	Hours
The Local Authority refuses to conduct an EHC Needs Assessment	20
The Local Authority refuses to issue an EHCP following an EHC Needs Assessment	30
Appealing the needs, provision (including health and/or social care) and/or placement in a Final EHCP following an EHC assessment	40
Appealing the needs, provision (including health and/or social care) and/or placement in a Final EHCP following an Annual Review when amendments were made and/or were requested and refused by the Local Authority	40
The Local Authority decides to cease to maintain an EHCP	50
Disability Discrimination claims against a school	50

5.0 Knowing the limits of a representative

5.1 . One of the reasons this guide has been written is in response to concerns raised within the SEND community that some representatives do not have the knowledge and experience required to provide good quality representation; including at SEND Tribunals.

In some instances this will be detrimental to the person they are assisting, leading to lost opportunities to resolve the matter swiftly and in a cost-effective manner.

5.2. It is important for representatives to understand and acknowledge any limits to their knowledge and experience. Furthermore, parents, carers and young people need to know what to look out for which might indicate that the representative may not be the right person to help them.

This does not necessarily mean approaching a legal representative as it could mean them seeking assistance from a more experienced non-legal representative. Furthermore, it also does not mean that the original representative needs to cease their involvement in the case, as it is likely their knowledge of the matter to date will be invaluable for anyone stepping into to assist.

5.3. To help you understand the limitations a representative might have, we have set out some common matters in which representatives are asked to be involved in and have explained the type of knowledge and experience a representative is likely to need; although this could differ on a case by case basis.

SEND Tribunals

5.4. Appeals that can be taken to the SEND Tribunal include:

- Refusal to carry out an EHC Needs Assessment
- Refusal to issue an EHCP following an EHC Needs Assessment
- Refusal to carry out a re-assessment of needs
- Refusal to amend an EHCP following Annual Review
- Decision to cease to maintain an EHCP
- A claim for Disability discrimination against a school (claims against colleges/universities/LAs must be brought in the County Court, or potentially by Judicial Review).
- Appealing the contents of a final EHCP, including the educational needs, provision, and/or educational placement.
- You can also appeal the needs and provision in relation to health and/or social care; however, you should be aware that currently, you are only able to obtain non-binding recommendations in these areas; whereas in relation to education, the Tribunal can and does make binding orders for changes to EHCPs. We discuss this further under the heading 'Extended Appeals' (Pg 24).

5.5. The way in which the SEND Tribunal is set up means that parents should not need to instruct a representative to assist them. However, you may decide you want a representative for a number of reasons, such as, being unsure of what to do, or to reduce the stress related with the appeal; not having the time to spend on the work required; or perhaps your case raises legal issues that you are unsure of.

5.6. Not only is each case brought to the SEND Tribunal unique, but the work required can vary significantly depending on the type of appeal. Therefore, do not assume that because a representative has experience with one type of appeal, they have the necessary experience to assist with another.

5.7. Statistics from HM Courts and Tribunals Service show that there is an ongoing increase in the number of cases proceeding either all the way to a Hearing, or where the local authority concedes at the last minute. This includes cases, which a few years ago would have resolved long before the Hearing.

However, with the increasing strains on SEND budgets, it appears that local authorities are continuing to oppose appeals, in particular those where the outcome sought is likely to cost them more money. As a consequence it is becoming more common for some appeals to become quite complex both factually and legally. Therefore, it may be beneficial to have a representative who is experienced in these types of appeals, the relevant legislation, and case law to assist you.

5.8 When choosing a representative to help with cases that are factually and legally complex, we recommend that you check if your representative has experience with these types of claims. They should also have a good understanding of the relevant law (Part 3 of the Children and Families Act 2014 and the SEND Regulations 2014) and case law to assist you.

A good representative will be willing and able to acknowledge any limitations in their experience and where necessary, help you find someone else to assist you.



Extended appeals

5.9. These relate to challenges against the health and/or social care elements of a Final EHCP (Sections C/D, G/H). When choosing a representative to support you at an 'Extended appeal', you will need to make sure they have experience and knowledge of the legislation which underpins both health and social care; which differs to legislation relating to the education sections of an EHCP.

They should also be able to advise you of the difference in the Tribunal's powers in relation to the education sections and the health and/or social care sections.

This is because, whilst the Tribunal can consider health and/or social care, they can only make 'Recommendations' in their decisions, rather than making an 'Order' (which they can do for the education sections of an EHCP). Your representative should, therefore, be able to explain the difference between these outcomes, and also what you can do if the LA does not comply with any 'Recommendations'.

Disability Discrimination claims

5.10. These are often legally complex and it is essential to properly set out the specifics of the 'prohibited conduct' (i.e. discrimination) in the claim form or accompanying grounds for appeal. It must also usually be established (amongst other things) that the 'prohibited conduct' caused the child or young person to experience substantial disadvantages, which often must be carefully documented.

Therefore, we recommend that you only use a representative with experience in these claims and a sound understanding of the relevant law (Equality Act 2010) and case law.

5.11. In some cases local authorities and Responsible Bodies (i.e. schools), are using Barristers / Solicitors to represent them at hearings. This can make the process more daunting and therefore, you might want to consider using a legal representative.

While some barristers and/or solicitors who act for local authorities and schools are very good at changing the way in which they present a case so that it is not a complex and technical legal hearing, the authors of this guidance are aware of some cases where they have been overly aggressive and legalistic in their approach to a hearing.

However, if this were to happen the Tribunal Panel members will normally step in and will check that you are OK and/or you understand what is happening.

Therefore, you should not feel that you must have a legal representative because a barrister or solicitor is attending for the Local Authority/Responsible Body.

Appeals to the Upper Tribunal

5.12. If you have received a decision from the SEND Tribunal that you are not happy with, you might be considering appealing this. This appeal would be to the Upper Tribunal.

5.13. An appeal to the Upper Tribunal needs to be brought on a point of law or a procedural error and will often be legally complex.

5.14. You do not need to have a representative for the Upper Tribunal process, but this will often be necessary to identify arguable errors of law/ procedural errors. If you do want a representative for an appeal to the Upper Tribunal, we suggest that you consider instructing a legal representative. It is worth noting that Solicitors often instruct Barristers to work with them on these appeals, which highlights their legal complexity

It may be possible to secure advice and help with potential Upper Tribunal appeals through some charities such as SOS!SEN, although they may charge as this is quite complex work.

EHCP Annual Reviews

5.15 You might want a representative to help you prior to an EHCP Annual Review, to help identify amendments that are required to the EHCP. This does not need to be done by a legal representative but you should make sure the representative has experience in working with EHCPs and understands the law (including case law and guidance) on how EHCPs should be drafted.

5.16. You may want someone to attend an Annual Review meeting because you might not feel comfortable attending on your own. As Annual Review meetings on the whole do not require any legal arguments to be made (as it is a review of the child/ young person's needs/ progress), you do not need to take a legal representative.

The authors of this guide suggest that the only time you might want to consider taking a legal representative to an Annual Review, is when there is currently, or is about to be a legal challenge.

For example, if you are challenging the Local Authority for a failure to implement the EHCP, through Judicial Review and you are concerned the Local Authority might try and use the Annual Review to remove the provision that is the subject of that challenge, you may want your representative to attend to try and help stop this from happening. You may also want your representative to attend if you have received correspondence to suggest your child/young person's placement may be changed, or the EHC Plan ceased.

5.17. There are instances where local authorities do not meet their legal deadlines following an Annual Review meeting. If this happens, you can make a complaint to the Local Authority (and ultimately, to the Local Government & Social Care Ombudsman) and you could use a representative to help you with this.

We recommend that where timescales are not followed following an annual review you seek advice from a legal representative who can confirm if there is a potential Judicial Review that can be pursued and discuss funding options for this with you.

5.18. If you want to pursue a Judicial Review, we strongly suggest that you seek advice from a legal representative. Most Judicial Review claims are funded via legal aid, and only solicitors with the relevant legal aid contracts can apply for this and only in cases which meet the eligibility and merits criteria. However, you should not require legal assistance if you decide to follow the complaint route.

Judicial Review is both complex and can carry with it the risk of costs. It is vitally important to get both the procedure and the arguments 'right'. To protect yourself as much as possible, we strongly suggest seeking advice from a legal representative.

Other school, or professional meetings

5.19. You might want a representative to attend other school / professional meetings with you. This usually will not require a legal representative to attend. You should consider choosing a representative who has experience of attending meetings similar to yours, so for example they are aware of any formalities for the type of meeting.



Throughout the EHCP process

(E.g., requesting an EHC Needs Assessment; reviewing a draft EHCP; if your Local Authority does not stick to the prescribed deadlines, etc))

5.20. You should not need a legal representative through the EHCP process, however, if you do want help from a representative, we suggest that you find someone with relevant experience.

5.21. If you want assistance in drafting parental comments to a draft EHCP, we suggest you make sure the representative has experience in this area and that they understand the law (including case law and guidance) on how EHCPs should be drafted.

5.22. If the Local Authority fails to keep to the legal deadlines during the process, you can make a complaint to the Local Authority and Local Government & Social Care Ombudsman and you could use a representative to help you with this. However, we suggest you seek advice from a legal representative who can confirm if there is a potential Judicial Review that can be pursued and discuss funding options for this.

Failure to implement an EHCP

5.24. The Local Authority has a legal duty to ensure that the educational provision set out in Section F of an EHCP is provided, and that your child / young person is able to attend the School named in Section I.

5.25. If they breach this duty, you could ask a representative to help you to make a complaint to the Local Authority and Local Government & Social Care Ombudsman. However, we strongly suggest that you first consider seeking advice from a legal representative who can discuss the potential of pursuing a Judicial Review, and funding options with you.

Exclusions

5.26. Depending on the type of exclusion, there is a legal process for appealing a Fixed Term or Permanent exclusion of a child or young person who attends a school. However, this does not apply to young people who are attending Post 16 / Post 19 institutions.

Therefore, if you decide that you want help from a representative about an exclusion, we strongly suggest that you check the following:

- That they have knowledge and experience of exclusion appeals, as these are very different to SEND Tribunal appeals.
- That they have knowledge, experience, and expertise with the particular age group and educational phase that your child / young person is at.
- That they have knowledge and experience of the Statutory Guidance on school exclusions for exclusions relating to children and young people attending a school.

5.27. Depending on the circumstances, you may have grounds for a Disability Discrimination claim. Therefore, to make sure they can advise you appropriately on both aspects, we also strongly suggest that you use a representative with knowledge, experience and expertise in both exclusions and discrimination claims.

Legal aid is not available for challenging appeals at the Governing Body stages or currently at the Independent Review panel hearings. The Authors suggest as a starting point for general exclusion matters, parents contact services offering free advice such as the [School Exclusion Project](#) or [School Exclusion Hub](#) operated by Coram.

If you need a representative for a Disability Discrimination claim, make sure they have detailed knowledge and understanding of the Equality Act 2010; whether or not they are legally qualified.

When a child is out of school

5.29. If your child/ young person is unable to attend school, there might be a legal challenge that can be made against the Local Authority. Therefore we suggest that you seek advice from a legal representative. If as part of that advice they recommend Judicial Review, they can discuss the funding options for this with you.

Admissions appeals (for children without EHCPs)

5.30. There is a process for appealing admission decisions for children without an EHCP. These appeals are also very different to a SEND Tribunal cases. Therefore if you want help from a representative, we suggest that you find someone with experience with School Admissions Appeals. Furthermore, that they should have knowledge of the Statutory guides for both School Admissions and School Admission Appeals.

5.31. Statistics show that Admissions Appeals are not easy to win. Therefore you should consider not only checking the representative has the right experience, but that they will also advise you on your prospects of success, rather than just drafting grounds of appeal without giving you any advice. You can then decide if you want to continue with an appeal.

Complaints against the Local Authority / Schools

5.32. You should not need a representative to help you make a complaint against the Local Authority or school. However, if you do want to use a representative, we suggest that you use someone who has experience with the type of complaint you are making.

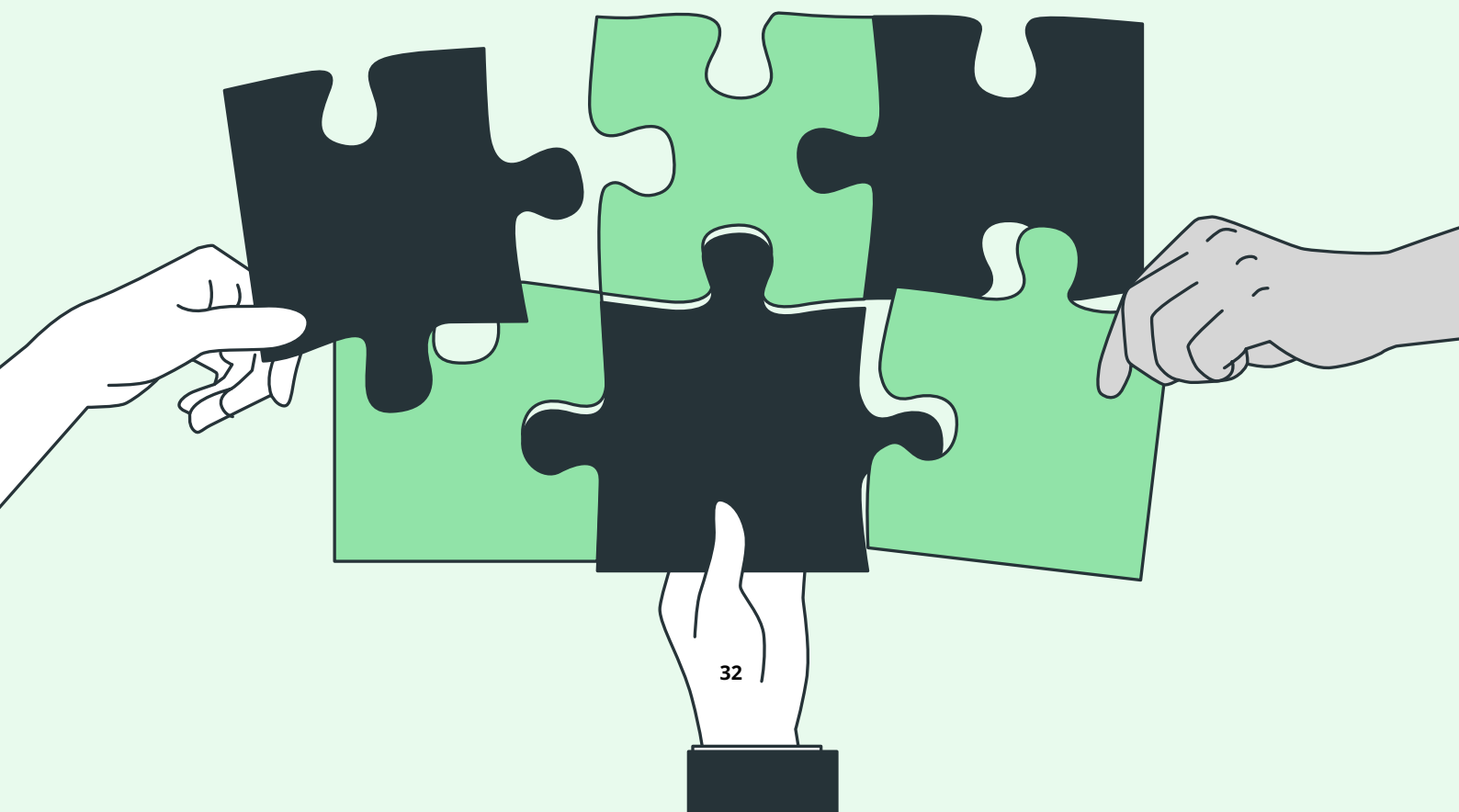
6.0 Knowing the limits of a representative

6.1. Firstly, you should raise any concerns you have with your representative directly as they may be able to resolve them through discussion with you.

6.2. If you remain concerned that they lack the necessary experience, knowledge and expertise to continue assisting you, you could try talking to other representatives about your situation, which may help you determine if you are right to be concerned.

There are many reputable organisations offering free advice and who could help you decide how to proceed. However, avoid using more than one representative at a time, as this could result in duplication/ conflict in the work being done for you.

6.3. If another representative needs to do further work to help you decide whether you are being advised and assisted properly, make sure you ask in advance about any fees they might charge for this.



6.4. If you conclude, for example, that your representative lacks the necessary experience and expertise required, you should consider asking if they will consider working alongside someone who does. However, where this is not possible or appropriate, you should consider changing representative.

6.5. In the absence of any regulation of non-legal representatives, it is likely your only form of redress if you are unhappy is through their complaints procedure, if they have one. Therefore, you may want to request a copy of their complaints procedure; which should outline any process that you need to complete first if you decide to make a formal complaint.

6.6. Whilst many representatives will work for organisations which have formal processes already in place for this, some representatives who essentially work on their own, may not have a formal complaints process for you to follow.

6.7. If you are concerned about the services you are being provided by a legal representative, their firm or chambers will have a complaints process which you can request at any point. If you are dissatisfied by the representatives' response to your complaint and the response from their firm / Chambers' internal process, you will be able to escalate your complaint to the Legal Ombudsman.

This document is intended for general information and should not be relied on as providing advice in any individual case. Although the authors believe the contents to be accurate, no liability is accepted in relation to the information provided here.

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