

Education Appeal Committees Proposals for Reform

Response from Govan Law Centre

1. An information leaflet for appellants should be produced. It should cover all the topics suggested. It is particularly important that those attending and their roles are explained to appellants. There is often a confusion in the roles e.g. a head teacher or education officer may be effectively presenting the authority's case and giving evidence at the same time, switching between the two from sentence to sentence. This is unsatisfactory in terms of producing a fair hearing, but also causes confusion for appellants. It is also important that local sources of help and advice are given for appellants, particularly highlighting those agencies who may be able to represent appellants, since these are few and far between. Information on the appellant's further right of appeal should be given, together with circumstances in which the case may be transferred to the Additional Support Needs Tribunal. Consideration should be given to producing a separate leaflet for pupils who are not appellants.
2. Each local authority should be required to produce such a leaflet, having consulted with parents, pupils and local advocacy groups, so that local information can be provided for appellants.
3. The Scottish Executive should issue guidance for local authorities, setting out the information which authorities ought to be providing to appellants.
4. It is essential that specialist advocacy be available for appellants to enable them to present their case on an equal footing. The head teachers who take decisions to exclude do not attend appeal hearings without professional representation from the authority (which is now often legal representation) and competent advocacy ought to be available for appellants as well. This should be provided by independent advocacy organisations, but there are far too few of these in the education field, and additional funding is urgently required.
5. There is no need for pre-hearing meetings. Adequate information given in writing, together with a named contact person (e.g. the clerk to the committee) would suffice. A pre-hearing meeting would simply serve to confuse, and would add to the time taken for each hearing.
6. Guidance for local authorities, covering the topics suggested, on arrangements for education appeal committees as an interim measure, pending legislative change.

7. The three main complaints appellants have regarding the fairness of hearings are i) the use of councillors as members of the appeal committee; ii) the use of council premises (particularly education department or council chambers) as a venue; iii) the use of council solicitors to advise the appeal committee. There is no requirement for councillors to be selected at all for any given hearing, and there is certainly no need for councillors to be in the majority. Committees wholly or mainly consisting of parent members would give a fairer hearing. Appeal committees should not be larger than 3 except in particularly complex or difficult cases. Members of the appeal committee (and chairs in particular) ought to be sufficiently training that it is not necessary to have solicitors present during a hearing and that they only require to be consulted in exceptional circumstances.
8. The issue of representation can only be dealt with by guidance. Authorities clearly cannot be prohibited from using legal representation, but they should be discouraged from doing so in the strongest possible terms. Adequate funding for advocacy services would ensure that both sides could be fairly represented.
9. While a right of appeal exists for parents in relation to schools where capacity has been reached, the numbers of appellants will require combined hearings.
10. As above.
11. Education appeal committees should not have a majority of councillors or people who advise the authority on education matters? Potential volunteers for membership of the appeal committee should be actively sought from among parent councils (and parent forums) on a regular basis. A letter inviting applications for membership could be sent home with pupils.
12. The education appeal committee should consist solely of parent members and those who know about education in the area (but do not work for the authority) in a ratio of 2:1.
13. Training materials for education appeal committee members have been produced by Govan Law Centre and Glasgow City Council in association with the Scottish Committee of the Council on Tribunals, and have been distributed to the clerks of all 32 authorities' education appeal committees. A sample is enclosed, and the training should cover the topics which were covered in that training (updated for additional support needs legislation).
14. Panel members should have completed training prior to conducting hearings, but it would be unusual to have a legislative requirement for specific training to take place.

15. The current timescales for hearings (where complied with) strike the right balance between a swift resolution of the appeal and adequate time to prepare for the hearing.
16. The vast majority of appeals every year are in relation to mainstream P1 and S1 placing requests which have been refused because the specified school is full. Virtually all of these appeals will be refused for obvious reasons. Far from being reassured that they have at least had a fair hearing of their case, parents are dispirited by the fact that the outcome is very obviously a foregone conclusion. Hearing these thousands of largely pointless appeals must cost a great deal and the arcane ground relied on by the authorities cause confusion and upset to parents every year. Rather than repeat this façade annually, we would recommend the following:
 - a. Consolidate the grounds of refusal relating to capacity or the effects of overcrowding in schools into a single ground to the effect that the school is full.
 - b. As a safeguard to authorities artificially manipulating school capacities, reintroduce the requirement to consult parents prior to any change in school capacity, possibly together with criteria for doing so.
 - c. There is currently a widespread practice of operating a numbered waiting list for those whose placing requests are refused. This should be made a requirement by way of guidance or legislation.
 - d. In relation to refusals due to schools being full, parents should not have a right of appeal to the education appeal committee. Rather, a right of appeal should lie to the sheriff court only where the parent can demonstrate that i) the school is not actually full; ii) the authority have failed properly to implement their placing arrangements applicable to the school; or iii) there are other exceptional reasons why the placing request should be granted.

Consideration should be given to having all placing requests made in terms of the Education (Additional Support for Learning) (Scotland) Act 2004 heard by the Additional Support Needs Tribunals for Scotland. Exclusion appeals involving pupils with additional support needs might also be heard by the ASNT.

The Legal Aid regulations should be amended to allow appellant to the ASNT or sheriff court to be legally represented and for the financial assessment to be made on the child's income and capital, rather than the parents'.

17. New bodies to hear appeals are not required. The local connection which education appeal committees have is a strength worth retaining in appropriate cases.
18. Education appeal committees should be more aware of their role and the criteria on which decisions should be made. However different procedural rules are not required.
19. The lack of properly reasoned decisions and findings in fact from education appeal committees means that appellants are left in the dark as to why they have not been successful in their appeal.

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