



School Closure
Review Panels

The Convener of the
School Closure Review Panels
Annual Report 2016





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Cabinet Secretary for Education and Skills
St. Andrew's House
Regent Road
Edinburgh
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Dear Mr Swinney

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

Mr Iain Nisbet
Convener

[School Closure Review Panels](#)

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The office of the Convener of the School Closure Review Panels and the School Closure Review Panels were established by virtue of section 17A of the Schools (Consultation) (Scotland) Act 2010.

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Foreword

by the Convener of the School Closure Review Panels

This is the second year of operation for the School Closure Review Panels and it has been a quiet year, with no school closure decisions called in by Scottish Ministers for review.

However, the work of the office of Convener continues, including the training of the pool of persons eligible to serve as members of a School Closure Review Panel. All members attended a training day which covered a variety of topics including useful input from the Scottish Information Commissioner's office on the responsibilities of the Convener and Panels under the Freedom of Information (Scotland) Act 2002. Having seen two reviews through in the first year of this new statutory process, a main focus of the day was the sharing of experiences and reflections from those who had served as Panel members and chairs. The decision of the first Panel of last year was appealed, and reflections drawn from that process also formed a part of the day.

The Sheriff Court rejected that appeal, confirming both the Panel's decision and the approach they had taken. The decision is testament to the professionalism and rigour that the members of that Panel brought to their review functions. It is useful to have such an early judicial opinion on the Panels' role and we will continue to be guided by the Sheriff's decision in future reviews.

Finally, I would like to take this opportunity to thank the Panel members for their continued enthusiasm and commitment and, the staff of the Scottish Arbitration Centre, who provide invaluable administrative support to both Panels and Convener. Their patience, hard work and support during this last year has been greatly appreciated.

Iain Nisbet

Convener
January 2017

About the Convener and the Panels

The School Closure Review Panels and the Convener of the School Closure Review Panels are 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. 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.

In making decisions on appointments of Panels, the Convener is independent of the Scottish Government and any other body or individual. The Convener is also independent of the Panels and has no input on review decisions made by a Panel. 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 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.

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

Further details on the Convener and Panels can be found at www.scrp.scot



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.

For more about the staffing structure of the Centre, see www.scottisharbitrationcentre.org/?page_id=1668.

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.

The Year 2016

There were no new call-ins of school closure decisions in 2016. The year has seen the continuation of work around the practicalities associated with the establishment of new statutory bodies. For example, the Convener has created a conflicts of interest schedule for Panel members, and has adopted guidance on Data Protection and Freedom of Information. How the two bodies of the Convener and the Panels have exercised their main functions in the year 2016 is set out in the subsections below.

The Convener

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

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 January 2016, a training day was arranged to bring the pool of persons eligible to serve on a Panel together to reflect on the two review processes of the preceding year, and to remind the pool of Panel members of the

review process and of their statutory duties. The decision of the first Panel of 2015 was appealed by Highland Council, and reflections from the appeal process also formed a part of the day. Training sessions included talks by members of previous Panels on their personal experience of chairing a Panel and working on a Panel, and a Freedom of Information update by guest speakers from the Office of the Freedom of Information Commissioner.

Feedback suggested that the training day was well received. Most participants found all sessions useful and of good quality, and in particular the talks by members of previous Panels covering their personal experience of serving on a Panel.

The Panels

This section sets out how the Panels have exercised their functions.

Reviews

The year 2016 has seen no new call-ins of school closure decisions. However, the Panel involved in the Highland Council review of 2015 was still exercising its functions in relation to the appeal against their decision up until around the time of the Sheriff's judgement on that appeal. Further details of this appeal case are laid out below.

Appeals

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

Last year, 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.

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 & 17 November 2015. Patricia Quigley, the chair, instructed solicitors on behalf of the Panel.

On 17 February 2016 Sheriff Tierney issued his judgment in the appeal against the Highland Council Review Panel in the Panel's favour.

The Sherriff's judgement can be read in full at:

<http://www.scotcourts.gov.uk/se/archjudgments/judgment?id=09b808a7-8980-69d2-b500-ff0000d74aa7>

Background

The Convener and the Panels were initially funded by grants paid by the Scottish Government. The Scottish Arbitration Centre has provided administrative services to the Convener and Panels since the establishment of the two bodies. In April 2016 Scottish Government began a procurement process for the provision of administrative services for the Convener and the Panels. The contract notice for “Support Services to the Convener of the School Closure Review Panels” was published in the Official Journal of the European Union (OJEU), and the closing date for tenders was 22 July 2016.

During the procurement process, the Scottish Government paid for the provision of these services by means of a services contract with the Scottish Arbitration Centre. The Scottish Arbitration Centre bid to continue providing administrative services to the Convener and Panels, and its bid was successful. The Scottish Government then entered into a new Administrative Services Contract with the Scottish Arbitration Centre on 1 September 2016. Funding is now provided by monthly invoices.

Income 2016

Month	Funding received	Type of Funding
January - February	£0 ¹	
March	£10,000	Grant
April	£10,000	Grant
May	£3,780	Invoiced payment
June	£5,412	Invoiced payment
July	£3,906	Invoiced payment
August	£3,386	Invoiced payment
September	£0 ²	
October	£5,365	Invoiced payment
November	£3,255 ³	Float
December	£0 ⁴	
Total	£45,104	

1 Funding for January and February was covered by grant payments in 2015

2 Funds remaining in the accounts covered expenditure for September.

3 Scottish Government paid this amount in addition to £1,745 remaining in the accounts for upcoming agreed services. The total amount of £5,000 will be repaid to Scottish Government upon termination of the administrative services contract.

4 As of 31 December 2016 we are awaiting payment of £10,027 for November and December invoices.

Amendment to the expenditure in the Convener's Annual Report 2015:

In May 2016 the Highland Council made a payment of £20,000 to settle expenses from the appeal against the first Panel's decision of the previous year. This amount was paid back to the Scottish Government. Taking this repayment into account, the expenditure for 2015 was £82,645.

Expenditure 2016

The actual expenditure for the period from 1 January 2016 to 31 December 2016 was £71,534. This is a £11,111 decrease on the expenditure for 2015.

Expenditure breakdown 2016

Administrative staff and associated costs	£40,831
Training and meeting accommodation	£2,541
Office accommodation	£2,012
External legal services	£7,089
Office running costs	£3,182
Fees for Convener	£4,815
Fees for Panel members	£10,300
Travel and subsistence (Scottish Government rates apply)	£764
Total	£71,534

Balance

The balance as of 31 December 2015 is £2,675.

Future

The Convener is holding a recruitment process to add to the pool of persons eligible to serve as members of a Panel. The aim of this process is to increase the number of legally trained persons eligible to be a Panel member, to ensure that each future Panel may include a legally trained member where required.

The Convener is in the process of arranging a training day for members eligible to serve on a Panel. The training day will serve as part of an induction for the individuals newly appointed to the pool of potential Panel members, and as a refresher for existing members as to the review process and their statutory responsibilities. The day will include reflections on Sheriff Tierney's judgement in the appeal case, and a Data Protection update.

Conclusion

The second year of the existence of the Convener and Panels has been a productive time during which we have provided training for all persons eligible to serve as Panel members and learnt much from the Sheriff's judgement regarding the Highland Councils appeal. We have also evaluated our internal systems to ensure that they are fit for purpose and developed internal guidance on the Convener and Panels' statutory Data Protection and Freedom of Information responsibilities. We have recently commenced a recruitment process for Panel members with a legal background and further training will be arranged accordingly. As a result of this activity, the Convener and Panels are all the more prepared to deal with any future call-ins which may arise in 2017 or beyond.



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