

Chapter 1 – Education and Learning

Education and Learning are areas wholly devolved to the Scottish Parliament under the Scotland Act 1998. In terms of administrative justice, it is possibly one of the most complex areas – with various different procedures to challenge or question decisions of the bodies which provide public services in education. The landscape comprises a complex mix of authorities, Government sponsored bodies, regulators and tribunals. Various decisions, despite coming from the same body, when challenged by the public follow distinct routes. The result is even more complex and confusing when a challenge is multi-faceted – such as situations involving a discrimination element - where different redress routes may require to be utilised to fully resolve the issue.

First Instance Decision Making Body	Remit
Local Authorities in their capacity as Education Authorities	Administer and maintain local authority owned nurseries, primary schools and secondary schools – and are responsible for all matters therein.
The Scottish Qualifications Authority	Awards qualifications and results to pupils sitting SQA approved examinations.
Institutions of Further and Higher Education (Colleges and Universities)	Each administer and maintain their own institution.
The Student Awards Agency for Scotland	Provides eligible students studying a course of higher education in Scotland with financial assistance.

Education Authorities

The provision of education is one of the largest areas of responsibility for Local Authorities in Scotland. Vast numbers of decisions are taken on a daily basis by schools under Local Authority control, and these cover a wide range of different issues. This section will set out the areas of decision making of local authorities in their capacity as Education Authorities. Pre-school education, Primary and Secondary Schooling, and Additional Support Needs will be discussed.

Education Authorities – Just a few of the main areas of decision making

Placing Requests

The Provision of Additional Support for Learning

School Transport

School Trips

Exclusion and Punishment

Attendance Orders

Educational Support for Pupils who cannot attend school

Online Learning Resources

Education Maintenance Allowance

Clothing Grants

Free School Meals

Music Tuition

Visiting Teaching and Support Services

Course Provision

Pre-School and Early Learning

Local Authorities provide nurseries and early learning centres to pre-school children. Placing requests for certain nurseries can involve being placed on a waiting list. There are no informal or formal appeal procedures for placement refusal. Parents are expected simply to look elsewhere.

The **Care Inspectorate** is the body responsible for ensuring that national care standards are being met in local authority nurseries, day care and early learning centres. **Education Scotland** takes the lead in ensuring that education standards are being met through the use of Her Majesty's Inspectorate of Education.

Primary and Secondary Schooling

Local Authorities manage the vast majority of primary and secondary schools in Scotland. Individual schools take a large amount of decisions themselves on a daily basis – from placing requests to pupil discipline to course provision. The decisions taken in relation to pupils with additional support needs, exam results and allegations of discrimination are dealt with in separate sections below. The table below exhibits the existing redress bodies for disagreements in relation to primary and secondary schooling.

Primary and Secondary Schooling – Redress Bodies				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Education Appeal Committees	Hears appeals from parents/carers or young people in regard to: a) A local authority's refusal of a placing request (where there are no disability discrimination issues or a coordinated support plan for additional support needs) b) Exclusions of pupils from school	The Education (Scotland) Act 1980 sections 28C-F	Can confirm or reverse the Education Authority's decision.	There is an onward right of appeal against the decision of the Education Appeal Committee to the Sheriff Court.
The Sheriff Court	Hears appeals from parents against Attendance Orders that have been imposed upon them as the parents of a pupil	The Education (Scotland) Act section 36	The Sheriff can amend, confirm or annul the Order.	None. The decision of the Sheriff is final.
The Scottish Public Services Ombudsman	Hears complaints about Education Authorities in terms of maladministration and service failure . Local complaints processes must be exhausted before the SPSO will consider a complaint. The law explicitly excludes the SPSO	Scottish Public Services Ombudsman Act 2002	The Ombudsman can make recommendations to the Education Authority to: apologise; amend their procedures; in rare circumstances to compensate the complainant.	The Ombudsman can carry out an internal review of its own decisions if requested because: a) you feel the decision was based on evidence that was inaccurate or b) new and relevant

	from investigating discipline and in-class education.			information is available which was not considered before.
The School Closure Review Panel	Hears “called-in” cases of recommended school closures by Education Authorities.	Schools (Consultation) (Scotland) Act 2010	The Panel can: refuse the proposal to close the school; remit the proposal to the Education Authority for a fresh decision; or grant consent to the proposal, with or without conditions.	There is an onward right of appeal against the decision of the Panel to the Sheriff Court, but this must be on a point of law.
The Scottish Ministers	Hears section 70 appeals in relation to a failure by a responsible body – such as an education authority or independent school - to carry out statutory duties under education law.	Education (Scotland) Act 1980 section 70	The Scottish Ministers are empowered to make an order requiring that the duty is carried out.	None.

For decisions falling out with the remit of the bodies listed in the table above, there exist no formal challenge processes. The option of making a complaint to the SPSO always remains open, although this only covers maladministration and service failure and in many cases will be unlikely to deliver the results that complainants seek. This leaves those dissatisfied with school decisions with limited options. For example, guidance offered by national advice agencies such as the Citizens Advice Bureaux advise those seeking to challenge the decision of a secondary school to withdraw certain courses to bring the matter up with the local parent council and to follow local Education Authority complaints procedures.

Additional Support Needs

Local Authorities are placed under a duty by the Education (Additional Support for Learning) Scotland Act 2004 to provide additional support to children who are deemed to have “additional support needs”. Children are deemed as having additional support needs if they require additional support above that which is normally provided in order to benefit fully from their education. If the additional support needs are deemed to be enduring and complex, then the Local Authority requires to create a Coordinated Support Plan for the child.

Disputes arising over additional support needs can be brought to the Additional Support Needs Tribunal for Scotland. The Tribunal can also hear cases relating to placing requests if they relate to disability discrimination, and cases relating to post-school transition.

Additional Support Needs is one area of administrative justice where parents and young people are offered a range of support services to help avoid disputes, but also to guide them through disputes should they arise. The table below demonstrates the mechanisms in place for disputes in this area. Section 10 of the 2004 Act also provides parents and young people with the support of free advocacy services should they wish in order to help guide them through the process and to allow them to better understand their rights.

Additional Support Needs Redress Mechanisms				
Redress Mechanism	Remit	Legislative Basis	Form of Redress	Onward Process
Mediation	Mediation is available at any stage in disputes with the education authority regarding additional support needs. The service is provided free of charge.	Education (Additional Support for Learning) (Scotland) Act 2004 section 15	Aims to allow both parties to come to a mutually agreeable solution before more formal redress processes are required.	Mediation is entirely voluntary and need not be used. The agreement at the end is also voluntary, although parties are generally expected to abide by it.
Independent Adjudication	Adjudication is also available at any stage in the proceedings where the dispute could not be resolved more	Education (Additional Support for Learning) (Scotland) Act 2004 section 16	Aims to resolve disputes before more formal redress processes are required.	The decision will include recommendations to resolve the dispute and parties are generally expected to abide by them.

	informally. An independent adjudicator will hear from both parties before coming to a decision on the case.			However, should a party remain aggrieved, they are free to proceed to more formal redress procedures.
The Additional Support Needs Tribunal for Scotland	Hears “references” by parents or young people in relation to CSPs or entitlement to CSPs; placing requests where there is a CSP; and disability discrimination in education.	Education (Additional Support for Learning) (Scotland) Act 2004	Can confirm or overturn the Local Authority decision, and can direct the Local Authority to take appropriate action as the Tribunal sees fit.	There is a right to ask the Tribunal to review its own decisions which can confirm, vary or revoke orders; and there is a limited onward right of appeal to the Court of Session, on a point of law only.

The Scottish Qualifications Authority (SQA)

The SQA is Scotland’s national organisation responsible for the accreditation and award of national qualifications other than degrees. The SQA operate an internal appeal service for candidates who wish to challenge their award called the Results Service. There are two types of consideration. In both circumstances, the school or educational facility requires to support the candidate in their appeal and will provide evidence for the candidate:

- a) Exceptional Circumstances Consideration Service – candidates can appeal to this service if they believe that exceptional circumstances – such as bereavement or medical illness – have affected their performance in an examination. This service is only available before the publication of results. Evidence of the circumstances is required, as is evidence of the candidate’s level of work prior to the examination.
- b) Post-Results Service - the educational establishment can appeal to this service if they are concerned that the published result is not reflective of the level of work achieved by the candidate throughout their study of the course. The educational establishment can provide evidence of the level of work attained throughout the study period. Should the mark remain unchanged at the end of this review, then the educational establishment will be charged for this service.

There is no onward appeal or review from the SQA’s Results Service decision. Similarly, an appeal will not even be possible should the school or other establishment refuse or fail to

support the candidate's claim. There are no formal challenge routes available to question the school's failure or refusal to do so. The SQA and all education establishments are, however, under the remit of the SPSO should there be a complaint regarding maladministration or service failure.

Discrimination and the Rights of Children and Young People in Education

There are a number of regulators which can take an active role in championing the needs of service users across administrative justice, and this is particularly relevant in education and learning. In particular, complaints regarding discrimination in education should properly be dealt with by the **Equality and Human Rights Commission (EHRC)**.

The Equality Act 2006 empowers the Commission to investigate potential breaches of equality legislation and to take measures to enforce that legislation. Crucially, the Commission is also empowered to financially assist individuals with legal action against a responsible individual or body. The Commission was recently successful in its involvement in a case alleging that a local authority had acted unlawfully in removing a student's disability support package when he turned 18. Similarly, but perhaps confusingly, complaints regarding discrimination in exams should also properly be made to the EHRC, and not to the SQA. Cases of disability discrimination, however, should in general be made to the Additional Support Needs Tribunal. But to complicate matters further, exclusions – normally within the jurisdiction of the Education Appeal Committees – can be brought to either the Committee or the Tribunal if there is an allegation of disability discrimination. The area of discrimination alone makes for a complex landscape.

Scotland's Commissioner for Children and Young People is also empowered to take an active role in championing the interests, views and rights of children and young people. This obviously includes education. The Children and Young People (Scotland) Act 2014 has broadened the rights of the Commissioner to investigate complaints by children and young people on an individual basis to ensure that their rights have been respected. However, this role is limited in the Act by a duty not to duplicate the work of other bodies or regulators. This could be an attempt to ensure that there are no gaps in the system. Perhaps an example could be the discipline of children in schools – where SPSO consideration is explicitly excluded by statute – as long as this did not also trigger a discrimination element.

Complaints against Teachers

The **General Teaching Council for Scotland (GTCS)** is an independent self-regulating body for Teaching in Scotland. It is responsible for setting professional teaching standards in Scotland and for maintaining a register of teachers in Scotland. Inclusion on the Register is

equivalent to a licence to teach. Members of the public can complain about a teacher's conduct insofar as it relates to their "fitness to teach" to the GTCS. Should there be sufficient grounds for a complaint, the GTCS will refer the matter to a Fitness to Teach Panel. The Panel is empowered to take one of four actions:-

- a) No action and to dismiss the complaint
- b) Formally reprimand the Teacher
- c) Make a Conditional Registration Order
- d) Order the Teacher to be removed from the Register (ordering the teacher be "struck off")

Teachers have a right of appeal against decisions of the Panel. There is an internal appeal to the GTCS Appeals Board and an external right of appeal, in certain circumstances, to the Court of Session. These may reverse, vary or confirm decisions of the Panel.

Further and Higher Education

Colleges and Universities in Scotland are independent institutions which administer and manage their own affairs independent of local and central government. However, they still perform a public service and operate in part with public funds.

Colleges and Universities – A few of the key decision areas

Admissions
Student Accommodation
Discretionary Grants and Bursaries
Course Provision
Exam Results and Degree Awards
Disciplinary Action
The Provision of Additional Support for Learning
Pastoral Care Provision

Universities and Colleges were brought under the remit of the **SPSO** by the Further and Higher Education (Scotland) Act 2005. The SPSO remains the only independent body which can investigate complaints against colleges and universities in Scotland.

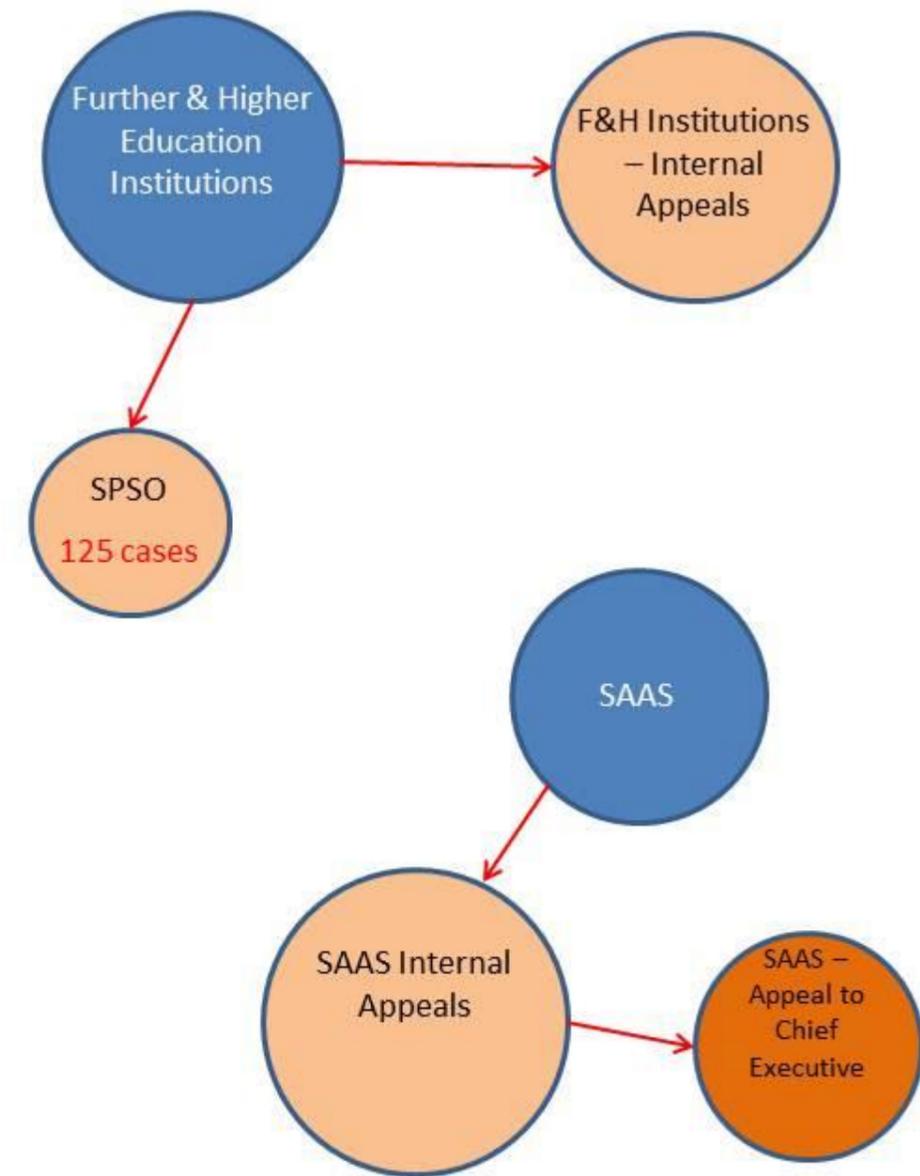
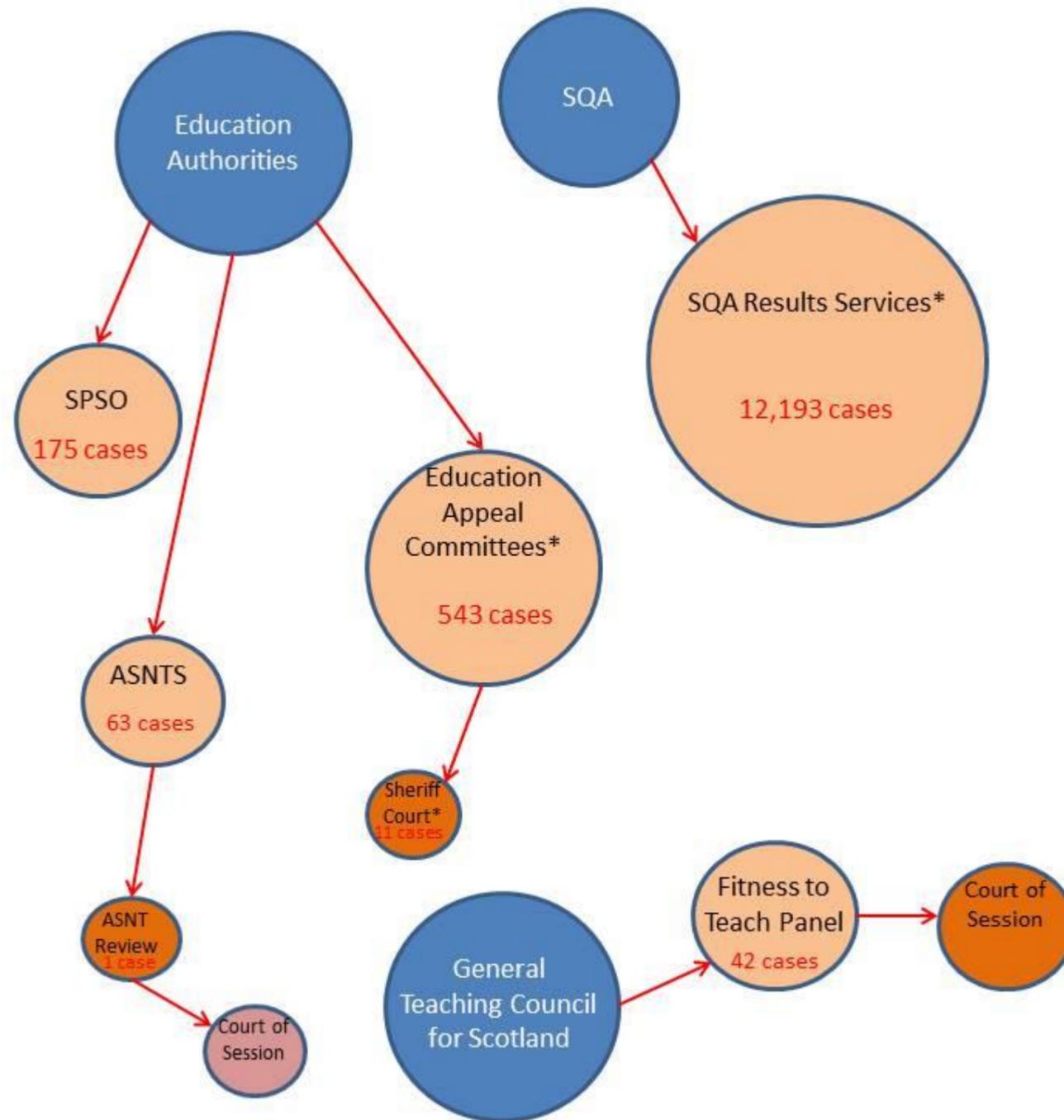
There are no external appeal or review procedures. Those who disagree with a decision by a University or College are therefore left to follow the individual institution's internal complaints procedures, or to raise the matter with their Student Union.

Student Awards Agency for Scotland (SAAS)

SAAS is the Government funded body responsible for providing financial support to eligible students studying a course of higher or further education in Scotland. The body's main function involves processing applications for the payment of tuition fees for Scottish and EU domiciled students studying at a Scottish Institution. However, the agency also processes and administers the Disabled Student Allowance, the NHS Bursary Scheme and Part-Time Fee Grants.

Applicants can appeal both the decision of SAAS on an application and the amount of support offered. This is an internal appeal to SAAS itself and must be in writing with evidence in support of the appeal. There is a further internal right of appeal against the decision of the appeal to the Chief Executive of SAAS. The decision of the Chief Executive is final.

The Education & Learning Landscape



	Initial Decision Making Body		Route of Complaint/Review/Appeal
	First Tier Complaint/Review/Appeal Body		
	Second Tier Complaint/Review/Appeal Body		
	Third Tier Complaint/Review/Appeal Body		

* - Figures are for Jan 1st to Dec 31st 2014. All other figures are for financial year 2013/2014.