

Scottish Government Education Appeal Committee Consultation

Report by Fiona Robertson, Executive Director Children, Young People and Partnerships

Report for Decision

1 Recommendations

Council is requested to delegate authority to the Children, Young People and Partnerships Cross-party Group of members to sign off Midlothian Council's response to the Transfer of the functions of education appeal committees to the Scottish Tribunals consultation prior to submission to the Scottish Government by 6 February 2023

2 Purpose of Report/Executive Summary

This report advises members of the Education Appeal Committees consultation which was launched by the Scottish Government 15th November 2022 and plans in place to engage with key stakeholders to inform the Council's response.

Date: 29th November 2022

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3 Background

- 3.1** Local authorities are required to set up and maintain education appeal committees with the majority of the appeals considered relating to school admission placing requests and a smaller number to exclusions from school.
- 3.2** The Tribunals (Scotland) Act 2014 created a new two tier structure for devolved tribunals known collectively as the Scottish Tribunals. In Schedule 1 of the 2014 Act, Education Appeal Committees are listed as one of the tribunals, which will transfer to the Scottish Tribunals in so far as Scottish Ministers consider it appropriate. The 2014 Act contains powers to make the secondary legislation required to amend the Education (Scotland) Act 1980 and transfer the functions of appeal committees to the first tier tribunal within the Scottish Tribunals collective. The function will be transferred to the Health and Education Chamber which also houses the functions of the former Additional Support Needs Tribunals for Scotland.
- 3.3** The consultation on the Bill for the 2014 Act sets out the Scottish Government's intention to create a structure to enable a range of tribunals to move under the umbrella of the Scottish Tribunals, if appropriate, and following discussions with interested parties.
- 3.4** Currently, appeal committees are established by a local authority under section 28D of the 1980 Act. Membership of the appeal committee is to consist of both members of the authority and persons who are not members, including parents of children of school age or persons whom the authority considers to have experience in education or who are acquainted with the educational conditions in the area of the authority. Appeal committees usually consist of elected members and local persons, often parent representatives with a strong interest/experience in the education sector. COSLA created a code of practice to ensure the quality of practice among local authorities.
- 3.5** The consultation seeks views on the proposal to take forward the transfer of the jurisdiction of appeal committees to the Scottish Tribunals as provided for by the 2014 Act.

Considerations

- 3.6** The current appeal committee system means decisions on placing requests and exclusion appeals are taken at a local level with involvement of local elected members and other key representatives. There is concern that transferring cases to the Scottish Tribunal system could make the process more remote for families, less accessible and with panel members who are not fully appraised of local context, education delivery and resources.

Next steps

- 3.7** The education service will engage with key stakeholders to inform Midlothian Council's response to the three questions:
- Do you agree that appeal committees should transfer to the Scottish Tribunals? And if so, why?

- Do you consider that appeal committees should remain with local authorities but with improvements to how they operate? And if so, what changes would you like to see?
- Do you consider that no changes should be made to how appeal committees operate? And if so, why?

4 Report Implications (Resource, Digital, Risk and Equalities)

4.1 Resource

Not applicable at present as any impact is yet to be defined.

4.2 Digital

Not applicable at present as any impact on digital resources is yet to be defined.

4.3 Risk

Not applicable at present as any risk impact is yet to be defined.

4.4 Ensuring Equalities

Not applicable at present.

4.5 Additional Report Implications

Not applicable.

APPENDIX A – Report Implications

A.1 Key Priorities within the Single Midlothian Plan

A.2 Key Drivers for Change

Key drivers addressed in this report:

- ☐ Holistic Working
- ☐ Hub and Spoke
- ☐ Modern
- ☐ Sustainable
- ☐ Transformational
- ☐ Preventative
- ☐ Asset-based
- ☐ Continuous Improvement
- ☐ One size fits one
- ☒ None of the above

A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- ☐ One Council Working with you, for you
- ☐ Preventative and Sustainable
- ☐ Efficient and Modern
- ☐ Innovative and Ambitious
- ☒ None of the above

A.4 Delivering Best Value

Not applicable at present as any impact is yet to be defined.

A.5 Involving Communities and Other Stakeholders

The Appeals Committee consultation period runs until 6th February 2023.

A.6 Impact on Performance and Outcomes

Not applicable at present as any impact on performance and outcomes is yet to be defined.

A.7 Adopting a Preventative Approach

Not applicable at present.

A.8 Supporting Sustainable Development

Not applicable at present.

APPENDIX B

Background Papers/Resource Links (if applicable)

[Education appeal committees - transfer of functions to Scottish Tribunals: consultation - gov.scot \(www.gov.scot\)](#)