



Education Tribunal for Wales

Permission to Appeal to the Upper Tribunal: Guidance

About this guide

The aim of this guide is to help you apply for permission to apply to the Upper Tribunal, to appeal a decision made by the Education Tribunal for Wales (ETW).

Tribunal clerks are the staff who process cases. They answer your letters and telephone calls. They can only answer questions about the administration of appeals and claims. They cannot give legal advice. This means they cannot give their opinion, or recommend whether you should take a particular action.

Language Preference

ETW welcomes receiving correspondence and phone calls in Welsh or English. We will respond in whichever language you use, and corresponding in either language will not lead to a delay in our response.

This document is also available in Welsh. Please contact the Tribunal for a Welsh version of this document. You may also submit forms, documents, and make written representations to ETW in Welsh or English.

Information resources

- [The Education Tribunal for Wales Regulations 2021](#)
- [The Tribunal Procedure \(Upper Tribunal\) Rules 2008](#)

Introduction

If you think the decision on your case is wrong on a point of law, you can appeal to the Administrative Appeals Chamber of the Upper Tribunal. The Upper Tribunal will review the case, the law, and ETW's decision, and make its own decision.

To appeal to the Upper Tribunal you must first apply to ETW for permission to appeal.

Who can make an application?

Any party to an ETW case may apply for permission to appeal the Tribunal's decision to the Upper Tribunal.

The parties are those that brought the case, and those that responded to the case. Parties may include children, their parents, young people, local authorities, FEIs, or responsible bodies responding to claims.

For example:

- A young person may appeal to ETW against a local authority's decision about their ALN. In this instance, the young person brought the case to ETW, and the local authority must respond to the case to defend their decision. Both the young person and the local authority are parties to the case.
- A child may make a disability discrimination claim about their school. In this instance, the child brought the case to ETW, and the governing body of the school must respond to the case to defend their position. Both the child and the governing body of the school are parties to the case.

Representatives may appeal on behalf of their clients.

What reasons can I use to apply?

You may apply to ETW for permission to appeal against its decision if you think the decision is wrong on a point of law.

Examples may include:

- The Tribunal did not apply the correct law, or did not interpret a law correctly;
- The Tribunal made a procedural error;
- The Tribunal had no evidence or not enough evidence to support its decision;
or
- The Tribunal did not give adequate reasons to support its decision.

These are only examples, and the Tribunal might be wrong on a point of law for reasons not mentioned here.

When can I make an application?

You must submit your application no more than 28 days after the date you received:

- a decision for a case;
- an amended decision, following a review by the Tribunal; or
- a notification that an application for the Tribunal to review a decision was unsuccessful. Applications made out of time are not included.

How do I apply for permission to appeal

You must make an application for permission to appeal to the Upper Tribunal in writing, by post or email.

The application must:

- identify the decision to which it relates;
- identify the alleged error or errors of law in the decision; and
- state the result you are seeking.

Our form, *Permission to appeal to the Upper Tribunal: Application form (ETW23)*, will ensure you meet the criteria.

What happens next?

If we receive your application in time we will write to you to tell you that we are dealing with your application.

We will then decide whether to review the original decision. We will not do this if we already reviewed the decision, or we already decided not to review the decision.

If we decide to review the decision, we will write to both parties to invite representations. Representations are parties' thoughts on the matter, and what they want us to consider when we review the decision.

If we do not review the decision, we will consider whether to grant permission to appeal to the Upper Tribunal.

Permission granted

If we grant permission to appeal, you will need to complete a Notice of Appeal to the Upper Tribunal. A Notice of Appeal is your appeal application to the Upper Tribunal. We will send this to you when we grant permission. You must send it to the Upper Tribunal no later than one month after the date we granted you permission to appeal.

Permission not granted

If we do not give permission to appeal, you may then ask the Upper Tribunal for permission to appeal. They will not consider your request unless we have already denied permission. We will send you information about applying to the Upper Tribunal for permission if we do not give permission ourselves.

If you apply to the Upper Tribunal for permission to appeal, you must do so no later than 1 month after the date that we denied permission.

You will need permission to appeal from either ETW or the Upper Tribunal before you can submit a Notice of Appeal.