

EAST RENFREWSHIRE COUNCILEDUCATION COMMITTEE2 FEBRUARY 2023Report by Director of EducationEAST RENFREWSHIRE COUNCIL RESPONSE TO THE SCOTTISH GOVERNMENT'S  
CONSULTATION ON THE TRANSFER OF EDUCATION APPEAL COMMITTEES TO THE  
SCOTTISH TRIBUNALS SERVICE**PURPOSE OF THE REPORT**

1. The purpose of the report is to seek the Education Committee's approval of the proposed Council response to the Scottish Government's consultation on the transfer of the functions of education appeal committees to the Scottish Tribunals Service.

**RECOMMENDATION**

2. Education Committee is asked to note and approve the Council's response to the Scottish Government's consultation on the transfer of the functions of education appeal committees to the Scottish Tribunals Service.

**BACKGROUND**

3. The Education (Scotland) Act 1980 ("the 1980 Act") allows for parents/carers of school age children to apply for a school place at any school. Where a parent/carer wishes for a child to attend a non-catchment school, such an application is by means of a written request ("placing request"). The 1980 Act allows for parents/carers to appeal a refused placing request decision.

4. The popularity of East Renfrewshire's schools means that the Education Authority receives a significant number of school placing request applications, disproportionately in terms of the size of the Council.

5. The 1980 Act also allows for parents/carers of children excluded from school to appeal against such decisions. East Renfrewshire Council has very few exclusions annually and such appeals are rare.

6. Local authorities are currently required to set up and maintain such education appeal committees.

7. The Tribunals (Scotland) Act 2014 created a new two tier structure for devolved tribunals. As part of the 2014 Act, Education Appeal Committees are listed as one of the tribunals which would be included. This would see the transfer of appeal committee hearings from local authorities (stage 1) and Sheriff Courts (stage 2) to a similar structured two tier appeal process managed by the Scottish Tribunals Service.

8. In November 2022, the Scottish Government published a consultation with a proposal to transfer the appeal committees to the Scottish Tribunals as provided for by the 2014 Act. If approved the process would require secondary legislation to be put in place; this process is expected to take at least 18 to 24 months from the date a decision is made to progress the transfer. It is unclear as to when a decision will be made.

9. The Scottish Government consultation provides an opportunity for consideration of the implications of these proposals and allows the views of those involved in the current and proposed system for school admission and exclusion appeals to be fully explored. More details are included in the [Scottish Government consultation paper](#).

10. This consultation will enable the Scottish Government to decide on whether to proceed with the transfer on the basis of as broad a range of viewpoints as possible.

## REPORT

11. The consultation period is from 24 November 2022 to 6 February 2023.

12. Various Council stakeholders with experience and interest in Education Appeal Committees were consulted on their views on the proposed changes.

13. Consultees include elected members, Business Operations and Partnerships, Legal Services and the Education Department. A cross party meeting of elected members took place to consider the proposal.

14. The proposed response by East Renfrewshire Council to the consultation is included as Appendix One.

## CONSULTATION

15. The response reflects the views of the East Renfrewshire consultees.

## FINANCIAL AND EFFICIENCY IMPLICATIONS

16. There are no specific financial or efficiency implications related to this paper and the department will use its existing devolved budget to undertake its duties should the proposed transfer of appeal committees be approved.

## CONCLUSION

17. The proposed Council response to the consultation records the Council's position that it strongly disagrees with the proposal to transfer education appeal committees to the Scottish Tribunal Service.

18. Whilst the principles behind the proposal to transfer appeals with respect to transparency, fairness, impartiality, the need for regular training and to reduce the stress and concerns of placing requests and appeals on appellants are recognised, these principles are already part of the robust appeal process in East Renfrewshire Council. A move to a centralised Scottish Tribunal Service is not required and such a move would result conversely

in a significant detrimental impact on all stakeholders, including inequality for appellants, as detailed in the proposed response in Appendix One.

19. The Council asks via its submission to the consultation that the Scottish Government does not proceed with the transfer of education appeal committees to the Scottish Tribunal Service and continues with the existing arrangements.

## RECOMMENDATION

20. Education Committee is asked to note and approve the Council's response to the Scottish Government's consultation on the transfer of the functions of education appeal committees to the Scottish Tribunals Service.

Mark Ratter  
Director of Education  
2 February 2023

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### **Background Papers**

Scottish Government Consultation on the transfer of the functions of Education Appeal Committees to the Scottish Tribunals: <https://www.gov.scot/publications/transfer-functions-education-appeal-committees-scottish-tribunals-consultation-paper/>  
Education (Scotland) Act 1980: <https://www.legislation.gov.uk/ukpga/1980/44/contents>  
Tribunals (Scotland) Act 2014: <https://www.legislation.gov.uk/asp/2014/10/enacted>  
East Renfrewshire School Admissions and Placing Requests: <https://eastrenfrewshire.gov.uk/article/4436/School-Admissions>

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## Transfer of Education Appeal Committees to Scottish Tribunals

### Respondent Information Form

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: [Privacy - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

East Renfrewshire Council

Phone number

0141 577 3001

Address

Eastwood Park,  
Rouken Glen Rd,  
Giffnock, Glasgow

Postcode

G46 6UG

Email Address

customerservices@eastrenfrewshire.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government 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 Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

## Questionnaire

### Question 1

Do you agree that appeal committees **should transfer** to the Scottish Tribunals?  
And if so, why?

- Yes  
 No  
 Not Sure

Please explain your answer in the text box.

East Renfrewshire Council strongly disagrees with the proposal to transfer the functions of Education Authority Appeal Committees to the Scottish Tribunal Service.

The Council asks via its submission to the consultation that the Scottish Government does not proceed with the transfer of education appeal committees to the Scottish Tribunal Service and continues with the existing arrangements.

The Council has consulted multiple stakeholders in preparation for responding to this consultation including: elected members (who held a consultation meeting); the Council's Legal Services department; Clerks to the Education Authority Appeal Committee; and the Council's Education Department.

Whilst all stakeholders recognised and agreed with the principles behind the proposal to transfer appeals with respect to transparency, fairness, impartiality, the need for regular training and to reduce the stress and concerns of placing requests and appeals on appellants, they believed that these principles were already part of the robust appeal process in East Renfrewshire Council. The Council believes that the move to a centralised Scottish Tribunal Service is not required and that such a move, would result conversely, a significant detrimental impact on all stakeholders.

East Renfrewshire Council does not believe that the development of a two tier centralised tribunal service, which in effect would mirror the structure of appeals which is currently in place in accordance with legislation (but with a different location and panel members), would make any improvement on the current approach. The current process allows Education Authorities to be held to account by locally elected members and lay persons, who not only have to consider the challenges of the Education Authority, but must also consider the position of their constituents, within in the framework of legislation. Furthermore the current system ensures that in the case where an appellant does progress to appeal at the Sherriff, there is a separate legal entity/body (few more conversant with law) which then re-considers the appeal at that time, which is a completely discrete body from the stage 1 appeal. There could develop a perception that the proposed approach with a two tier Tribunal Service results in less independence and scrutiny by discrete bodies across the two tiers; the current approach is considered to be more independent than the proposed system.

Consultees commented upon the unique context of each local authority in Scotland and the local knowledge and experience which Education Appeal Committee members have developed over a significant period of time. This local knowledge and experience is vital in that members are able to understand and fully appreciate the reasoning for placing request submissions and appeals and can fully understand appellants' contexts. Additionally, given members' knowledge of the local community and services, members are able to provide appellants with supportive guidance and advice which is particular to the Council. Committee members are also well informed with the local contexts for refusal of such placing requests such as local development planning. Moving to a centralised tribunal service would not only lose this vital knowledge and experience of local context, familiarity with council policy and the appeal processes, but would also result in appellants not being provided with this local knowledge, support and guidance.

Committee members commented upon their disappointment at the suggestion in the consultation paper that appeal committee members are not trained, lack knowledge, are biased and not impartial, and commented that they found this suggestion offensive; it was also commented that the proposal is primarily on the basis of surveys which were undertaken more than 16 years ago and do not reflect current approaches. Within East Renfrewshire, committee members are provided with regular training in the process of administering appeal hearings and are led and supported to this end at all times by the Clerks to the Appeal Committee. Furthermore committee members receive regular training from the Council's Legal Services and have access to legal advice as and when required. The Clerk of the appeal committee ensures that all hearings are undertaken in an open, transparent and fair manner and ensures that at all times the Education Department and the committee are completely discrete from each other. In each of the last five years the Education Appeals Committee has upheld appeals and granted places in East Renfrewshire schools overturning the decision of the Education Department in cases where it believed it was appropriate to do so, in keeping with legislation.

All East Renfrewshire Council consultees are concerned with the centralisation of the process and the inequitable impact of this. East Renfrewshire Council in no way recognises the suggestion that the hosting of appeal committee hearings in Council buildings is intimidating for appellants and believes that the hosting of appeals in a central tribunal would actually be more intimidating. This perception is held by consultees on experiences of attending the Additional Support Needs Tribunals, and it was commented upon that these tribunals feel more formal and adversarial, particularly when compared with local Education Authority Appeal Committees. Furthermore, the requirement for applicants to travel to a central location is inequitable as this may not be possible due to cost, ability to travel and/or time. East Renfrewshire Council is a small geographical area which means that all appellants do not need to travel far should they wish an appeal hearing in person. A move to a centralised tribunal service is likely to result in a service which is not equitable to all.

It is noted in the proposal document that it may be possible for hearings to be held remotely by the tribunal service. As a consequence of the Covid-19 pandemic, East Renfrewshire introduced the option of remote online conference appeal committee hearings as well as the traditional options of in person or written submissions. Whilst this was undertaken as a matter of need at the time, East Renfrewshire Council has



continued to offer the three modes of appeal hearing. Since March 2019, all with the exception of one appeal hearing have been requested remotely; this is in excess of 300 appeals having been heard remotely. This has allowed appellants to join meetings from a location of their preference and means people are relaxed and do not feel intimidated by the process and can be easily supported; there is little disruption to an appellant's day. The Council ensures that all required parties are able to access the remote meeting (such as family advocates), any documentary evidence can be submitted and that there is a robust system in place for managing remote meetings. The approach to remote meetings is of benefit to committee members and Council officers who can work more efficiently. The consultees also noted that the need for Council officers to travel to a central location would result in significant additional workload, impact on officers' time, result in additional costs to local authorities and be completely inefficient; such a change would be a significant backwards step and would be counter active the local and national actions with regards to net carbon zero.

Across Scotland all 32 local authorities have their own unique school admissions and placing request policies which are in accordance with national legislation and have come into effect following public consultation and approval by locally elected members. The centralisation of the appeals committees was viewed as an erosion of local democracy as a consequence of the removal of the appeals process from locally elected members and lay persons to a centralised team; this is heightened given that East Renfrewshire's policies have been created locally following full public consultation and approved by locally elected members.

The East Renfrewshire policies, like those for all other local authorities, have been developed to ensure that all applicants are treated in a fair, consistent and transparent manner whilst facilitating the Council to meet its statutory duties of ensuring a school place for residents of the council area. Whilst it is not yet clear as to the composition of proposed Tribunal hearings or as to how appeal hearings would be arranged and managed, East Renfrewshire Council has concerns with the application of its policies by a committee which may not be fully conversant with the its policies, and which may be hearing complex cases from several different local authorities (with differing policies) and schools over a short period of time. Furthermore, East Renfrewshire's policy ensures that any applicant, catchment or placing request, who is not allocated a place at their preferred school, is able to challenge the allocated place or refusal, which leads to further complexity for committees not familiar with the Council's policy. Such appeals include:

- Placing Request: Application for place in a non-catchment school;
- Catchment allocation: An applicant not allocated a place at a preferred catchment school;
- Redirected children: Those allocated a place in a non-catchment school due to oversubscription;
- Request to remain: Where a child no longer resides in the catchment area of the school but wishes to continue to attend the school.

This means that whilst the majority of Education Authority Appeal Committee hearings relate to requests for places for the commencement of the school year, we continue to receive and process hearings throughout the year and in multiple contexts, and not

only for new school places at P1 and S1 year stages. This will result in an on-going capacity requirement throughout the year for a tribunal service.

The consultees have concerns about the basis for the placing request estimates with the suggestion that the demand nationally would be around 600-700 placing request appeals annually; in East Renfrewshire alone the number of appeals in recent years averages in excess of 140 appeals in a normal year. The Council is further concerned with a central tribunal service's ability to process the significant number of appeal hearings required particularly over a short period of time. Placing request applications are not responded to until the end of April in accordance with legislation; this provides a short window of 3 months in which to hear applications before the end of the school year. There would be a necessity to share data between all 32 local authorities and the Tribunal Service to ensure that any appeal received by the tribunal: is a genuine one; is received within required timescales; and that there are not multiple appeals by the same appellant in one year, as per legislation. This is further exacerbated by the timelines which applicants have to appeal to Education Authority Appeal Committee and where appropriate, subsequently the Sheriff Court; in both cases appellants have up to 28 days to progress appeal on receipt of outcome letter. Consequently East Renfrewshire Council has significant concerns regarding a central service being able to process all placing request hearings prior to the end of the school year. Should appeal hearings not be heard as soon as possible, and certainly before the end of the school year, this will result in children and families being distressed with the uncertainty of outcome and children will not be able to engage in transition activities with the other learners who they will be attending school with. Any delays will impact negatively on the start of pupils' education; this would be heightened for children and families with additional needs. By extension such delays will have significant workload implications and challenges for officers and schools within local authorities.

East Renfrewshire Council is also concerned with a central service's capacity to manage the potential additional appeals which are required when an appeal is upheld in favour of an applicant. As per legislation, all other similar applications have to be reconsidered, applicants informed that a decision has been upheld and offered the opportunity to re-appeal their decision. Whilst such a situation can be managed locally given scale and local flexibility, should this occur at a central level with regards to several schools/local authorities, this would result in the need for co-ordination between the central service and local authority and will undoubtedly result in a significant number of appeals requiring to be reheard, which East Renfrewshire Council does not believe would be possible for a central tribunal service within desired timescales of children and families.

A central tribunal service will require significant administration support due to required ongoing communication and co-ordination with local authorities given any material changes. For example, placing request applications continue to be received after the legislative timeframe at the end of April and where applications cannot be granted these will often result in more appellants on an ongoing basis. Another example is where school places often become available following a refused placing request, as a consequence of previously allocated places no longer being required. These two examples highlight how such changes will require to be communicated and co-ordinated with a central service on an ongoing basis and the significant workload

challenge this would present as well as difficulties with the effective and efficient timetabling of appeal hearings.

Locally arranged appeal committees are flexible and allow for changes to be made to schedules quickly and easily to accommodate appellants. Currently within East Renfrewshire where an appellant requests a particular date/time or requires a change of date/time at short notice, the Council is able to accommodate such changes; remote hearings are particularly helpful in this regard. However East Renfrewshire Council believes that a central tribunal approach, as a consequence of the demand for appeal hearings and the need to align with appropriate committee members, would be rigid in its allocation of appeal hearing dates/times and would be completely inflexible to any change or alterations to accommodate appellants' needs. This would result in appellants not being able to attend a hearing; should the hearing be heard in an appellant's absence and the appeal not upheld in the appellant's favour, this will lead to an increase in demand for Tier 2 tribunals and place further strain on the proposed service's capacity to process all hearings within appropriate timescales.

Whilst East Renfrewshire acknowledges the frankness of the proposal paper, it is concerned at the suggestion that a central tribunal service will require time to bed in and that local authorities may choose to have legal representatives as a consequence:

*'We also expect local authorities may choose to have legal representation in cases before the Tribunal at least in the initial period while a new system was bedding in.'*

**Para 4.25 of consultation paper**

This suggests, at least initially, that any central tribunal will not have the confidence of all stakeholders, and given the gravity of appeal committee hearings to appellants and local authorities alike, may undermine the process and decisions made. Such concern is likely to increase the number placing requests appeals which are submitted as it could be considered by applicants that there is a greater likelihood of a positive outcome from appeals and may also lead to a greater number of Tier 2 appeals. This perception is also likely to lead to an inequity between appellants, with those financially capable, able to instruct legal representation whilst others will not be in such a fortunate position.

As noted in the proposal paper there will be a requirement for secondary legislation governing the operation of appeal committees to be put in place, should the transfer of functions come into effect. However the consultation does not provide detail of which elements of the legislation will change; will the only changes be the transfer of committees from local education authorities and Sheriffs to a central tribunal service, or will there be other changes which would have greater consequences such as statutory timeframes and deemed decisions. Furthermore, as is currently the case, should a Sheriff uphold an appellant's appeal, education authorities have the opportunity to appeal that decision where it is felt appropriate via Judicial Review. There is no detail in the consultation proposal as to what vehicle would be available to education authorities to challenge the decision of a Tier 2 tribunal decision. East Renfrewshire Council believes that there should be such a vehicle for local authorities, as is currently the case.

East Renfrewshire Council is concerned with the proposal with regards to proposed costs. The proposal suggests costs of between £500,000 to £700,000 per annum for a central tribunal service, with costs being met by central and local government – given the concerns previously made, these costings seem to be an under estimate. As the proposal has not been fully costed at this time it is difficult to comment further. As noted previously, almost all appeals are heard remotely within East Renfrewshire Council and so there is little cost associated with the process; where meetings have been held in person there is also little expense to all parties. Given the current economic challenges being faced in local government, it is concerning that a process which is efficient, working well and very low cost, will be replaced by one which will cost more and likely be more inefficient and inequitable.

### Question 2

**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?**

- Yes**  
 **No**  
 **Not Sure**

**Please explain your answer in the text box.**

It is notable revenue funding is to be made available for the proposed transfer of the appeals service.

Currently, Councils have met the costs of changes to the appeal committee hearing process including costs associated with the rental of neutral venues for hearings and for capital investment in such areas as IT equipment to accommodate changes such as remote meetings.

Furthermore, lay persons volunteer to undertake their role in the committees. It is noted in the proposal that members of the tribunals would be recompensed for their service. The Council would like to see the availability of a revenue budget to recompense volunteers for their service and to acknowledge their commitment to their local communities.

### Question 3

**Do you consider that **no changes** should be made to how appeal committees operate? And if so, why?**

- Yes, no changes should be made**  
 **No, changes should be made**  
 **Not Sure**

**Please explain your answer in the text box.**

The Council's response to the consultation records the Council's position that it strongly disagrees with the proposal to transfer education appeal committees to the Scottish Tribunal Service.

East Renfrewshire Council does not believe that there is any requirement to change how appeal committee hearings are currently operating in Scotland.

As noted in response to question 1, there are multiple factors for this position. However there are key themes which should be re-iterated:

- The proposal is based upon surveys undertaken in excess of 16 years ago – these findings in no way are reflective of the current context in East Renfrewshire Council;
- Appeal committee hearings are offered to appellants in person, remotely, or by written submission; in three years all but one of these in East Renfrewshire has been undertaken remotely. This ultimately removes any concerns regarding appellants feeling intimidated by attending a non-neutral location, and avoids the inequity, inefficiency, cost and disruption of asking appellants and officers to travel to a central location;
- Significant concerns regarding a centralised body being able to overtake all appeals, subsequent appeals (and any others required as a consequence of an appeal being upheld) in a timely fashion for learners, schools and families to prepare for transitions, impacting negatively;
- Tier 1 and tier 2 tribunals would be no less daunting than attending a local Education Appeals Committee or Sheriff Court, respectively;
- Current process has clear checks and balances and discrete entities involved in considering appeals, thus avoiding any perception of bias;
- Concerns regarding legal due process and how this would be impacted;
- Significant training, expertise and local knowledge assists greatly in ensuring accurate decisions on application of local authority policy within legislative framework are made;
- Current processes operate at little to no cost to local authorities and appellants. The proposal would introduce significant cost with no benefits for this.

Whilst East Renfrewshire Council does not believe that there is a need to make any changes to the operation of appeal committees, it would like to take this opportunity to highlight that the Council does believe that there is a need for a review of the legislation in relation to school admissions, placing requests and appeals. For example, there are various elements of legislation which are contradictory. One such contradiction is the requirement for education authorities to ensure a Roman Catholic denominational school place for any child of Roman Catholic faith. Whilst East Renfrewshire Council is in agreement with this guarantee, the legislation does not support the Council in ensuring this as the Council is unable to consider any places as reserved places within a Roman Catholic denominational school for children of Roman Catholic faith. Whilst in almost all cases East Renfrewshire Council can accommodate all children of Roman Catholic faith in their catchment school at the commencement of their education (P1 and S1), thereafter should a child join the community of one of the popular Roman Catholic schools within the Council, it is almost certainly the case that the child will not be able to be accommodated at the local school, and will require to be redirected to

another Roman Catholic denominational school within the council. This is at great expense to the Council, but most importantly, impacts negatively on the child and family given:

- the impact of travelling time;
- missing out on after school clubs;
- challenges for regular parental engagement;
- siblings who attend catchment and non-catchment schools and associated issues;
- not attending school with friends in the vicinity of residence;
- having to move school once again once if/when a place at the denominational catchment school becomes available.

If legislation permitted the Education Authority to consider places as reserved for Roman Catholic children, (in keeping with the legislation and its intentions with regards to no more places being held than is required), this would avoid these issues.

Once again East Renfrewshire Council strongly disagrees with the proposal to transfer the functions of Education Authority Appeal Committees to the Scottish Tribunal Service.

The Council asks via its submission to the consultation that the Scottish Government does not proceed with the transfer of education appeal committees to the Scottish Tribunal Service and continues with the existing arrangements.