



STAJAC

Scottish Tribunals & Administrative
Justice Advisory Committee

Making decisions fairly

Developing excellence in administrative
justice in Scottish councils

Case study annex

November 2015

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¹ A list of Steering Group members can be found at [Appendix 3](#)

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Introduction to case studies

1. These case studies supplement the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) report *Making Decisions Fairly - Developing excellence in administrative justice in Scottish councils*. The case studies included in this supplement contain detailed information on the legislative basis and administrative processes that provide the foundation of the report findings.

Background to the main report

2. Administrative justice can be described and defined in many different ways. For the purposes of this report, the administrative justice system is the part of Scotland's justice system that helps people to resolve disputes with, or complaints about, the providers of public services. Its aim is to make sure that people can obtain redress, where justified, and ensure that public service decision-makers are accountable. In doing so, it should use procedures that are independent, open and appropriate for the matter involved.

3. Administrative justice is important because, directly or indirectly, it has an impact on everyone. In this report, we look at decisions made by councils because of the breadth and volume of the administrative justice decisions they make: of all of the devolved Scottish public bodies, councils' administrative justice processes have the biggest impact on the public. We also looked at those parts of the system outside councils where decisions are challenged or appealed to provide a view of the whole system.

4. Our approach was to identify a selection of case studies to model the service user journey through each administrative justice decision-making process, to examine the costs of each part of the process and how long the process takes. The case studies provide additional information to support the main report and illustrate some of the lessons and key principles. We do not directly assess the impact of council policy in these areas, but aim to raise awareness of the importance of sound and transparent administrative justice processes to implement council policies fairly and consistently. We collected some indicative cost information to look at the relative impact on councils of getting decisions right first time compared with going through appeals processes. However, we did not seek to establish an overall baseline cost for all administrative justice decisions in councils because this would be too time-consuming and expensive in some services and information is not available in others.

5. There are three broad types of decisions that councils make in relation to service delivery, rights and entitlement for individual citizens, businesses and organisations:

- Managerial decisions as part of service delivery, for example housing repairs, where the council has clear service standards and where council staff generally make assessment as to whether the standards are met.
- Decisions conferring a right or entitlement, based in a statutory power, but also on policy priorities determined locally. For example in planning or licencing, where the council will make an individual decision on a planning or licence application and where this decision is taken in the context of a local policy to zone particular areas for housing or another purpose, or for example in licencing, to limit the number of licenced premises in a predominantly residential area.

- Decisions conferring a right or entitlement, based in statutory power and national rules and policy, for example free personal care or housing benefit.

6. Our report and these case studies examine the types of decisions set out in the last two bullets.

The case studies

7. We undertook case studies in four council services to look at users' routes through councils' decision-making and appeals processes:

- planning and development control
- the adult social care assessment process
- how parking penalty charges are administered
- the additional support needs assessment process.

8. In each of these case studies we examined:

- why this process is an administrative justice issue
- the legal basis for councils' decision-making
- the service context
- how the process works
- 'real life' examples of the impact of administrative justice decisions on individuals
- the cost and impact of reviews and appeals (cost information is provided on an indicative basis only and is not intended to be used for benchmarking purposes).

9. We asked the four councils we worked with to provide us with information on the number, cost and outcome of appeals at each stage of the appeals process. The councils also provided us with anonymised 'real life' case study examples. Any comparative data between councils has been included for illustrative purposes and where this data was already publicly available.

Case study 1: Planning

Why planning is an administrative justice issue

10. The term administrative justice covers decision-making by public bodies that affect individual citizens' rights and interests,¹ including the legislation and rules under which public bodies make these decisions and the procedures used.

11. Planning is an administrative justice matter because the council uses the relevant legislation to decide whether an individual (or business) receives planning permission for any new development, including change of use of buildings and land. Planning permission is only one of many related permissions such as listed building consent, advertisement consent, certificates of lawfulness and conservation area consent. Planning permissions are granted for the land or building rather than to the individual who applies for the permission. Decisions are dependent on council (or national park authority) policy as set out in the development plan for each area.²

The legislative basis of the planning and planning appeals process

12. The legislative framework within which Scotland's 34 planning authorities (32 councils and the two national parks) operate in relation to planning permission is mainly contained in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. These are supplemented by various sets of regulations, but of principal concern are the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. A more detailed list of planning legislation is included at [Appendix 1](#).

13. The 1997 Act now requires planning authorities to create a Scheme of Delegation to determine how they will decide local development applications. This determines whether an appointed officer from the planning department can decide the application or whether the elected members of the relevant council committee make the decision. Generally, a council committee will decide upon more contentious and larger developments.

14. The 2006 Act amended the way in which an applicant can appeal or ask for a review of decisions. In general, decisions on applications falling within the planning authority's Scheme of Delegation are open to review by a Local Review Body (LRB). This is a quasi-independent body of the council, comprised of elected members.

15. Where a council committee determined the application, the available challenge

¹ Including businesses and organisations.

² Planning permission is not needed for work that only affects the inside of a building (except for listed buildings). Some developments, such as house extensions, are classed as permitted development and don't need planning permission.

route lies with an appeal to the Scottish ministers. In practice, this involves an appeal to a reporter of the Directorate of Planning and Environmental Appeals (DPEA). Both the review and the appeal routes can uphold the original decision or overturn that decision and substitute a fresh decision. In all circumstances, it remains open to both the LRB and the DPEA to add, vary or revoke any conditions upon the planning permission.

16. There are no third party rights to challenge a decision in planning law, meaning that the only remedy available for a third party would be to raise judicial review proceedings. Third parties can also complain about maladministration and service failure, to the SPSO. It should be noted, however, that under the legislative framework third parties can make representations on a planning application (either in objection or support), and these will be taken into account by the Planning Authority. In cases where there are a number of objections, the application may fall outwith the scheme of delegation and would therefore be decided by a council committee. Further, interested parties (which include those who have made representation on an application) are notified of any review or appeal of a planning decision and are afforded the opportunity to make further representations at that stage.

17. The 2006 Act also introduced a new way of categorising planning applications by their scale. There are three categories of planning applications – national, major and local.

- **National** - Identified in the National Planning Framework as developments of national importance, for example large infrastructure projects such as the replacement Forth crossing.
- **Major** - Includes developments of 50 or more homes, certain waste, water, transport and energy-related developments, and larger retail developments.
- **Local** - All developments that are neither national nor major. They include changes to individual houses and smaller developments for new housing (fewer than 50 units) and retail.

Statutory Time Limits

18. Planning authorities determine that the starting time for the application begins when the application is validated. In practice, this means that the clock begins ticking as soon as the last piece of information, for example, maps, is received from the applicant, which would make the application “valid” for determination. The following time limits apply:

- **Local Development** - the planning authority has two months to determine the application.³
- **Major/National developments** - the planning authority has four months to determine the application.

19. The statutory time limit for the applicant to bring an appeal is three months from the decision notice (a notice issued on determination of the application) for both local applications (LRB) and major/national applications (DPEA).

Background

20. The planning system provides the framework for deciding how land is used, how communities take shape and how new developments look and work. This is accomplished by granting or refusing planning permission (or granting planning permission with conditions). Councils base their decisions on the development plan for each area.

³ For local development, which is subject to an Environmental Impact Assessment, the environmental regulations extend the time limit from two to four months.

21. Development plans have to balance economic, environmental and community priorities. They are central to achieving the Scottish Government's goal of sustainable economic growth. There are three main parts to the planning system in Scotland:

- development planning sets out long-term plans for an area's development and provides the basis for making decisions about planning applications
- development management determines whether to grant individual applications for planning permission, either by deciding applications or through subsequent appeals and makes sure development is carried out correctly and takes action where it is not
- the enforcement process ensures that development is carried out correctly and that action is taken when development happens without permission or when conditions have not been followed.

22. Most planning authorities use E-planning, a national web-based system to provide planning information, submit and receive planning applications. Applicants can use the system to:

- make planning applications and appeals online and attach plans, drawings and documents to support the application (except for major development which can be submitted and appealed through a portal for new development plans)
- buy an online location plan, use the checklist provided to ensure that they provide all the information required to the council and use a fee calculator to work out the correct fee
- access information about planning applications - which can be viewed on council websites
- share the information with neighbours, clients or colleagues.

The planning process

23. When the council receives an application for planning permission, it sends a notice to neighbours to inform them what is proposed and how to make comments. Councils put information about applications on a register and make a full list of applications available in libraries and on their websites. In some cases, applications are subject to press advertisement. Anyone can comment on an application for planning permission, including neighbours, people directly affected by a proposal and the wider community.

24. Each council has a Scheme of Delegation setting out who is responsible for deciding different types of planning applications. In general, the appointed officer will make decisions on applications for local and uncontroversial developments, while council members will decide larger and potentially controversial proposals. In all cases, the council must make decisions in line with the development plan, unless material considerations justify going against the plan.⁴ Councils usually approve applications for developments that are in line with the development plan.⁵

25. Once the council has reached its decision, it will issue a decision notice and inform anyone who has made a comment on an application of its decision. A person whose

4 A material consideration is a planning issue, which is relevant to the application. It can include national policy, comments by the public and by organisations the council has consulted, the design of the proposed development, and the effect of the plan on the environment.

5 These are prepared by each planning authority, setting out the areas for new development and the policies that will inform decision-making. By statute, Local Development Plans must be updated every five years.

application has been refused can appeal to a local review body or to Scottish ministers (by way of the Directorate for Environmental and Planning Appeals - DPEA), depending on whether a planning officer or councillors made the decision.

26. There is a limited onward right of appeal to the Court of Session, but only on a point of law only, not on the merits of the case. Judicial review may also be available,⁶ but again this will not entail a review of the merits, and is only available on the limited grounds of illegality, procedural impropriety and unreasonableness.

27. Finally, the Scottish Public Services Ombudsman (SPSO) is the redress body for complaints against planning authorities in relation to maladministration and service failure.⁷ Both applicants and third parties can complain to the SPSO.

28. Exhibit 1 (page 10) shows the planning decision making process from the perspective of a council.⁸ The map shows the complexity of the process, and the number of parts of the council involved therein. As can be seen from the process map, local applications, in general, follow the delegated process and appointed officers will take a decision on these. However, should the local application fall outwith the council's Scheme of Delegation – for example, by receiving a number of objections or being contrary to the Local Development Plan – then the process becomes more complicated. The application will not follow the delegated process, and instead will proceed to one of the council's planning committees or full council for determination. A council committee, in this case the development management committee, or the full council, determines major development applications (falling outwith the Scheme of Delegation) where they are controversial. The full council determines national development applications.

29. The case study examples below illustrate how the appeals process works in planning. **Example 1 (page 13)** is an appeal to ministers and **Example 2 (page 14)** an appeal to a local review body.

6 This is the only available form of legal challenge for third parties and objectors.

7 The Scottish Public Services Ombudsman Act 2002.

8 The process map (and case study) considers only generic applications for planning permission. The impact of, for example, environmental impact assessments in the planning process has not been considered. Other planning applications can also be made, for example, conservation area consent and listed building consent. We have not considered these in this process map or case study.

Exhibit 1

Map of the planning decision-making process from the perspective of the planning authority (the council) for Aberdeen City Council

The planning process is complex.

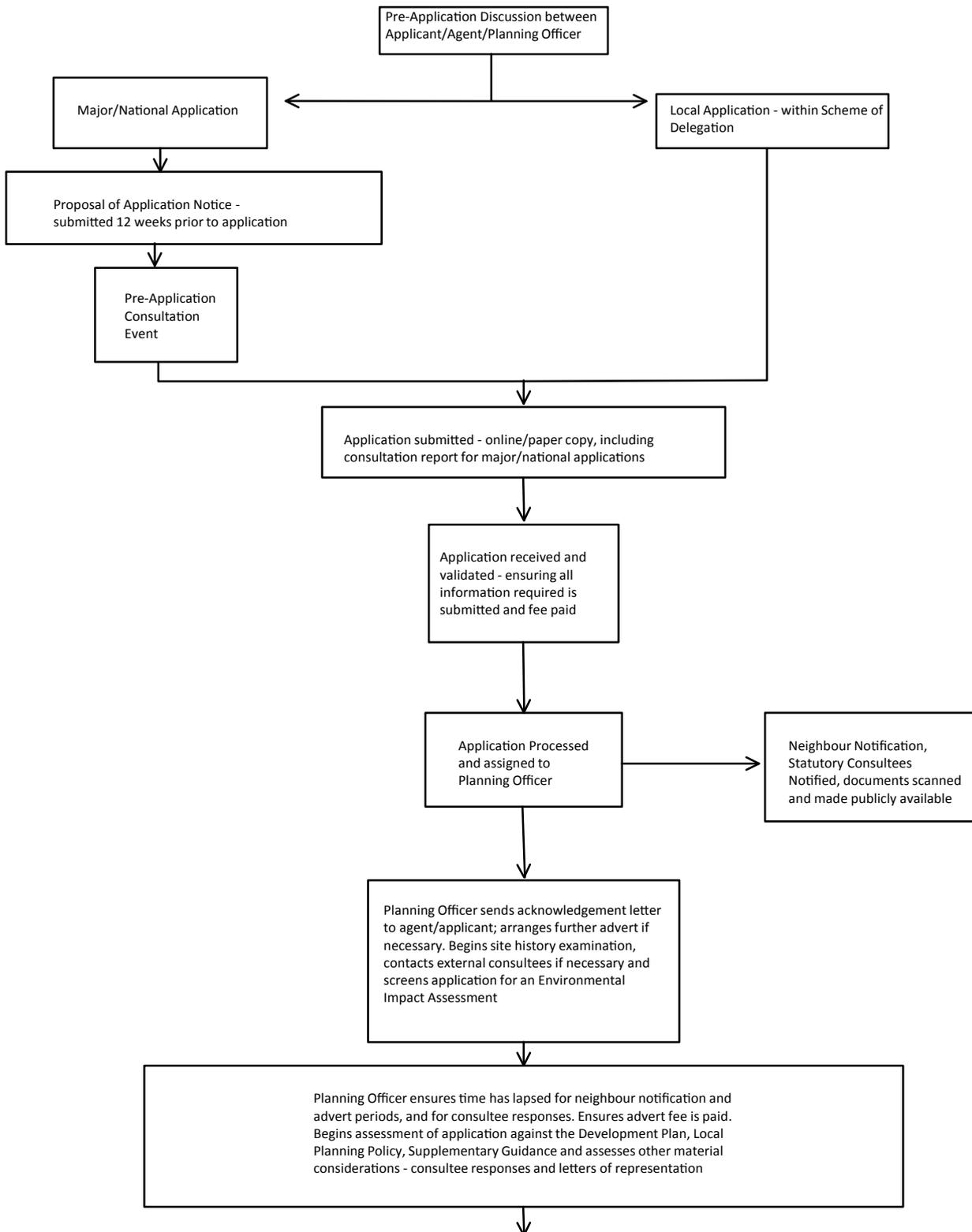


Exhibit 1 (continued)

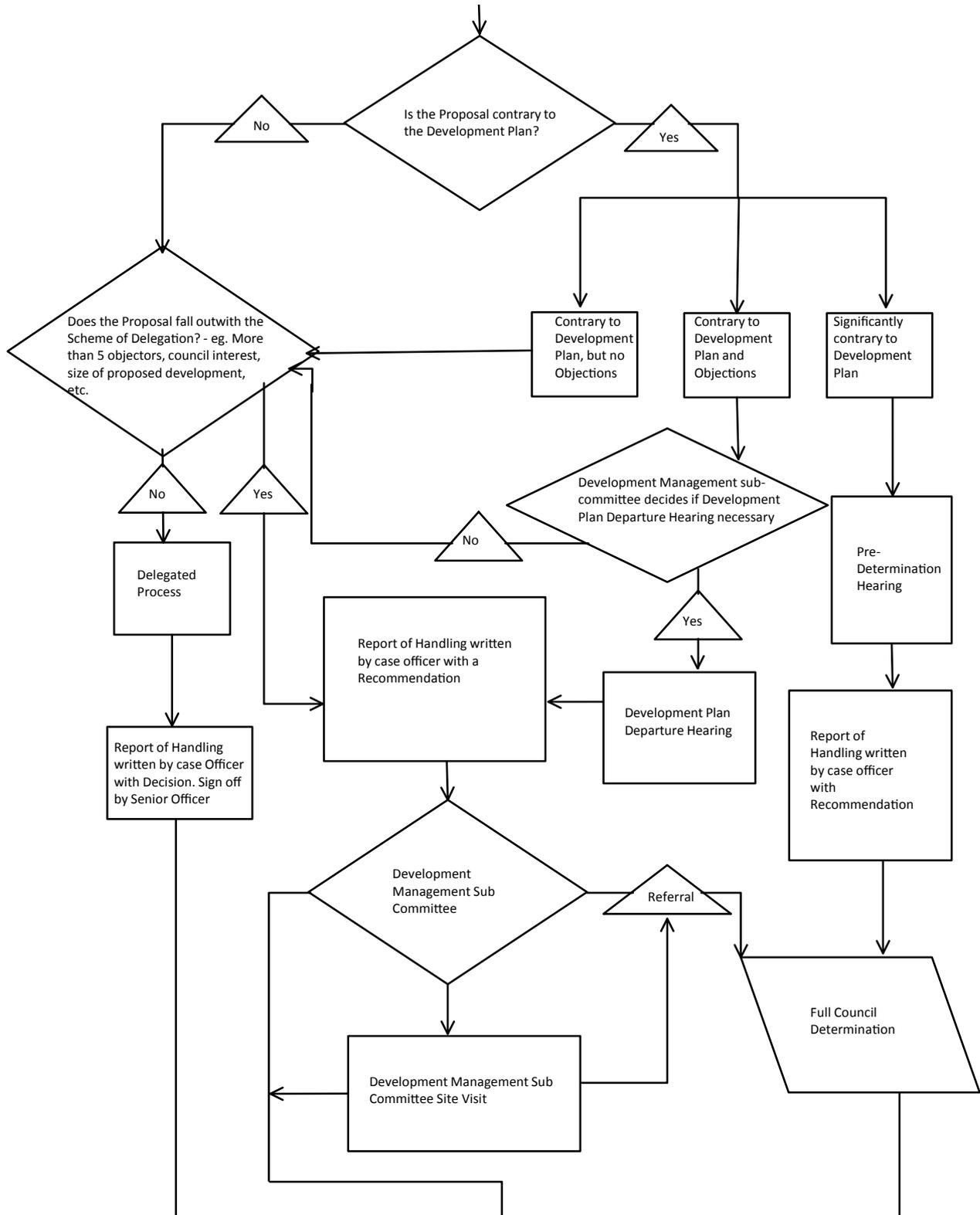
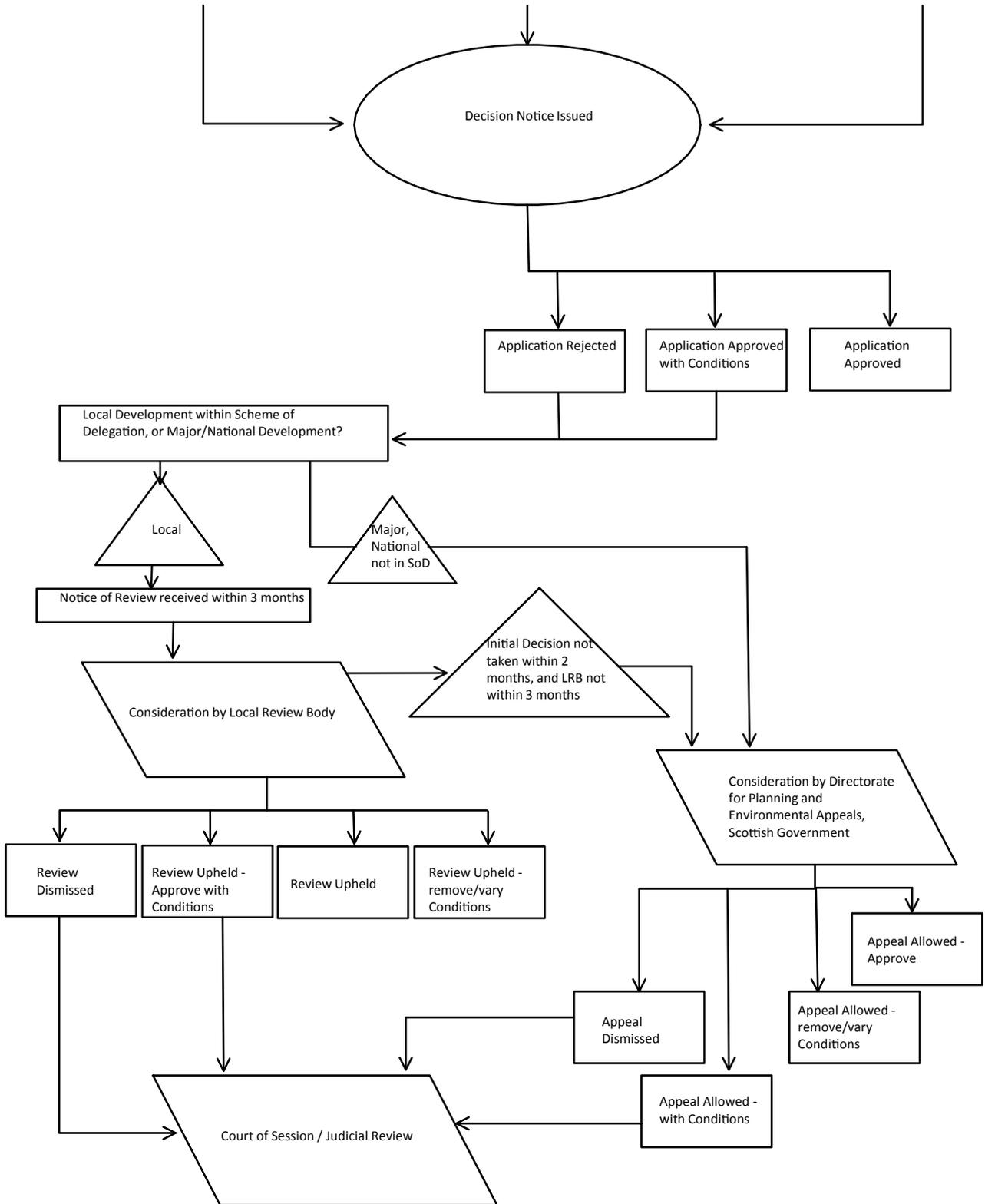


Exhibit 1 (continued)



Source: STAJAC, Aberdeen City Council

Example 1

Appeal to the Directorate of Planning and Environmental Appeals (Scottish ministers)

Mr and Mrs S had their application for the formation of a permanent gypsy/traveller site rejected by the council. This involved the creation of two permanent caravan sites and a utility building housing toilet and shower facilities. The application did not fall within the council's Scheme of Delegation and was determined by the council's Development Management Committee. The committee rejected the application as the application was considered to be contrary to the council's local development plan and it received many objections.

Mr and Mrs S were informed of their right to appeal the decision to the Scottish ministers by way of the Directorate for Planning and Environmental Appeals (DPEA) within three months of the decision notice. They duly appealed the decision.

The DPEA acknowledged receipt of the appeal and wrote to the council to request their submissions on the matter. A DPEA reporter considered the submissions and noted that the reasons for refusal of planning permission were as follows:

- the proposed development failed to meet the council's policy on the development of new gypsy/traveller sites and therefore ran contrary to the council's local plan, namely that:
 - it would have a detrimental impact upon the appearance of the wider area
 - it would negatively affect neighbouring land uses and is not environmentally compatible with the landscape
 - it would generate an inappropriate amount of traffic for the area.

The DPEA reporter determined that a site visit would be required in order to make an informed decision. This was carried out. The reporter noted that the application had originally been for five caravan sites, but that after initial discussions with the council, the application had been revised to only two sites. Given this, the reporter considered that the two sites would not have a materially adverse visual impact upon the area. It was also noted that much of the site was partially screened by tree planting and that additional tree planting could resolve this matter.

It was further considered that the site was within a loch catchment area and therefore strict waste and drainage requirements were mandated under the Local Plan. The reporter took into consideration that the Scottish Environmental Protection Agency, as a statutory consultee, had initially objected to the proposals, but had considered a drainage report carried out by the applicants and withdrawn this objection. It was therefore considered that the site would be environmentally compatible with the landscape.

The reporter finally considered the amount of traffic likely to be generated by the site. The council's reasoning that an inappropriate amount of traffic would be generated was rejected. The reporter reasoned that as there were to be only two caravan sites, this would not cause a significant increase in local road usage.

The DPEA therefore allowed the appeal and granted planning permission, but attached the following conditions to ensure compliance with the council's local plan:

- that within one month of the date of permission, plans would be submitted to the council detailing the drainage and wastewater facilities to be utilised
- that within three months of the date of permission, detailed landscaping plans would be submitted to the council, which must include supplementary screening, by tree planting.

Source: Aberdeen City Council

Example 2

Appeal to Local Review Body (LRB)

Ms H had her application for the erection of a house rejected by the Planning Department. She submitted a Notice to Review on the Council within three months of the decision notice. The Local Review Body (LRB) acknowledged receipt of the notice within 14 days, and gave notice of the review to interested parties – including third party objectors. The review documents were made publicly available.

The LRB convened to discuss the Notice of Review, the decision notice and associated documents. A planning officer who was not involved in the initial decision gave the LRB an overview of the application and the reasons for rejection. The LRB was informed that the planning department had refused the application on the basis that the proposal was contrary to Policy 1(e) of the council's structure plan, and policy H8 of the council's local plan. This was because in the planning department's view, an additional house in the area would lead to a build-up of development, which would be unduly prominent in a flat and open landscape; and the applicant had failed to demonstrate that at least half of the site's boundaries were long established and capable of distinguishing from the surrounding land.

The LRB heard directly from Ms H who challenged the decision on the basis that the application did not contravene the stated policy or local plan. Based on the evidence, the LRB determined that a site visit would be appropriate before making a decision, and the decision was postponed. The members of the LRB conducted an unaccompanied site visit before holding another meeting. At the second meeting, one elected member expressed the view that the boundaries of the site were sufficiently capable of being distinguished due to agricultural use in adjacent land. Two other elected members agreed. The LRB also determined that the construction of the house would not in itself lead to increased development in the surrounding area, especially given that an access road into the site was already in place. It was also determined that the design of the building was sufficiently sympathetic to the surrounding landscape.

The LRB decided that the application did not contravene the council policy or local plan. The LRB upheld Ms H's appeal and granted planning permission.

Source: Aberdeen City Council

There is considerable variation in the time planning authorities take to process planning applications

30. The average time to make a decision on the 30,123 local development planning applications considered in 2013/14 was 10.6 weeks for local developments. The average decision time varies between types of development. Householder developments (local developments, where the statutory time limit is two months) form over 46 per cent of the total and have the shortest decision time of on average 7.7 weeks. Applications for electricity generation (almost three per cent of all local decisions) have the longest average (23 weeks).⁹ The number of local decisions made by each planning authority per year varied from 46 in the Cairngorm National Park to over 2,900 in Aberdeenshire Council, with the average processing time varying from 17.7 weeks in the Cairngorm National Park to 6.1 weeks in North Ayrshire Council ([Exhibit 2, page 15](#)).

31. In 2013/14, 92 per cent of planning applications were decided under delegated authority and 94.1 per cent were approved. Approval rates varied from 87.9 per cent in Perth & Kinross to 98.4 per cent in Eilean Siar. Over the same period, there were 543 appeals to local review boards; the original decision was upheld in 59.8 per cent of these cases. There were 427 appeals to Scottish ministers, with the original decision upheld in 53.6 per cent of cases ([Exhibit 3, page 16](#)).

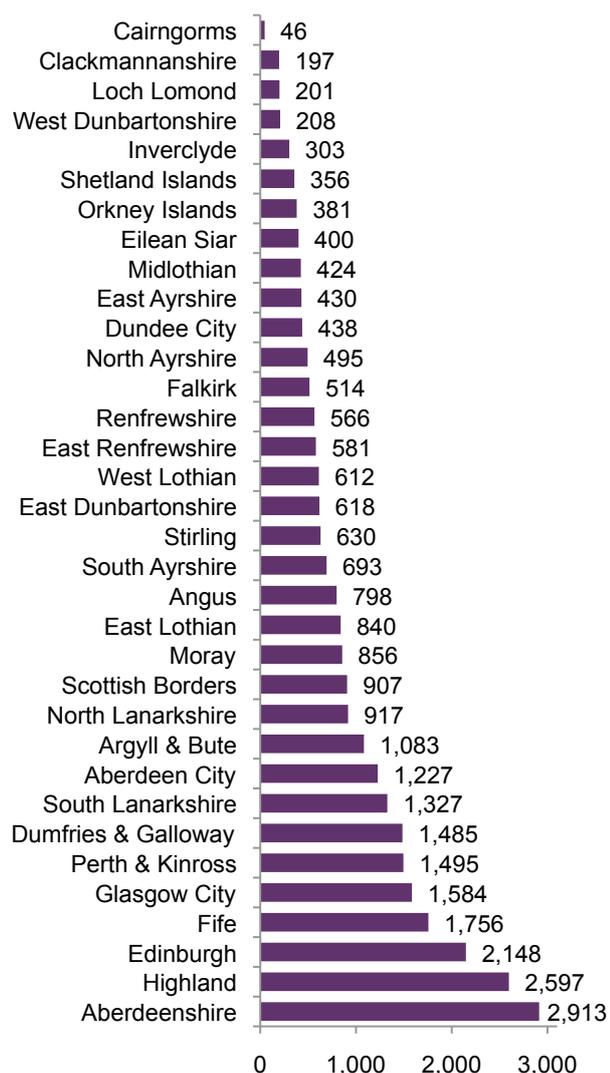
⁹ *Annual planning performance statistics 2013/14*, Scottish Government, July 2014.

Exhibit 2

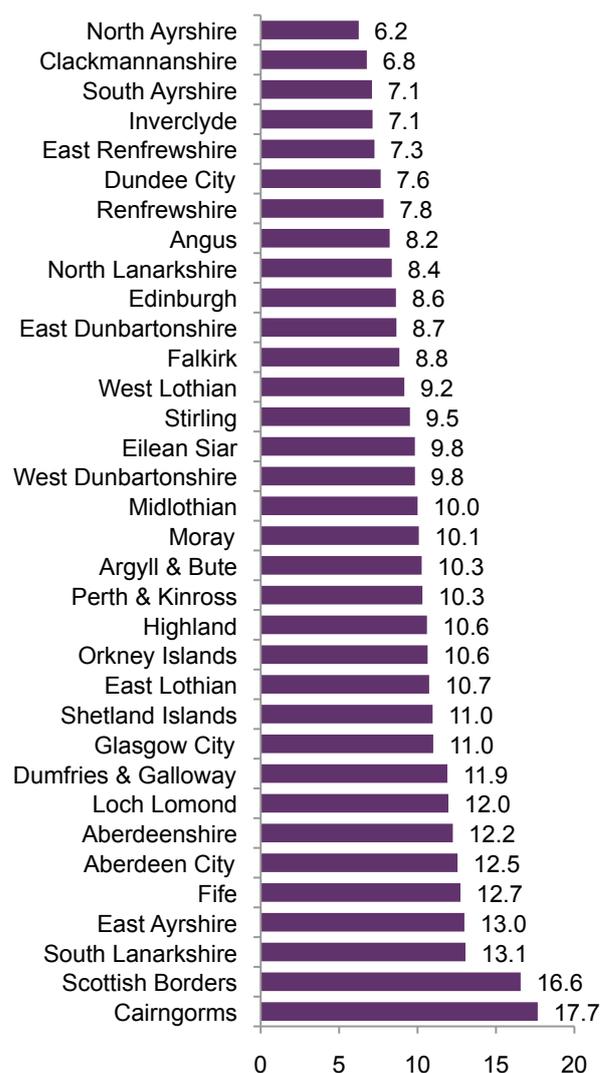
Number of planning applications and the average processing time, 2013-14

There is considerable variation in the number of applications made to planning authorities and the time taken to process them.

Number of applications



Average processing time (weeks)



Source: Scottish Government planning statistics

Exhibit 3

Number of planning appeals and the average processing time 2013-14

There is a considerable variation in the number of appeals made to local review bodies and Scottish ministers. The processing times for local review bodies also vary.

Council	Appeals to Local Review Bodies (LRBs)			Appeals to Scottish ministers	
	Number of applications	Average time (weeks)	% original decision upheld	Number of applications	% original decision upheld
Aberdeen City	2	31.0	50.0	9	66.7
Aberdeenshire	47	26.1	78.7	64	40.6
Angus	20	7.7	85.0	6	66.7
Argyll & Bute	14	16.3	64.3	12	66.7
Clackmannanshire	1	15.9	100.0	3	33.3
Dumfries & Galloway	21	14.2	76.2	30	66.7
Dundee City	4	17.1	25.0	5	40.0
East Ayrshire	21	14.6	66.7	10	60.0
East Dunbartonshire	7	11.7	57.1	6	16.7
East Lothian	12	12.6	58.3	9	55.6
East Renfrewshire	6	7.4	50.0	3	66.7
City of Edinburgh	75	6.4	62.7	56	71.4
Eilean Siar	1	5.4	0.0	0	-
Falkirk	3	17.6	33.3	6	33.3
Fife	51	16.4	47.1	29	37.9
Glasgow City	20	8.7	72.5	22	59.1
Highland	28	14.8	35.7	19	63.2
Inverclyde	9	13.7	44.4	5	40.0
Midlothian	16	11.7	31.3	2	100.0
Moray	22	7.0	50.0	13	30.8
North Ayrshire	9	7.0	77.8	1	100.0
North Lanarkshire	2	7.1	0.0	21	66.7
Orkney Islands	4	15.5	75.0	2	50.0
Perth & Kinross	56	16.2	51.8	14	57.1
Renfrewshire	3	10.9	66.7	3	66.7
Scottish Borders	39	8.1	48.7	13	46.2
Shetland Islands	0	-	-	0	-
South Ayrshire	22	10.2	72.7	11	63.6
South Lanarkshire	4	10.2	100.0	18	55.6
Stirling	7	10.4	85.7	9	55.6
West Dunbartonshire	1	5.0	0.0	3	33.3
West Lothian	16	8.8	75.0	19	26.3
Scotland	543	12.8	59.8	427	53.6

Source: Scottish Government planning statistics

32. Example 3 describes how a council improved its planning performance by empowering staff and improving internal processes.

Example 3

How one council improved its planning performance

In 2009, with the introduction of a new legislation, Argyll and Bute Council centralised its planning validation function creating the Central Validation Team (CVT).

The CVT review and register all the council's planning related submissions. They vet plans against locally and nationally set criteria and electronically scan and quality check submissions to ensure information is accurate. They also generate and send out neighbour notifications and consultations to statutory consultees. They deal with around 3,000 applications per year.

The principal performance measure for this team is the 'Percentage of valid applications that can be processed and neighbours notified in five working days', with the target being 90 per cent.

When the senior technician left, the service and the council were unable to appoint a suitably qualified and experienced replacement. There was a slippage in performance and a perceived increase in customer complaints due to lack of an onsite manager and direction. Noting the drop in performance, the council took the following actions:

- Installed a departmental process and productivity improvement officer into the team to provide day-to-day process support for a limited time. The main remit was to develop Business Process Reengineering (BPR) for the CVT processes to make them more efficient and make recommendations on how to develop the team.
- Empowered staff through an Ideas Log – a number of ideas were put in place.
- CVT participated in a national exercise with other planning authorities, the Improvement Service and CIPFA to examine the 'cost of the planning service'. This entailed looking at the actual costs incurred by the council when processing planning applications. It highlighted the importance of an efficient validation team as councils with the most robust registration processes had the shortest overall determination times.
- Developed a new validation checklist in consultation with Heads of Planning Scotland (HoPS), Scottish Government and other professional bodies such as Royal Institute of Chartered Surveyors (RICS). The aim of this new standard was to improve the quality of planning submissions as well as providing more customer friendly guidance.

As a result, performance stabilised, gradually improved and finally exceeded target. As a result:

- staff feel more empowered to change the way they work, they know they can influence processes and procedures
- the new validation checklist has been commended by HoPS and was shortlisted for a Scottish Quality in Planning award
- team processes have improved and become more efficient
- the team more is more likely to challenge perceived inefficient working
- performance has exceeded the 90 per cent target for past five quarters.

Source: Argyll and Bute Council

The cost of planning appeals

33. Planning appeals are made to local review bodies (LRBs) or Scottish ministers depending on the decision-making process:

- where applications are decided by the planning officer, appeals are made LRBs
- where applications decided by councillors, appeals are made to Scottish ministers (by way of the Directorate for Planning and Environmental Appeals–DPEA).

The cost of appeals to local review bodies

34. The staff cost of an appeal to a LRB varies from around £440 - £464 (**Exhibit 4**) in the case of Aberdeen City Council. In addition to the cost to the council, there may also be a considerable impact on the individual appealing to the LRB in terms of the cost, time and stress involved.

Exhibit 4

Appeal costs in Aberdeen City Council

Stage	Cost of each stage (range / average)	Number of appeals	Total Cost
Appeal to Local Review Body - staff costs to council	£440 - £464	2	£904
Appeal to DPEA - staff costs to council	£600	9	£5,400
Appeal to DPEA - cost to DPEA	£4000	9	£36,000

Notes: We calculated the total cost using the midpoint of the salary range of the staff involved at each stage. In contrast, the cost provided by the DPEA includes overheads as well as staff time.

Source: Aberdeen City Council, Scottish Government

The cost of appeals to Scottish ministers

35. Scottish Government reporters in the DPEA consider and decide cases on behalf of ministers. A very small number of appeals relating to developments of national importance may be 'called-in' by Scottish ministers who make the decision themselves. In these cases, a DPEA reporter will examine the case and make recommendations for the minister to consider before they make their decision.

36. Aberdeen City Council and the DPEA provided information on the cost of appeals. The council cost information is based on the percentage of staff time spent dealing with appeals work divided by the number of appeals decided in 2014/15. This gives an estimate of £600 to the council per appeal to the DPEA.

37. The cost provided by the DPEA includes overheads as well as staff time and is estimated at an average of just over £4,000 per appeal. Some appeals costing significantly less whilst others significantly more. This would give a total DPEA cost of dealing with appeals from all planning authorities of around £1.7 million a year.

38. In appeals cases, there is also a right to challenge the DPEA reporter's decision in the Court of Session. On average, there are approximately ten appeals in Scotland in each financial year. The cost to the DPEA of each challenge varies considerably depending on the approach. If they concede at the outset, the costs involved will be minimal. The losing party in the appeal is required to pay the other party's costs, so the cost will vary from zero to a significant sum. The DPEA estimated that their cost for an average appeal decision through the Court of Session would be around £2,500. In addition to these costs, there will also be a cost to the Scottish Courts and Tribunals Service, but we have not been able to establish how much this might be.

Conclusions

39. The Audit Scotland report *Modernising the planning system* found that users are generally satisfied with the planning system but not with the time taken to process applications or respond to enquiries. Overall, service users (householders, agents, businesses, and developers) are satisfied with the planning application process with 28 per cent saying they are very satisfied and 49 per cent fairly satisfied.

40. However, a third of service users felt the council had not kept them well informed throughout the planning process and that the council did not deal with enquiries in a reasonable timescale. Factors that add time to the process for assessing applications included:

- poor quality applications and missing information
- incomplete or invalid applications being submitted with additional information provided by applicants on a piecemeal basis
- non-payment of advertising fees by the applicant, which prevents a decision being issued
- high number of objections to be considered and reported
- waiting for planning committee meeting cycles
- consultation with key agencies and other council departments delaying final assessment
- additional assessments, for example environmental or transport assessments
- negotiations about legal agreements between the council and developers, which can take many months.¹⁰

41. For some people the cost, both in emotional and financial terms of submitting planning applications and planning appeals can be considerable. They can also lead to issues such as neighbour disputes and affect a considerable number of people not directly involved in the application.

¹⁰ *Modernising the planning system*, Audit Scotland, September 2011.

Case study 2: Adult social care assessment

Why this is an administrative justice issue

42. The term administrative justice covers decision-making by public bodies that affect individual citizens' rights and interests, including the legislation and rules under which public bodies make these decisions and the procedures used.

43. Social care needs assessments are administrative justice matters because the council uses the relevant legislation to assess an individual's needs and then makes a decision on whether it will provide services or fund services based on council policies. Free personal care assessments are also an administrative justice matter, but we do not describe that process here.¹¹

The legislative basis for the adult social care assessment and complaints processes

44. The Social Work (Scotland) Act 1968 at section 12A sets out the legislative basis for all community care needs assessments for adults. The Act places councils under a duty to carry out an assessment of the needs of a person who may require the provision of social care services. Section 12AA provides the concurrent framework for the assessment of a carer's needs. The list at [Appendix 2](#) illustrates the complex legislative and regulatory landscape that underpins the decision-making by local authorities in this area.

45. The Social Care (Self-Directed Support) (Scotland) Act 2013 requires councils to offer people a choice of four options in how their social care is provided – a) Self-Directed Support; b) Individual Service Fund; c) council arranged services; d) a mix of all options.

46. The council's social work department will also carry out a financial assessment to assess how much service users may have to pay towards the costs of the services offered. Local authorities set their own charges for social care services in line with COSLA guidance. COSLA publishes each council's charging schedule on its website.¹²

47. The assessment, the assessment results, the support plan and the financial assessment are all open to challenge. Complaints against social work services and about decisions made in the assessment follow a statutory procedure – set out in the Social Work (Representation Procedures) (Scotland) Directions 1996.¹³ While these are termed complaints, they entail a review of the decision and process followed by the department

11 Social care is different from free personal care, where councils have to provide services for people aged 65 or over assessed as having personal care needs (and cannot charge for this). The Community Care and Health (Scotland) Act 2002 sets out a list of personal care tasks that councils must provide under the Act, including: assistance with personal hygiene, eating and drinking, certain immobility problems and management of medication.

12 <http://www.cosla.gov.uk/about/how-we-work/health-and-social-care/charging/care-home>.

13 As mandated by the Social Work (Scotland) Act 1968, s.5B.

and can result in the recommendation of a different decision.¹⁴ The social work complaints framework provides for a three-stage process:

- informal consideration by the social work department
- formal consideration by designated council staff
- consideration by an external Complaints Review Committee.¹⁵

48. As a further step, individuals who are unhappy about the handling of their complaint can take the matter to the Scottish Public Services Ombudsman (SPSO). To do this the individual will need to have first gone through the council's complaints process. In addition, the complaint to the SPSO needs to be made within 12 months of when the issues in the complaint happened. Although the SPSO can check that a decision has been properly made, they cannot change or overturn the decision. However, they can make recommendations to put things right.

49. As a last resort, decisions of the council could be challenged in court by way of a judicial review. However, judicial review concerns the legality of the decision, rather than the substance of the decision itself.

Statutory Time Limits

50. The Social Work (Representation Procedures) (Scotland) Directions 1996 set out the timescales for social work complaints. The local authority has 28 days to initially investigate complaint; a Complaint Review Committee (CRC) has 56 days to make a recommendation; and then the local authority has a further 42 days to decide which action (if any) to take as a result of the recommendation and notify the complainant.

Background

51. Councils have a statutory duty to assess people's social care needs. If they assess a person as needing support and eligible to receive services, councils must provide or pay for services to meet these needs. People with social care needs include children and families, people with physical, sensory or learning disabilities or mental health problems, and older people. The duty to meet people's care needs can be difficult to manage as demand can be hard to predict and the amount of money available to councils to pay for these services is finite.

52. Demand on the care system, including social work, is increasing because older people make more use of services and Scotland's population is ageing. Between 2010 and 2035, the percentage of the population aged 65 or over is projected to increase from 17 per cent to 25 per cent (from 879,000 to 1.43 million). Over the same period, the number of people aged over 75 is projected to increase by 82 per cent from 406,000 to 738,000.

53. Councils' spending on social work has been almost flat in real terms over the past

¹⁴ Appeals are concerned with the accuracy or correctness of a decision in terms of a citizen's legal rights, natural justice or other relevant criteria, for example stated council policy. Complaints usually describe expressions of dissatisfaction about a public body's action, lack of action, slowness in taking action, or the standard of a service. However, the complaints framework for social work can be ambiguous as councils process both appeals and complaints through the same system, and are usually all described as complaints in that context.

¹⁵ Complaints about service provision in terms of maladministration and service failure, and issues such as staff rudeness would not follow this procedure, but could instead be referred to the Scottish Public Services Ombudsman (SPSO). Complaints about the conduct of registered social workers/care workers etc could be made to the SSSC, and/or the Care Inspectorate.

five years, and will continue to be constrained in the medium term. Given the projected increase in demand for social work services and restricted budgets, councils need a process for prioritising resources to those most in need. They do this by assessing each person's needs using a consistent process and setting eligibility criteria to focus the available resources on those most in need.

54. Councils have discretion over the eligibility thresholds they set. Thresholds in each council will depend on the resources available and on the council's policies and priorities. Individuals assessed as having needs below a certain threshold may not be eligible for care arranged or funded by the local authority. Thresholds may change over time in response to changes in demand and the resources available to meet that demand. They will also vary from council to council depending on the resources they have available and their local priorities.

55. Councils need to review assessments regularly to ensure that services continue to meet an individual's needs. Reviews could also lead to a person's services being reduced or withdrawn if the council's eligibility thresholds change or because an individual's health improves.

The needs assessment process

56. Local authorities assess users' and carers' needs using a common framework of four eligibility levels (the national guidance provides more detailed information on eligibility levels):¹⁶

- **Critical Risk:** Indicates that there are major risks to an individual's independent living or health and well-being likely to call for the 'immediate' or 'imminent' provision of social care services (high priority).
- **Substantial Risk:** Indicates that there are significant risks to an individual's independence or health and wellbeing likely to call for the immediate or imminent provision of social care services (high priority).
- **Moderate Risk:** Indicates that there are some risks to an individual's independence or health and wellbeing. These may call for the provision of some social care services managed and prioritised on an ongoing basis or they may simply be manageable over the foreseeable future without service provision, with appropriate arrangements for review.
- **Low Risk:** Indicates that there may be some quality of life issues, but low risks to an individual's independence or health and wellbeing with very limited, if any, requirement for the provision of social care services. There may be some need for alternative support or advice and appropriate arrangements for review over the foreseeable future or longer term.
- In these definitions, the timescale descriptions are used to indicate that services are likely to be required as follows:
 - Immediate – required now or within approximately one to two weeks
 - Imminent – required within six weeks
 - Foreseeable future – required within next six months
 - Longer term – required within next 12 months or subsequently.

57. A person's needs may be complex, for example involving health and housing as well as social work. Therefore, the needs assessment process may need to involve other council services and health services ([Exhibit 5, page 23](#)).

¹⁶ *National standard eligibility criteria and waiting times for the personal and nursing care of older people*-guidance, COSLA, Scottish Government, September 2009.

Exhibit 5

The social work needs assessment process involves other agencies

Social work	Other council services	Health services
Counselling and therapies	Welfare rights & housing advice	Drug and alcohol services
Homecare	Housing benefit	District nursing
Community centres	Transport services	Mental health services
Day care meals	Disability benefits	GP services
Care homes	Advocacy	Occupational therapy and equipment
Adaptations to the home	Social housing	

Source: Audit Scotland

The process in East Lothian Council

58. In this case study we are indebted to East Lothian Council for helping us to set down how the needs assessment process works. Because there is a common standard eligibility framework for adult social care services, the main features of the process will be common to all councils, although details will vary depending on council policy and administrative arrangements.¹⁷

59. The purpose of the process is to assess the extent of a person's care needs and decide how best to meet them. A social worker, district nurse, occupational therapist or another care professional will carry out the assessment, depending on the person's circumstances. There may be a lead care professional, but they work closely with other care professionals to prepare a care plan.

60. A number of people can request an assessment, including people themselves, or their relatives or carers, a GP, district nurse, member of hospital staff, local housing officer or welfare rights officer. Councils carry out assessments in order of priority of need. If needs are very urgent, a person can receive help before the assessment. With a person's consent, carers can be involved in the needs assessment.

61. The needs assessment process can seem quite daunting to a person with little knowledge of the care system. For this reason, people will often choose to have a friend, relative or advocate helping them and being present during the assessment.

62. The care professional carrying out the assessment will ask questions to help them understand the person's needs and assess the suitability of their home. They will document the assessment and will ask the person's consent to share specific information with other professionals. After completion of the assessment, the social work department will send the person a copy of the outcome of the assessment. A review date will be set, usually six months after the date of the assessment. If the person meets the council's eligibility criteria, the care professional will develop a care plan setting out how their

¹⁷ *National standard eligibility criteria and waiting times for the personal and nursing care of older people - guidance*, COSLA, Scottish Government, September 2009.

assessed needs may be met. If a person disagrees with the assessment, they can request a further discussion of their needs.

63. Councils may charge for some services and social work will carry out a separate financial assessment to determine the level of payments.

64. If a person does not agree with the outcome of the care needs assessment or the financial assessment, and it has not been possible to resolve the matter informally, then the social work department has a formal complaints procedure. If a person is unhappy with the decision after the informal review and then the formal investigation under the complaints procedure, they can appeal to the Complaints Review Committee of the council. This consists of two councillors and a suitably qualified independent chair. If the person is still unhappy, they can complain to the Scottish Public Services Ombudsman.

65. [Exhibit 6 \(A\) \(page 25\)](#) shows a map of East Lothian council's assessment process from the point of view of the individual assessed. The boxes outlined in red in the first part of the exhibit are the decision points where service users might ask the service to reconsider, or make an appeal or complaint. The process map in [Exhibit 6\(B\) \(page 26\)](#) below illustrates the stages of the complaints process (initiated at any of the 'red' (ie bold boxes) points in the first map) from the point of view of the service user.

66. [Exhibit 7 \(page 27\)](#) shows East Lothian Council's assessment process from the point of view of the social work service. Although the map appears quite complex it is a helpful tool for staff and managers. It also illustrates the complexity of the process that needs to be negotiated by the decision maker (and which is not visible to the individual concerned).

Case study examples

67. The case study examples ([Example 4 page 29](#) and [Example 5 page 30](#)) illustrate some of the issues and difficulties arising from the assessment and review of adults' social care needs. In particular, when councils change eligibility thresholds and when people are expected to contribute to their care.

The cost of reviews and complaints

68. For the council the benefit of reducing the number of complaints would be that the resources involved in appeals and complaints processes could have been put to better use. Although the number of cases going forward to the Complaints Review Committee (CRC) is small, they are costly ([Exhibit 8, page 31](#)). The cost of judicial review in particular, though a rare occurrence in this context, is very high. This illustrates that getting things right first time could potentially bring about considerable savings.

69. It is important to know whether the level of complaints in East Lothian is reasonably consistent with that in other councils. To do this we gathered information from Chief Social Work Officer annual reports. These reports vary in the detail in which they report social care complaints, with some councils not reporting the number of complaints at all and others providing a detailed breakdown ([Exhibit 9, page 32](#)). These show that the number of complaints and SPSO cases in East Lothian are reasonably in line with those in other councils. Although these figures give an indication of the scale of social care complaints/appeals across Scotland, they do not allow us to estimate the overall cost to Scottish councils.

Exhibit 6 (A)

Map of East Lothian Council's needs assessment process from the point of view of the individual assessed

The needs assessment process can seem daunting to an individual.

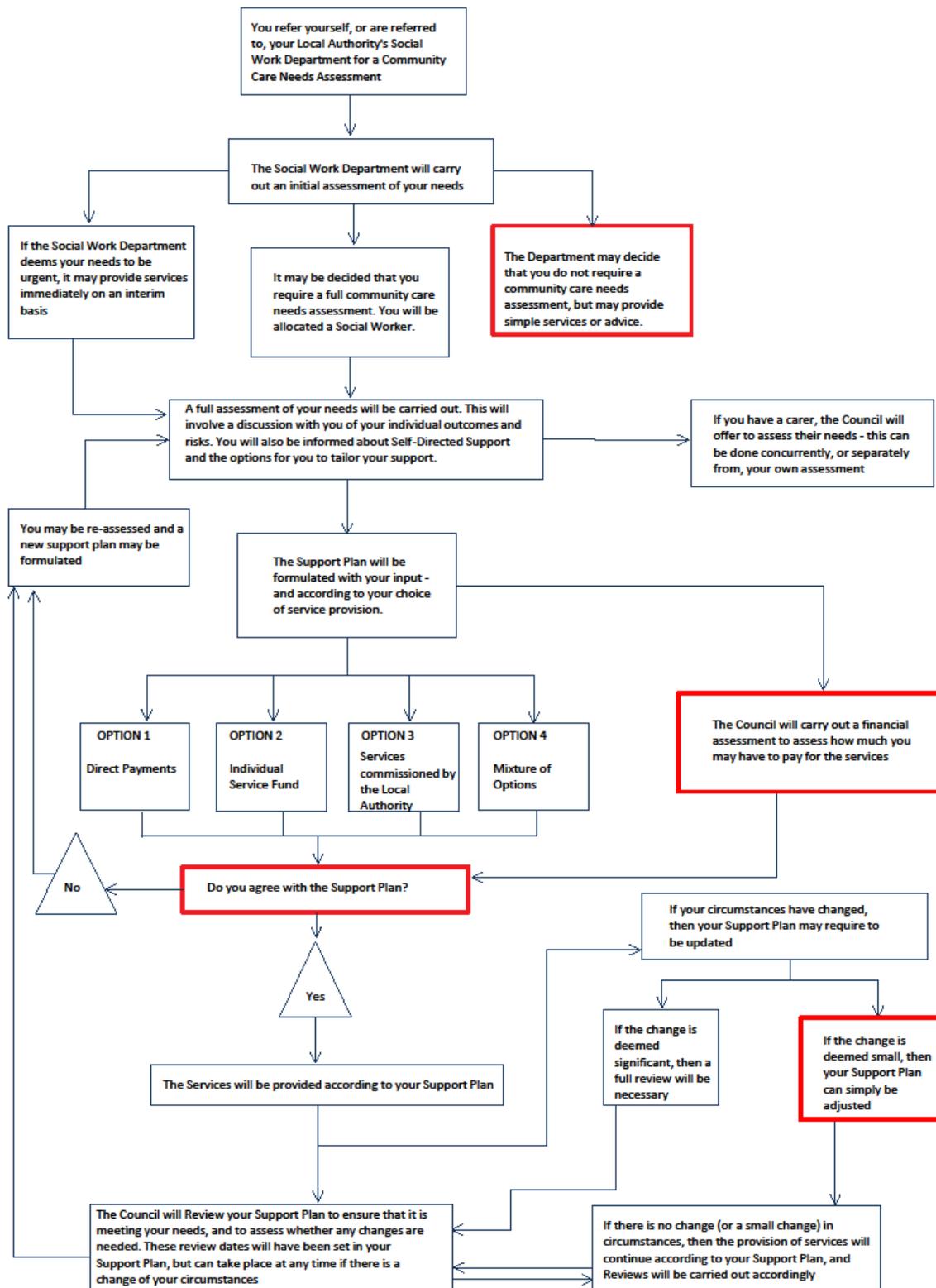
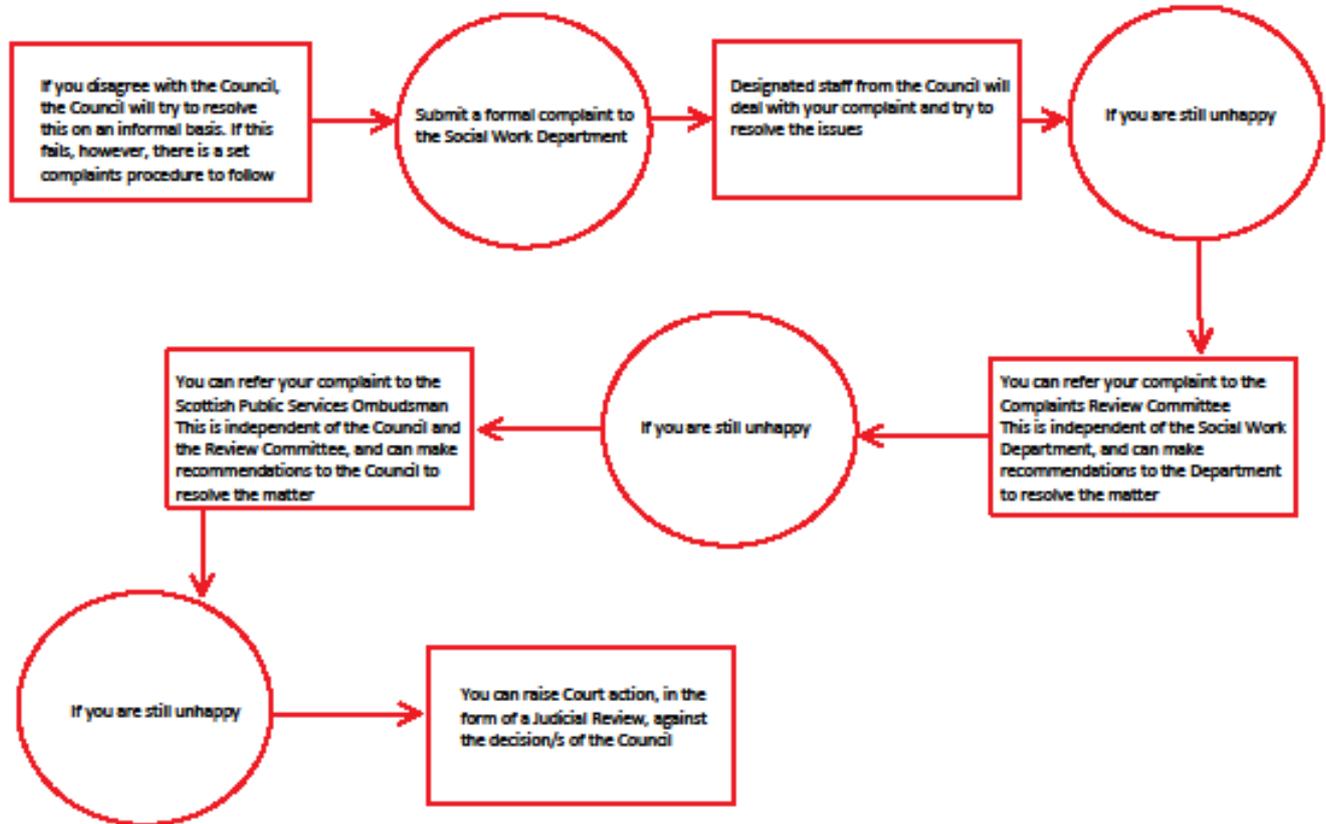


Exhibit 6 (B)

The stages of the complaints process (initiated at any of the 'red' points in the first map)



Source: STAJAC, East Lothian Council

Exhibit 7

Map of the assessment and appeals process from the point of view of the council

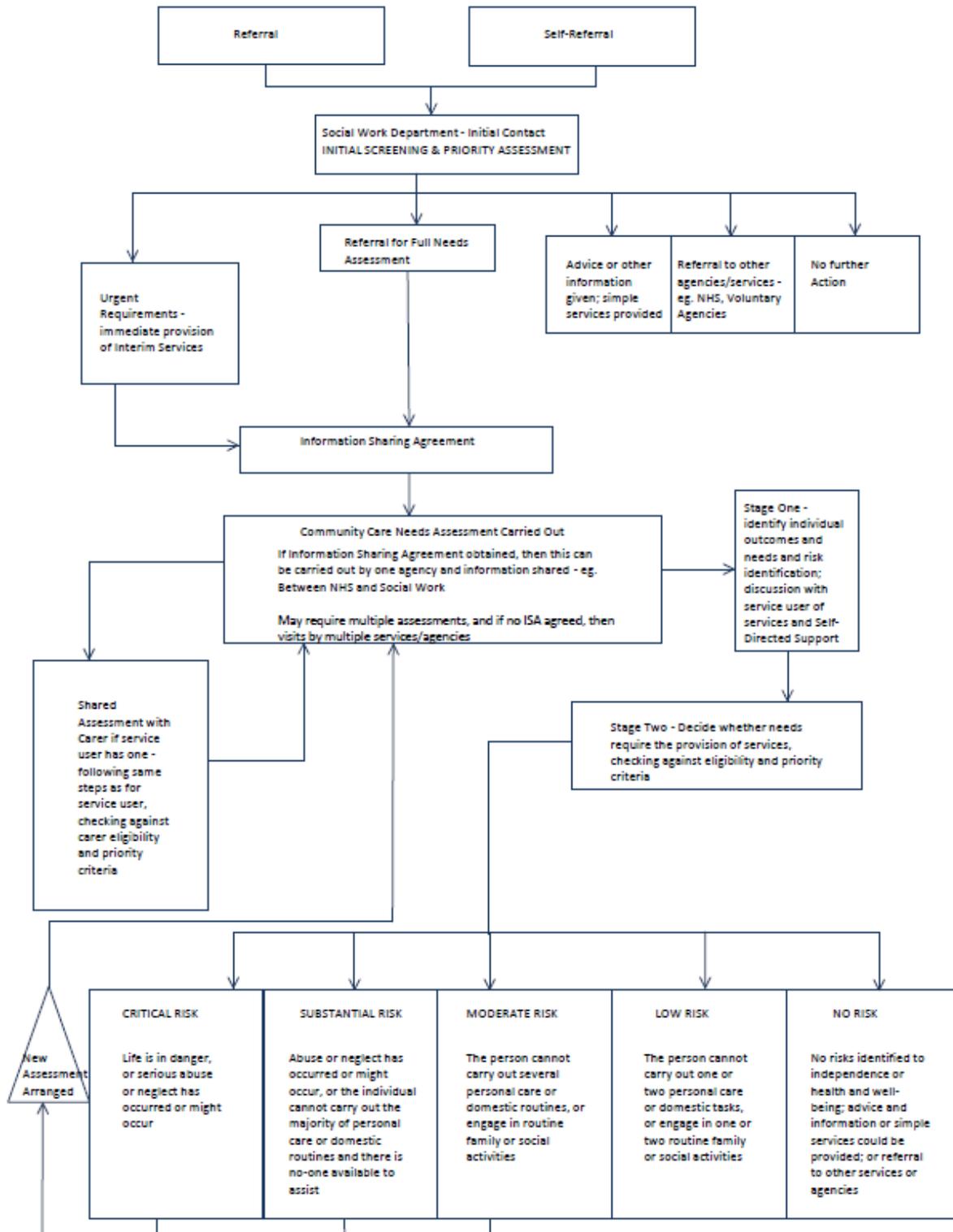
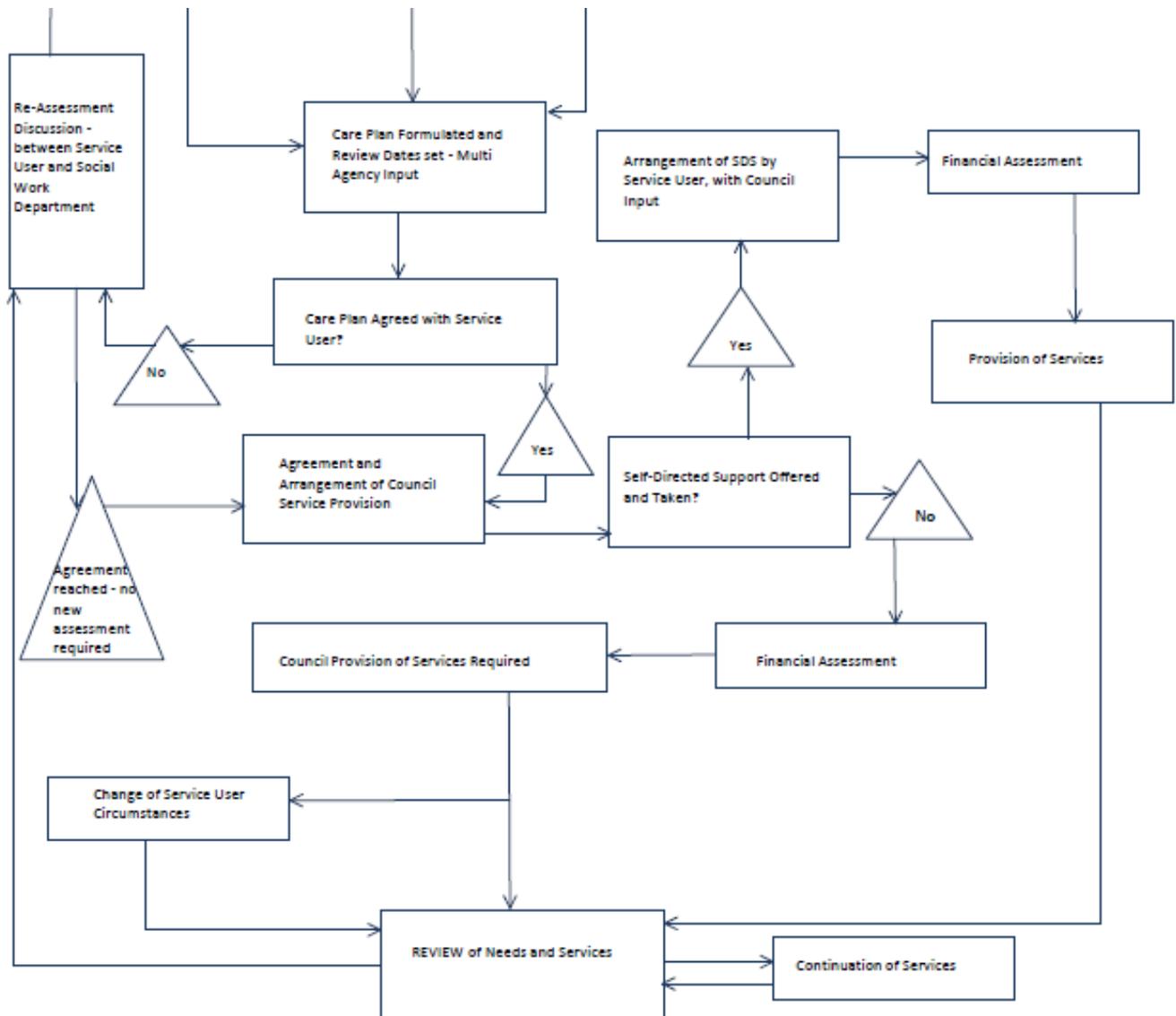


Exhibit 7 (continued)



Source: STAJAC, East Lothian Council

Example 4

Withdrawal of social care support

Ms X had been receiving support from a third party care provider (paid for by the council) for five hours per week; four hours for help with cooking, shopping and other skills to help her live independently in her home and another hour to help with correspondence. Following a yearly review, the council reduced Ms X's care package to one hour per week for support with correspondence and then withdrew it completely. There were three reasons for this; 1) the care was no longer being used for its originally identified purpose, 2) Ms X's capability had improved and; 3) the council's eligibility threshold for the provision of support had increased to 'critical risk' (see paragraph 56), meaning that Ms X (who had now been assessed as being in 'substantial risk' no longer met the eligibility criteria.

Ms X was unhappy with this decision, as in her view she still required support. She explained that she was isolated and was struggling with day-to-day tasks. She asked her social worker to review the decision. This informal review was done in conjunction with a social work manager and the original decision to withdraw the care package was upheld.

Ms X remained unhappy and was signposted to the statutory complaints procedure (as set out in the Social Work (Representation Procedures) (Scotland) Directions 1996). Following an investigation within the 28-day statutory timescale, council staff concluded that the decision to withdraw support was reasonable and taken in line with the current eligibility criteria; therefore, Ms X's complaint was not upheld. They did however, acknowledge that Ms X was used to receiving support and would miss interaction with her carers. Other avenues to help with her isolation, such as re-housing, began to be explored.

Ms X disagreed with the decision on her complaint and requested that a Complaints Review Committee (CRC) consider her complaint. A CRC to consider Ms X's complaint was held within 80 days (therefore outwith the prescribed 56 days). Ms X was not receiving support during this time. Unfortunately, delays are not uncommon due to committee schedules and problems recruiting members for the CRC. This process can substantially lengthen the complaints procedure for an individual wanting to challenge a social work decision, especially when also taking into account the 28 days given to the local authority to investigate the complaint initially. There are also the costs and resource implications associated with the CRC process, in that considerable staff time is involved in preparing for the committee and council members and an independent chair need to take part. The CRC did also not uphold Ms X's complaint but through the CRC process, the social work service agreed to further actions to help Ms X with her isolation such as seeking a befriender and exploring alternative community support options.

Earlier clarification and better communication with Ms X and her advocacy worker could have identified these issues at a much earlier stage. This would have allowed Ms X to receive assistance at an earlier stage and might have avoided the requirement to go through the complaints process.

A meeting of the council's Social Work Appeals Sub-Committee was then convened to consider the recommendations of the CRC, which were agreed. Ms X did have the option of taking the matter to the Scottish Public Services Ombudsman (SPSO) if she remained unhappy but she decided not to do so.

Source: East Lothian Council

Example 5

Dispute over financial assessment

Mrs Y was unhappy with a decision to take into account the value of her mother (Mrs Z's) property as part of the financial assessment to determine whether Mrs Z should be considered self-funding for her residential care costs. Mrs Y had Power of Attorney for Mrs Z and argued that Mrs Z had transferred ownership of the property to her and her husband prior to needing care and did not do so with the intention of trying to avoid care home costs. Mrs Y asked the council to reconsider their decision to assess Mrs Z as self-funding because the value of the property took Mrs Z over the capital threshold for local authority funding (after an initial 12-week period where the property value was disregarded). She argued that the council had not made its policies around this issue clear and had not clearly explained the decision-making process, either in person or in literature.

While the matter was under dispute, the council took an interim decision to fund Mrs Z to secure her residential care placement but made clear it would seek to recover the sum accrued. On review of the decision, with the input of legal advisers, the council concluded that Mrs Z should be self-funding. According to the Charging for Residential Accommodation Guidelines (CRAG), the local authority may feel that a resident has deprived him or herself of a capital asset in order to reduce an accommodation charge and, where this is the case, may treat the resident as still possessing the asset.

The local authority has a duty to examine the purpose of the disposal. The intention to reduce the accommodation charge does not have to be the main reason but must be significant. In this case, the property was transferred under seven years before (the period adopted by the local authority when considering disposal of assets) and Mrs Z had been receiving social work support for some time so it was not unreasonable to assume that she might require residential care in the future.

In the course of the review, it was accepted that information provided by the local authority on the financial assessment process could be clearer and should be discussed with families at an earlier stage when residential care was being considered for a client. Mrs Y exercised her right to make a complaint about the review decision through the social work complaints procedure. Following an investigation, her complaint was not upheld. Mrs Y then asked for her complaint to be considered by a Complaints Review Committee (CRC).

The CRC was held within the 56 days allowed and Mrs Y's complaint was not upheld, as it was considered that all relevant information had been taken into account by the local authority in reaching the decision. A meeting of the council's Social Work Appeals Sub-Committee was then convened to consider the recommendation of the CRC, which was agreed.

Mrs Y then took her complaint to the Scottish Public Services Ombudsman (SPSO) as she did not believe the CRC process had been fair and impartial and not all relevant information had been taken into account. The SPSO can only look at whether the CRC process was followed correctly; rather than the substantive decision reached, as they cannot question the merits of a discretionary decision taken by a local authority without evidence of maladministration.

Unhappy with the limitations of the SPSO's remit, Mrs Y notified the council through her solicitors that she intended to take the local authority to judicial review in the Court of Session to challenge the decision reached, as this was the only remaining option open.

Source: East Lothian Council

Exhibit 8

The number and staff salary cost of complaints (East Lothian Council example)

Although the number of East Lothian Council cases going forward to the Complaints Review Committee is small, costs per case rise significantly at the CRC stage. Costs to the administrative justice system more widely escalate once the SPSO consider the case, and in particular for judicial review.

Stage	Cost of each stage (range)	Number of complaints	Cumulative cost to the council per case ¹	Total annual cost for each stage in process ¹	Total annual, cumulative cost to public purse ²
Complaint at the frontline	£10 - £50	29	£30	£870	£870
Complaint plus investigation	£400 - £500	48	£480	£23,040	£23,910
Complaints review Committee (in addition to investigation)	£700 - £800	3	£1,230	£3,690	£27,600
Council Response to SPSO (in addition to CRC and investigation)	£300	6	£1,530	£9,180	£36,780
SPSO investigation and report	£1,000 - £2,000	6	n/a	£9,000	£45,780
Council cost of Judicial review	£30,000 - £50,000	1	£41,530	£40,000	£85,780
SCTS cost of Judicial review	£5,000 (illustrative)	1	n/a	n/a	£90,780

Notes:

1. We calculated the cost using the midpoint of the salary range of the staff involved at each stage.

2. The total cost to public purse includes an estimate of the SPSO costs, although these vary widely from case to case, we estimated that the staff cost of an SPSO investigation to be around £1,500. Estimates of the cost of judicial review are not available because there are not enough social care cases to enable us to make a reliable estimate.

Source: Audit Scotland

Exhibit 9

Social care complaints 2013/2014

Council	Frontline Resolutions	Formal Complaints	Complaints Review Committee	SPSO
Edinburgh	224	191	6	4
East Lothian	29	48	3	6
Perth & Kinross	not reported	11	4	not reported
North Lanarkshire	not reported	146	3	not reported
Dundee	not reported	38	2	2
South Ayrshire	not reported	14	5	0
Inverclyde	not reported	36	9	not reported

Source: Council websites

Conclusions

70. Although the council's view was upheld in both of our case study examples, there are a number of other lessons from example 4 that are important when considering the use of the complaints process in social work:

- the process can be lengthy, in this case it took almost six months to reach a conclusion, during which time Ms X was left isolated and without support
- better communication and empowering staff to propose alternatives at the beginning of the process could have identified alternative community support options at an early stage and allowed Ms X to avoid the stress of the appeals process
- the withdrawal of social care support could have been alleviated by the alternative provision at an early stage, resulting in continuity of support and very much less anxiety and distress
- identifying and resolving issues at the front line would have reduced direct staff costs, as illustrated in our costing information.

71. There are also instances, as in example 5, in which the council will need to defend its judgement to ensure consistency and fairness and to comply with legislation. In some instances, the council may incur considerable expenditure in doing so. Even so, the observation that information provided by the council on the financial assessment process could be clearer and should be discussed with relatives at an early stage when residential care is being considered, is highly relevant. Improving the information and ensuring understanding by relatives of the financial assessment and its implications could prevent misunderstanding and manage expectations.

Case study 3: Parking on public land

Why parking on public land is an administrative justice issue

72. The term administrative justice covers decision-making by public bodies that affect individual citizens¹⁸ rights and interests, including the legislation and rules under which public bodies make these decisions and the procedures used.

73. Parking enforcement is an administrative justice matter because the council uses the legislative framework to decide whether an individual has infringed local parking regulations and makes a decision on whether it will enforce a penalty charge based on council policies.

The legislative basis of parking charges and appeals processes

74. The legislative basis of parking on public land flows from the Road Traffic Act 1991, and the Road Traffic Act 1991 (Amendment of Schedule 3) (Scotland) Order 1998. The 1998 Order allowed Scottish councils to apply for an order to allow decriminalised parking enforcement within the council area.

75. Councils have a requirement to record and report each year on the income and expenditure they incur in relation to decriminalised parking. If, at the end of the year, a council has incurred a deficit (ie costs greater than income), it is required to borrow money from its general fund to meet this. If in any year a council has a surplus (ie income greater than costs), it is restricted in how it can use this.

76. The council can only use a surplus for the activities set out in the Road Traffic Act 1991. The Act allows councils to carry forward the surplus, but councils must specifically allocate the surplus to one of the permitted activities:

- repaying any money borrowed from its general fund to meet a deficit in the previous four years
- providing or maintaining parking
- paying others to provide or maintain parking
- if no further parking provision or maintenance is deemed necessary
 - providing public passenger transport
 - carrying out road improvement projects.

Time limits and charges

77. Typically, the initial cost of a ticket is £60; the council gives a discount of £30 for payments made within 14 days of the date of issue. Failure to pay within the first 14 days (at £30) results in a statutory notice being sent to the registered keeper 28 days after the issue date for the full charge of £60. Failure to pay the £60 charge within 28 days from

¹⁸ Including businesses and organisations.

receipt of the statutory notice results in the charge increasing to £90 and the council issues a charge certificate. Failure to pay the charge within 14 days of its issue will result in the council forwarding the debt to sheriff officers. The sheriff officers can award additional costs by issuing a charge.

Background

78. Parking on public land in Scotland is managed by the local council or by the police, depending on the council area. Where a council manages parking restrictions, they employ parking attendants, and people not following the rules may receive a penalty charge. This is then a civil matter, not a criminal offence. In areas where the police enforce parking restrictions, it is a criminal matter and a person may receive a fixed penalty notice.

79. In February 2014, Police Scotland announced they were withdrawing their traffic warden service. Police Scotland officers will now only attend to breaches of parking regulations which are “dangerous or cause significant obstruction”. This means that councils are increasingly taking on the role of managing parking restrictions. Currently 13 out of 32 councils (mainly larger urban councils) have Decriminalised Parking Enforcement (DPE) powers and most of the others are in the process of obtaining them.

80. In 2012-13, council income from parking charges totalled £29 million. The City of Edinburgh Council (CEC) had the largest net income from parking (£15.2 million) followed by Glasgow City Council at £10.9 million.¹⁹

81. An advantage of decriminalised parking is that it can enable a council to tailor parking enforcement to meet specific needs, taking into account wider traffic management issues and alignment with other policies, such as town regeneration and road safety.

The enforcement process

Time limits

82. The council process for enforcement of parking restrictions is similar where parking is decriminalised. If people park their car contrary to the council’s parking regulations, a council parking attendant can issue a penalty charge notice. The parking attendant must hand the driver the penalty charge notice or fix it to the car. Councils give a discount of 50 per cent if the penalty charge is paid within 14 days. After 14 days, the charge reverts to the full charge. A statutory notice is issued to the registered keeper of the vehicle after 28 days from the date of issue, ([Exhibit 10, page 36](#)).

83. The parking ticket informs the person of the reason for the charge. Common reasons for getting a parking ticket include:

- parking where waiting is not allowed
- the parking time had expired
- more parking time was purchased after the maximum stay had been reached
- parking without payment of the parking charge
- parking in a permit space without displaying a valid permit
- parking in a suspended parking place
- re-parking in the same place within the no return period

¹⁹ Scottish Transport Statistics, 2014 Edition, Transport Scotland.

- not parking correctly within the bay markings
- staying for longer than allowed in a free parking place
- parking in a disabled parking place without displaying a valid disabled blue badge
- parking on a red line or greenways route when parking is not allowed
- parking at a bus stop.

84. If the person does not agree that they have committed an infringement, they can appeal to the council. There are a number of grounds for appealing including:

- they weren't the owner of the vehicle when it was wrongly parked
- the alleged infringement did not take place, for example:
 - the meter time had not run out
 - the vehicle had broken down
 - the person was legally loading or unloading a vehicle
 - the vehicle had been parked by someone without the consent of the owner
 - the vehicle was parked in a place that was not properly designated as restricted parking.

85. The council must consider the case and inform the person whether it accepts or rejects their appeal. If it accepts the appeal, it will cancel the penalty charge notice. If it rejects the appeal, it must send a notice of rejection along with appeal forms and details of how to make a further appeal to the Scottish Parking Appeals Service (SPAS).

86. If the further appeal to the SPAS is dismissed, the person will have to pay the local authority, but they won't have committed a criminal offence. If a person doesn't pay within the correct time, an additional charge of 50 per cent will be added and a Charge Certificate sent to the registered keeper of the vehicle requesting payment within 14 days. Should payment be outstanding the council can register the debt with the court, without a court hearing, and recover the charge using sheriff officers.

The process in the City of Edinburgh

87. Edinburgh issues around 180,000 parking tickets per year. Overall, around 14 per cent of people who get a parking ticket in Edinburgh appeal to the council to have their ticket set aside. The council parking service upholds about half of these appeals.

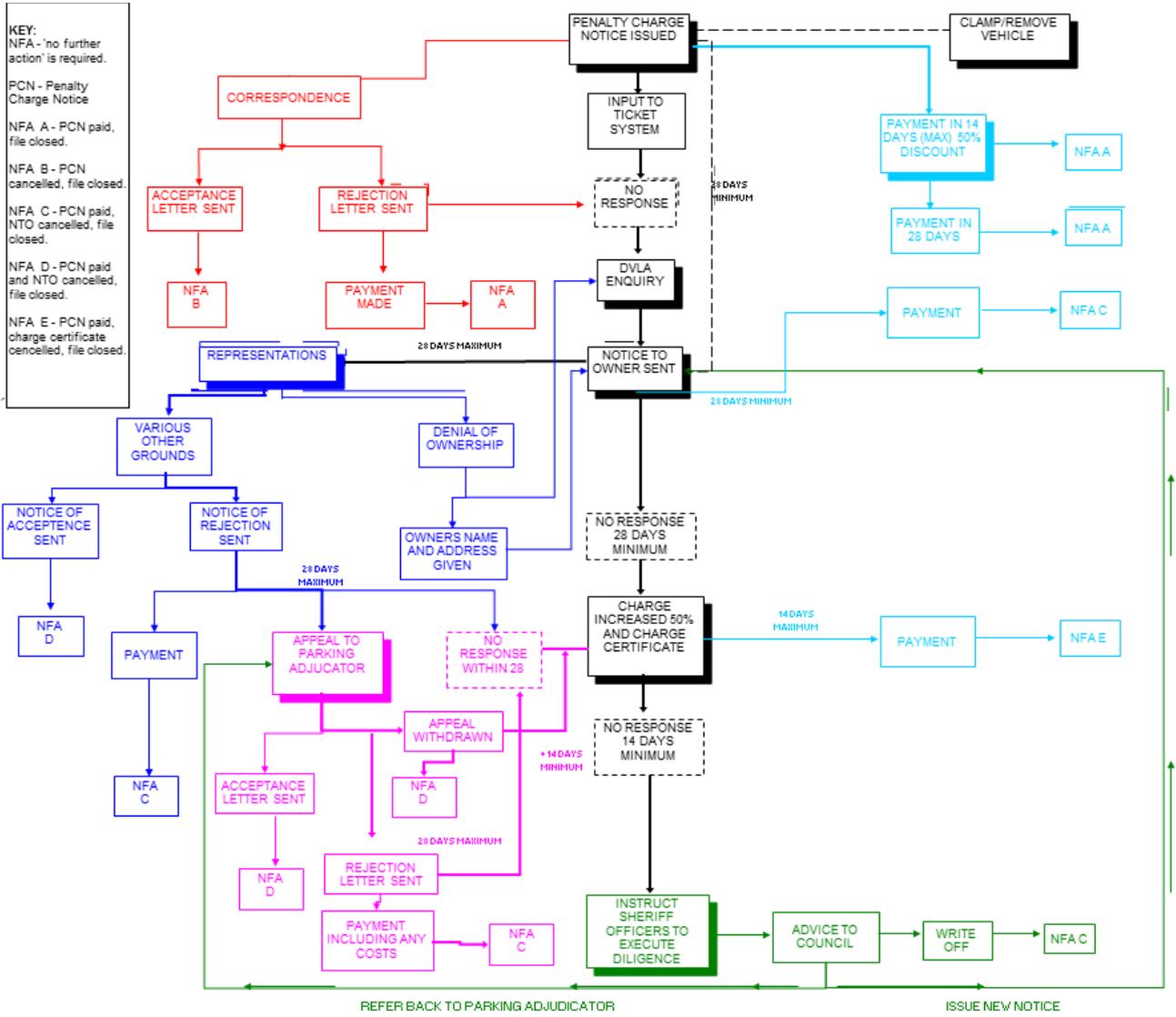
88. Very few people appeal to the Scottish Parking Appeals Service (SPAS), with 437 appeals (0.23 per cent of tickets) in 2013/14. In Edinburgh's case, the Scottish Parking Appeals Service rarely upholds appeals (23 in 2013/14).

89. The council has a highly automated back-office system to manage the penalty charge workload ([Exhibit 10, page 36](#)). Individuals receiving tickets automatically have internet access to photographs of their infringement. This facility allows people to see the evidence against them and in this way cuts down the number of unnecessary appeals. The system automatically generates the statutory documentation required, which includes explanations of the nature of the infringement, the penalty, the rights of appeal and timescale. All the documentation has been plain English tested. The council also has a customer service charter for its parking operations.

90. This process can also be mapped for the point of view of the individual receiving the parking charge ([Exhibit 11, page 37](#)). This map is considerably simpler as it does not include details of the council's internal process.

Exhibit 10

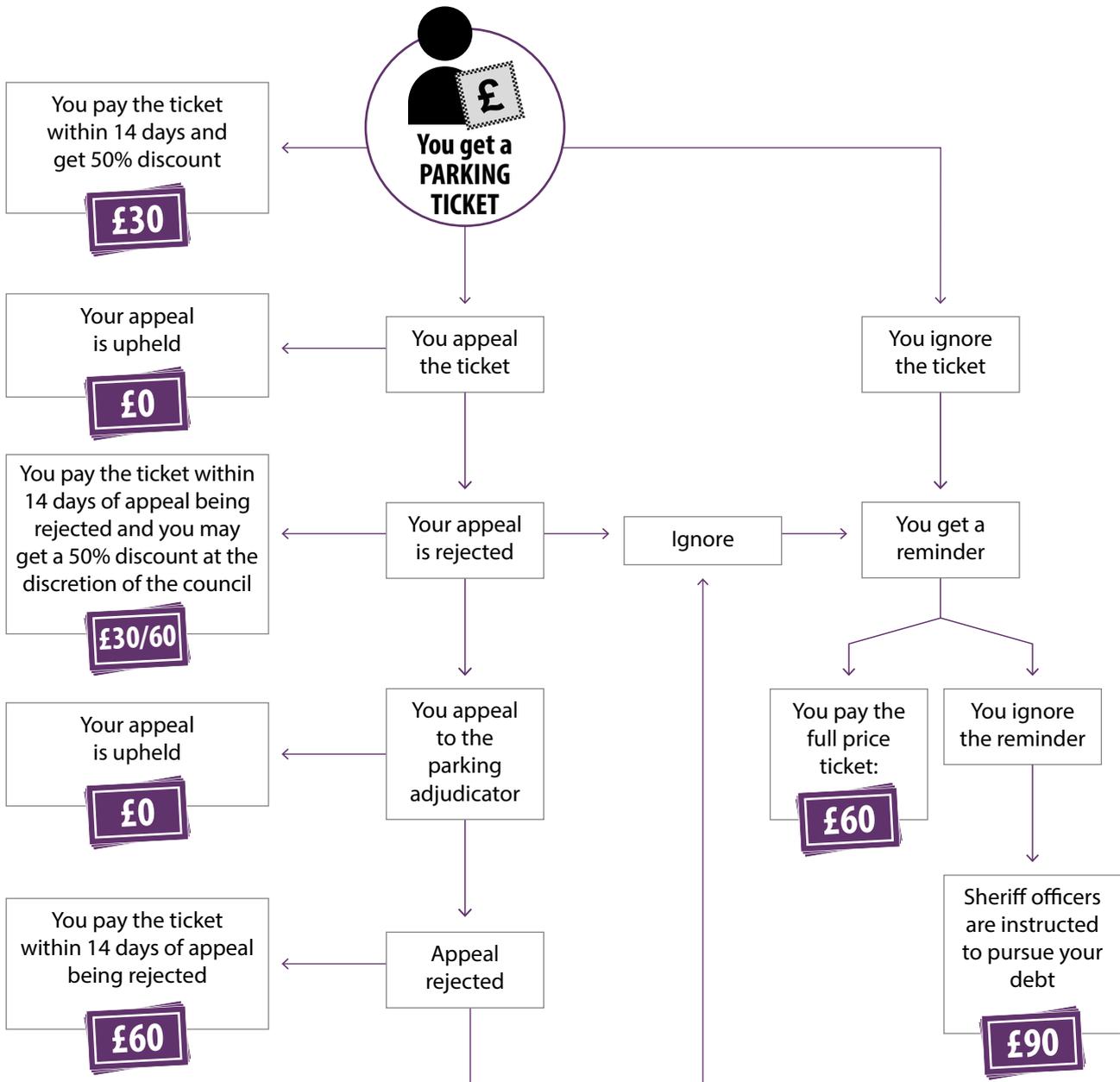
The City of Edinburgh council's parking penalty charge process map



Source: Edinburgh City Council

Exhibit 11

The parking ticket process from a citizen's point of view



Note: See paragraph 78 for an explanation of the charges.
Source Audit Scotland

The Scottish Parking Appeals Service

91. The Scottish Parking Appeals Service (SPAS) currently adjudicates parking appeals for 13 councils that have decriminalised parking. The SPAS powers flow from the Road Traffic Act 1991 s.73 and the associated orders that transfer decriminalised parking to each Council. The Driver and Vehicle Standards Agency (DVSA) currently fund the SPAS. The DVSA reclaims this funding from councils with decriminalised parking according to an agreed formula.²⁰

The adjudication process

92. The SPAS employs parking adjudicators to decide appeals; adjudicators are solicitors of 5 years good standing who have no connection to the council involved in the appeal. The SPAS also hears appeals against penalty charges for infringing bus lanes.

93. Appeals are part of a legal process and both sides must have access to all the evidence. The appeals process is as follows:

- The SPAS receives signed and completed appeals forms (unsigned or uncompleted forms are referred back to appellants).
- The SPAS informs the council of the appeal within five days of receiving the appeal and provides the council with a copy of the evidence.
- Appellants can elect to have a personal hearing or have the appeal decided by post. Councils are not usually represented at personal hearings because of the expense involved. There is no timetable set out in the legislation to arrange a hearing, but appeal hearings are usually arranged within seven to eight weeks of receiving the completed appeal.²¹
- If the appellant brings further evidence, the hearing is adjourned to allow the adjudicator to read the evidence and provide the additional evidence to the council.
- When the adjudicator has made a decision, the appellant and council are informed within five days.
- If an individual is unhappy with the outcome of the appeal, they can request that the SPAS review the decision. In this case, the adjudication process is repeated with another adjudicator using the same evidence.
- If the individual is still unhappy with the process, their only further recourse would be to Judicial Review. As far as the SPAS the staff interviewed were aware, only one person has ever taken a SPAS decision to judicial review, as the expense involved is out of all proportion to the cost of the penalty charge.

94. In 2013/14, the SPAS received around 1,500 appeals. This represents around 0.34 per cent of penalty charge notices issued by councils (**Exhibit 12, page 39**). The percentage of appeals (as a percentage of the total number of penalty charge notices issued) varies between 0.11 per cent in Perth and Kinross to 0.63 per cent in Glasgow City Council. The most common grounds for appeal are:

- The appellant did not park incorrectly (59 per cent)
- The penalty was for the wrong amount (16 per cent)
- The relevant parking order was invalid (18 per cent).

²⁰ The merger of Vehicle and Operator Services Agency (VOSA) and the Driving Standards Agency (DSA) formed the Driving and Vehicle Standards Agency (DVSA) in April 2014.

²¹ Road Traffic Act 1991, and the Road Traffic Act 1991 (Amendment of Schedule 3) (Scotland) Order 1998.

Exhibit 12

Number of appeals made to the Scottish Parking Appeals Service 2013/14

The SPAS receives very few appeals to penalty charge notices compared with the number issued, but the rate varies considerably among councils.

Council	Number of Penalty Charge Notices	Number of appeals to SPAS	Percentage of Charge Notices appealed
City of Edinburgh	190,111	437	0.23
Glasgow City	114,317	723	0.63
Perth & Kinross	11,881	13	0.11
Aberdeen	47,609	31	0.07
Dundee	23,180	68	0.29
South Lanarkshire	18,787	103	0.55
Renfrewshire	10,327	36	0.35
South Ayrshire	7,178	22	0.31
East Ayrshire	7,597	22	0.29
Fife	16,647	42	0.25
Total	448,434	1,497	0.34

Note: This data reflects the number of councils with decriminalised parking at the time.

Source: Scottish Parking Appeals Service

95. Of the appeals heard during 2013/14:

- 442 (29 per cent) were not contested by the council
- 92 (6 per cent) were allowed by the adjudicator
- 83 (5 per cent) were withdrawn by the appellant
- 918 (60 per cent) were refused by the adjudicator.

The cost of appeals

96. The cost to the council of dealing internally with the initial appeal is very small, usually less than £10, however, if a case is appealed to the SPAS the cost increases significantly:

- the direct cost to the council of providing evidence to the SPAS is about £180 in the case of the City of Edinburgh Council (staff cost only)
- the cost of SPAS staff administering the appeals process averages around £70 per case
- SPAS adjudicator's fees are £36 per case.

97. This gives a total cost to the public purse of appeals to the SPAS of around £286 in the case of the City of Edinburgh Council (**Exhibit 13, page 41**). The SPAS is funded by the councils that use it through an arrangement with the DVSA²², making it worthwhile for councils to minimise the number of appeals.

98. The number and success rate of appeals varies among councils (**Exhibit 14, page 41**). For example, the City of Edinburgh Council issues 66 per cent more penalty charge notices than Glasgow City council but has 9 per cent fewer appeals. Very few SPAS adjudications are made in favour of motorists; of the total 1010 cases that went to adjudication across the participating councils, only 92 were allowed by the adjudicator. This is partially because councils do not contest appeals where they believe they will lose.

99. Although decriminalised parking allows councils to manage parking better, particularly in cities, and manage traffic flows within their area, it can become controversial if the public perceive that parking charges are excessive, or the parking attendants are being over zealous. Receiving a parking ticket can also be annoying and stressful for citizens. In addition, the financial impact, particularly on lower paid residents and tradespeople can be significant.

100. It is important that parking attendants are well trained and that appeals are handled sensitively (**case study Example 6, page 42**). Where they are not, residents may complain to local newspapers and the resulting media coverage may damage the reputation of the council.

Conclusions

101. The City of Edinburgh's parking service is a bigger service than other councils, which allows it to make good use of the technology available. Not all councils are in this position, particularly those who have just begun to make use of the legislation to decriminalise parking.

102. Where it is possible to provide good evidence of infringements (for example through photographs), and this evidence is available to review for individuals who have received a penalty charge, few people appeal to SPAS and very few appeals are upheld.

²² The Driver and Vehicle Standards Agency (DVSA) currently fund the SPAS. The DVSA reclaims this funding from councils with decriminalised parking according to an agreed formula

Exhibit 13

The number and cost of parking appeals

Although the cost of initial appeal handling is very low, and although the number appeals going forward to the SPAS is very small, costs still mount up.

Stage	Cost of each stage (range)	Number of appeals	Cumulative cost direct to the council per case	Total annual cost for each stage in the process	Total annual cumulative cost to the public purse
Initial appeal at the frontline	£1 - £10	18,000	£5.50	£99,000	£99,000
Appeal to SPAS (cost to council)	£180	614	£185.50	£113,897	£209,520
Appeal to SPAS - SPAS administration costs	£70	614	n/a	£42,980	£252,500
Appeal to SPAS - adjudicator costs	£36	351	n/a	£12,636	£265,136

Notes: The cost to sheriff officers for collecting parking debts is not included in the cost of appeals as it is a debt collection process. Sheriff officers can cover their costs by charging for the cost of debt collection.

Source: Edinburgh City Council, Scottish Parking Appeals Service

Exhibit 14

Number of appeal decisions made by the Scottish Parking Appeals Service 2013/14

Council	Appeal Decisions	Number of appeals Allowed		Number of appeals Refused		Percent allowed	Percent refused
		Not contested	By Adj	With-drawn	By Adj		
City of Edinburgh	614	212	23	51	328	38	62
Glasgow City	677	176	51	19	431	34	66
Perth & Kinross	12	3	1	1	7	33	67
Aberdeen	34	6	1	1	26	21	79
Dundee	46	6	3	3	34	20	80
South Lanarkshire	76	19	7	6	44	34	66
Renfrewshire	34	9	2	0	23	32	68
South Ayrshire	20	4	2	1	13	30	70
East Ayrshire	18	5	2	1	10	39	61
Fife	4	2	0	0	2	50	50
Total	1535	442	92	83	918	35	65

Note: This data reflects the number of decisions made in by SPAS in 2013/14. The City of Edinburgh data and the figures in Exhibit 12 are slightly different as they are for appeals made in 2013/14. The numbers are different because appeals made in one financial year can be heard the following year.

Source: Scottish Parking Appeals Service

Example 6

Ms X parked in a pay-and-display bay in and paid a parking ticket to enable her to visit the building society. When she returned, she had a parking penalty notice. She discovered that her pay-and-display ticket had fallen off her windscreen after she had left the car. There was condensation on the windscreen and the ticket had fallen off as she closed the door.

She appealed against the penalty charge and was able to provide as evidence a copy of the ticket and a photograph of the relevant part of the windscreen as well as proof of the transaction at the building society. Although she was technically at fault, because in the pay-and-display system it is the individual's responsibility to buy the correct ticket and make sure that it is properly displayed, in this case the council exercised their discretion and cancelled the ticket.

Source: Audit Scotland

103. Where appeals are upheld, Edinburgh has a feedback loop to ensure it takes action as a result. For example if an appeal is upheld because a parking sign has been vandalised, or road markings are indistinct, the roads department is informed to ensure repairs and reinstatements are undertaken in a timely manner. This also happens if new evidence becomes known when a person appeals to the SPAS, in which case the council will not contest the appeal.

Case study 4: Assessing children with additional support needs

Why this is an administrative justice issue

104. The term administrative justice covers decision-making by public bodies that affect individual citizens²³ rights and interests, including the legislation and rules under which public bodies make these decisions and the procedures used.

105. Assessments for additional support needs are an administrative justice matter because the council uses the relevant legislation to assess pupils' needs and then makes a decision on the support it will provide. If parents are unhappy with specific aspects of the council's assessments and decision they have a right to appeal to an additional support needs tribunal.

The legislative basis of the Additional Support Needs assessment and appeals processes

106. The Additional Support Needs framework is set out in the Education (Additional Support for Learning) (Scotland) Act 2004. The Act was amended and strengthened by the Education (Additional Support for Learning) Act 2009.

107. The 2004 Act first introduced the concept of additional support needs (ASN). The Act places duties upon local authorities, acting in their capacity as education authorities, to identify and provide additional support where it is deemed necessary. Under the legislation, any child who requires more or different support in addition to that normally provided in order to benefit from their education is deemed to have "additional support needs". The Act also introduced a 'presumption of mainstreaming' for children and young people with ASN, except under certain exceptional circumstances.

108. The Act provides a right for parents or young people to request the education authority to carry out an assessment to determine whether there are additional support needs. Where it is determined that the child has enduring and complex additional support needs, and requires the support of a specified agency and the support provided by that agency is significant, the Act determines that the authority must create a Coordinated Support Plan for that child. This details how the needs will be met and by whom, and sets out educational objectives to be sought. The Act stipulates the plan must be kept under review.

109. Dispute resolution mechanisms are included within the statutory framework. The Education Authority, under s.15 of the Act, must provide free mediation services where a

²³ Including businesses and organisations.

disagreement arises, and this is available at any stage. External Independent Adjudication is provided for at s.16 of the Act. That involves a formal review of the circumstances leading to the dispute and will result in a decision and recommendations to resolve the dispute.

110. In cases of disagreement involving a Coordinated Support Plan (CSP), placing requests to Special Schools and disability discrimination, the Act established the Additional Support Needs Tribunal for Scotland at s.17. This is a formal appeal process, and the Act provides free advocacy services to parents and young people who have made a reference to the Tribunal.

111. The Children and Young People Act 2014, added to the 2004 Act by introducing provisions to ensure that children's rights properly influence the design and delivery of policies and services, to improve the way services work to support children, young people and families and to ensure better permanence planning for looked after children.

The Statutory timetable for producing a co-ordinated support plan

112. There are statutory time limits for each stage of the process of establishing whether a child or young person needs a CSP. Once the parent or young person has asked the council to establish whether the child or young person requires a CSP, the council has 8 weeks to respond. If the council fails to respond, it is treated as if it is a decision not to prepare a CSP. If this happens, the parent or young person can take their case to an ASN Tribunal.

113. A council has 16 weeks to establish whether the child or young person requires a CSP and to inform the parent or young person of their decision. The council may ask an appropriate agency, eg the NHS for advice and the Act specifies that appropriate agencies are expected to respond to requests for help within 10 weeks, subject to certain exceptions. Where the education authority has decided that a co-ordinated plan is required, they must produce the plan within the 16-week timescale.

Background

114. Local authorities and other agencies have a duty to provide additional support where needed to enable any child or young person to benefit from education. This may range from additional adult support in class to part-time or fulltime attendance at a special school.

115. An Individualised Educational Programme (IEP) will support the majority of children and young people with complex additional support needs. An IEP is a planning document, which specifies a child's or young person's learning needs, and the recommended strategies and approaches required to meet them. It allows all those involved to create a profile of the child's or young person's strengths and areas of development and to plan their progression using in short and long term targets and monitor provision of support. In many cases, the IEP is now being assimilated within a Child's Plan as part of the arrangements for the implementation of *Getting it Right for Every Child*.²⁴

116. Some children with enduring complex and / or multiple additional support needs require a Co-ordinated Support Plan (CSP). This is a statutory, strategic planning document to co-ordinate the provision of services. It specifies appropriate support for children and young people. The Act also requires education authorities to consider whether each individual looked after child or young person requires a CSP. The plan must contain:

²⁴ A guide to *Getting it right for every child*, Scottish Government, June 2012.

- the education authority's conclusions as to the factor or factors from which the additional support needs of the child or young person arise
- the educational objectives intended to be achieved taking account of those factors
- the additional support required to achieve these objectives
- details of those who will provide this support
- the educational objectives, which require the various forms of support to be co-ordinated in order to achieve these objectives.

There are a large number of pupils with a variety of additional support needs

117. In 2013, there were 674,000 children and young people in Scotland's local authority schools. Of these 132,000, around one in five, were identified as having an additional support need (ASN). Of the pupils identified as having an ASN, 40,089 (30 per cent) have an Individualised Educational Programme (IEP) and 3,279 (2.4 per cent) were identified as having a Coordinated Support Plan. Most children with additional support needs are educated in a mainstream setting but some with more complex or specific needs are educated in special schools (6,981 in 2014). Examples of factors that may give rise to additional support needs include:

- school organisation and curriculum
- family and social circumstances
- disability such as attention deficit disorder, autism spectrum disorders, sensory impairments, physical impairments, speech and language delay and/or deficit, dyslexia, learning difficulties
- particular circumstances, for example English as an additional language, refugees and asylum seekers, travelling communities or young carers.

The additional support needs assessment process

118. The Education (Additional Support for Learning) (Scotland) Act 2004 (the Act) requires councils to make appropriate arrangements for identifying children who have additional support needs and those who require a CSP. The Act also presumes that all looked after children have additional support needs unless the education authority determines otherwise.

119. Councils have to publish information explaining these arrangements. Schools should be able to identify most children requiring support needs through their arrangements for monitoring children's progress. However, the Act also gives parents and young people the right to request the education authority to assess whether their child has additional support needs or requires a CSP. Councils can refuse parents' requests if they feel it is unreasonable. Reasons for a council refusing a request can include:

- the assessment is not in the best interests of the child
- the assessment is unnecessary because there has not been a significant change in the child's circumstances since an earlier assessment
- the assessment would repeat earlier assessments.

120. Schools identify children and young people with additional support needs through their arrangements for monitoring children's educational progress. This will usually include discussion with parents and professionals involved, for example, their class teacher, support for learning staff, speech and language therapist and educational psychologists. Normally, the child's parents and the education authority agree, through discussion, what

the child's needs are and the provision required. However, there can be disagreements; the process for resolving disagreements is described from a parent's point of view in [Exhibit 15 \(page 47\)](#).

Appeals and dispute resolution processes

121. There are, almost inevitably, a small number of occasions when parents and schools disagree about the best way to make provision for children with ASN. The dispute resolution process is described from a parent's point of view in [Exhibit 16 \(page 48\)](#).

122. Common reasons for disputes include:

- the presumption of mainstreaming within the 2004 Act - there is an assumption that pupils with ASN will normally attend a mainstream school - but sometimes parents take a different view
- parents want their child to go to a particular school, but the council believes their needs can best be met in another - this issue can be one of supply and demand for places at a particular school
- parents who have difficulty coping with a child's behaviour want a residential school but mainstreaming is practical - the issue in this case is the child's care needs at home
- the parents' school of choice is fully subscribed.

123. The additional Support for Learning (Scotland) Act 2004, as amended by the Education (Additional Support for Learning) Act 2009 makes provisions for the resolution of disputes between education authorities and the parents of children and young people (and young people aged 16 and over still in school). These provisions include rights to:

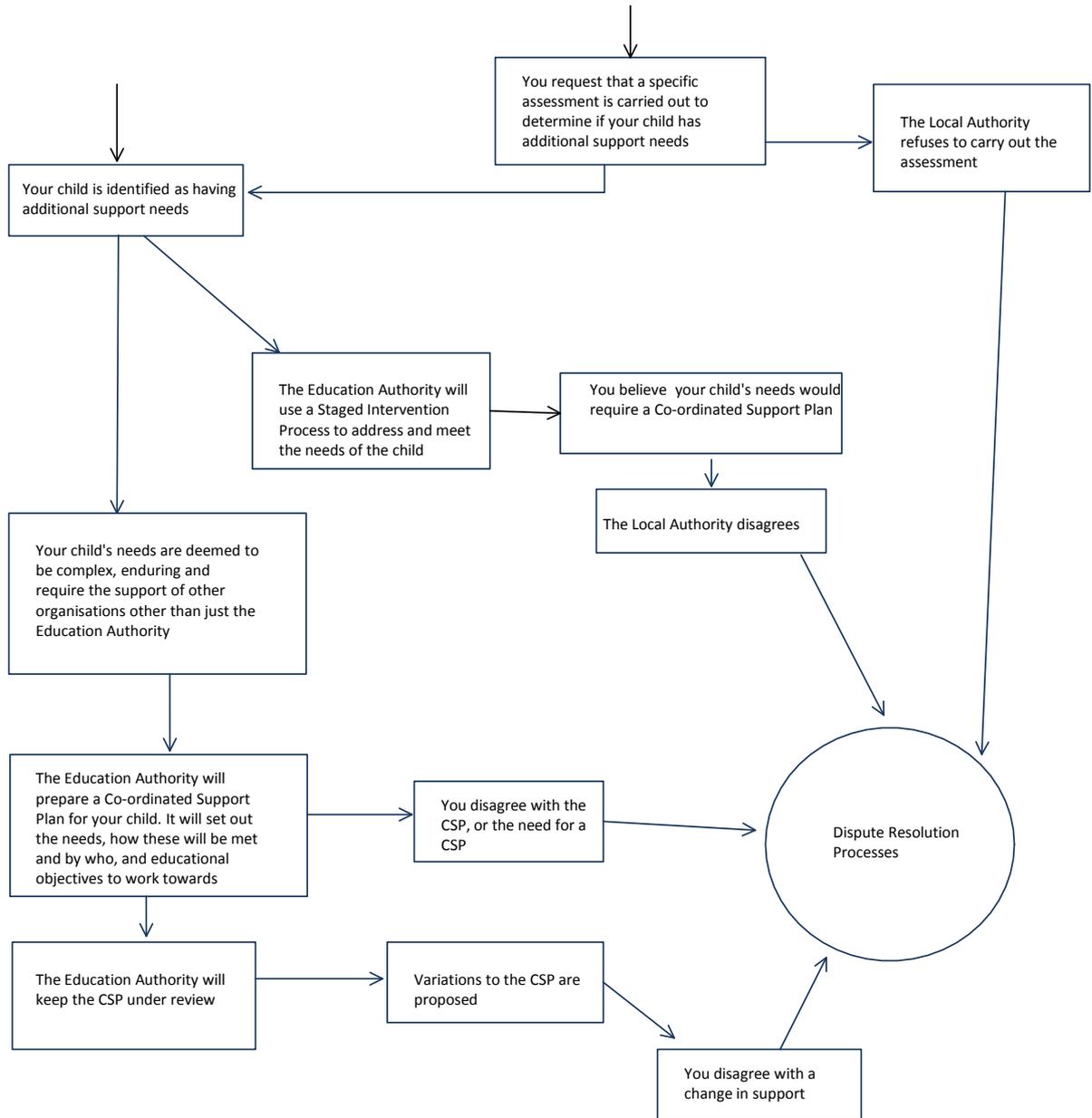
- **Independent mediation** - a small range of independent services provides mediation services through contracts with local authorities. Their function is to support the resolution of concerns or disagreements at as early a point as possible and to re-establish relationships and communication.
- **Independent adjudication** - independent adjudication supports the resolution of disagreements and concerns through a formal review of the case by someone who is independent of both the education authority and the family. The adjudicator will consider the circumstances of the case and will reach a decision and make recommendations to everyone involved. Although the decision is not legally binding, there is an expectation that decisions and recommendations will be accepted and followed.
- **Advocacy services** - their role is to provide advocacy services to those parents or young people including circumstances where they may have grounds to make a reference to an Additional Support Needs Tribunal. When this happens, they provide advocacy to empower parents and young people to represent themselves at a tribunal hearing.²⁵
- **Reference to an Additional Support Needs Tribunal** in relation to:²⁶
 - a decision to prepare/ not to prepare a CSP

²⁵ The Scottish Government provides funding to Children in Scotland to provide the Enquire service. Enquire is the national advice and information service for additional support for learning. The service provides information to parents on services, provision and their rights. The service is provided directly to parents through a telephone helpline and through online services, and published advice and information, such as range of easy to read guides and factsheets.

²⁶ This is not an exhaustive list of matters that can be taken to an ASN tribunal, but gives an indication of the main issues.

Exhibit 15

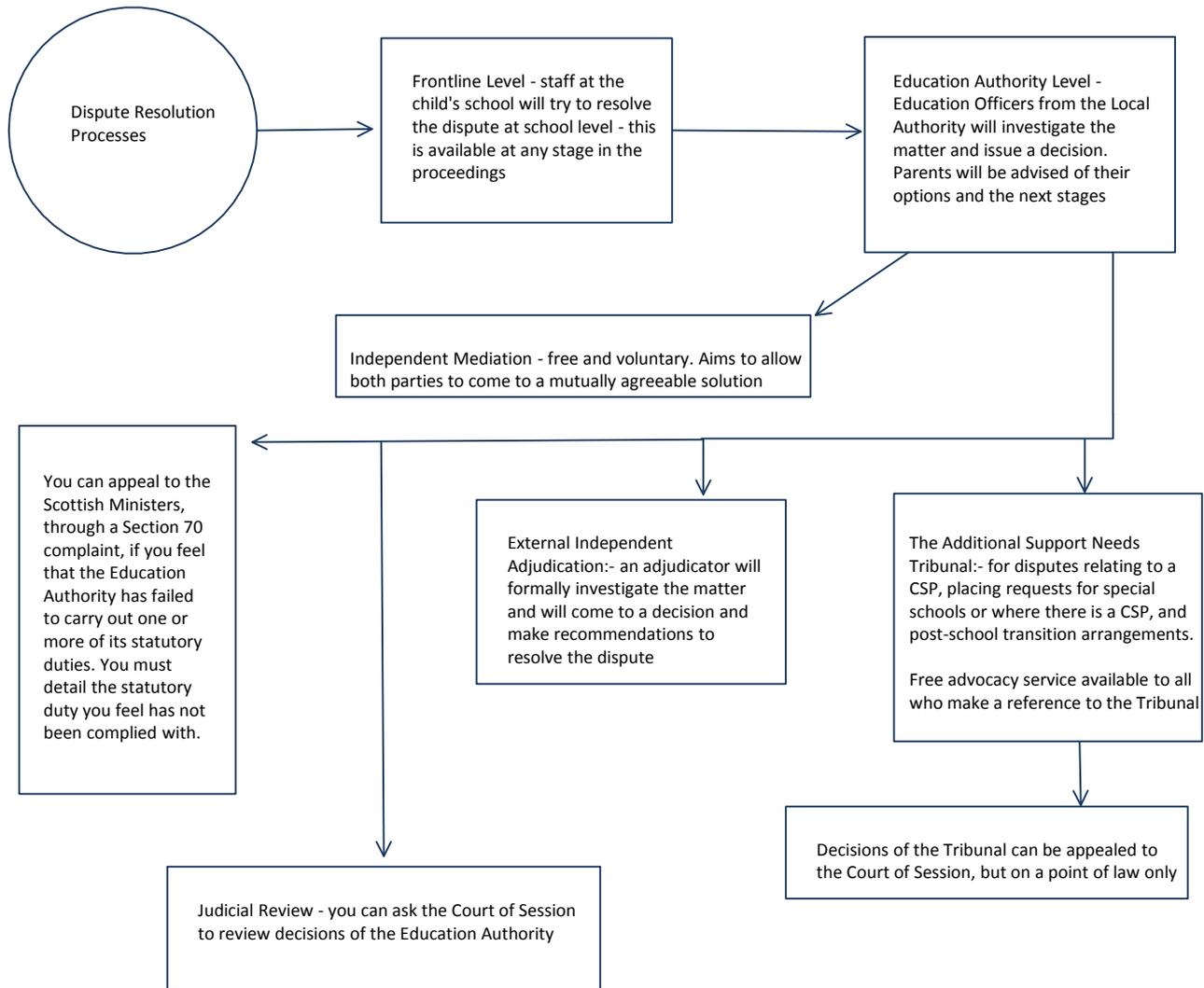
Map of the assessment process appeals process for children with additional support needs, described from the perspective of the parent



Source: Scottish Government

Exhibit 16

Map of the dispute resolution process for assessment process for children with additional support needs, described from the perspective of a parent



Source: Scottish Government

- a decision to continue/discontinue a CSP following a review
- the length of time it is taking to decide whether a CSP is needed, to prepare the plan or review the plan (an appeal can be made if the education authority fails to review the CSP after 12 months)
- a decision to refuse a parent's request to find out if a child needs a CSP, or a request to have an early review of the plan
- specified content of a CSP
- the failure to provide the additional support included in the plan
- where there is no CSP the tribunal will also hear appeals on the refusal of a placing request to a special school.²⁷

124. Most disputes are settled through discussion. The number numbers of parents going to tribunal and other external processes are relatively small. There were 77 tribunal cases involving pupils with additional support needs in 2014/15, with smaller numbers of parents using advocacy (35 cases), mediation (55) and adjudication services (18).²⁸

Case study examples

125. The case study examples below illustrate how disputes about additional support needs assessments can be resolved. **Example 7 (page 50)** shows how mediation can be used and **Example 8 (page 51)** shows the use of independent adjudication.

The cost of dispute resolution and appeals

126. Across Scotland, there were 77 tribunal cases involving pupils with additional support needs in 2014/15. The total costs of these tribunals (administration plus members' fees) was £189,000. The average cost of the tribunal service is therefore around £2,450 per case (**Exhibit 17, page 51**).

127. Mediation, and Adjudication services are funded by councils, while advocacy Services for parents or young people taking cases to Tribunal are funded by the Scottish Government. Enquire are managed by Children in Scotland and funded by an annual grant of £280,000 from the Scottish Government.

²⁷ *Supporting Children's and Young People's Learning: A Report on Progress of Implementation of The Education (Additional Support for Learning) (Scotland) Act 2004 (As Amended)*, Scottish Government, 2012.

²⁸ *Supporting Children's and Young People's Learning: A Report on Progress of Implementation of The Education (Additional Support for Learning) (Scotland) Act 2004 (As Amended)*, Scottish Government, 2012.

Example 7

Use of mediation

Mr and Mrs Jacks have a son Paul who is 14. Paul has Asperger's syndrome. Paul had a difficult transition from his local mainstream primary to secondary school. Mr and Mrs Jacks started to feel increasingly frustrated at the school as they felt Paul's needs were not being met and it was having a bad effect on him. They brought this up with the deputy head and head teacher throughout S1 and S2. They did not think anything was changing so they decided to withdraw Paul from school and educate him at home themselves.

The home education programme worked out well in some ways and not so well in others. Mr and Mrs Jacks felt that Paul was socially isolated and did not have friendships and wanted to look at what alternatives might be better. Because of their experiences with Paul's secondary school, Mr and Mrs Jacks found it difficult to talk to any staff in the authority about where Paul would best be placed. There was distrust between the parties and Paul's parents did not think the authority knew how to meet Paul's needs. After some time both parties agreed to contact an independent mediation service.

A mediator from the independent mediation service got in touch with the Jacks and the contact person at the education authority. Mrs and Mr Jacks met the independent mediator to share information about their concerns and learn more about mediation. The same opportunity was given to the education officer involved.

Both parties met at the local voluntary centre, with the mediator there to facilitate their discussions. Mr and Mrs Jacks said how they felt about the handling of Paul's transition to secondary school and raised concerns that his needs were not met in school. The education officer referred to the local authority's policy on additional support needs and the staged intervention approach it adopts. They were able to talk about what would now work best for Paul. Both parties agreed that Paul's home education programme would continue, and that an additional support needs teacher from the school he attended would begin some outreach support work. The plan would be to work towards Paul attending his local school again. Initially this would be on a part-time basis, until Paul and his parents were happy with this step.

Source: Enquire, parents guide to additional support for learning

Example 8

Use of independent adjudication

Mr and Mrs Smith have been in a long-running and difficult dispute with their daughter's school and their education authority on the education of their daughter Maya who is 13. An education officer involved in the case suggested they could apply for independent adjudication. The officer explained how to do this. In their application, Maya's parents said that the education authority was failing "to provide, or make arrangements for the provision of, the additional support" Maya needed.

To present their arguments and evidence to the independent adjudicator, Maya's parents and the education authority had to clarify their views of Maya's additional support needs and how well they were being met. They also had to consider how they thought the dispute should be resolved. Maya gave her views with the support of a member of staff at school she was comfortable with, Maya's behaviour had deteriorated considerably at school and often she was not turning up.

The independent adjudicator reviewed the evidence and found that both parties disagreed on the nature and impact of Maya's learning difficulties. There was no detailed up-to-date assessment evidence on the precise nature of Maya's learning difficulties, and the targets in her personal learning plan were not precise. The adjudicator noted that Maya was anxious about the way the dispute was drawing attention to her.

In her report, the adjudicator's recommendations for resolving the dispute included the following:

- Maya should have a specialist assessment to establish the precise nature of her learning difficulties and advice on overcoming them.
- The education authority should prepare an individualised educational programme that would be agreed and regularly reviewed by all parties and Maya herself.
- Maya should work with a mentor to understand her learning needs and her part in dealing with them.

The education authority accepted the need to act on the recommendations. To co-ordinate this, it appointed an educational psychologist who had not previously been involved. Over time, Mr and Mrs Smith and the staff in Maya's school began to work together to Maya's benefit.

Source: Enquire, parents guide to additional support for learning

Exhibit 17

Costs of mediation, adjudication and tribunals for pupils with Additional Support Needs, excluding council staff costs

Resolution process ¹	Number of cases across Scotland ²	Estimated cost per case ³	Total cost to public purse for each process
Independent mediation	55	£700-900	£44,000
External adjudication	18	£355	£6,390
ASN Tribunal	77	£2450	£189,000
Enquire - national advice and information service	Advice service	n/a	£280,000

Notes:

1. Mediation and adjudication numbers of cases and costs are based on 2009 and 2010/11 information. Tribunals and Enquire data were supplied by the Scottish Government and are 2014/15 (the ASN Tribunal information includes 72 references and 5 disability discrimination claims).
 2. Supporting Children's and Young People's Learning: A Report on Progress of Implementation of The Education (Additional Support for Learning) (Scotland) Act 2004 (As Amended), The Scottish Government, 2012.
 3. Education (Additional Support for Learning) (Scotland) Bill, Revised financial memorandum, Scottish Parliamentary Corporate Body, 2009.
- Source: Audit Scotland, Scottish Government.

Conclusions

128. Schools generally have very good relationships with parents, and the number of parents going through external dispute resolution processes to resolve disagreements over additional supports needs is small. Good communication and information sharing between school staff and parents and pupils are a crucial part of keeping the number of formal disputes to a minimum.

129. Alternative means of resolving disputes such as mediation, advocacy and adjudication services are provided for in the legislation and are more commonly used in this area than the other areas we examined. They are preferable in many ways in that disputes can be resolved in such a way as to allow both parties to maintain a relationship, which is much more difficult than after the parties have been through a formal legal process.

Appendix 1

Development Management Legislation and Regulations

Primary Legislation (Principal)

The Town and Country Planning (Scotland) Act 1997

The Planning etc. (Scotland) Act 2006.

Primary Legislation (Ancillary)

National Parks (Scotland) Act 2000

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 Chapter 9
The Town and Country (General Permitted Development) (Scotland) Order 1992

Planning (Hazardous Substances) (Scotland) Act 1997

Climate Change (Scotland) Act 2009

Flood Risk Management (Scotland) Act 2009.

Secondary Legislation

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009

The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008

The Town and Country Planning (Appeals) (Scotland) Regulations 2008

The Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2009

The Town and Country Planning (Temporary Stop Notice) (Scotland) Regulations 2009

The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009

The Environmental Impact Assessment (Scotland) Amendment Regulations 2009

The Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2009

The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010

The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010.

Appendix 2

Social work: Needs Assessment: Legislation and Regulations

Primary Legislation

- **National Assistance Act 1948** – first introduced an obligation on local authorities to help the elderly who required supplementary benefits, and to provide accommodation suitable for those who had extra care needs.
- **Social Work (Scotland) Act 1968** – the primary Act for the general social work functions of local authorities.
- **National Health Service and Community Care Act 1990** – amending the 1968 Act, this introduced the statutory duty upon local authorities to assess the needs of a person for whom community care services may be required.
- **Carers (Recognition of Services) Act 1995** – introduced a duty on local authorities to consider the needs of unpaid carers.
- **Community Care (Direct Payments) Act 1996** – allowed local authorities to consider making a payment direct to a service user so that they could arrange for their own support, as an alternative to council provision of care.
- **Data Protection Act 1998** – the primary Act in the UK for the protection of personal data.
- **Human Rights Act 1998** – enshrines the European Convention on Human Rights in UK law, guaranteeing the fundamental rights and freedoms of all UK citizens.
- **Adults with Incapacity (Scotland) Act 2000** – this Act sets out the provisions for the support and intervention in cases of adults who are not deemed to have capacity.
- **Regulation of Care (Scotland) Act 2001** – this Act established the Care Commission and the Scottish Social Services Council, which, respectively, regulate registered care services and those employed in the social services.
- **Community Care and Health (Scotland) Act 2002** – this Act introduced Free Personal Care for all older people, and strengthened the rights of unpaid or informal carers.
- **Mental Health (Care and Treatment) (Scotland) Act 2003** – this Act strengthened the rights of those with mental disorders. Local authorities were placed under additional duties to provide care and support services to people with mental disorders, and the protections against unnecessary compulsory measures and detention were strengthened.
- **Adult Support and Protection (Scotland) Act 2007** – this Act places a duty upon local authorities to investigate in cases where harm is known or suspected in relation to adults with disability, mental disorder, illness or mental infirmity.
- **Social Care (Self-directed Support) (Scotland) Act 2013** – this Act strengthens the rights of individuals to direct their own support, beyond simply direct payments – and allowing them to decide the level of control and input they want to have over their own support arrangements.

Secondary Legislation

- National Assistance (Assessment of Resources) Regulations 1992
- Community Care (Assessment of Needs) (Scotland) Regulations 2002
- Community Care (Direct Payments) (Scotland) Regulations 2003, as amended.

Appendix 3

Steering group members

Marieke Dwarshuis, Chair of STAJAC, chaired the steering group.

The members of the Steering Group were:

- Malcolm Burr – Chief Executive, Comhairle nan Eilean Siar (for SOLACE)
- Ken Graham – Head of Legal & Democratic Services, Renfrewshire Council (for SOLAR)
- Cllr Peter Johnston – West Lothian Council, COSLA Health and Social Care Spokesman
- Sally Loudon – Chief Executive, Argyll and Bute Council (for SOLACE)
- Mark MacAteer – Director, Governance and Performance Management, Improvement Service (replaced by Colin Mair, Chief Executive, Improvement Service)
- Paul McFadden – Head of Complaints Standards, SPSO and Member; Scottish Tribunals and Administrative Justice Advisory Committee
- Fraser McKinlay – Director of Performance Audit and Best Value, Audit Scotland
- Michael O'Neill – Economist, Economic Analysis, Scottish Government
- Linda Pollock – Head of Administrative Justice Policy, Scottish Government (replaced by Alicia McKay)
- Douglas Proudfoot – Head of Development, East Lothian Council and Member; Scottish Tribunals and Administrative Justice Advisory Committee
- Douglas Sinclair – Chair, former Fit for Purpose Group Complaints System Action Group.



STAJAC

Scottish Tribunals & Administrative
Justice Advisory Committee

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