

# education appeal committees: proposals for reform

a consultation

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education appeal  
committees:  
proposals for reform  
a consultation

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# summary

Education Appeal Committees (EACs) hear appeals from parents (and young people in certain circumstances) against a local authority's decision to refuse a placing request, or to exclude a pupil from school. Local authorities establish EACs, but they are independent bodies with members drawn from a pool that includes parents, those with knowledge of education, councillors, and others. In 2004/05 EACs heard almost 400 appeals. Of cases where EACs had made a decision when statistics were collected, 22% were successful.

A report in 2000 by the Scottish Council of the Committee of Tribunals, who oversee all tribunals in Scotland, found that the current processes around EACs were often "seriously unsatisfactory". The Committee's key recommendation was that all those involved with EACs should be properly trained.

In 2004 the Scottish Executive funded George Street Research to conduct research with parents who had appealed to Education Appeal Committees across a range of authority areas (such as urban and rural areas). This research found that parents who had been through the process found it a "bleak and dispiriting experience" and saw the system as biased against them. The report made a number of recommendations aimed at reducing the formality in the system and making it more parent and child friendly.

We want to have in place a system for hearing appeals against placing request and exclusion decisions that is fair, impartial, and transparent, and seen to be so by all those who use it. We are still in the process of deciding what will be the best way of achieving this aim, and the purpose of this consultation is to give you the opportunity to contribute your views and suggestions. We are interested in all comments and ideas relating to the current appeal system.

Our main proposals for improving the current system are:

- › issuing guidance for local authorities on arrangements surrounding Education Appeal Committees;
- › producing national training materials for training those who sit on Education Appeal Committee panels. We would recommend through guidance to local authorities that panel members had to be trained with this material before being allowed to hear an appeal;
- › producing an information leaflet on Education Appeal Committees for parents and young people, to be distributed by authorities and published on the Scottish Executive website.

Please contribute your views by responding to the questions on page 15 by **16 February 2007**.

# background

## Education Appeal Committee Role and Membership

Education Appeal Committees (EACs) hear appeals from parents, young people who are over school age and under 18, and some pupils under school leaving age, against a local authority's decision to:

- > refuse a placing request; or
- > exclude a pupil from school.

Pupils may only appeal against exclusion decisions, and only if they have legal capacity. Pupils are generally presumed to have legal capacity from age 12. A parent will still have a right of appeal when a pupil also has that right.

The procedures which EACs must follow are set out in the law (the Education (Appeal Committee Procedures) (Scotland) Regulations 1982). EACs have the power to overturn an authority's decision. If an EAC does not overturn an authority's decision the parent or young person can appeal that decision to the local Sheriff.

Local authorities establish and run EACs in their area. The law requires every local authority to appoint people to sit on Education Appeal Committee panels in its area. Local authorities establish a pool of potential panel members, and then select pool members, to form an Education Appeal Committee to hear an appeal. Education Appeal Committees can have 3, 5, or 7 members. (For more information on who may sit on an EAC panel see pages 11 and 12.)

In 2004/05 over 696 appeals were made to EACs. The vast majority of these appeals (649) related to placing requests.

### Education Appeal Committee decisions on placing requests for primary, secondary and special schools, by outcome

	2000/01	2001/02	2002/03	2003/04	2004/05
Appeals granted	67	94	125	162	67
Appeals refused	542	527	612	314	280
Appeals under consideration	3	3	7	4	7
Appeals withdrawn prior to consideration	328	122	384	185	295
Total decisions (including under consideration)	612	624	744	480	354
Total decisions (excluding under consideration)	609	621	737	476	347
% of appeals which were successful	11%	15%	17%	34%	19%

Whilst we have statistics on the number of appeals made to Education Appeal Committees relating to exclusions, we do not have statistics on the outcome of these appeals.

### Appeals made to Education Appeal Committees on exclusions, 2000/01 to 2004/05

	2000/01	2001/02	2002/03	2003/04	2004/05
Appeals made to Education Appeal Committees	76	144	91	26*	47

\* this figure does not include successful appeals



## Scottish Committee of the Council on Tribunals Report

In 2000 the Scottish Committee of the Council on Tribunals, which supervises tribunals that operate in Scotland, published a report on Education Appeal Committees. The main findings and recommendations of this report were that:

- › processes were “often seriously unsatisfactory”;
- › there was a “real and urgent need for relevant training”;
- › a “national training programme [should] be established” which panel members would be required to attend before hearing an appeal;
- › neutral and accessible venues should be used;
- › local authorities should advise appellants to seek professional advice;
- › local authorities should hold pre-hearing meetings to ensure appellants were fully informed;
- › EACs should adopt a structured approach to their deliberations; and
- › the Scottish Executive should review “the constitution and workings of EACs”.

The full report is available on the Council on Tribunals website, at [www.council-on-tribunals.gov.uk/scot\\_pubs\\_sr\\_eac.htm](http://www.council-on-tribunals.gov.uk/scot_pubs_sr_eac.htm).

The Convention of Scottish Local Authorities, CoSLA, responded to the report and published a revised version of their Code of Practice for the constitution and procedures of Education Appeal Committees.

In 2003 the Scottish Executive wrote to local authorities to gather information on how EACs operated in different areas, and to establish authorities’ views on training. Most authorities had implemented all or most of the recommendations in CoSLA’s response to the Committee’s report. Many authorities offered panel members training, and most sent information to parents involved in the appeals.

## Further research

In 2004 the Executive commissioned George Street Research to carry out interviews with parents whose appeals had been heard by an EAC panel. Those interviewed covered a geographic spread (with a mix of urban, suburban and rural locations) large and small local authorities, and appeals in relation to placing requests and exclusions.

The research highlighted that for many parents appealing to an EAC was a dispiriting experience, and most felt the system was unfair and worked against them. The key findings and recommendations of the research were that:

- › there is a “serious imbalance of power” between the local authority and parents;
- › existing panel membership is seen to be under implicit pressure to be more sympathetic towards the arguments of schools, which often form part of the local authority’s case;
- › guidance should be produced on procedures at the hearing;
- › panel members should be trained;
- › the composition of the panel should be changed; and
- › parents should be provided with better information.

The full report of the research is published as an Annex to this consultation paper.

Scottish Executive officials have also attended a number of Education Appeal Committee hearings, in different local authority areas, to observe how the system currently works.

## This consultation

We agree with the Scottish Committee of the Council on Tribunals that appeal tribunals must be independent, and equally importantly, must be perceived as such. The Committee’s report and the research conducted with parents who have appealed to EACs show that the system needs to be improved if it is to be seen as impartial and have the trust of those who use it.

We want to have in place a system for hearing appeals against placing request and exclusion decisions that is fair, impartial, and transparent, and seen to be so by all those who use it. We are still in the process of deciding what will be the best way of achieving this aim, and the purpose of this consultation is to give you the opportunity to contribute your views. We are interested in all comments and suggestions on the current appeal system.

This consultation therefore seeks your views on EACs and possible ways of improving them. We are interested in all your views on the current appeal system, both positive and negative. This paper is, however, purely on the appeal system, and we have no plans to change the current placing request and exclusion systems.





# the issues and our proposals

The research and reports set out above have identified a number of issues with the current Education Appeal Committee system. We have set out below what we believe the key issues are, together with any proposals we have, and questions seeking your views. We welcome your views on these issues, on our proposals, and any other comments you believe are relevant to improving EACs. All quotes in italics are from parents interviewed as part of the Executive funded research on the experience of parents who had appeals heard by EACs.

## Information and advice for those appealing

There is no standardisation across the country on what information and advice appellants receive, with approaches varying from authority to authority. Whilst information on procedures, and introductions to those at the hearing, are usually given at the start of a hearing, appellants are often too overwhelmed to remember them. The research recommended that there was a need for better information, in advance of the EAC panel hearing, about what would happen at the hearing itself. It also recommended that there should be clearer and more accessible sources of advice and support, to give those appealing general advice on how the process will work, what sort of evidence an EAC might be interested in, and how to present a case.

*“I felt it could have been given in a leaflet form beforehand, or sent to us, saying this is what happens and this is the way things are conducted, instead of that day.”*

Unsuccessful exclusion appeal

Our proposal: that the Executive produces basic information for appellants, which local authorities could then supplement. This basic information could be provided as a leaflet sent to local authorities for them to distribute, and also published on the Executive’s website.

### **Question 1: Do you agree that a leaflet, with basic information for parents on the following topics, should be produced?**

- › **how an appeal hearing is conducted;**
- › **who will attend a hearing, and their roles;**
- › **rules on submitting evidence;**
- › **possible sources of help and advice for appellants.**

**Are there any other topics that should also be included in the leaflet?**



**Question 2: Who should produce such an information leaflet? The Scottish Executive, local authorities, or some other body (please specify)?**

**Question 3: Rather than producing an information leaflet, should the Scottish Executive set out what information local authorities should provide to those appealing?**

**Question 4: Do you think that any additional sources of advice and support for appellants should be provided? If so, what sort of advice and support should be provided, and by whom?**

### Procedures before a hearing

There are a number of areas of concern in relation to procedures surrounding EACs, highlighted by the research with parents. The main ones are:

- › timetabling. Some appeals are heard on a first come first served basis, with those arriving later being given less time to have their appeal heard than those who arrive earlier;
- › venues. It is important that the hearing is held in a venue that is neutral and easily accessible.
- › dates and times of hearings. Sometimes hearings are held at times and dates that do not suit appellants.
- › arrangements not being made for people who might not speak English, or would prefer letters to be in a language other than English.

Our proposal: we propose to address the issues above by producing guidance for local authorities, in consultation with relevant groups such as CoSLA. There is more detail on the guidance at pages 8 and 9.

### Pre-hearing meetings

The research with parents recommended the use of pre-hearing meetings, with an independent person working to bring about an equitable solution. The Committee also recommended that authorities hold pre-hearing meetings, to ensure that everyone is fully informed. We believe that authorities who want to introduce such an approach should be allowed to do so. However, we think it is very important that such meetings have a clear purpose, and are not seen as an additional ‘hurdle’ to be cleared by appellants before the EAC hearing.

**Question 5: Do you support the use of pre-hearing meetings? If so, what should the purpose of such meetings be, and how should they work?**



## Procedures at a hearing

The conduct and atmosphere at Education Appeal Committee hearings were two of the main areas for improvement that came out of the research with appellants.

Appellants found the atmosphere at appeal hearings was overly formal and intimidating, and this often added to the stress they felt in the hearing. All of those who participated in the research commented that less confident individuals might have been put off going to an appeal by the formal atmosphere.

Those who took part in the research generally saw hearings as being one sided, with few feeling that they had been on an equal footing with the authority. Authorities often use solicitors to represent their case to the EAC panel, and this can add to the formality and legalistic feel of a hearing.

Seating arrangements, together with the choice of venue, can also make the appellant feel that they are being examined by a panel, rather than presenting their case to an impartial body which will then make a decision.

*“They were a way up at the other end of a room and there were so many of them ... It was quite overwhelming ... I just thought there would be a little table and I was sitting one side of it and they were sitting the other side ... It felt almost like a court room, I felt.”*

Successful placing request appeal

Our proposal: we propose to address issues surrounding the procedures around, and at, Education Appeal Committees by producing guidance, in consultation with relevant groups such as CoSLA, covering:

- › informality of the hearing, and avoiding a quasi judicial approach
- › procedures
- › holding appeals at times that suit appellants
- › specific time slots for appeals
- › use of suitable venues
- › use of nameplates
- › numbers and types of representation
- › communication before and after an appeal
- › room layout

- › seating arrangements
- › arrangements for those with particular needs, e.g. for whom English is an additional language
- › number and type of panel members (see pages 11 to 12 below)

**Question 6: Do you agree with our proposal to issue guidance for local authorities on arrangements surrounding Education Appeal Committees? Do you agree with the proposed areas for the guidance to cover (above)? Are there any other topics that you think should be included in the guidance?**

**Question 7: Is there anything in particular that authorities should put in place to ensure that all those who appeal to EACs have a fair hearing? For example, what provision should the guidance recommend in relation to sign language, interpretation, etc.?**

### Representation at a hearing

An EAC panel has to allow the person appealing the opportunity to make oral representations to the EAC panel but the person does not have to make oral representations if they have lodged written representations. Up to three people, including a person speaking for the appellant (if any), can accompany an appellant at the hearing. In addition witnesses may be called into the room to answer questions by the parties. Many appellants are not represented by someone else.

Authorities are often represented at an EAC panel hearing by a solicitor who works for the authority. The research found that most parents interviewed did not know in advance that a solicitor might represent the authority, and therefore felt at a disadvantage.

Our proposal: whilst we recognise that this is a difficult area we propose to encourage authorities in guidance to avoid using solicitors except where the appellant uses a solicitor, and instead use education authority officials or relevant headteachers. We believe this will help to make EAC hearings as informal as appropriate.

**Question 8: Do you agree with tackling the issue of representation through guidance? Do you have any ideas or suggestions on ways of making sure that both sides are fairly represented?**



## Combined hearings

The law currently permits Education Appeal Committees to hold combined hearings (i.e. hearing more than one case together). However, it can only hold combined hearings for more than two cases in certain circumstances, which are:

- › if the appeals relate to placing requests, all the decisions being appealed relate to the same stage of education at the same school (e.g. for S1 intake), and in the EAC panel's opinion have been refused for substantially the same reasons. If the appeals relate to children with additional support needs the panel may combine the hearings if the appellant agrees;
- › if the appeals relate to exclusions, all the decisions being appealed must relate to the same pupil, the same school, the appeals must have been made at the same time, and in the EAC panel's opinion have been refused for substantially the same reasons. If the appeals relate to children with additional support needs the panel may only combine the hearings if the appellant agrees.

Appellants have the right to ask the EAC panel for the opportunity to speak to them without other people who are appealing being present. However they do not have the right to stop an EAC panel from considering their case as part of a combined hearing. The research with parents recommended that appeals should always be heard individually, with no combined hearings.

Our proposals: We propose to discourage authorities from holding combined hearings in guidance, and make clear that combined hearings should only be held when there are compelling reasons for doing so.

**Question 9: Do you agree with our proposal to discourage local authorities from holding combined Education Appeal Committee hearings?**

**Question 10: Do you think Education Appeal Committees should continue to be able to hold combined hearings (e.g. hearing two or more appeals at the same time)?**

## Panel membership

EAC panel members are drawn from a pool of volunteers. Authorities have different ways of selecting volunteers, such as drawing them from School Board members. EAC panels must have:

- (a) members of the local authority (i.e. councillors), or of any committee which the authority has appointed and which advise the authority on matters relating to education (which could include religious representatives and other members of such a committee);
- (b) and other people drawn from the following groups:
  - › parents with children of school age;
  - › people with experience in education (such as retired teachers);
  - › people who know about the educational conditions in the authority area.

Those in group (a) above cannot outnumber by more than one those in group (b) on an EAC panel. The chair of an EAC panel cannot be a member of any committee which the authority has appointed, and which advises the authority on matters relating to education.

Teachers, pupils, parents of pupils, and school board members at any of the schools concerned in the appeal (e.g. the school a child wishes to attend, or from where the child has been excluded) cannot sit on the EAC panel considering the appeal.

The EAC panel must not include anyone who was involved in making the decision being appealed or was present at discussions about whether the decision should be made.

One of the problems with the system is that appellants do not view EAC panels as being impartial because they are seen as being connected to the local authority.

*“I think it was a foregone conclusion, and I don’t think it was necessary for us to go to the appeal because I don’t feel there was going to be any difference ....”*

Unsuccessful placing request appeal

Our proposals: To address the possible perception of bias we propose to recommend in the guidance that:

- › an EAC panel does not include a majority of persons from group (a) (e.g. councillors and members of any committee which the authority has appointed and which advises the authority on matters relating to education), with the possibility of changing the law later to make this compulsory;
- › a councillor does not chair an EAC panel.



**Question 11: Do you agree with our proposals to recommend that EAC panels do not include a majority of councillors or people who advise the authority on education matters? Do you have any suggestions on how authorities can widen their pool of potential volunteers?**

**Question 12: Should the rules on who can sit on an EAC panel be changed? If so, who should be allowed to sit on an EAC panel?**

### Training of panel members

There is no requirement in the law that EAC panel members are trained. Some authorities do provide training, and a smaller number insist that people have completed this training before they can hear an appeal. The Scottish Committee of the Council on Tribunals has consistently raised this as one of the main problems with Education Appeal Committees, and commended those authorities who have introduced training. In their *Annual Report 2004-05*, the Committee stated that:

“Whilst all panels comprised committed individuals, there are still instances where the presented evidence is not weighed up, no facts are probed and where hearts are allowed to rule heads. At the end we are talking about the fairness, both actual and perceived, of administrative justice and the future of a child’s development.”

This lack of training may explain why those appealing, whilst generally feeling that they were treated fairly, sometimes gained the impression that panels were “going through the motions”.

*“I feel that before we went in there, it was them against us. They had made up their mind what was happening, and it wouldn’t have mattered a blind bit ... I felt it was a complete waste of time because I don’t think it would have mattered what we said. That was the way it was.”*

Unsuccessful placing request appeal

*“... I think I was given a very fair hearing, and the councillors were most interested ... I think actually ... was the Headteacher of the school there? I can’t remember now. But I think that the councillors listened. They were quite interested and fair in listening to me.”*

Unsuccessful placing request appeal

*“This woman [a panel member] came across so [biased] it was unreal. I thought why was she here because she had judged him before he had even spoken.”*

Unsuccessful exclusion appeal

Our proposals: We recognise the public spirited commitment that those who sit on EAC panels have made. We believe that good training can help develop their skills in weighing up evidence, questioning with accuracy and consideration, and having a structured decision making process. We therefore propose to fund the production of national training materials for EAC members, to be delivered and supplemented by local authorities. These materials would provide for a full day of training, and would include materials on areas such as:

- › effective questioning
- › weighing up evidence impartially
- › being seen to be impartial
- › reaching a structured and reasoned decision
- › diversity awareness
- › the law relating to placing requests and Education Appeal Committees
- › Human Rights

An additional module for Chairs would help them ensure appeals were conducted in a fair and impartial way. We envisage this would be delivered through a half day in addition to the training for all panel members.

We would recommend in the guidance to authorities that all panel members had completed this training before they were allowed to sit on an EAC panel and hear an appeal.

**Question 13: Do you agree with our proposal to produce training material for authorities to deliver? Do you agree that such training should cover the topics above? Do you think the training should cover any other topics?**

**Question 14: Do you agree that all panel members should complete training before they sit on an EAC panel? Should this requirement be put in Scottish Executive guidance (which would not be binding on authorities) or in legislation? Please let us know the reasons for your view.**





## Timings

The law says that an Education Appeal Committee should hear an appeal within 28 days of someone registering an appeal with them. If the EAC fail to hold a hearing for an exclusion appeal within 1 month, or a placing request appeal within 2 months, the panel is deemed to have refused the appeal and the appellant can appeal to the Sheriff Court. The hearing can be adjourned but there are further time limits to be observed by the panel so that the matter does not become protracted. The research with parents suggested that there was little concern with the current timescales, but some appellants did comment that anything that could be done to shorten the process would be welcome.

**Question 15: Do you have any comments on the current timescales for hearing appeals? If you think they should change, what other timescale would be appropriate and realistic?**

## The Education Appeal Committee system as a whole

*"I think for a normal person it's quite daunting. Maybe it's just that I'm an emotional type person, but I found it all very daunting and a bit scary, and I wouldn't want to go through it again."*

Unsuccessful placing request appeal

The report on Education Appeal Committees by the Scottish Committee of the Council of Tribunals in 2000 showed a system that needed to be improved if it was to be seen as independent and impartial by those who used it. The research with parents who had appealed to Education Appeal Committees found that there was "a serious imbalance of power between the local authority and appellants".

**Question 16: Given the findings of the research and the Scottish Committee's report we would welcome views on whether Education Appeal Committees are still an appropriate means for hearing appeals relating to placing requests and exclusions. Do you think there is another, and better, way of dealing with appeals? If so, what is it? Are there any other existing bodies which could possibly hear these appeals?**

**Question 17: Should we establish new bodies to hear appeals against placing request and exclusion decisions? If so who should sit on these bodies and how should they work?**

Education Appeal Committees also hear appeals against two very different decisions by an authority: to exclude a child from school, and not to grant a child a place of their (or their parents') choice. The procedures for hearing these cases are exactly the same.

**Question 18: Given the different issues involved should one body hear appeals against exclusions and against placing request decisions? Do you think EACs should have one set of procedures for hearing appeals relating to placing requests, and another set for when they are hearing appeals relating to exclusions? If so, what should be the differences?**

**Question 19: Are there any other comments you would like to make about Education Appeal Committees?**

## Consultation questions

Question 1: Do you agree that a leaflet, with basic information for parents on the following topics, should be produced?

- › how an appeal hearing is conducted;
- › who will attend a hearing, and their roles;
- › rules on submitting evidence;
- › possible sources of help and advice for appellants.

Are there any other topics that should also be included in the leaflet?

Question 2: Who should produce such an information leaflet? The Scottish Executive, local authorities, or some other body?

Question 3: Rather than producing an information leaflet, should the Scottish Executive set out what information local authorities should provide to those appealing?

Question 4: Do you think that any additional sources of advice and support for appellants should be provided? If so, what sort of advice and support should be provided, and by whom?

Question 5: Do you support the use of pre-hearing meetings? If so, what should the purpose of such meetings be, and how should they work?

Question 6: Do you agree with our proposal to issue guidance for local authorities on arrangements surrounding Education Appeal Committees? Do you agree with the proposed areas for the guidance to cover (above)? Are there any other topics that you think should be included in the guidance?

Question 7: Is there anything in particular that authorities should put in place to ensure that all those who appeal to EACs have a fair hearing? For example, what provision should the guidance recommend in relation to sign language, interpretation, etc.?

Question 8: Do you agree with tackling the issue of representation through guidance? Do you have any ideas or suggestions on ways of making sure that both sides are fairly represented?

Question 9: Do you agree with our proposal to discourage local authorities from holding combined Education Appeal Committee hearings?



Question 10: Do you think Education Appeal Committees should continue to be able to hold combined hearings (e.g. hearing two or more appeals at the same time)?

Question 11: Do you agree with our proposals to recommend that EAC panels do not include a majority of councillors or people who advise the authority on education matters? Do you have any suggestions on how authorities can widen their pool of potential volunteers?

Question 12: Should the rules on who can sit on an EAC panel be changed? If so, who should be allowed to sit on an EAC panel?

Question 13: Do you agree with our proposal to produce training material for authorities to deliver? Do you agree that such training should cover the topics above? Do you think the training should cover any other topics?

Question 14: Do you agree that all panel members should complete training before they sit on an EAC panel? Should this requirement be put in Scottish Executive guidance (which would not be binding on authorities) or in legislation? Please let us know the reasons for your view.

Question 15: Do you have any comments on the current timescales for hearing appeals? If you think they should change, what other timescale would be appropriate and realistic?

Question 16: Given the findings of the research and the Scottish Committee's report we would welcome views on whether Education Appeal Committees are still an appropriate means for hearing appeals relating to placing requests and exclusions. Do you think there is another, and better, way of dealing with appeals? If so, what is it? Are there any other existing bodies that could possibly hear these appeals?

Question 17: Should we establish new bodies to hear appeals against placing request and exclusion decisions? If so, who should sit on these bodies and how should they work?

Question 18: Given the different issues involved should one body hear appeals against exclusions and against placing request decisions? Do you think EACs should have one set of procedures for hearing appeals relating to placing requests, and another set for when they are hearing appeals relating to exclusions? If so, what should be the differences?

Question 19: Are there any other comments you would like to make about Education Appeal Committees?



## How to respond

We are inviting written responses to this consultation paper by 16 February 2007.

**Please send your response to:**

EAC.Consultation@scotland.gsi.gov.uk

or by post to:

Education Appeal Committee consultation  
Scottish Executive Education Department  
Schools Division  
Area 2-B North  
Victoria Quay  
Edinburgh  
EH6 6QQ

or you can complete an on line response form at [www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations).

If you have any queries please contact Ben Haynes on 0131 244 4924.

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.



### Handling your response

When responding please could you complete and return the **Respondent Information Form** on page 20 of this consultation paper. This will ensure that we treat your response appropriately. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. The views expressed may be quoted or referred to in a future review of responses. **If you do not wish your responses to be made public, please ensure that you indicate clearly that all or part of your response is to be treated as confidential.**

All respondents should be aware that the Scottish Executive is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### What happens next?

Following the closing date all responses will be analysed and considered. We aim to issue a report on this consultation process by the end of March 2007. Following this we will be deciding how best to take forward work on Education Appeal Committees, with the intention of taking work forward in this area in the autumn of 2007.

### Electronic publication and additional copies

This publication is available on the internet at [www.scotland.gov.uk](http://www.scotland.gov.uk). If you would like additional copies of this consultation paper, or if you would like this document in another format or language, please contact us on 0131 244 7048. We will try to accommodate your wishes.

### Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Lynn Henni  
Schools Division  
Area 2-B North  
Victoria Quay  
Edinburgh  
EH6 6QQ

Tel: 0131 244 4423

# list of consultees

All Directors of Education  
 All Education Authorities  
 Association of Directors of Education in Scotland  
 Association of Headteachers and Deputies in Scotland  
 Catholic Headteachers Association of Scotland  
 Children's Commissioner  
 Citizen's Advice Scotland  
 Commission for Racial Equality  
 CoSLA  
 Disability Rights Commission  
 Enquire  
 Equal Opportunities Commission Scotland  
 Ethnic Minorities Law Centre  
 Headteachers Association of Scotland  
 MEP Alliance of Liberals and Democrats for Europe  
 MEP European People's Party (Christian Dems) & European Dems  
 MEP Greens/European Free Alliance  
 MEP Party of the European Socialists  
 MEP Party of the European Socialists  
 MEP SNP Greens/European Free Alliance  
 NASUWT (Scotland)  
 One Parent Families Scotland  
 Parent Network Scotland  
 Professional Association of Teachers Scotland  
 Scottish Asian Action Committee  
 Scottish Association of Law Centres  
 Scottish Catholic Education Service  
 Scottish Committee of the Council on Tribunals  
 Scottish Consumer Council  
 Scottish Network for Parental Involvement in Children's' Learning  
 Scottish Parent Teacher Council  
 Scottish School Board Association  
 Scottish Schools Ethos Network  
 Scottish Secondary Teachers Association  
 The Educational Institute of Scotland  
 The General Teaching Council for Scotland



# respondent information form: education appeal committees

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name: \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. Are you responding as: (please tick one box)

(a) an individual  go to Q2a/b and then Q4

(b) **on behalf of** a group/organisation  go to Q3 and then Q4

## Individuals

2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)  No, not at all  We will treat your response as confidential

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

## On behalf of Groups or Organisations:

3. The name and address of your organisation **will be** made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes  No  We will treat your response as confidential

## Sharing responses/Future engagement

4. We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes  No

# the scottish executive consultation process

This consultation, and all other Scottish Executive consultation exercises, can be viewed online on the consultation web pages of the Scottish Executive website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Executive now has an email alert system for consultations (SEconsult: [www.scotland.gov.uk/consultations/seconsult.aspx](http://www.scotland.gov.uk/consultations/seconsult.aspx)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses <http://www.scotland.gov.uk/consultations>

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD, telephone 0131 244 4565).

All Scottish Executive consultation papers and related publications (e.g., analysis of response reports) can be accessed at [www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations)





The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- › indicate the need for policy development or review
- › inform the development of a particular policy
- › help decisions to be made between alternative policy proposals
- › be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence. **While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**



# appellants' experiences of education appeals committees

Janet Biggar and Sue Granville  
George Street Research

# acknowledgements

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JB

November 2004



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# executive summary

Education Appeals Committees (EACs) hear appeals from parents against local authorities' decisions to refuse placing requests and decisions to exclude pupils from schools.

The Scottish Executive, having gathered evidence from local authorities and from a report by the Scottish Committee of the Council of Tribunals (SCCT), identified a need to obtain the perspectives of individuals who had direct experience as users of the EACs, namely those who had used the appeals procedures.

George Street Research was commissioned in September 2004 to undertake qualitative research among parents with direct experience as users of the EACs. The main aim of this review was to obtain the parents' views and experiences of Educational Appeals Committees and in particular, to establish whether or not they perceived the appeals system to be fair and independent.

In June 2000, the SCCT published a report which suggested that the appeals procedure may not be seen to be independent by those appealing. This report made a number of recommendations. This research suggests that the recommendations of the SCCT have to some extent been achieved, but there remain some that are clearly not being implemented, such as the requirement to hold pre-hearing meetings and that appellants should, as a matter of course, be encouraged to seek professional advice.

However this research suggests that, particularly in the case of placing appeals (the vast majority of those heard), the system is already over-formalised. Our findings indicate that measures that add yet more formality to the process will not be beneficial.

The research indicates a serious imbalance of power between the local authority and appellants. However, the findings suggest that the most effective and appropriate way to redress the balance is not to attempt to empower appellants by encouraging them to adopt the same formal, quasi-judicial stance as the authority, but to encourage authorities to take a different stance. Our recommendations are made with this overall aim in mind.

The existing sort of panel, with its membership slanted towards the authority and educationists, is seen to be under an implicit pressure to be more sympathetic towards the arguments of other educationists in schools than to the parents who are apt to perceive themselves as 'the outsiders'. Panels seem to appellants to act as dispensers of justice. Parents would prefer panels to focus on making the best arrangements possible for the needs of each individual child.

Indeed, our research suggests that appeals panels are over-used as a means to resolve placement allocation issues, which are often resolved at a later date in any case. There may be much more effective and less stressful, time-consuming and confrontational ways of achieving this. Appeals should be a last resort and the end stage of the process.

For exclusions, there is a stronger case for the use of appeals hearings and a clear need for these to be rigorous and fair, necessitating a degree of formality. However, the system as it currently stands is widely perceived to be extremely unfair and unbalanced. Measures need to be taken to ensure that the playing field is levelled out between local authorities and appellants. Education Appeals Committees must be perceived to be genuinely independent and impartial if they are to have any credibility.

## Recommendations

- 1 Consideration should be given to alternative systems for allocating places in schools, that include appeals only as a last resort.
- 2 Where formal appeals are used, the role of the pre-hearing meeting could be significantly enhanced, with an appointed enabler present to listen to the parent's side and try to bring about an equitable solution. If the parents then wished to appeal, they could be informed of their rights and told about the workings of the appeals system.
- 3 The role of the panel should be re-defined so as to give it a more pro-active role in seeking to achieve a satisfactory outcome for parents, children and schools, achieving agreement, rather than passing judgement.
- 4 There is a clear need for better information, in advance of the hearing, about what to expect at the hearing.
- 5 Every measure should be taken to keep the process as short as possible, without prejudice to rights to submit evidence.
- 6 There is a clear need to either speed up the process for placement appeals or to begin it earlier in the year. We understand that this would mean changing legislation.



- 7 A leaflet, sent out before the hearing, with information about how an appeal hearing is conducted, who will be there and what their roles are would be a useful and helpful addition to the information provided to appellants. This could also be used to signpost other sources of information and advice.
- 8 Clearer and more accessible sources of advice and support are needed and information should be provided to appellants to ensure that they are aware of these.
- 9 Appeal hearings should always be allotted individual and specific times. These should be adhered to and where more than one appeal is to be heard they should be timetabled to allow sufficient length of time to hear each case. The question of what is a sufficient length of time will need to be considered and determined by authorities. There may need to be flexibility and provision for re-convening hearings that over-run.
- 10 Appellants' rights to privacy should be respected and hearings should always be heard individually. We understand that this would mean changing legislation.
- 11 Efforts should be made to ensure that hearings are arranged at times convenient to appellants and that they feel able to ask for changes if the time allotted is inconvenient.
- 12 Greater effort should be made to hold appeal hearings in more neutral and less formal venues to help reduce appellants' perceptions of inequity. Furthermore the use of more local venues, rather than Council head offices in town/city centres should be considered to improve convenience for appellants.
- 13 All those involved in hearings should be well trained as set out in the recommendations of the report on Education Appeal Committees by the Scottish Committee of the Council on Tribunals.
- 14 Efforts should be made to improve communication both before and during the appeal, to ensure that the roles and descriptions of all those present are clearly presented to appellants.
- 15 Consideration should be given to mechanisms for ensuring that panel members are drawn from a wider pool of types of people and that all panels include one or two members who are not associated with the local authority. We understand that this would mean changing legislation.

16 Guidelines should be produced to ensure that appeals are heard in an atmosphere that does not disadvantage the appellant. These should include advice and expected standards for location, room layout, seating arrangements, number and type of panel members, number and types of representation allowed to each 'side', procedures and so on.





# chapter 1: background and objectives

## 1.1 Background

Education Appeals Committees (EACs) are established by local education authorities to hear appeals from parents (or in some cases pupils) concerning actions taken by a local authority towards a pupil.

There are two types of appeal:

- 1) Appeals against a local authority's decision to refuse a placing request, which is a request for a pupil to attend a school outwith their catchment area; and
- 2) Appeals against a decision made by the local authority to exclude a pupil from school.

There are significantly more appeals against placing requests than exclusions. For example in 2002/03 across Scotland as a whole, EACs heard **1,130** appeals against placing request decisions but only **91** against exclusion decisions.

The local authorities that received the highest numbers of appeals in 2002/03 included Glasgow City Council, City of Edinburgh Council, West Lothian Council, East Renfrewshire Council and South Lanarkshire Council.

In June 2000, the Scottish Committee of the Council of Tribunals published a report which suggested that EACs may not be seen to be independent. This report made a number of recommendations, and the majority of councils are believed to have enacted these. The SCCT also recommended that the Scottish Executive should conduct a review of the constitution and workings of EACs.

In 2003, as part of the review process, the Scottish Executive wrote to all local authorities to find out their views on the consultation process and received feedback from 26 of the 32 local authorities.

Having obtained the views of the local authorities, and having the report of the SCCT, the Scottish Executive identified a need to obtain the perspectives of individuals who had direct experience as users of the EACs, namely those who had used the appeals procedures.

George Street Research was commissioned in September 2004 to undertake research among parents with direct experience as users of the EACS. This report provides the findings from that research.

## 1.2 Objectives

The main aim of this research was to obtain the parents' views and experiences of Educational Appeals Committees and in particular to establish whether or not they perceive the appeals system to be fair and independent.

In particular, the project aimed to obtain views on:

- › Whether the process of appealing was easily understood and parents could keep track of what was happening at each stage
- › Any advice or information received from the education authority
- › Whether they were given or sought any advice and if so, from whom?
- › Whether they had a pre-hearing meeting with the education authority; if so, was it helpful or not; if not, why not?
- › The venue where the appeal was held
- › How the appeal was conducted
- › If they were represented or supported at the hearing
- › If they felt they were on an equal footing with the education authority
- › The independence and fairness of the EAC panel
- › Whether any additional needs (disabilities, translation, etc.) were provided for
- › Whether it was easy to understand what the panel's decision was



# chapter 2: methodology and sample

## 2.1 Approach

Because of the sensitive and personal nature of the subject matter, the research was conducted using telephone in-depth interviews. This approach guaranteed anonymity and confidentiality and allowed respondents freedom to express their personal views about the experience of the appeals committees, without being influenced by the perceptions of others or without fear of judgement by others.

## 2.2 Recruitment Procedure

SEED identified five local authorities to cover in the study, selected to provide a geographic spread, a mix of urban, suburban and rural locations, and to include both large and small local authorities.

Initial contact with potential respondents was made via the local authorities. Local authorities were asked to send letters on behalf of SEED to all parents who had used the appeals committees in the past year. The letter contained brief details of the project, explaining that volunteers were required to participate in an interview on the telephone by a researcher from an independent research agency. Those interested in participating were invited to contact George Street Research, using either a reply paid envelope and tear off slip, a direct line phone number or an email address.

At this stage, the potential respondents were asked to provide basic information for both contact and classification purposes. A sample was then selected and the individuals were contacted to arrange interviews.

## 2.3 Sample

A total of 29 in depth telephone interviews were conducted with parents who have experienced the appeals procedure. The sample was weighted towards parents who were refused a placing request rather than those who have had a child excluded from school, to reflect the actual distribution of parents between the two types of appeal.

## 2.4 Interviews

Interviews were conducted by experienced researchers from George Street Research at a time convenient to the respondent. The topic guide is appended (Appendix 1). All interviews were audio recorded and transcribed for analysis.

# chapter 3: main findings

*This section of the report presents the main findings of this review. They are presented in sections relating to the key objectives of the research.*

## 3.1 Communication and Timing

### 3.1.1 Communication

Most respondents felt reasonably well informed about the appeals process. They received letters at an early stage that outlined the process and clearly stated what the options were at each stage. These were clearly written and most respondents understood the process as it was explained.

*“As soon as you make a placing request at all, the literature is very good in as much as it tells you what will happen when your placing request goes in, what will happen if your application is successful or unsuccessful ... and if it’s unsuccessful, that there is a right of appeal ... then it goes on to tell you what ... you know, and if in fact you appeal and that’s unsuccessful, that it then can be taken to court – to a Sheriff. So the information was actually laid down quite clearly there.”*

Successful placing request appeal

However, there does seem to be a need for better information about what to expect at the actual appeal hearing. Many appellants were quite unprepared for the formality of the setting and conduct of the appeal and felt very disadvantaged as a result. In many cases, the information received about the appeal hearing did not match the experience on the day. This will be discussed further in a later section of this report.

*“... just a letter saying you can bring somebody along with you or someone else can speak on your behalf ... I didn’t remember anything else, because I was a bit unclear: I was just thinking it was going to be myself and one other person at the appeal, but it wasn’t.”*

Unsuccessful placing request appeal

*“When somebody’s explaining that to you there and then, you can’t take that in because you’re overwhelmed. If you have, five days beforehand or a few days beforehand in easy language, then you are then more prepared for that day ... you’ll have a picture in your head.”*

Unsuccessful exclusion appeal

The information provided about the process is good. However, **there is a clear need for better information, in advance of the hearing, about what to expect at the hearing.**



### 3.1.2 Speed

The speed of the process overall drew little in the way of negative comment. In general, respondents felt that they had enough time to prepare for hearings and that they received speedy responses to communications. The timescale from lodging an appeal to it being heard was generally a matter of weeks and this seemed acceptable to most appellants. However, people did find the whole process extremely stressful and several stated that anything that can be done to shorten it would be beneficial.

One or two respondents felt that communication is over bureaucratic, with letters being sent when telephone calls would suffice, slowing things up. For some, this delay meant that they were effectively prevented from meeting the authority's deadline for providing a written submission.

*"They send a letter out to say, you know when the date of the appeal was, and that we could submit information, the written information but by the time the form was sent out, the date for submission had passed."*

Unsuccessful exclusion appeal

**Every measure should be taken to keep the process as short as possible, without prejudice to rights to submit evidence.**

### 3.1.3 Timing

There were a few issues about the timing of the process overall, with many respondents finding that the appeals process ran right to the end of the school year and even into the summer holidays. For people awaiting the outcome of a placing appeal, this created extra stress and worry. Many did not find out until May that their placing request was refused, with appeals heard in early summer. Furthermore, for children moving into primary or secondary education, this meant that they missed out on the visits and induction sessions that happened in their new school at the end of the previous school year, ie in June.

One or two parents felt that the timing of the process actually mitigated against fairness, since it imposed (some felt deliberately) a pressure on parents to 'back down' for the sake of their child.

*"He was doing his introduction to secondary school. So when I heard ... It was done about the May or something I found out. I mean his primary 7 year was nearly over, and I was just finding out that he'd not been accepted, so it surely didn't leave much time for another school anyway – or to have much thought regarding another school."*

Successful placing request appeal

*“My son had no place at school and we then would have had to try and find a school for him but of course it was the school holidays so we didn’t have the opportunity to go around other schools to look, and the term started so we hadn’t actually done that yet, because first day back at school – nobody’s going to see you.”*

Unsuccessful placing request appeal

*“I think the timescale of the whole thing is where it falls down; that the timescale works to the benefit of the school who’s rejecting the ... well the council who’s rejecting the placing request, because they know that they can hang out as long as possible – and the longer they hang out from making the decision, the more pressure the parent has to give in and say ‘Och well, I’ll just make some other arrangement’.”*

Unsuccessful placing request appeal

This lateness invariably caused distress and an element of panic to the parents and upset to the children, especially when it meant that the latter would be separated from their friends, or other children in the family who had been accepted into a particular school. In addition, some local authorities were operating a ballot system to allocate any places that are available later in the process.

*“... the waiting for the ballot was ridiculous because the ballot wasn’t actually drawn until after the start of term, and it could even be as long as to the October week, so we’d have to have sent him to some secondary school for 3 or 4 weeks and then changed mid-year – and that’s just totally unacceptable.”*

Unsuccessful placing request appeal

One respondent who is a Deputy Headteacher pointed out that the timing was not helpful to schools either and that earlier decisions would help schools to timetable and plan for the following year, instead of starting it with uncertainty about the numbers on their role.

**There is a need to either speed up the process for placement appeals or to begin it earlier in the year.**



## 3.2 Information Provision and Support

### 3.2.1 Information

Views on the provision of information about the appeals process and about the system varied somewhat. In general, the panel clerks were found to be extremely helpful when contacted (usually by phone) for information at all stages of the process.

*“... the clerk to the appeals committee, I was on the phone to him several times and he was extremely helpful, absolutely sympathetic over the whole time and he really was wonderful.”*

Successful placing request appeal

However, others (possibly those asking for more and/or more detailed information) found information difficult to extract and even felt that the local authority concerned was taking a defensive stance when asked for information to help them prepare their case.

*“But you see the council is very very resistant to give any information, I actually wrote them a letter and ask for over twenty bits of information and lucky I got five of them. So right from the very word go I was say, they were very very resistant to supply me with any information that could be used against them at my appeal.”*

Unsuccessful placing request appeal

No information appears to have been provided for parents on sources of information about appeals: parents recalled the letters they received as giving them the authority's decision and telling them that if they wished to appeal, they must do so within 28 days.

All respondents recalled that introductions and information were given at the start of the hearing itself, but most were too overwhelmed to remember any of them. Very few knew exactly who was present at their appeal hearing, which organisations they represented, and what their roles were. One respondent had called the clerk to ask who would be on the panel and one or two had looked on the Scottish Executive website.

**A leaflet sent out before the hearing, with information about how an appeal hearing is conducted, who will be there and what their roles are, would be a useful and helpful addition to the information provided to appellants. This opportunity could also be used to signpost other sources of information and advice.**

*“I felt it could have been given in a leaflet form beforehand, or sent to us, saying this is what happens and this is the way things are conducted, instead of that day.”*

Unsuccessful exclusion appeal

### 3.2.2 Support/advice

Few appellants sought support or advice, other than informally from friends or relatives who were teachers or solicitors. One or two spoke to their local Councillor or to a specific representative (e.g. an armed forces education liaison officer). Where advice was sought it was sometimes conflicting, with teachers in particular often advising that an appeal was pointless.

*“Advice from [the local Councillor] was don’t bother you will never succeed. [the Clerk] said no, go for it, try.”*

Successful placing request appeal

Few appellants engaged representation, though one had her local Councillor with her and one or two engaged solicitors. Some looked to the internet or a lawyer for advice or support before getting involved in an appeal. These latter were then prepared for, and in a mood for, conflict.

*“I found there wasn’t a lot of information at all, and if you were a working parent it was really difficult to get any advice except on the Internet, and I came across the Govan Law Centre, and I started to read about children’s rights, with parents involvement in the school; and I gathered a lot of information from the Scottish Executive website as well, to give me an idea.”*

Unsuccessful exclusion appeal

**Clearer and more accessible sources of advice and support are needed and information should be provided to appellants to ensure that they are aware of these.**

## 3.3 Pre-hearing meetings

No respondent had attended a specific pre-hearing meeting. Only one had been to any kind of meeting before the actual appeal, and the purpose of that (though it was not made clear in the correspondence) turned out to be to check whether she had completed a form correctly. This respondent was very upset by the experience, since she thought the meeting was the appeal, and made arrangements for her and her husband to be able to attend, as well as getting all ‘worked up’ for a meeting that was of no use or interest to her.





## 3.4 Hearings

### 3.4.1 Logistics

The precise arrangements for appeals hearings varied across the local authority areas examined, and in all cases elements of the logistics were unsatisfactory.

#### Timetabling

One example provided regarding timetabling was that at all times in some local authority areas, and at times in all areas examined, appellants are not allocated an individual time for their hearing (although this is not made clear to them until they turn up on the day). So, a number of appellants are asked to turn up at the same time and then their cases are heard on a first-come first-served basis. This means that many have to wait a long time to be heard and can miss their turns because of the necessity to leave to feed parking meters and so on. It also restricts the length of time available to those appeals heard later in the day, since there does not appear to be a limit to the time allowed per appeal.

*“Well I phoned the day previously and I can’t remember what I was going to ask. And then I was told ‘It’s first ... come, first served’ kind of thing. There was about 12 families there ... [they said if] I was there first, so I would get seen first, and I knew this and I felt ‘Gosh. I’ve got a bit of extra information there that will benefit me’... So I made a point of being first, and I thought that was a bit unfair! ... there’s only a certain amount of time. And with me being the first, I was in there for about 40 minutes.”*

Successful placing request appeal

Others did not know this and there was no information provided when they arrived (often despite asking). This leaves many appellants in the frustrating position of having to simply sit and wait till their name is called, without even knowing their position in the queue.

In one area, where there was an allotted time per appeal, the allotted period was insufficient, with the result that the timetable was not adhered to and the same problems then arose.

*“... they didn’t say at any time you know, your time has run out, cause we were in for about forty five minutes which is obviously then other people’s time was running on which wasn’t fair because they are all just sitting waiting outside, it was ten minute intervals which I don’t think it right either.”*

Unsuccessful placing request appeal

In one area there was an occasion when several appeals were all heard together (all were placing requests at the same school) because the allocated time for hearing appeals on the day in question was insufficient. The first case involved solicitors on the appellant's side and took a long time, leaving insufficient time for the remaining cases. The solution adopted was to call all the remaining cases and hear them together. This occurred in a small community where the appellants all knew each other and were 'competing' for the one available place.

**Appeal hearings should always be allotted individual and specific times. These should be adhered to.**

**Where more than one appeal is to be heard they should be timetabled to allow sufficient length of time to hear each case. The question of what is a sufficient length of time will need to be considered and determined by authorities. There may need to be flexibility and provision for re-convening hearings that over-run.**

**Appellants' rights to privacy should be respected and hearings should always be heard individually.**

### Flexibility

No-one had asked for their hearing to be held at a different time from the one they were offered, feeling that this might jeopardise the outcome. Where people couldn't make the time allocated, they simply asked a friend to attend for them, or in one case agreed to let the hearing go ahead without them.

*"We kind of looked at this in saying, 'Well that's the time that we've been allocated, and I am not going to rock any boats here. That's the time we've been given, and that's the time I'm going to be there'. And my husband ... It's a bit difficult for him to get time off work..."*

Successful placing request appeal

*"The first appeal I couldn't attend because I had a hospital appointment that I couldn't get out of, and the girl said, 'it doesn't matter – the hearing would still go ahead'."*

Unsuccessful placing request appeal

**Efforts should be made to ensure that hearings are arranged at times convenient to appellants and that they feel able to ask for changes if the time allotted is inconvenient.**



*"I felt that they didn't take arrangements for the fact that what if I didn't speak English? I had a parking ticket which I then complained to the committee, that if it wasn't for the committee member being late-! They sent it back, saying it wasn't their responsibility and I felt it was. There has to be more arrangements made, more sensitivity for parents, and pupils – sorry!"*

Unsuccessful exclusion appeal

### Venue

Almost without exception the venue for appeals hearings is a Council HQ or similar. One appeal hearing was heard in the school. In one authority various venues seem to be used; a hotel, an (unidentified) council building. In another authority an appeal was held in the local town civic centre ("in the room where weddings take place").

While in general respondents did not make strong objections to the selection of venue, many commented that the setting was too formal and that a different, perhaps local venue would have been less imposing and less daunting. One or two did feel that a more neutral venue, rather than a council one, would have been more suitable and the choice of venue was felt to contribute to the feelings of powerlessness and bias that most appellants expressed (this is covered in more detail below).

*"I think probably it should have been done in a school setting, with the people actually making an effort to go to the school instead of taking it outwith the school."*

Unsuccessful exclusion appeal

*"I also felt it was wrong to have it on council property, because that was very much, you know they know their way out of the room, I didn't even know where this building was, you know they could have had it in a church hall, they could have had it in a hotel."*

Unsuccessful placing request appeal

**A greater effort should be made to hold appeal hearings in more neutral and less formal venues. This would to help reduce appellants' perceptions of inequity. Furthermore the use of more local venues should be considered to improve convenience for appellants.**

Other logistical concerns identified include:

- › a parent with a special needs child was forbidden to bring the headmaster of the school to which she wished to send her child
- › another parent (a Muslim) deeply resented being harangued by a (Muslim) panel member on what were good (Muslim) manners
- › another parent had specified several schools to which she wished to send her child but was told that she could only make one appeal in relation to one school in any year
- › No attempt was made to accommodate people who might not speak English, or would prefer correspondence in a different language

### 3.4.2 Purpose/Relevance

There was an overwhelming feeling from all respondents, whether their appeal was successful or not, that the appeal process they went through was largely pointless. Most entered into it with no expectation that there was any chance of them being successful, but feeling like there was no other option and they had to give it a go. A small number of respondents commented that the advice they had received (usually from people they knew in the teaching profession) was that the appeals process was only a formality and that the decision had already been taken (not to offer a placement or to rescind an exclusion).

*“I think it was a foregone conclusion, and I don’t think it was necessary for us to go to the appeal because I don’t feel there was going to be any difference ...”*

Unsuccessful placing request appeal

*“I feel that before we went in there, it was them against us. They had made up their mind what was happening, and it wouldn’t have mattered a blind bit ... I felt it was a complete waste of time because I don’t think it would have mattered what we said. That was the way it was.”*

Unsuccessful placing request appeal

Most placing appellants felt their request should never have gone so far. An appeal hearing is unnecessary and ‘over the top’, particularly since, in most cases, the reason for a placing request having been turned down was simply that the school was full at the time the request was made.

*“... for just a wee normal person like myself, just trying to get a child moved into another school. It seems all a bit over the top.”*

Unsuccessful placing request appeal



All would like to see a better system for allocating any places that do exist or become available. The existence of waiting lists seemed to be patchy, with some appellants having been told that there is no waiting list system and that therefore, the way to get a child into a school is simply to keep on making and appealing placing requests. Others trying to get children into schools that did hold waiting lists saw little point to the appeals process, since they were told there was currently no place and that their child was on a list and would obtain a place when one became available.

*“Although I didn’t know why I had to do that, because I did know there wasn’t a place available to her, and if a place came available a place would be made for her. So I felt this appeal was quite horrendous for me, knowing that there wasn’t a place for her anyway, so really I didn’t see a point for going through what I did go through.”*

Unsuccessful placing request appeal

In one authority where we conducted research a ballot system operates for placing requests that are not upheld at appeal.

*“They continued to say that, as far as they were concerned, the school was at capacity, that there was no space for my son. However my name would be entered into a ballot and that, at some stage, they would be drawing from ballot, and – if it was successful – I’d be informed.”*

Unsuccessful placing request appeal

Appellants were fully aware of the difficulties in finding a fair way to allocate places at schools where demand exceeds capacity and they were realistic about the need to accept that no system could be perfect.

*“I think the ballot system is one that’s difficult to avoid, but it’s a bit like going into penalty shoot-outs at a European Cup Final. You think ‘Drat’, you know? ‘A wee bit unfair after all the effort that’s been put into this’, but there isn’t really any other way this could be done I don’t think.”*

Successful placing request appeal

They understood that there were no places at the school of their choice, although some felt bitter at the perceived lack of fairness in the systems for allocating places. For example:

- the parent of one boy found that she could not legally appeal against his placement because he was only four years old, and she therefore had to wait till he was in primary two before she could do so
- frustrations about places that are kept empty for children who might move into the catchment area during the year; for example a parent whose child was denied a place, when she knew there were several places in the class being kept free in case a child of that age moved into the catchment area during the year
- frustration of parents who have moved in during the year and found there is no place in their catchment school; for example a forces family who found they could not get a place for their child because the catchment school was full when they moved into the area after the allocation of places had been conducted
- many are all too aware that there are children whose parents use false addresses and other means to cheat the system; several respondents gave examples of children they knew of who had places in a school, although they did not live in the catchment area, because they had been registered under a relatives address within the catchment area

Those who were appealing to try and get their children into schools that had no places felt they were being patronised and almost forced down a route which they had no desire to follow and whose purpose they did not understand.

*"I'm not stupid, thinking they're going to hire another teacher! If they'd read my letter, I should not have gone through what I did. I thought it was all too formal for me, knowing that there was no place at that time. And all I ever wanted was for them to say, if there's a place coming up and there's not another child waiting from the area then [child] can have it."*

Unsuccessful placing request appeal

Appeals about placing requests were therefore usually perceived as unnecessary and a waste of everyone's time, with the conclusion foregone.

**Consideration should be given to alternative systems for allocating places in schools, that include appeals only as a last resort.**



Those appealing against exclusions largely also felt that the outcome was inevitable and the appeal pointless, but for different reasons. They felt that they were battling against a system that would always defend itself, that there was no chance of the appeals panel finding in favour of them against the education department. There were also comments that by the time a hearing comes about, the excluded child will have gone through the exclusion and returned to school.

### 3.4.3 Atmosphere

The general perception of the atmosphere at hearings is one of excessive formality. This was seen as unnecessary for the purpose of the meeting and most respondents felt that it could be daunting and intimidating, particularly for people who might be less confident or less articulate than themselves. This begs the question of whether less confident or articulate people actually ever even enter into the appeals process. Indeed, all of the respondents participating in this study commented that they were relatively confident in their ability to go through an appeals process, and able to express their opinions in a sensible and literate manner, but that many other individuals would not have the confidence to go through an appeals process.

*"I did feel that the lady from the local authority just gave a big spiel from clause this and that and didn't really explain it. It wasn't really helpful. Personally we felt that if you weren't educated in any way it would be very daunting..."*

Successful exclusion appeal

Several respondents pointed out that the information they had received in advance of the hearing had stated that the hearing was an informal affair and that they were taken aback when they arrived to discover what they felt was an extremely formal setting and format. Many likened it to a court trial and felt this was unreasonable, since neither they nor their child were on trial. Words like 'evidence', 'convicted', 'defence' were frequently used by appellants when describing the experience of attending their appeal hearing. One respondent likened the tone and approach of the Council's solicitor to being on trial at the Old Bailey.

*"They were a way up at the other end of a room and there were so many of them... It was quite overwhelming ... I just thought there would be a little table and I was sitting one side of it and they were sitting the other side ... It felt almost like a court room, I felt."*

Successful placing request appeal

*"It was like a big conference ... quite formidable actually."*

Successful placing request appeal

*“Well the [council offices] are very imposing. It’s a lovely building. From the minute I found out that that’s where the hearing was to be, I thought ‘oh this is more serious than I thought it was going to be;’ it was a bit intimidating with huge tables and everybody’s sitting there ... with everyone just staring at you-! You feel like you’re on trial!”*

Unsuccessful placing request appeal

Respondents found the process of appealing extremely stressful and were generally there because they felt very strongly about the issue, which they felt might have far reaching effects on their child and family. The atmosphere at hearings was reported to do little to reassure or counter this stress and emotion, making it even more difficult for appellants to put their case effectively.

*“I was allowed to say why I wanted to, what I felt, but by then I was distraught, crying and ohhh-! My mum had said before ‘don’t you be crying in here’ and I looked over at my mum and she was crying. It was stressful, and I knew there wasn’t a place at this time and I just kept thinking, ‘why are you putting me through this?’ When I’m not silly and I know there’s not a place just now, and I just thought it was a wee bit formal.”*

Unsuccessful placing request appeal

This said, all respondents felt that they were given sufficient opportunity to speak and to put their case. Opinion varied, however, as to whether or not their point of view was being listened to.

*“They asked you but it was a case of it wasn’t a discussion. It was very down and you felt you had lost before you even opened your mouth. That is how I felt – that a decision had been made already.”*

Unsuccessful exclusion appeal

*“And I did feel very much that all 3 of the panel members were listening.”*

Successful placing request appeal

*“People weren’t hurrying you along. You were able to say it clearly and in your own time, what you wanted to say, yes.”*

Unsuccessful placing request appeal





One respondent was reluctant to call witnesses in defence of their child, since these would be other children who were present when the incident that led to his exclusion occurred. She felt it would be unfair to put other children through the experience of having to give evidence at the hearing. This same respondent had a statement of character from her child's Boys Brigade leader and hadn't felt she could ask him to come along, though afterwards thought her child's case would have been better made if she had. One respondent had been very aggressively cross-examined by the local authority solicitor. Another respondent felt that an exclusion had been unfair from the outset, with only one boy involved in the incident being excluded while the other was allowed to continue attending school.

#### 3.4.4 Conduct

There was some variation in the conduct of hearings. Some lasted as little as five minutes, with appellants being asked no questions, others as long as forty minutes or more, with a great deal of questioning. Where specific times had not been allocated and several hearings were held on the same day, the process was seen to be unfair, as discussed earlier.

Hearings were also widely experienced as one-sided, with very few respondents feeling that they were on an equal footing with the education authority. This feeling was exacerbated by the size and make-up of the appeals panel and education authority 'side'.

Some appellants felt that there was someone else in the room who was empathetic to their case or 'on their side', but most did not. Many described the panel members as cold, formal and unsympathetic and few saw this as a necessary part of being impartial. In fact, very few thought that the panel members were impartial.

*"When I said they listened to me, they looked absolutely ..., there was no emotion at all in their faces. I couldn't tell if they were sympathetic or whatever but I carried on anyway."*

Successful placing request appeal

*"No eye contact, and they can't tell you anything with their face or anything, you know?!, so they're very stern looking, and they give you no indication of where you are within your appeal when you're talking to them."*

Successful placing request appeal

There was no discussion of cases in front of the appellants and no feedback. The hearing was held and they were asked to leave and await a decision at a later date. However, the local authority side were not asked to leave the room once they had given their evidence and this was seen by some as unfair.

*“What I was led to believe is they wouldn’t make the decision in front of the council, it was purely going to be the committee. So I felt a bit annoyed that, why didn’t the council come out?”*

Unsuccessful placing request appeal

One respondent did feel as though her point of view was being listened to and that she was given an indication of the outcome of her appeal.

*“As far as I was concerned, they asked sensible questions. And, at the end of it, because of the questions they asked, that gave me an indication that they had listened to my point and they realised my points were valid.”*

Successful placing request appeal

Many respondents felt that no-one involved was thinking about the child concerned, there was no recognition of the child’s point of view, and some took pictures of their children (for example, brothers hugging goodbye in the garden in their different uniforms) to try and shift the focus of attention. One appellant brought a letter from her local Councillor about the effect on the child’s wellbeing, self-confidence and a certificate from the school to confirm that he’d done the introductory sessions there.

Most parents went to the appeal with whom they wished (a partner/member of the family/solicitor) but tended to feel overawed or angered by the array of people on the ‘other’ side, as they saw it. Appellants were up to three in number while there tended to be about seven (sometimes more) others in attendance and it seems that they (panel members, educationists, headmaster, solicitor, Clerk, etc.) often sat on the other side of the table and thus were perceived as a group ranged against the appellant. Many felt that the seating arrangements in the room reinforced the feeling that the local authority were ‘looking after their own’, with council officers sitting in big chairs at the top and the appellant down one side of a table. One person was required to move to speak and likened it to going into the witness box.

*“... we were very much two adults sitting across the table from nine individuals. So I thought right from the word go ... why were the two parties putting a case to the committee, why would they not come in at the same time as us. But that didn’t happen and it didn’t happen when it finished either, they, we left and they stayed in the room and then the next appeal was heard. I just thought it was extremely disadvantaged because we weren’t like somebody on the left side of the room and somebody on the right side of the room and then the panel in the centre, it was very much like them and us. And that is how we felt.”*

Unsuccessful placing request appeal



The overwhelming view was that there were too many people on the 'other' side.

*"I think we were a bit overwhelmed by how many people were in the room and obviously the deputy head is used to speaking to people."*

Successful exclusion appeal

*"I still probably resent the way it was done, I still felt as though ..., because of the representation at the meeting, I felt there that you know that they were in a position of power and that we weren't going to be successful."*

Unsuccessful exclusion appeal

*"We were only allowed two representatives, why were they allowed four? You know in that way that wasn't fair."*

Unsuccessful placing request appeal

*"There was four people on the panel: there was the speech therapist, there was an educational psychologist, chief educational psychologist, the head of education; there was two people from the High School that they wanted them to go to – there was at least seven I can think of that they had. Plus the council lawyer, that's eight."*

Successful placing request appeal

*"Oh goodness, there was, clerk, then there was the lady taking the minutes, then there was the councillor, then there was the lawyer from the education department, six, then there was the headmistress from the school, seven, then there was the chap from the council who was dealt with the placing requests and his boss, his director of finance, and they actually deal with it ?, there was nine people."*

Unsuccessful placing request appeal

Very few respondents had any idea, before coming to their hearing, of the numbers of people that would be involved and many were taken aback when they realised how many others were in the room. To many, it seemed unfair that they had been told they could only have two (or three if they had formal representation) and yet the 'other' side seemed to have no such limit imposed. Most were not told that the local authority might involve a solicitor and again, felt disadvantaged as a result.

*"Oh well, well first I didn't know there was going to be legal representation ... I would have done that as well."*

Unsuccessful exclusion appeal

### 3.4.5 Panel

In every case, panels seemed to be made up of local councillors or others seen to be connected with the authority side. They were therefore widely viewed as not likely to be impartial. That said, in the experience of many appellants, the panel members treated them fairly. There was, however, a great deal of variation across different panels and even within panels. Some members were viewed as empathetic and kindly, others officious and formal.

*“I just felt that he was speaking down to me all the time. He’s obviously very knowledgeable, and I’m just like a mum who’s just trying to do the best for her child, and I just found it all quite formal and a wee bit scary.”*

Unsuccessful placing request appeal

In some cases, the composition of the panel was clearly recalled but in others respondents’ recall was vague and many were uncertain whether they had ever known it. The strong impression among respondents was that decisions had already been made and that the panel seemed to be going through the motions for the sake of form. None had any great confidence that the panel members had appropriate experience or training.

*“I just feel that I don’t know their background or if they have any qualifications that would make them suitable to sit in that capacity. But my impression from that particular incident was that I don’t see that they were qualified in any way... I work with autistic children and I would say somebody that I work with would be far more qualified to sit as an impartial member than a councillor.”*

Unsuccessful exclusion appeal

*“... one was a councillor and I remember she could barely speak a coherent sentence and I was a bit shocked that somebody like that was on a panel in the first place. I never criticise people on that level but I think then they are sitting in judgment of you, I have a right to question what are their qualifications as far as this goes ... another one but I can’t remember what their role was ... every time you say anything they glare at you and they are just not listening to a word you say.”*

Unsuccessful exclusion appeal

Many appellants find it difficult to distinguish between the panel members and the local authority representatives. This may be partly because the seating arrangements often meant they were not physically separated, partly because they were all already in the room when they walked in and partly because they were actually all people associated with the local authority in some way. The level of understanding about the role or function of the Clerk varied, but was not high in general.



Respondents gave one or two examples of behaviour they felt to be inappropriate, on the part of panel members or local authority staff, highlighting the need for training.

*“This woman [a panel member] came across so [biased] it was unreal. I thought why was she here because she had judged him before he had even spoken.”*

Unsuccessful exclusion appeal

*“They had a question and answer bit. And the Head of Education had said, what did it feel like to have a child who was abnormal. ‘My son is not abnormal.’ And I think anybody who can say to a mother ‘your child is abnormal’, is very hurtful and it might have been the reason we won the appeal. Because you could actually see that quite a few of the panel were shell-shocked by the way he was treated.”*

Successful placing request appeal

*“I can’t remember what it was he [panel member] said, but it was just like a daft wee word! ... but I just reworded it for him, and he just looked at me and then looked away, so ... and it was very disrespectful. I didn’t like that, you know, because you’re being so careful and it’s a very important thing. But he was very disregarding of me, and I didn’t like that. I thought that was very disrespectful and not very professional!”*

Successful placing request appeal

One woman was offended when an issue had been made of the fact that her son shook hands with a classmate when he was excluded.

*“So there were things like that that actually are a part of our religion ... I felt that was really inappropriate ... and I was quite astounded with it, because she gave us all a ticking off! I felt the committee needed more training and understanding.”*

Unsuccessful exclusion appeal

**All those involved in hearings should be well trained as per the SCCT recommendations.**

**Efforts should be made in communication both before and during the appeal, as well as in the conduct of the appeal, to ensure that the roles and descriptions of all those present are clearly presented to appellants.**

### 3.4.6 Decisions

In most cases, the decision of the panel was received within a week. Few appellants expected to get a favourable decision. Most left their hearing despondent and those that were successful were pleasantly surprised and delighted. These people tended to be slightly more positive about the process, though they often still said they did not think they should have had to go through an appeal.

*“So when we were actually told that the appeal had been upheld in favour of the council, there was no surprise. We already had come out of the hearing and felt that was exactly what was going to happen.”*

Unsuccessful placing request appeal

### 3.4.7 Fairness/independence

Feelings varied about whether hearings were fair. Most appellants felt that the panel had treated them fairly, the exceptions being largely those who were appealing exclusions. Placement appellants were more likely to think the system rather than the panel was unfair.

*“Yeah. I think I was given a very fair hearing, and the councillors were most interested. I think actually ... was the Headteacher of the school there? I can’t remember now. But I think that the councillors listened. They were quite interested and fair in listening to me.”*

Unsuccessful placing request appeal

*“I did say that he had not been caught with a cigarette. It was really on my mind to say even in a court of law, you wouldn’t be found guilty if you have not got the evidence to prove it. I felt there could have been someone else there for the child ... there was nobody really there to represent him.”*

Unsuccessful exclusion appeal

*“They wouldn’t allow anyone from [special school] to come; they wouldn’t allow them in. They told us about an hour before the hearing that they could actually come, but it was too late for the school ... We could only have myself, my husband, plus two others. Yes, so we plumped for the lawyer and the councillor ... And they couldn’t bring a medical person in. Couldn’t bring any specialists in – that wasn’t going to be allowed.”*

Successful placing request appeal

*“I had nobody else to support what I said and this is where I was feeling extremely vulnerable. I could have howled when I came out of there ...”*

Unsuccessful exclusion appeal



Generally, panels were made up of councillors, who, in the minds of appellants were most likely to take the side of the local authority. Only one or two (most often those who had successful appeals) saw councillors as independent and likely to be impartial.

*“But I don’t think the appeal process is impartial, because when you get there the members of the panel are on first-name terms with the placing officer! And I just feel that they’re not going to come down in your favour when the old boy network’s working!”*

Unsuccessful placing request appeal

*“I have to say from the minute I got in I felt ganged up on by the people they had there from the education authority and I was there on my own. It was like me being on trial and they had no intentions of listening to anything I had to say. My impression was that they have probably had some very bad cases in front of them and it is like oh well they are all the same...”*

Unsuccessful exclusion appeal

*“The headteacher and someone from head office of education department and it appears he has a kind of solicitor as a legal role to play in it. There were three councillors but there were very much a part of the education system I felt. They were most definitely not impartial in no way.”*

Unsuccessful exclusion appeal

*“... they had issued us with these guidelines as to how the appeal would take place and I genuinely believed that them and I were of an equal standing before anything was said, but it wasn’t like that.”*

Unsuccessful placing request appeal

Suggestions for more independent members included parents from boards of other schools, people from the business community (private nurseries for example), children’s panel. There was a desire to involve people who might be thinking of the child’s interests – not the parents, the schools or the authorities.

**Consideration should be given to mechanisms for ensuring that panel members are drawn from a wider pool of types of people and that all panels include one or two members who are not associated with the local authority.**

## chapter 4: overall views of the process

Appellants, without exception, found the process extremely stressful and upsetting. Many were concerned about the effects on their child and the impact on the family as a whole. Most wanted to put the experience behind them and try to make the best of whatever outcome had resulted.

*"I think for a normal person it's quite daunting. Maybe it's just that I'm an emotional type person, but I found it all very daunting and a bit scary, and I wouldn't want to go through it again."*

Unsuccessful placing request appeal

*"I was quite upset really because we'd always sort of spoken to the little one when we'd been dropping her brother at school, 'Oh it'll not be long now until you go to school with your brother' and it was hard telling her that she wasn't going to be able to go to the school with him and she was going to have to go somewhere else and, you know, she sort of thought she'd done something wrong."*

Unsuccessful placing request appeal

*"... I mean that was quite nerve-wracking and emotional. It was quite stressful for [child] as well, because she had no idea what school she was going to and it was all quite worrying for her. She was getting several months at a time where she didn't know."*

Successful placing request appeal

*"I basically, I cried for days, I was so disappointed, I was so, it was so personal, it wasn't, it wasn't, I just felt that if I really didn't have any other choices and the whole sensitivity of having a disabled child who you have cried for years over, all the time anyway."*

Unsuccessful placing request appeal

*"Plus, you have a child who ... it's coming up to summer holidays and she doesn't know what High School she's going to, and she was becoming completely distraught about it ... and it was a very important decision and, you know, what school she goes to obviously is going to affect the rest of her life. And for her benefit, we wanted her to know what was happening to her."*

Unsuccessful placing request appeal

*"It was also getting quite upsetting for our son, because he couldn't understand why the school didn't want him. And we were trying to explain to him that it's not that the school didn't want him."*

Unsuccessful placing request appeal





These experiences appeared to affect appellants' propensity to take their case any further, or to appeal again. Very few said that they would consider appealing at the Sheriff Court, despite feeling that they had been unfairly treated. An appearance at the Sheriff's Court would, they felt, be expensive and daunting. Thus the final stage of an appeal seems to become more heavily weighted against the appellant's side, since it is much more daunting and expensive for an individual to consider than for the educational authority who have their in-house legal support. Timing also meant that there was little opportunity to pursue the case any further without causing more disruption to the child's education.

*"By this time, it was becoming quite unsettling as we didn't know what school our son was going to, so we decided to just send him to one of the other schools ... although the placing request was turned down and the appeal was turned down – we just said, 'Oh we're not going to go through the hassle of going to the Sheriff court and all the rest of it ... I went and spoke to a lawyer and the cost of it was quite expensive. The cost was £2000 I think is what he said it would cost to do it, and I said 'No. It's not worth it'."*

Unsuccessful placing request appeal

*"... and I felt that at that point in time we'd just back down, although my husband as I say really would have rather taken it the whole way. But I felt, both financially and emotionally, I don't think we could have coped with it last year."*

Unsuccessful placing request appeal

*"I felt it was so unfair and I actually contacted the council's ombudsman. And I think they told me to try and discuss it with the council first, but you know to be honest I ran out of steam, it did, just taking the whole stuffing out of me, I was ironing my white flag and I just thought, you know you have to go and put this [in the] past."*

Unsuccessful placing request appeal

Many appellants feel bitter about the time wasted and the stress they have gone through.

*"And they had caused an awful lot of hurt and upset between the boys and the, stress to myself too. I did really feel quite bitter that we had to go through all this trauma ... and I had all this with the boys being upset and why can't my brother come to my school ... Why am I going to this strange school ... they would hug each other in the morning to say bye and oh, so I felt very bitter about all of that ... I felt really let down in a way by the, by the whole system."*

Successful placing request appeal

*“For [child] it ruined his last year of Primary School because he was left up to the very last second to find out where he was going. He didn’t know which school he was going to, which spoiled it. He couldn’t celebrate as much as I’m sure he would have ... so he couldn’t celebrate as much with his school friends to go on because he wasn’t sure whether he was going to be with them or not.”*

Successful placing request appeal

For many placement appellants, things often work out at the last minute, despite the appeals procedure, since places become available at the school of their choice anyway. Many respondents reported that their children had obtained a place at the school of their choice just before or very shortly after the beginning of the school year.

*“The headmistress phoned me Friday and she’s got a place ... there’s a wee girl leaving.”*

Unsuccessful placing request appeal

For others, although their children did not get places at the school of their choice, they settled into the school to which they were sent and their parents reported that they are happy.

*“My child was already settling down at school and he said. ‘It’s a waste of time Mum, now, I know all the boys and girls now. I’m happy and settled’.”*

Unsuccessful placing request appeal

For many, although things had turned out quite well in the end, they had gone through a stressful time, felt bitter at the way the system was perceived to be working against them and felt little respect for the way the system worked in their case. In the few cases where lawyers were involved, there was an additional source of dissatisfaction:

*“What annoyed me with his appeal was we had to engage lawyers into it, and because we won at appeal and not at court, we had to pay our expenses.”*

Successful placing request appeal

All respondents, whether the appeal was successful or not, felt that the appeal had been a bleak and dispiriting experience. It was distressing for both parent and child, was expensive, time-consuming and few, when unsuccessful, were inclined willingly to undergo the further stress, tension and expense they thought would be attached to an appeal to the Sheriff’s Court.



# appendix

## 3865: Parents' Experiences of Education Appeals Committees

### 1.1.2 Topic Guide

*The following question areas have been developed to provide a framework for discussion. All topic areas of relevance should be covered at some point in the discussion but should be addressed in an order that facilitates easy and relaxed conversation. Be sure to allow opportunities for respondents to raise new or different issues that they consider significant to the core subjects.*

#### **Background on respondent**

- › Recap on respondent details, including reason for appeal, date of appeal and outcome of appeal etc

#### **The Appeals Process**

- › Explore family/pupil's situation leading up to appeal (eg problems at school, preference for a school in a different area)
- › What factor(s) prompted the appeal and how did respondent obtain information relating to the appeals process and procedures

#### **Initial approach to appeals committee**

- › Initial action taken by parent to appeal (*NB For placement requests parents are required to write a letter to the appeals committee within 28 days of their request being turned down – check if the local authority informed them that they could do this, and if they did so*)
- › Details of response to initial enquiry in terms of speed/clarity/ongoing feedback regarding appeal procedure etc (probing how long to get acknowledgement of their letter from the committee; how long it took to set up the hearing); what advice was offered and how effective/useful was this, together with reasons
- › Did they seek/get advice from anyone other than the local authority, e.g. other parents, Scottish Parent Teacher Council, School Board, other groups.
- › (if relevant) Details of pre-hearing meeting (probing usefulness, organisation/set up of meeting, depth and amount of information provided, fairness)
- › What advice or information was provided to them and how would they describe this (useful, easy to understand/clear, informative etc) and what options were presented.
- › Were the rules and procedure on submitting evidence explained to them
- › What options were available in terms of the hearing (e.g. they could attend the hearing in person, they could take up to three people with them, they could ask another person to speak on their behalf, they could put their case in writing in advance, anything in writing should be provided at least ten days before the hearing)

### The Hearing

- › Who attended the hearing and on what basis was this decision taken; what were the advantages/disadvantages of the options available
- › On what basis were date, time and location selected and what flexibility, if any, was offered to respondent
- › How would respondents describe the hearing (fair/unbiased/neutral); were respondents/their representative(s) given the opportunity to express their situation and requests; were these listened to; what feedback/commentary was provided etc
- › Did they feel they were on an equal footing at the hearing with the education authority

### The EAC panel

*(Note that the committee should consist of 3, 5, or 7 members who are to be nominated by the authority comprising of elected members, or members of the education authority's education committee (which could include teachers, religious representatives, and co-opted members) and other people who are either a) parents or children of school age, b) persons who in the opinion of the authority are acquainted with the educational conditions in the locality, or c) persons with experience in education. The committee should be carefully selected to ensure avoidance of any bias. **Individuals who have been involved with the case or are connected with any of the schools involved cannot be members.**)*

- › How would respondents describe the composition of the EAC panel (eg. fair/unbiased/impartial/disconnected from the child for whom appeal was being made/independent from and uninfluenced by the authority/unknown to the parent/professional in their approach/appropriately selected)
- › To what extent did the panel listen to what parent/representative had to say and discuss the issue before reaching a decision

### The role of the clerk

*(NB: The clerk should normally be an appropriate officer of the local authority and will be responsible for arranging the hearings and ordering the business at the hearing. They will be expected to take notes and record decisions. They should be an employee whose normal role in the local authority does not involve dealing with the admission of children to school or children with special educational needs. There should therefore be no conflict of interest.)*

- › To what extent was the role of the clerk explained? How effectively did the clerk fulfil their roles and duties, together with reasons (neutral/objective etc);



### **Receiving a decision**

- › How long did it take to hear about the decision and how was the parent informed of decision; how easy to understand the communication setting out the decision
- › Reactions to the decision
- › What further opportunities to appeal were offered and what did this entail

### **General comments on overall appeals procedure**

- › Level of satisfaction of the outcome of the appeal overall, together with reasons
- › Perception of impartiality and independence of Education Appeal Committees
- › General comments on the appeal procedure as a whole (regardless of outcome); what changes should be made to the process in the future and why

### **Hearing venue**

- › Reactions to venue in terms of location (neutral location/Council offices etc); were special needs required and if so, were they catered for (probe translation services, disabled access etc.).



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