



School Closure
Review Panels

The Convener of the
School Closure Review Panels
Annual Report 2015





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Cabinet Secretary for Education and Lifelong Learning
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Dear Ms Constance

I have pleasure in submitting this, the first Annual Report of the School Closure Review Panels, to the Scottish Ministers.

Mr Iain Nisbet
Convener

School Closure Review Panels

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Foreword

by the Convener of the School Closure Review Panels

As the first holder of the post of Convener of the School Closure Review Panels, I am reporting on the commencement of a new jurisdiction. The task has been a challenging and rewarding one.

My first responsibility was the appointment of individuals eligible to serve as members of a School Closure Review Panel. I am pleased to say that our pool of panellists represent an impressive range of skills, expertise and professional backgrounds.

All members attended two days of induction training, which covered a variety of topics including useful input from Scottish Government officials who were previously responsible for advising Ministers on school closure review functions.

I am keen to underline the importance of the duties on education authorities to consult meaningfully with pupils on closure proposals, and therefore I am grateful to the office of the Children and Young Person's Commissioner Scotland for their assistance in providing relevant input to the training.

During the course of this year, two closure decisions have been called in by Scottish Ministers for review by Panels. Both cases have been determined by the respective Panels within the statutory timescales. My thanks go to the members concerned and to both chairs of the panels. One of these decisions is currently subject to appeal proceedings and we await the Sheriff's decision with interest.

School Closure Review Panels were introduced in order to provide an independent and impartial review of school closure decisions in line with statutory criteria. The Panels I have constituted have delivered exactly that, and have done so in a timeous and well reasoned way.

Finally, I cannot report on my first year as Convener without acknowledging the commitment of the Panel members, the staff of the School Infrastructure Unit and the staff of the Scottish Arbitration Centre, who provide the administrative support to the panels and the office of Convener. Their patience, hard work and support during the establishment of a new organisation, with all its attendant complexities, has been greatly appreciated.

Iain Nisbet

Convener
January 2016

Background

School Closure Review Panels are new independent statutory bodies which have been created to enhance and strengthen the process of local authority school closures in Scotland.

Scottish local authorities proposing to close a school within their area must do so in line with the requirements of the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”) and it is for the Scottish Ministers to decide whether the authority has met these statutory requirements. The 2010 Act contains the power for Ministers to “call in” a local authority school closure decision, if there is evidence that the requirements may not have been met.

On 30 March 2015 the School Closure Review Panels took over the responsibility from the Scottish Ministers of reviewing certain local authority school closure decisions. When the Scottish Ministers decide to call in a decision, they refer the decision to the Convener, who appoints a Panel of three to review the closure decision.

School Closure Review Panels cannot become involved in any school closure unless the decision is called in by Scottish Ministers.



Background

Overview of the legislative framework establishing the Convener and the Panels

The office of the Convener of the School Closure Review Panels and the School Closure Review Panels were established by amendments to the Schools (Consultation) (Scotland) Act (“the 2010 act”) introduced by Part 15 of the Children and Young People (Scotland) Act 2014. The new sections 17A-17D of and schedule 2A to the 2010 Act set out the functions of the Convener and the Panels, and how they are to operate. In addition, further details are set out in Regulations (see SSI 2014/262 and SSI 2014/263).

Ministerial call in and referral to the Convener – section 17A

The School Closure Review Panels have no role in a school closure process unless the Scottish Ministers call in the decision. The Scottish Ministers must then refer the decision to the Convener of the School Closure Review Panels.

Establishing a Panel – section 17A

Once Ministers have referred a case to the Convener, the Convener has seven days to appoint a Panel consisting of three Panel members. The Convener appoints one of the three as Chair of the Panel.

Review by the Panel – section 17B

The Panel reviews the school closure decision by considering whether the authority has:

(i) failed significantly to comply with the requirements of

the Act; and/or (ii) failed to take proper account of a material consideration relevant to the decision. In carrying out this review, the Panel may request further information from the local authority, and advice from Education Scotland (HMIE) or “any other person as it may reasonably require for the relevant purposes”. For example, a panel may seek advice from the Children and Young People’s Commissioner Scotland in relation to consultation with pupils.

The Panel does not re-take the authority’s decision nor consider aspects of the closure apart from the two considerations set out above.

Panel’s decision – section 17C

The Panel must review the case and notify the education authority of its decision within eight weeks, beginning on the day that the Panel is constituted.

If for any reason the panel is not able to reach a decision by that date, the Panel can issue a notice to the authority setting out reasons for not taking a decision within that time period. In such cases, the Panel may take up to a further eight weeks.

Once the Panel has notified the education authority of its decision, it must notify the Scottish Ministers

of the decision, and publish notice of the decision. Decisions are published on www.scrp.scot.

Appeal process – section 17D

An appeal may be made by the education authority or a relevant consultee such as a parent council of an affected school, in relation to the closure proposal. An appeal may only be made on a point of law and by way of summary application. The appeal must be lodged within 14 days of the day on which the Panel publishes notice of the decision. The final determination of the appeal lies with the sheriff, who can either confirm or quash the decision. If the latter, the case will be referred back to the Panel.

Panels – schedule 2A

Schedule 2A regulates practical and operational matters including appointment of the Convener and persons eligible to serve as members of a Panel, resources and funding, the power of the Scottish Ministers to issue directions, and reporting.

Regulations SSI 2014/262 and SSI 2014/263

The two regulations concern various matters relating to the Convener and the persons eligible to serve as members of a Panel, including eligibility, disqualification, tenure, removal from office, and fees, expenses and allowances.

About the Convener and the Panels

The Convener

The office of the Convener of the School Closure Review Panels was established on 9 January 2015 by virtue of section 17A of the Schools (Consultation) (Scotland) Act 2010.

The office of the Convener is a public appointment. The Scottish Government ran the appointment process, and confirmed the appointment of Iain Nisbet as Convener, commencing on 12 January 2015.

The Convener is appointed for a period of up to five years and is eligible for reappointment thereafter. The current holder of the Office of the Convener, Iain Nisbet, is appointed for five years.

Iain Nisbet is the Head of Education Law at Govan Law Centre, where he advises, and provides training, for parents, schools and education authorities on all aspects of education law. He is the chair of the advisory group on Additional Support for Learning, and a former non-executive director with Education Scotland. He was, until recently, a member of the parent council of his local school.

Functions

The Convener's main statutory functions are to appoint a number of persons eligible to serve as members of a School Closure Review Panel and, in the event of a call-in, to select three members to form a Panel. The Convener selects one of the members to be the Chair of the Panel. In making these decisions on appointments and selections, the Convener is independent of the Scottish Government and any other body or individual. The Convener is responsible for providing the Panels with necessary staff and services for the delivery of their functions as well as making appropriate arrangements for training the persons eligible to be selected to serve as Panel members. The Convener has no input on review decisions made by a Panel.

The Convener is ultimately accountable to the Scottish Ministers and must publish an annual report on the exercise of his and any Panel's functions during that year.



About the Convener and the Panels

The Panels

On 30 March 2015 the Panels took over responsibility from Scottish Ministers for reviewing education authority school closure decisions which are called in by the Scottish Ministers.

The Convener appoints persons eligible to serve as a member of a Panel for a period of up to five years and each individual is eligible for reappointment thereafter. Currently there are ten persons eligible to serve as a member of a Panel.

The main statutory function of a Panel is to review a called in closure decision of an education authority. Each Panel is independent of other Panels, the Convener, the Scottish Government and any other bodies or individuals.

Persons eligible to serve as members of a Panel



Dr. Charles S. Bestwick



Russell Ellerby



Donald Gillies



Helen McGhee



Forbes Mitchell



Patricia Susan Quigley



Catriona Waddington



Sally Wainwright



Lesley Ward



Justin Willey

Biographies can be found at www.scrp.scot.

About the Convener and the Panels

Administrative Support Services

The Scottish Arbitration Centre (the Centre) provides administrative support to the Convener and the Panels, including the coordination of training for the Panels. The Centre is a not for profit company providing an administrative service to the Convener and Panels, and is not involved with the decision making of the Panels.

From the beginning of the year, the Convener and the Panels were assisted by Andrew Mackenzie (Chief Executive at the Centre), Marius Røe Nåvik (Business and Development Manager at the Centre) and Katie Hislop (secondee to the Centre from the Scottish Government). When Katie's secondment ended in July, she was replaced by Paula Wilkie (Administrator at the Centre). Since July, Marius has been managing the administrative support to the Convener and the Panels with assistance from Paula. For more about the staffing structure of the Centre, see

<http://www.scottisharbitrationcentre.org/index.php/about/officers-of-the-centre>.



The Year 2015

This year has seen the establishment of two, new statutory bodies: the Convener and the School Closure Review Panels. How the main functions of these bodies have been exercised during the year 2015 is set out in the subsections below. In addition to this, all the practicalities associated with setting up new bodies have been points of focus. For example, the Convener has adopted guidance on several matters for the Panel members, including Guidance on the Determination Process, Guidance on Conditions, Guidance on Construction of Decisions, and Guidance on Expenses and Fees. The Convener and the Panels have also adopted the Freedom of Information Model Publication Scheme which has been approved by the Scottish Information Commissioner.

The Convener

This section sets out how the Convener has exercised his functions during the year. This includes the appointment of persons eligible to be selected as a member of a Panel, making arrangements for training of these, and the selection of Panels.

Appointment of persons eligible to be selected as a member of a Panel

From 9 January, the office of the Convener had the power to appoint such persons as considered appropriate to be eligible to be selected as a member of a Panel. Regulations regarding such persons had already come into force on 24 November 2014 (SSI 2014/263).

The Scottish Government had advertised for persons eligible to be selected as a member of a Panel in 2014, in advance of the office of the Convener being established. Applications were submitted to the Government and they undertook a sifting process, which was endorsed by the Convener shortly after his appointment.

The Convener chaired interviews of the 23 candidates between 30 January and 13 February 2015. The interview panel consisted of the Convener (Iain Nisbet), one representative from the Scottish Government School Infrastructure Unit (Jonathan Moore/Clare Morley) and the Chief Executive of the

Scottish Arbitration Centre (Andrew Mackenzie).

Eleven successful candidates were appointed by the Convener as persons eligible to be selected as a member of a Panel. One of these, Alex Nicoll, was subsequently elected as a Councillor of Aberdeen City Council, and stepped down from his role with the Panels in order to avoid any conflict of interest arising. This means that the pool currently consists of ten persons. It boasts a broad range of experts, including solicitors, teachers, education authority staff, parents and campaigners against school closures.

Training

One of the statutory responsibilities of the Convener is to make appropriate arrangements for the training of the persons eligible to be selected as a member of a Panel.

In March 2015, in advance of the establishment of the Panels, two training days were arranged. The training encompassed the following topics: an overview of the relevant legislation with focus on the Panel's statutory responsibilities, determination options, when conditions can be imposed and an explanation of the appeal process; an overview of the School Closure process from the view of the Government; and overview of past determinations, judicial review and appeal; general legal guidance on

construction of decisions and conditions; data protection and freedom of information; the parent representative's perspective; the local authority's perspective and its role under the School Consultation (Scotland) Act 2010 ("the 2010 Act"); a presentation on the importance of consultation with children and young people from the Children and Young People's Commissioner Scotland; and Education Scotland's role under the 2010 Act. The training days concluded with a paper exercise prepared by the Scottish Government School Infrastructure Unit, which allowed the participants to apply their knowledge on a practical case and discuss the outcome.

Feedback suggested that the training days were well received. Most participants found all sessions useful and of good quality, and in particular the paper exercise was considered to be helpful.

Selection of Panels

The Convener is responsible for selecting a Panel when a call in has been referred to him. Two Panels were constituted last year, and in both events the selection process was concluded within the seven day timescale set out in the Act.

To support the Convener's selection process, a record of potential conflicts of interest of the mentioned persons has been established.

The Year 2015

The Panels

This section sets out how the Panels have exercised their functions. Year one has seen two Panels completing a review process successfully within the statutory timescales. The first Panel's decision was appealed to the sheriff.

Reviews

Panel One North Skye Primary Schools

The Highland Council's proposal to close Dunvegan, Struan, Knockbreck and Edinbane Primary Schools and Nursery Classes was called in and referred to the Convener of the School Closure Review Panels by the Scottish Ministers on 1 May 2015. A letter from the Scottish Government to the Highland Council, setting out the grounds for the call in is available at:

<http://www.gov.scot/Resource/0047/00476228.pdf>.

A Panel of three was constituted by the Convener on 7 May 2015. The Panel members selected were Patricia Quigley, serving as the Chair, Charles Bestwick, and Helen McGhee. The appointment was communicated to relevant stakeholders including Highland Council and relevant Parent Councils as well as the press.

On 29 June 2015, after a thorough review, the Panel refused consent to Highland Council's proposal to close the above mentioned schools and

nursery classes, well within the statutory deadline of eight weeks.

The decision in full can be found at: <http://scrp.scot/wpcontent/uploads/2015/03/SCRPDdecisionHighland-Council-June-2015.pdf>

Panel Two Aberdeenshire Dyslexia Units

Aberdeenshire Council's proposal to close Kellands Primary School Dyslexia Unit and Crimond Primary School Dyslexia Unit was called in and referred to the School Closure Review Panels by the Scottish Ministers on 20 October 2015. A letter from the Scottish Government to Aberdeenshire Council, setting out the grounds for call in is available at:

<http://www.gov.scot/Topics/Education/Schools/Buildings/changestochoosestate/schoolclosures/2015/CrimondPrimaryandKellandsPrimary>

A Panel of three was constituted by the Convener on 21 October 2015. The Panel members selected were Lesley Ward, serving as the Chair, Forbes Mitchell, and Russell Ellerby. The appointment was communicated to relevant stakeholders including Aberdeenshire Council and relevant Parent Councils as well as the press.

On Monday 23 November, after a thorough review, the Panel refused consent to Aberdeenshire Council's proposal to close the above

mentioned Dyslexia Units and remitted the case back to the Council. The Panel completed the review well within the statutory deadline of eight weeks.

The decision in full can be found at: <http://scrp.scot/wpcontent/uploads/2015/11/SCRPDdecisionAberdeenshire-Call-In-V4.pdf>

Appeals

A decision taken by a Panel is subject to appeal to the sheriff. Appeals follow the summary application procedure.

Following the decision of a School Closure Review Panel to refuse consent to Highland Council's plans to close Dunvegan, Struan, Knockbreck and Edinbane Primary Schools and Nursery Classes, the Highland Council lodged an appeal in Portree sheriff Court on 10 July 2015.

Procedural hearings were heard in Portree Sheriff Court on 31 August 2015 and 26 October 2015. The latter was held to address submissions to the sheriff made by Edinbane Parent Council. The substantive hearing of the case was held in Portree Sheriff Court on 16 and 17 November 2016.

Patricia Quigley, the chair, instructed solicitors and counsel on behalf of the Panel. The Panel awaits the decision.

Finance

Background

The Convener and the Panels are funded by grants paid by the Scottish Government.

In the Scottish Government's Supplementary Financial Memorandum to Children and Young People (Scotland) Bill as amended at Stage 2, the Government estimated that the budget for the two bodies would be between £200,000-£258,000 for a six months period in 2014/15 and all of 2015/16. However, the Convener and Panels only existed for a three month period in 2014/15, and only nine months of 2015/16 had elapsed at the end of December. Therefore, this estimate would be more accurately stated as between £126,250-£163,750.

Income

The Convener and the Panels are funded by grants paid by the Scottish Government.

Grants paid to date:

1 January 2015 – 31 March 2015: £47,500

1 April 2015 – 31 March 2016: £40,000 (first instalment of £80,000 for the full year)

1 April 2015 – 31 March 2016: £40,000 (second instalment of £80,000 for the full year)

Expenditure

As noted above, the Scottish Government estimated that expenditure would be between £200,000-£258,000 over the first 18 months, and if adjusted to the period of actual operation, between £126,250-£163,750. The actual expenditure for the period from 1 January 2015 to 31 December 2015 was £102,645, so between £23,605-£65,105 less than the Scottish Government estimate.

In terms of the breakdown of expenditure, as noted the Convener and the Panels have spent £102,645, which has included payment of administrative staff and associated costs (£31,898); training and meeting accommodation and associated costs (£4,237); office accommodation and running costs (£1,395); external legal services (£33,849); office equipment (£12,342); fees for Convener (£2,300); fees for Panel Members (£12,241); travel and subsistence (Scottish Government rates apply) (£4,383).

Balance

The balance as of 31 December 2015 is £24,855.

Future

The Convener has arranged for further training for the pool of persons eligible to be a member of a Panel at the end of January. Having seen two reviews through in the first year of this new statutory process, the main focus of the day will be sharing of experiences and reflections from the persons who have served as Panel Members. The decision of the first Panel was appealed, and reflections drawn from that process will also be discussed. The training will also include further training on the Freedom of Information.

Conclusion

One year has passed since the Convener was appointed and assumed office, and nine months since the Panels were established. To set up two new statutory bodies within that timeframe was a demanding task for all concerned. However, there is now in place an effective, independent and fully functioning process in which called in school closure decisions can receive a fair, transparent and impartial review, delivered within the set deadlines.





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