Item 4

9th March 2023

Glasgow City Council

Education, Skills and Early Years City Policy Committee

Report by Executive Director of Education Services

Contact: Jean Miller Ext: 74214

EDUCATION APPEALS PROCESS PROPOSED REFORMS

Purpose of Report:

To make councillors aware of the issues around the proposed changes to the Education Appeals process and to homologate the consultation response.

Recommendations:

To note the response to the consultation on Education Appeals.

Ward No(s):	Citywide: ✓
Local member(s) advised: Yes ☐ No ☐	consulted: Yes ☐ No ☐

***PLEASE NOTE THE FOLLOWING**:*

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1 BACKGROUND

1.1 The Scottish Government sought views on reforming the present Education Appeals system. Their proposal is to hand over responsibility for education appeals to the Scottish Tribunal Service. The consultation paper outlines the reasons why this is being proposed. Education Services do not think that this proposal would result in a better, fairer or more equitable system and this paper outlines why. The purpose of this report is to homologate our response to the consultation.

We believe that appeal committees should remain with local authorities. We believe that the present appeals system is fair, equitable and responsive to the needs of our city.

1.2 The present appeal system ensures that parents and carers, regardless of their economic or social circumstances, have the same access to appeals. The process in Glasgow is supportive from ensuring that information is accessible (reflecting the diversity of our city), process supportive and the actual meeting as informal as possible. An added benefit of the local nature of the appeals meetings is the ability of local authority education officers to support any issues or concerns raised by parents during the meeting itself. The less formal nature of the meetings encourage this. We believe that by moving to the Scottish Tribunal service the process would, despite what the consultation says, become more formal, particularly since it is likely to have a more legalistic approach. This is our experience of the present tribunal service.

This issue is reinforced in the consultation paper itself which states;

4.27 At present, most parents represent themselves at appeal committees, and although it is not considered necessary for parents to access any kind of representation before Scottish Tribunals, it is possible that some parents may choose to seek legal representation (although this may be in a small minority of cases) for hearings before the Tribunal and so may face associated costs. This may put off some parents from pursuing an appeal, at least initially following the transfer.

This is really concerning since it accepts that a system will develop where parents may choose to get legal representation. This is only likely to benefit those parents who can afford such representation and is therefore not equitable or just. Some parents may seek representation through legal aid provision but this is a limited resource and, arguably, it would struggle to cope with demand.

1.3 We are concerned that the new system will result in a more legalistic service. The Scottish Tribunals service already generates a considerable amount of workload for our in-house legal team. To ensure fairness in the local officers presentation of cases, we would have to spend more time in discussion with our legal representatives at preparation stage and at the meeting. Our legal colleagues workload would be dominated by the work generated by cases for the Scottish Tribunal service with little room for other aspects of their work which supports officers. This would result in a need for more legal representatives but we would be unable to expand the legal team due to the significant pressure on local government budgets at present.

1.4 It is interesting that the consultation mentions resources but does not seem to include the impact on local government finances as a result of these changes. It is also worth noting that this change has already been conservatively costed at £500,000 to £700,000 to operate at a time when resources are stretched. This is without the *Additional set up costs may be required, for example in terms of adapting case management systems already in use within the Scottish Tribunals.* Is this value for money at this time of financial constraint?

1.5 The consultation acknowledges that the process for appeals needs to be done swiftly. There is real concern that this would not happen due to the volume of appeals the tribunals would have to deal with. This could mean the process could move into the summer period where there would be no representation from schools due to headteachers being on leave. The system would then need to pick up when term starts and the less timeous the response, the more disruptive a successful appeal would be. There would be a greater likelihood of increased re-classification of school classes. Children and young people would be significantly impacted by late decisions and there is absolutely no assurance in the consultation that this would not happen.

1.6 A fundamental aspect of the present appeals system is that local membership of panels. We find it disappointing that the inference from the consultation is that appeals panels are at times biased and unfair. The panels involve local councillors, democratically elected by local people to represent them. They have an understanding of local policies and circumstances. Parents on the panels often articulate the voice of parents appealing, at times asking questions for the appealing parents to ensure fairness. They are people who volunteer because they care about local education and the rights of parents. The consultation is stating that appeals panels will be chosen by the Scottish Tribunal service. This seems undemocratic and erodes the principles of local democracy and local solutions. The panel members receive significant training and support and we do not agree that the replacement would lead to *increased rigour, transparency, judicial independence and objectivity in appeal committee decisions.* We believe that the consultation paper does not itself provide enough evidence to make this assertion.

1.7 The consultation paper refers to Appeals venues and whilst these are based in cities with expansions proposed, this can still be prohibitive in relation to parents. During the pandemic we moved to an online/hybrid system. Parents can choose to be in person or online and virtually all meetings have remained online. Furthermore, headteachers no longer have to leave their schools allowing them to focus on their core duties. The feedback from parents is that they prefer this option and find it less intimidating and more flexible. We already have the facilities established which are working well, and would be concerned at the upheaval were this to change and revert to an in person set up.

1.8 Over the years the present local authority responsibility for the appeals system has evolved and improved based on feedback. If we were to propose changes they could be;

- looking at more rigorous evaluation procedures in relation to feedback from parents to ensure that we have an evidence based approach to making any improvements.

- Explore the potential and benefits of independent training being provided to our panel members since this consultation is suggesting that impartiality is an issue (even if we cannot see clearly where this concern is evidenced).

- It may be helpful if instead of the upheaval to the system and resource implications of this, that independent observers are appointed by the Scottish Tribunal service to act as monitors and moderators of the system.

- Conduct regular reviews of the practices of appeals panels and learn from best practice in our empowered, collaborative system.

1.9 Finally, the appeals system is there to provide parents with an opportunity to challenge decisions which they are unhappy with. The initial decision about a placing request for a child is based on a set of criteria which is transparent and fundamentally based on the right for local children to access their local catchment school. We appreciate that when parents do not get their choice of school they are unhappy and will seek to appeal since they believe that this is in the best interests of their child. However, they are appealing a decision which has already gone through a democratic, transparent process which will impact a successful outcome at appeals stage. Therefore, some parents will never accept the present system and have lobbied for change. That does not make the present local authority appeals process not fit for purpose and a more thorough review should have been carried out before proposing a change of such a fundamental nature which will not, we believe, result in a better system. Indeed, we would argue that the replacement, for the reasons outlined, would lead to a less fair, equitable and more bureaucratic and legalistic system which is not based on the importance of an understanding of local context.

2 POLICY AND RESOURCE IMPLICATIONS

Resource Implications:

Financial:	None
Legal	Implications for future legal representation
Personnel:	Impact on Appeals committees
Procurement:	None

Council Strategic Plan: Not impacted

Equality and Socio-Economic Impacts:

Does the proposal support the Council's Equality Outcomes 2021-25? Please specify.	N/A N/A
What are the potential equality impacts as a result of this report?	Concerns re the impact on equity of access regarding the Tribunals
Please highlight if the policy/proposal will help address socio-economic disadvantage.	N/A

Climate Impacts:

Does the proposal support any Climate Plan actions? Please specify:	N/A
What are the potential climate impacts as a result of this proposal?	N/A

Will the proposal contribute to Glasgow's net zero carbon target?	N/A

Privacy and Data Protection Impacts:

Are there any potential data protection impacts as a result of this report Y/N	N/A
If Yes, please confirm that a Data Protection Impact Assessment (DPIA) has been carried out	N/A

3 RECOMMENDATIONS

3.1 To note the consultation response as detailed above.