

# education appeal committees: proposals for reform

a consultation summary paper

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education appeal  
committees:  
proposals for reform  
a consultation summary paper

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# background

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.



# this consultation

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.

This is the summary version of the full consultation paper on Education Appeal Committees, which is available on line at [www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations), or by phoning Kevin Rae on 0131 244 7048. The full consultation paper includes the report of the Executive funded research on the experience of parents who had appeals heard by EACs. All quotes in italics in this summary paper are from parents interviewed as part of the research.

The questions in this summary paper cover our main proposals to improve EACs, and the broader questions in the consultation. The complete set of consultation questions are in the full consultation paper. The question numbers in this summary paper reflect the question numbers in the full consultation, and so are not sequential.



# our main proposals

## 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. 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 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 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. 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.

**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: Are there any particular things 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.?**

### 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

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
- reach 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.**



## 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?**

## 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 you respond we will ask you to complete a Respondent Information Form. 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:

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