

## INFORMATION FOR PARENTS ON SCHOOL PLACING APPEALS

Since the pandemic, School Placing Appeals have been held remotely via Teams and using the telephone. This appears to be an efficient approach and allows Appeals to be held in a timely manner. Should parents wish for a face to face Appeal Hearing, this can be arranged and will take place at the Town House in Broad Street Aberdeen.

PLACING APPEALS (ie appeals against the decision of the education authority not to offer a place at the parents' choice of school)

### WHAT POWERS DOES AN APPEAL COMMITTEE HAVE?

An Appeal Committee will first of all have to be satisfied that the education authority had acted reasonably in adducing statutory grounds for refusing to offer a place at the school in question. This effectively means that the Committee accepts the education authority's reasoning. However, the Committee must also decide whether it is appropriate *in all the circumstances* to uphold the authority's original decision. That obviously means that the Members also have to be satisfied *even after having heard the grounds of the parents' appeal against that decision*. In other words, the Committee will not reach a conclusion about whether it is appropriate in all the circumstances to confirm the original decision until it has heard about the individual circumstances in the case in hand.

If the Appeal Committee is satisfied that the original decision was based on the statutory grounds for refusal, and also that it is appropriate in all the circumstances to stay with that decision, the members will refuse your request.

However, on the other hand, if the Committee is not satisfied on either count, it will tell the Council to let your child into the school of your choice. The Council will then be obliged to admit your child to that school.

For information on the grounds of refusal of the education authority please see Appendix A below.

The Appeal Committee cannot:-

- Attach any conditions if it allows your appeal;
- Hear complaints or objections on wider aspects of local admission pollicised and practice e.g. it cannot change the catchment area of a school; or
- Order the education authority to change your position on the waiting list for the school.

The Committee's decision is binding on the education authority unless it is overturned by a Court.

### WHO HAS THE RIGHT TO MAKE AN APPEAL?

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.

There is no appeal to an Appeal Committee against refusal of a place in a nursery school/ Early Learning and Childcare Centre.

There can be no further appeal if a previous appeal against refusal of a request for placement in a school of your choice (concerning the child in question) has been lodged in the preceding 12 months. Parents cannot appeal separately in this timescale.

### HOW SHOULD MY APPEAL BE SUBMITTED?

Your appeal should be submitted online or by letter, email or fax to the Democratic Services Manager at the following address:-

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

A placing request appeal must be lodged within twenty eight days of receipt of the education authority's decision. The Appeal Committee have power, on good cause being shown, to hear appeals which have not been made timeously.

### 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.

### 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, neither a teacher or parent of a pupil at the school of your choice, nor a teacher or parent of a pupil at the school the Council is suggesting your child should attend, can be involved.

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.

#### WHERE AND WHEN WILL APPEAL COMMITTEE MEETINGS BE HELD?

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

#### SHOULD I ATTEND THE APPEAL HEARING?

Yes, if at all possible. You are the best person to tell the Committee why you want your child to go to the school, as you know your situation and will be able to provide information to help the Committee make an informed decision. If you decide you want to attend the remote meeting, the clerk will dial you into the meeting.

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 Democratic Services 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 meeting will be as informal as possible. Rules of evidence and procedure are

observed. Otherwise, however, the Convener will do his or her best to ensure that the proceedings are relaxed and low-key. In particular, you should not fear that the experience will be akin to appearing in court. On the other hand, the Appeal is more formal than simply informal talks.

Essentially, the procedure is that the education authority explains its original decision, which means that the Appeal Committee will hear the system according to which your original placing request was refused. This will not only involve an outline of the way the education authority deals with situations where more people want to be at a school than the school has room for; it will also involve clarification of where your child stands on the waiting list for the school (assuming he or she is on that list at all) and will bring out the seriousness with which the Committee has to take the responsibility of having at its disposal the possibility of moving a child to the head of the queue and, indeed, putting that child straight into the school on grounds of exceptional circumstances.

The evidence of the education authority is usually led by the Education Authority.

Once the education authority's position has been outlined, the Convener will ask you if you would like to ask any questions about what you have heard so far. 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.

Then, however, you will have your opportunity to say why you think your placing request should indeed be granted. Since you would be looking for a place at a school that is for some reason more popular than it can deal with, it is fair to say that the Committee will want to hear about particular concerns and anxieties which you may have if your child is not able to go to this school, and to this school in particular. Having said all of that, however, it is important to stress that the Committee from time to time does uphold appeals, and tells the Council to place the child at the school of the parents' choice.

Proceedings would then move onto any questions from the education authority about what you have said. Then the authority sums up, after which you would be able to sum up. At this stage, it is common for parents to feel they have already said all that they need to say, but it is perhaps desirable to focus one more time on what you take to be the central thrust of your argument. Members of the Committee may also ask questions at any time, both of you or of the education authority.

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?

You can present your case either on your own or with help from a friend or colleague whom you may believe would be good at dealing with a relatively formal situation. As is mentioned above, the evidence of the education authority will be led by a Quality Improvement Officer who is part of the Education Service It is

also quite familiar to find the case being shared by both parents or, alternatively, by one parent and a new partner.

If you wish to have people with you who will not be helping you present your case but who are simply there for moral support, or who may not intend to speak but who may have background information which you believe you may have to refer to during the proceedings, the number of such persons should not exceed three. The regulations refer to these people as “friends” and, although they will not be sharing the presentation of your case, the Convener will in most circumstances be happy for them to say a few words if he or she thinks that would be appropriate.

You can of course let your case rest on your original written representations alone, and therefore not attend the hearing remotely at all. Either way, there is an important point about submitting any extra written representations. These must be sent to the Senior Democratic Services 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 THE APPEAL COMMITTEE TAKE DECISIONS IN APPEALS INVOLVING CO-ORDINATED SUPPORT PLANS?

Placing appeals where a CSP is involved are heard by the Additional Supports Needs Tribunal and the education officer dealing with your placing request will have given you guidance on this. If the Tribunal decides that your child does not need a CSP, it may refer the appeal to the Appeal Committee.

If the Appeal Committee has an appeal before it and it has yet to make a decision, and it is told that an appeal has been made to the Tribunal about the refusal of a CSP, the Appeal Committee must send the placing appeal to the Tribunal for it to consider.

The Additional Support Needs Tribunal Scotland will make decisions in relation to the following:-

- opening a Co-ordinated Support Plan (CSP) or continuing a CSP on review
- refusing to open a CSP or discontinuing it on review
- failure to comply with certain time limits connected with a CSP
- certain information contained within a CSP
- new grounds of appeal as introduced by the Education (Additional Support for Learning) (Scotland) Act 2009

#### WHO PAYS IF THE APPEAL COMMITTEE SUPPORTS MY APPEAL TO PLACE MY CHILD IN AN INDEPENDENT SCHOOL?

When the Appeal Committee agrees that a child with additional support needs should be placed in a school which isn't a Council school, the Education Authority must meet the fees and the other costs of the placement.

### 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 meeting except the members of the Committee and the Clerk. At this time the Committee discuss what they have heard and reach a decision whether to uphold the Appeal or not. The decision will be communicated to you, usually on the same day as the hearing, and by e mail,. The Clerk will check your contact details so that you are informed of the decision timeously. Over the next 2 or 3 weeks you will be emailed a full record confirming the decision in writing and detailing the reasons for the decision.

### IS THE APPEAL COMMITTEE'S DECISION FINAL?

If the Appeal Committee has upheld the education authority's original decision, and rejected your appeal, you will be told (in the record advising you of that decision) about your right to appeal to the Sheriff within 28 days of receipt of that letter.

### 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.

## Appendix A

The Education Service is informed by the legislation in THE EDUCATION (SCOTLAND) ACT 1980 in matters relating to school placing and appeals.

### REASONS FOR REFUSAL OF A PLACE

The Council does not have to admit your child to the school of your choice:-

- If to do so they would have to employ an additional teacher or spend a lot of money, for example, where the Council would have to provide an additional classroom;
- If the capacity on pupil numbers at the school would be exceeded, even if the reason given above does not apply;
- If a child's education would suffer from another change of school;
- If the Council thinks that placing your child in the school might have a serious effect on order and discipline in the school;
- If the Council thinks that placing your child in the school might have a serious effect on the education of other children attending the school; (NOTE - This may be the reason that is used to refuse your placing request if the Council considers that the class in which you wish your child placed is already full);
- If the education in the school you want would not be suitable to the age, ability or aptitude of your child. This might apply if a parent wants his or her child to be admitted to a stage of education for which the child is not yet ready, or to a school which cannot meet the child's needs;
- If the school the parent wants has been provided specially for children with disabilities or for children with other special needs, and the Council thinks the child does not need the special equipment or specially trained staff which has been provided in that school;
- If a child has been very troublesome at school and has been expelled, the Council is not bound to re-admit a child. If a child has been in constant trouble, and the parent asks that the child should move to another school, the Council may refuse a place if they think that the child would be likely to disturb the other children and affect the discipline in that school. They may indeed suggest another school better able to cope with the child;
- If the parent wants a girl to go to a boys' school, or a boy to go to a girls' school;
- If granting a place would prevent the Council from retaining reserved spaces at the school which were reserved for children moving into the school's catchment area;
- If the Council thinks that it would have to create an extra class or composite



class, or employ an additional teacher, at a future stage in a primary school, assuming that pupil numbers at the school did not change.

The circumstances in which the Council can refuse placing requests for children with additional support needs include the reasons set out above and the following ones:-

- If you wish to place your child in an independent school and the Council thinks it can make the provision required itself, which may not necessarily be in one of the Council's own schools; the Council may also think that it is not reasonable to place your child in an independent school in view of the suitability of that school and the costs involved compared to the Council school at which your child would be placed;
- If the school at which you wish to place your child is a special school and this would breach the duty on the Council to provide mainstream education. This would not apply where the mainstream school is not suited to the ability or aptitude of your child, where placing your child in a mainstream school would not be compatible with the efficient education of the other children there, or where it would be unreasonably expensive.

THIS SECTION OF THE LAW IS IMPORTANT. You may wish to know the exact words used to describe the circumstances in which the Council may refuse your request. These are set out in section 28A of the Education (Scotland) Act 1980, as inserted by section 1 of the Education (Scotland) Act 1981, and are:

- "(a) If placing the child in the specified school would -
- (i) make it necessary for the authority to take an additional teacher into employment;
  - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at, or facilities provided in connection with, the school;
  - (iii) be seriously detrimental to the continuity of the child's education;
  - (iv) be likely to be seriously detrimental to order and discipline in the school; or
  - (v) be likely to be seriously detrimental to the educational well-being of the pupils attending the school;
- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
- (c) if the education authority has already required the child to discontinue his attendance at the specified school;
- (d) if, where the specified school is a special school, the child does not have special educational needs requiring the education or special facilities

normally provided at that school; or

- (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school."

But section 28A(3) goes on to say that -

"an education authority may place a child in the specified school notwithstanding paragraphs (a) to (e) above."

Section 33 of the Education (Scotland) Act 1996 added section 28A(3A) to the 1980 Act, which introduced an additional ground:

"The duty imposed by the sub-section (1) above does not apply where the acceptance of the placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved spaces at the specified school or in relation to any particular stage of education at the school, but nothing in this sub-section shall prevent an education authority from placing a child in the specified school".

Section 44 (4) of the Standards in Scotland's Schools Etc Act 2000 brought in two further grounds of refusal; the first is where placing a child would:

"assuming that the pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the Authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school". (This becomes (a) (vi) in the list above)

The second ground of refusal contained within this Act did not come into force until 31<sup>st</sup> December, 2004. This provided for a refusal on the ground that placing a child would:

"though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers". (This becomes (a) (vii) in the list above).

Schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004, introduced by Section 22 of the Act, provides two additional grounds of refusal. The duty to place a child does not apply:

- “(f) If all of the following conditions apply, namely-
  - (i) the specified school is not a public school,
  - (ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
  - (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental

expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and (iv) the authority have offered to place the child in the school referred to in paragraph (ii), or

- (g) If, where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act".