

ABERDEEN CITY

INFORMATION LEAFLET FOR PARENTS

EDUCATION (SCOTLAND) ACT 1980 (AS AMENDED) – APPEAL COMMITTEES

EXCLUSIONS FROM SCHOOL

The Education (Scotland) Act 1980, as amended by the Education (Scotland) Act 1981, gives parents certain rights to choose their child's school, and also, once their child has started attending school, to appeal if a decision is taken to exclude the child from school. If parents are not satisfied with an education authority's decision on either of those two points, they may refer their case to an Appeal Committee.

Aberdeen City Council, as Education Authority, has therefore set up such a Committee to consider appeals by parents against (a) the Council's refusal of their requests for places in schools of their choice for their children, or (b) the Council's decision to exclude their child from school.

This leaflet gives some information regarding Appeal Committees, in question and answer form for ease of reference. If you would like any further information, please contact the Interim Democracy Manager, Town House, Broad Street, Aberdeen AB10 1AQ.

NOTE: The rights of appeal given to parents by this legislation in respect of their children are also given to pupils themselves if they are over compulsory school age.

WHAT POWERS DOES AN APPEAL COMMITTEE HAVE?

The Appeal Committee can confirm or annul the decision of the Council to exclude your child. If the Council had attached conditions to your child's re-admission to school, then the Appeal Committee may confirm the decision but modify the conditions. The Council must comply with the decision of the Appeal Committee.

WHO CAN APPEAL TO AN APPEAL COMMITTEE?

Parents have the right of appeal in all cases where their child is still under school leaving age (16 years old). They may also have the right of appeal in cases where their child is over that age (i.e. a young person), but the young person does not have the necessary understanding to appeal on their own. A person is of school age if he/she has attained the age of five years and has not attained the age of sixteen years (see Section 31 of the Education Scotland Act 1980).

Generally, once pupils are over school leaving age, they will have the right of appeal, their parent(s) will not.

Parents or young persons have the right to appeal against an exclusion. In addition, children who have legal capacity have the right to appeal. A parent can appeal on

behalf of a pupil who is older than school leaving age if the pupil is unable to do so due to learning difficulty or mental incapacity. The national guidance on exclusions states that either the child or the child's parent can appeal against an exclusion, but not both.

HOW SHOULD MY APPEAL BE SUBMITTED?

Your appeal should be submitted by letter, email or fax to the Interim Democracy Manager at the following address:-

Interim Democracy Manager,
Aberdeen City Council,
Town House,
Aberdeen,
AB10 1AQ
Email:- educationappeals@aberdeencity.gov.uk

There is no time limit placed on the submission of appeals against exclusions.

If your placing request was submitted in any other permanent form, such as audio or video recording, your appeal can be submitted in the same form.

WHAT HAPPENS AFTER I HAVE SUBMITTED AN APPEAL?

You will get an acknowledgement of your appeal within five working days of receipt of your letter. At this time the clerk to the Committee will give notification of the appeal to the education authority. It may take up to 2 weeks for you to be told the date, time and place of the hearing. The hearing itself will probably take place roughly 2 weeks after that, and within twenty eight days of receipt of your appeal.

CAN I WITHDRAW MY APPEAL?

Yes. You can withdraw your appeal before (and during) the appeal hearing by advising the Clerk to the Committee.

WHERE AND WHEN WILL APPEAL COMMITTEE MEETINGS BE HELD?

As a rule, meetings will be held during office hours at the Town House, Broad Street. Alternative arrangements may be made in exceptional circumstances.

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WHO ARE THE MEMBERS OF AN APPEAL COMMITTEE?

An Appeal Committee will have 3 or 5 or 7 members drawn from a pool of candidates held by the Council. These members will be a mixture of external lay persons, probably with some civic experience relating to education (e.g. former member of a school board), parents of children currently of school age (traditionally drawn from Parent Councils), along with some Councillors (elected members of the local authority). Obviously, no one who is involved in the original consideration of your placing request can be a member. Also, persons who have been involved in a decision to exclude your child may not be a member of the Appeal Committee, nor may a teacher or parent of a pupil at the school from which your child was excluded.

Whilst there is no requirement to have an elected member on every Committee, there is a requirement that where elected members are on the panel, they must not form a majority. In addition, an elected member cannot Chair the Committee.

Finally, members of the Committee will not have connections with the schools concerned, and this rule is also applied to any officials involved in the hearing.

SHOULD I ATTEND THE APPEAL HEARING?

Yes, if at all possible. You are the best person to tell the Committee why you feel that the decision taken by the education authority is not appropriate, as you know your situation you will be able to provide information to help the Committee make an informed decision.

If you can not make the hearing, you can of course let your case rest on your original written representations alone. Either way, there is an important point about submitting any extra written representations. These must be sent to the Interim Democracy Manager at least ten days before the date fixed for the hearing, unless you have been advised otherwise. In particular, were you to submit significant material late in the day, less than ten days before the hearing, the education authority could quite conceivably feel that it did not have time to react to your representations, and this could result in the hearing being deferred, which is probably the last thing which either side would really wish. Accordingly, anything submitted less than ten days before the hearing should be judged from the point of view of whether the other side can react to its content in good time, and the practice is altogether to be discouraged.

WILL I HAVE ANY INFORMATION ABOUT THE EDUCATION AUTHORITY'S CASE BEFORE THE APPEAL HEARING?

You will be sent a copy of the education authority's submission approximately seven working day before the appeal hearing directly by the education authority.

The committee will also receive these, along with any written submission you have made.

WHAT FORM WILL AN APPEAL COMMITTEE MEETING TAKE?

The procedure is as follows:-

- appointment of Chairperson
- a representative(s) of the Education Authority will explain why your child has been excluded from school. **The evidence of the education authority will be led by a Council solicitor.**
- you may ask the representative - or any witnesses called by him/her - questions relating to the evidence given. This is not your opportunity to state your case in full but simply to clarify anything you wish to ask about vis-à-vis the system as it has been explained.
- you will have the opportunity to state why you think the decision of the education authority should not be confirmed.
- the representative of the education authority will be given the opportunity to ask you questions regarding your appeal, as will the Committee members,
- the Education Authority will sum up its case.
- you will be able to sum up your own case.

Either yourself or the representative of the education authority may call evidence or question any witness at the appropriate stages.

Members of the Appeal Committee may also ask questions of both yourself and the education authority's representative.

Hearings are private. Only the persons taking part are allowed to be present, except for (very occasionally) external persons appointed to see that Appeal Committees operate fairly, or (more likely) observers who are new members of staff in the Council department that offers procedural advice and administrative support to the Committee.

HOW CAN MY CASE BE PRESENTED AT A HEARING?

In accordance with Education (Appeal Committee Procedures) (Scotland) Regulations 1982, you can appear or be represented at the meeting or not, as you wish; and you can attend the meeting with up to 3 friends, relatives or representatives who may speak in support of your appeal. You can also give written evidence (information and representations) in support of your appeal.

You can of course let your case rest on your original written representations alone, and therefore not attend the hearing at all. Either way, there is an important point about submitting any extra written representations. These must be sent to the Interim

Democracy Manager at least ten days before the date fixed for the hearing, unless you have been advised otherwise. In particular, were you to submit significant material late in the day, less than ten days before the hearing, the education authority could quite conceivably feel that it did not have time to react to your representations, and this could result in the hearing being deferred, which is probably the last thing which either side would really wish. Accordingly, anything submitted less than ten days before the hearing should be judged from the point of view of whether the other side can react to its content in good time, and the practice is altogether to be discouraged.

CAN MY CHILD ADDRESS THE COMMITTEE?

During 1998, the Scottish Office issued a circular which emphasised the importance of pupils involved in hearings having their own views put before Committees. Before hearings, the Clerk to the Committee will write to pupils inviting them to submit letters giving their views which will be circulated to Committee members at the same time as the rest of the papers.

BURDEN OF PROOF

The burden of proof in all hearings rests with the authority. The onus is on the authority to ensure that they have applied the correct legal test for placing request refusals and exclusions.

WHEN WILL I BE TOLD THE DECISION OF THE APPEAL COMMITTEE?

Once both sides have summed up (see above) *everyone* leaves the room except the members of the Committee and the Clerk. Since there can be no reliable prediction of how long the members will then discuss what they have heard, we do not hold on to parents so that they can be told the outcome before they leave the building. In many cases, however, it will be possible for parents to phone the Clerk (or his or her colleagues) later in the day to hear orally and informally what has been decided. This is very common. However, the decision is always put out in writing as soon as possible, and certainly within 14 days.

IS THE APPEAL COMMITTEE'S DECISION FINAL?

You have the right to appeal to the Sheriff within 28 days of receipt of the Appeal Committee's decision. If the Appeal Committee's decision is in the Council's favour, rather than yours, you will be told the appeal procedure in the letter advising you of the decision.

RECORD OF PROCEEDINGS OF AN APPEAL COMMITTEE

The clerk of an appeal committee keeps notes of the proceedings, the attendance, the voting, the decisions and the reasons for the decisions. Such documents will not be public, and along with evidence submitted by all parties, will be retained for three months only following the Committee's decision being notified to all parties. This is in

accordance with the policy approved by the clerk and in compliance with the Data Protection Act 1998.

CLERK TO THE COMMITTEE

Each appeal committee has the services of a clerk. The clerk will normally be an appropriate officer of the local authority and will be responsible for arranging the hearings, circulating papers and liaising with the parties to the appeal. He/she is an employee who, in the course of his/her employment by the local authority, does not deal regularly with the admission of children to school, the exclusion of children or with children who have special educational needs. The clerk is also responsible for the production of a record of the hearing. If the committee withdraws or invites the parties to do so when they wish to consider their decision, the clerk remains with the committee but only for the purpose of offering advice on procedure and the application of the relevant legislation. The clerk may also be called on to give advice on procedure to the appeal committee during the course of the hearing.

HOW WE USE YOUR DATA

Aberdeen City Council will use the personal information you provide as part of the submitting an appeal to the School Placings and Exclusions Appeal Committee for the purposes of processing your appeal, and not for any other purpose. This activity is one of the Council's statutory duties under the Education (Scotland) Act 1980 (Section 28(d)).

In processing your appeal, the Council will share the information you have provided with (1) the Education Authority;(2) the members of the Committee determining your appeal; and (3) Legal Services in order to provide advice to the Committee, and to the Education Authority. This is part of the process the Council has to follow when carrying out School Placing and Exclusion Appeals, which is set out in the Education Appeal Committee Procedures Scotland Regulations 1982. These regulations also provide the Education Authority the opportunity to submit documentation in relation to your appeal for consideration by the Committee. If this is the case, this information will be shared with you and with the Committee Members deciding your appeal.

Your data will be stored on secure servers within the EEA by our suppliers Firmstep Ltd and on servers maintained by Aberdeen City Council in our local data centre with BrightSolid. In preparing the agenda for a hearing the information provided to us is uploaded to an electronic committee management system. Your details will be deleted in accordance with destruction procedure and timescales referred to below.

The Council doesn't share the information you've provided with any other third parties, unless we're authorised or required to do so by law.

HOW LONG WE'LL KEEP YOUR INFORMATION FOR

Following conclusion of your appeal, whether by withdrawal or determination of the appeal, all documentation, including any notes of the proceedings, the attendance, the voting, the decisions and the reasons for the decisions, in relation to any appeal will be securely destroyed after three months of the Committee's decision being notified to all parties. The Council will keep a formal anonymised record of the hearing which details the decision that was made.

YOUR RIGHTS

You've got legal rights about the way the Council handles and uses your data, which include the right to ask for a copy of it, and to ask us to stop doing something with your data. Please contact the Council's Data Protection Officer by email DataProtectionOfficer@aberdeencity.gov.uk or in writing at: Legal and Democratic Services, Business Hub 6, Level 1 South, Marischal College, Aberdeen, AB10 1AB. More information about all of the rights you have is available on our website at: <https://www.aberdeencity.gov.uk/your-data>.

You also have the right to make a complaint to the Information Commissioner's Office, (www.ico.org.uk). They are the body responsible for making sure organisations like the Council handle your data lawfully.

OUR LEGAL BASIS

Wherever the Council processes personal data, we need to make sure we have a legal basis for doing so in data protection law. The Council understands our legal bases for processing personal data in relation to School Placings and Exclusions Appeal Committee as 6(1)(c) and 6(1)(e) of the General Data Protection Regulation.

This is because this activity is part of our public task, and something we have to do by law, as set out in the Education (Scotland) Act 1980 (Section 28(d)), and the Education Appeal Committee Procedures Scotland Regulations 1982.

Education Appeals - Further Advice and Information

Useful publications

The following publications and websites may be of interest:

- COSLA Revised code of practice for the constitution and procedures of education appeal committees in Scotland – published July 2001.
- A-Z of Scots Education Law *A Guide for Parents 3rd Edition* ISBN 978-011-497346-9
- Scottish Executive circular 1/2001 Placing Requests for School age Children - <http://www.scotland.gov.uk/Publications>
- Scottish Committee of the Council on Tribunals Special Report on Education Appeal Committees in Scotland – www.ajtc.gov.uk
- Scottish Government circular 8/2003 Exclusion from Schools in Scotland: guidance to Education Authorities - <http://www.scotland.gov.uk/publications>
- Scottish Government: A guide for parent on Choosing a School and the placing request system, November 2010 – <http://www.scotland.gov.uk>
- Principles for Administrative Justice- www.ajtc.gov.uk

Useful Organisations and Contacts

Additional Support Needs Tribunals for Scotland

5th Floor Highlander House, 58 Waterloo Street, Glasgow, G2 7DA

Tel 0845 120 2906 website www.asntscotland.gov.uk

Citizens Advice Scotland

Spectrum House, 2 Powderhall Road, Edinburgh, EH7 4GB

Tel 0131 550 1000 website www.cas.org.uk

European Court of Human Rights

Council of Europe, F-67075 Strasbourg Cedex, France

Tel +33 (0)3 88 41 20 10 website www.echr.coe.int

Independent Special Education Advice (Scotland)

164 High Street, Dalkeith, Midlothian, EH22 1AY

Tel 0131 454 0144 website www.isea.org.uk

Law Society of Scotland

26 Drumsheugh Gardens, Edinburgh, EH3 7YR

Tel 0131 226 7411 website www.lawscot.org.uk

Scottish Committee of the Administrative Justice and Tribunals Council

George House, 126 George Street, Edinburgh, EH2 4HH

Tel 0131 271 4300 website www.ajtc.gov.uk

Scottish Government Learning Directorate

Victoria Quay, Edinburgh, EH6 6QQ

Tel 0131 556 8400 website www.scotland.gov.uk

Enable

1 Wester Shawfair, Danderhall, Midlothian, EH22 1FD

Tel 0300 0200 101 website www.enable.org.uk

Relevant Legislation

The legislation listed can be viewed at <http://www.legislation.gov.uk>

- Education (Scotland) Act 1980
- Education (Appeal Committee Procedures) (Scotland) Regulations 1982
- Education (Placing in Schools) (Scotland) Regulations 1982
- Education (Lower Primary Class Sizes) (Scotland) Amendment Regulations 2010
- Human Rights Act 1998
- Schools General (Scotland) Regulations 1975
- Standards in Scotland's Schools Act 2000
- The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005
- The Education (Additional Support for Learning (Scotland) Act 2005
- The Education (Additional Support for Learning) (Scotland) Act 2009
- Tribunals Courts and Enforcement Act 2007