

SEMINAR ON EDUCATION LAW

1 June 2009

**PLACING REQUESTS – CURRENT ISSUES AND DEVELOPMENTS**

What does an education authority do if it has more pupils for a particular school than places at the school? It's an old question, but in the current climate it is being posed in some new ways. It is linked to the perennial dilemma about resources. That issue also arises acutely in relation to placing requests for children with additional support needs. Education is never far from the political agenda, but there is a worrying gap between the expectations of politicians in the Scottish Parliament and the reality for education authorities and parents when it comes to placing request.

**Placing requests**

For those unfamiliar with the structure of the law, this is a thumbnail sketch of the basic position. The Education (Scotland) Act 1980 was amended in 1981 to give parents dissatisfied with the school at which their child was placed by the education authority the right to make a placing request for a school of the parents' choice. The education authority are obliged to accede to the request, unless one or more of a number of grounds for refusal are present<sup>1</sup>. There are eleven grounds on which a request may be refused, plus a provision for treating certain places as reserved. The eleven grounds are:

- “(a) if placing the child in the specified school would—
- (i) make it necessary for the authority to take an additional teacher into employment;
  - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;

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<sup>1</sup> 1980 Act, s. 28A.

- (iii) be seriously detrimental to the continuity of the child's education;
  - (iv) be likely to be seriously detrimental to order and discipline in the school;
  - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;
  - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school;
  - (vii) though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers;
- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
  - (c) if the education authority have already required the child to discontinue his attendance at the specified school;
  - (d) if, where the specified school is a special school, the child does not have additional support needs requiring the education or special facilities normally provided at that school; or
  - (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school<sup>22</sup>

Education authorities have a discretion to place the pupil at the school specified in the request, despite the existence of a ground for refusal. If they refuse, then the parent may appeal to an appeal committee<sup>3</sup>. If the appeal committee refuses the appeal, then there is a further appeal to the sheriff, whose decision is final<sup>4</sup> (subject to judicial review by the Court of Session). The right to appeal is the right of the parent, not the child, so any application for legal aid must be based on the means of the parent<sup>5</sup>. Both the appeal committee and the sheriff are obliged to apply a two-stage test. They cannot confirm the decision of the

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<sup>22</sup> 1980 Act, s. 28A(3).

<sup>3</sup> 1980 Act, s. 28C.

<sup>4</sup> 1980 Act, s. 28F.

<sup>5</sup> *S v Scottish Legal Aid Board*, [2007] CSOH 116, 2007 SLT 711.

education authority unless satisfied that one or more of the grounds of refusal exists or exist, at the time of their determination. They must also be satisfied that it is in all the circumstances appropriate to confirm the authority's decision<sup>6</sup>.

There are similar provisions which apply to pupils with additional support needs. These are found in the Education (Additional Support for Learning) (Scotland) Act 2004<sup>7</sup>. If a child has a co-ordinated support plan ("CSP"), or one is in prospect, then refusal of a placing request must be referred to the Additional Support Needs Tribunal (ASNT)<sup>8</sup>.

### **Education authority arrangements and guidelines for admitting children to schools**

The current structure of the law imposes a duty on education authorities to secure for their area adequate and efficient provision of school education<sup>9</sup>. They have a duty to provide sufficient accommodation. Schools have to be maintained and equipped<sup>10</sup>. As the curriculum changes, new facilities are required. All this means planning. As populations change, changes are required in schools. Schools are built, schools are closed, schools merge. On top of this there are political imperatives to reduce class sizes (of which more later).

From the perspective of the individual child the education authority are obliged to have, and to publish, their arrangements for placing children in schools under their management<sup>11</sup>. The scheme established by the Education (Scotland) Act 1980<sup>12</sup> assumes that an individual child will be allocated a place in terms of the general arrangements, the child's parent will be informed, and can then decide whether to accept the place, or to make a placing request for the child to attend school somewhere else<sup>13</sup>. Authorities are required to formulate guidelines that they will apply if there are more placing requests for a particular school than places available. Those guidelines too require to be published<sup>14</sup>. Furthermore, the arrangements

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<sup>6</sup> 1980 Act, ss. 28E(1) and 28F(5).

<sup>7</sup> For pupils who do not have a CSP see sch 2.

<sup>8</sup> 2004 Act, s. 18(4).

<sup>9</sup> Education (Scotland) Act 1980, s. 1(1).

<sup>10</sup> 1980 Act, s. 17.

<sup>11</sup> 1980 Act, s. 28B(1)(a)(i).

<sup>12</sup> As amended by the Education (Scotland) Act 1981.

<sup>13</sup> 1980 Act, s. 28B(1)(b).

<sup>14</sup> 1980 Act, s. 28B(1)(c).

and the guidelines cannot be changed without a process of public consultation<sup>15</sup>.

So what happens if there are more children entitled to a place under the council's general arrangements than there are places? Can the director of education conduct a ballot to identify those who are to be left out? One director thought this was the way out. As of May 2009 he is no longer in post. The legislation does not anticipate what will happen if education authorities, in a drive to efficient use of resources and under pressure to reduce class sizes, provide insufficient places for pupils at their local school. The general arrangements for that school were based on living in the 'catchment area'. Those arrangements presumably did not cover there being more pupils in the area than places at the school. The guidelines apply only to placing requests. But if there is no room, then what is the authority to do? The child has a right to education provided by the education authority<sup>16</sup>. Do the general arrangements imply a right to education in terms of those arrangements? It could be argued that a right to attend the school for the catchment area is implied by the legislation, or that pupils in that area had a legitimate expectation of attending the school specified in the arrangements. On the other hand even if the education authority were in breach of duty to the pupil, the court may not afford a remedy. The Court of Session declined to find Strathclyde Regional Council in breach of duty during the teacher's strike in the 1980s, because they had acted reasonably in the circumstances<sup>17</sup>. There may be sympathy in court for education authorities caught between the need for efficiency in management of the education budget, the exigencies of policy to reduce class sizes and issues such as population change.

What does a parent do in this situation? Can the parent appeal to the appeal committee against a refusal to allocate a place at the catchment school? The 1980 Act permits a parent who has made a placing request to refer the refusal of that request to the appeal committee<sup>18</sup>. The child excluded by ballot appears to have had her case considered by an appeal committee in May 2009. She was not however, at first blush, a child whose placing request had been refused.

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<sup>15</sup> 1980 Act, s. 22A and Education (Publication and Consultation Etc.) (Scotland) Regulations 1981, SI 1981/1558, as amended by SI 1987/2076, SI 1988/107, SI 1989/1739 and 2007/315.

<sup>16</sup> Standards in Scotland's Schools Act 2000, s. 1.

<sup>17</sup> *Walker v Strathclyde Regional Council (No 1)* 1986 SLT 523; *Walker v Strathclyde Regional Council (No 2)* 1987 SLT 81.

<sup>18</sup> 1980 Act, s. 28C(1).

What is a placing request? Then legislation is not specific. It seems that any written request will do, provided it identifies basic details such as the child, the school and the session for which a place is sought<sup>19</sup>. If a parent completes a form relating to the catchment school in the expectation that this is simply a document required to give details for administrative purposes when the child starts at the school, could this be a ‘placing request’? There are attractions to treating such a document as a placing request. It allows the parent to appeal if the child is not given a place. The alternative is that the parent must make a new request, in order for the education authority to refuse, and allow the appeal committee can consider the case, which failing the child will be placed as the local authority deem appropriate, albeit not in accordance with their own general arrangements.

If a parent has to make a placing request for the child’s own catchment school this could have serious implications. Children who attend a particular school as a result of a placing request are not entitled to school transport<sup>20</sup>, nor to special arrangements should these be necessary to enable them to benefit from school education<sup>21</sup>. That means that a child who is not permitted to attend the school she should be attending under the education authority’s general arrangements, but wins a place there following a placing request, is deprived of her legal right to transport, although transport may be provided at the education authority’s discretion. If her parents chose to make a placing request for an alternative school, that was some distance away, they would have no reasonable excuse if they failed to get her there<sup>22</sup>, and could be prosecuted<sup>23</sup>.

The lesson for local authorities is that they must keep their arrangements and guidelines under review as circumstances change. The arrangements must specify what is to happen if there are more children than places for the ‘catchment’ school, and what will happen to a child who cannot be placed in the local school. The guidelines must cover the situation where a parent is put in the position of having to make a placing request for their own ‘catchment’ school. The policy issues arising from such a situation may also require

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<sup>19</sup> *Cf Doyle v Grampian Regional Council*, unreported, 29 August 1984, Sheriff Risk, Aberdeen, where a general inquiry about a place, which did not identify the child or session for which a place was sought, was held not to qualify as a placing request.

<sup>20</sup> 1980 Act, s. 51.

<sup>21</sup> 1980 Act, s. 50.

<sup>22</sup> 1980 Act, s. 42.

<sup>23</sup> 1980 Act, s. 35.

consideration at a local level and in terms of the legislation, to avoid children losing rights such as the right to transport.

### **Reserved places**

That brings us to reserving places at a school for pupils who move into the catchment area. What is the difference between a “delineated area” and a “catchment area”? “Delineated area” is the term used by the 1981 Regulations<sup>24</sup> in connection with “arrangements adopted by an education authority in relation to any school”. “Catchment area” is a term introduced into the 1980 Act<sup>25</sup> in relation to the area from which pupils resident therein will be admitted to a school in terms of priority based on residence, in accordance with the guidelines formulated under section 28B(1)(c)<sup>26</sup>. The oddity of the definition of “catchment area” is that it should surely be the same thing as the “delineated area”. It should refer to the area specified in the general arrangements, where pupils who are resident will attend a particular school. On one reading of section 28B(1)(c) the guidelines are only relevant to placing requests. The way the legislation is framed means that an education authority can only reserve places if they specify a priority for pupils from a particular area in terms of their guidelines, rather than their general placing arrangements.

Places may be reserved. This means that an education authority may refuse a placing request if acceptance would prevent the authority retaining reserved places. They have a discretion in the matter<sup>27</sup>. The Scottish Ministers may cap the number of places an education authority may reserve<sup>28</sup>, but have not exercised this power. There was some initial bewilderment about reserved places, not least because they were not mentioned in relation to the appeal provisions, leading to the suggestion that appeal committees and sheriffs could disregard them. This suggestion was refuted in a decision of the Court of Session, holding that the requirement for appeal committees and sheriffs to have regard to reserved places was to be inferred<sup>29</sup>. There has still been some unease about reserved places. They only arise in relation to a refusal of placing requests based on some other ground. There is at least one

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<sup>24</sup> 1980 Act, s. 22A and Education (Publication and Consultation Etc.) (Scotland) Regulations 1981, SI 1981/1558 (as amended), sch 1(d) – (f).

<sup>25</sup> By the Education (Scotland) Act 1996.

<sup>26</sup> 1980 Act, s. 28A(3D).

<sup>27</sup> 1980 Act, s. 28A(3A).

<sup>28</sup> 1980 Act, s. 28A(3C).

<sup>29</sup> *Aberdeen City Council v Wokoma*, 2002 SLT 878.

(unreported) decision accepting that reserved places should be treated as if they had been filled for the purpose of deciding whether the education authority had established a ground for refusing a placing request<sup>30</sup>. However the fiction of a filled place may hold much less sway when the appeal committee or sheriff comes to decide whether it is appropriate in all the circumstances to confirm refusal of the request.

### **Class size limits**

Turning from hypothetical pupils to real ones, there are regulations limiting to 30 the number of children in a class in the first three years of primary education<sup>31</sup>. This is subject to certain exceptions. One of the exceptions for the primary one year is that a child placed in a class as a result of a decision by the appeal committee or the sheriff after 30 April will not be taken into account in calculating the number in the class. The effect is that an education authority may cap the number in the class at 30, but cannot then resist a placing request appeal taking the number over 30 on the basis that they will require to employ an additional teacher. This is recognised in the SNCT Handbook containing terms and conditions of teachers' employment, which specifies the maximum number of children teachers may be required to teach. Ironically it means that numbers in primary one classes may be higher than in other years, unless one of the other grounds for refusal of a placing request applies.

The problem was compounded by the Scottish Government's attempt to reduce primary one class sizes to 25, by issuing guidance. This has caused difficulties. In the first place the guidance adopted the same exceptions as the regulations. A child placed in a primary one class as a result of a decision by the appeal committee or the sheriff after 30 April would not be taken into account in calculating the number in the class. As a result an education authority could not claim that they would require to employ an additional teacher if allowing the placing request appeal would take the number of pupils in the class over 25<sup>32</sup>. In the second place guidance, of itself, would not allow education authorities to refuse statutory placing requests.

Class sizes in the upper primary school are regulated by teacher's terms and conditions of

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<sup>30</sup> *Ide v Stirling Council*, 7 September 2007, Sheriff Cubie, Stirling. See also *Wokoma v Aberdeenshire Council*, unreported, 24 December 2001, Sheriff Davies, Aberdeen.

<sup>31</sup> Education (Lower Primary Classes) (Scotland) Regulations 1999, SI 199/1080.

<sup>32</sup> *East Lothian Council, Petitioners*, 2008 SLT 921.

service. The limit is 33. The attempt to reduce class sizes in the lower primary to 30, while leaving class sizes in the upper primary at 33 has led to the introduction of more composite classes. The limit on numbers in composite classes is 25. In order to use resources effectively there is now a patchwork of classes in primary schools. If all single year group and composite classes in the lower primary are filled, then a school may have more pupils than it can accommodate in later years in the upper primary. Education authorities may refuse a placing request where it would be necessary for the authority to create an additional class or taken an additional teacher into employment at a future stage. Placing request appeals are now bedevilled by complex flow charts showing the projections for future years. The matter has to be considered on the basis of another fiction, namely the “constant intake”. Is that constant relative to last year, the authority’s plan for this year, or the intake were the placing request allowed. In *Smiles v City of Edinburgh Council*<sup>33</sup> the sheriff the constant number to mean that the numbers admitted in future years would be the same as the current year, including the pupil who was the subject of the placing request.

There does inevitably come a time when a school is full. Education authorities are now entitled to refuse a placing request on the ground that the capacity of the school would be exceeded in terms of pupil numbers, even if they would not have to employ an additional teacher, nor incur significant expenditure in extending the accommodation or facilities. The ground is only available when there are sufficient teachers and no significant expenditure is required on accommodation or facilities, so it is difficult to see when it will apply, save perhaps where the Regulations would provide for indefinite expansion of a primary one class or extension of accommodation is impossible. The Scottish government has issued guidance<sup>34</sup>. The intention appears to be to clarify that it is for education authorities to determine the capacity of a school with regard to all factors including staff, accommodation and facilities, but it does not address the issue of when this ground is available, having regard to its limitations.

### **Proposed changes to schools**

What happens if the education authority is in the process of making changes within a school? This year there are 14 classes, but next year the authority plan to reduce the numbers to 13.

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<sup>33</sup> 2006 SLT (Sh Ct) 6 at 8D.

<sup>34</sup> 1980 Act, s. 28A(1A); Circular No 3/2004: Guidance on Determining School Capacities.

Can the authority claim that admitting one pupil more than will fit into 13 classes will result in them being required to create an additional class or employ an additional teacher? It would appear that they can, if they have adopted a policy and planned the change<sup>35</sup>, but not if they are merely expressing a preference for a reduction in the number of classes<sup>36</sup>. Careful planning did not however assist an education authority trying to reduce numbers at a school in preparation for an amalgamation to form a new school. The sheriff allowed a placing request, holding that no additional teacher would be required at the school specified in the placing request, nor would any extra accommodation be required there. A requirement for extension of accommodation at the new school was irrelevant, as that was not the specified school<sup>37</sup>.

Education authorities are charged with planning for schools and determining allocation of resources and priorities. Sheriffs should not make decisions on placing requests that are designed to force changes in policy<sup>38</sup>. Where is the line between proper exercise of the court's functions in relation to placing requests, and a decision that is *ultra vires* because it usurps the proper functions of the education authority?

### **Children with additional support needs**

A placing request does not generally require to be made to the education authority for the area in which the child resides. A parent may make a placing request to another area specifying a school in that area. Rather to the dismay of the Scottish Parliament the Education (Additional Support for Learning) (Scotland) Act 2004 as originally drafted, was held to exclude an out of area placing request if a child had additional support needs<sup>39</sup>. The result was a new Education (Additional Support for Learning) (Scotland) Bill, passed on 20 May 2009 and now awaiting Royal Assent. The Act will permit parents of children with additional support needs to make out of area placing requests. The new Act will contain provisions designed to cover matters such as responsibility for a pupil's CSP. The home authority will require to meet the cost of provision<sup>40</sup> (other than mediation and dispute

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<sup>35</sup> *Smiles v City of Edinburgh Council*, 2006 SLT (Sh Ct) 6.

<sup>36</sup> *Gilmour & Mcrae v Stirling Council*, unreported, 28 November 2007, Sheriff Cubie, Stirling.

<sup>37</sup> *G v Inverclyde Council*, 2008 SLT (Sh Ct) 87.

<sup>38</sup> *Dundee City Council Petitioners*, 1999 Fam LR 13.

<sup>39</sup> *D v Glasgow City Council*, [2007] CSIH 72, 2008 SC 117.

<sup>40</sup> 1980 Act, s. 23(2); *East Renfrewshire Council v Glasgow City Council*, [2008] CSOH 175; to be confirmed in 2009 Act.

resolution). Additional support needs will be clarified as extending beyond measures traditionally regarded as educational provision<sup>41</sup>.

The Education (Additional Support for Learning) (Scotland) Act 2004 has the potential to reintroduce an old controversy, the early age placing request. There were conflicting sheriff court authorities on whether a parent could make a placing request for a child who was too young to attend school. The Standards in Scotland's Schools Act 2000 made an inept attempt to end early age placing requests, but by restricting requests to children of school age succeeded in preventing any placing requests at all for children due to start school. This was corrected in 2002<sup>42</sup> by the introduction of the definition of a "qualifying child", being a child of school age, a child who had started school or a child eligible to start school. However a parent may make a placing request for a child under school age who has additional support needs<sup>43</sup>. Gifted children have additional support needs<sup>44</sup>. Such a child may qualify to make a placing request under the 2004 Act.

There is an additional ground for refusal of a placing request for an independent special school. The education authority may refuse the placing request if:

- (i) the specified school is not a public school,
- (ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
- (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and
- (iv) the authority have offered to place the child in the school referred to in paragraph (ii).

The 2004 Act has allowed authoritative interpretation of "respective cost" by the Court of

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<sup>41</sup> Reversing *C v City of Edinburgh Council*, 2008 S.L.T. 522.

<sup>42</sup> School Education (Amendment) (Scotland) Act 2002, s. 1.

<sup>43</sup> 2004 Act, sch 2, para 2.

<sup>44</sup> See eg *RB v Highland Council*, [2007] CSOH 126, 2007 Fam LR 115.

Session decision, on appeal from the ASNT<sup>45</sup>. The cost of placing the pupil at an independent school is usually clear. It will include fees, transport and incidental expenses. The cost of a place at a school managed by the education authority is less clear. Lord Glennie decided that “cost” refers to the education authority’s own budget, not the public purse generally. The cost of a place at a public school is the additional cost to the authority of providing the place. The authority will generally be running the school whether or not the pupil attends, so the cost does not fall to be calculated by dividing the running cost of the school by the number of pupils or places. If the pupil can be placed in a suitable school managed by the education authority at no additional cost, then the authority are likely to be able to establish this ground. They will still have to show that it is appropriate in all the circumstances to approve their decision to refuse the placing request.

In the case of certain children with additional support needs a placing request appeal must be made to the ASNT. The original plan was for the Tribunal to deal with cases where there was a CSP. Section 18(4) provided for the Tribunal to hear an appeal where at the time the placing request was refused the pupil had a CSP, or it had been established the pupil required a CSP, or there was an appeal against the refusal of a CSP. In *Gordon, Appellant*<sup>46</sup> a local authority refused a placing request, the mother appealed to the appeal committee. The authority then decided a plan was required and cancelled the committee hearing. The Tribunal refused her appeal. However on a straightforward reading of section 18(4) the Tribunal should not have been considering the case at all, because at the time the placing request was refused the pupil did not have a plan and it had not been established that he needed one. The mother’s appeal to the Court of Session was allowed. The Scottish Parliament appear to have seen this as some kind of loophole and have extended the jurisdiction of the ASNT to cover cases where an education authority say that they propose to establish whether a plan is required. The ASNT will also consider cases where a placing request is made for a child with additional support needs to attend a special school, or a school in England and Wales that makes provision for children with additional support needs.

The relationship between the ASNT and the usual appeal route of appeal committee and sheriff is somewhat clumsy. Under the original provisions of the 2004 Act, an appeal

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<sup>45</sup> *SM, Appellant*, 2007 Fam LR 2.

<sup>46</sup> 2007 Fam LR 76.

committee or a sheriff seised of a placing request appeal was required to transfer the appeal to the ASNT if there was an appeal against refusal of a CSP<sup>47</sup>. If the Tribunal decided that a CSP was not required, they had to transfer the appeal back to the appeal committee<sup>48</sup>. The appeal went back to the committee, even if it had already proceeded to the sheriff. The effect in practice was a disaster, because the placing request could become enmeshed in lengthy procedure. This occurred in *JT v Stirling Council*<sup>49</sup> where the ASNT refused the appeal against refusal to establish a CSP, their decision was appealed, the appeal was remitted to the Outer House of the Court of Session, and then the judge's decision was reclaimed to the Inner House, who confirmed the original decision of the ASNT, resulting in a remit to the appeal committee. By this time the pupil was most, if not all the way through her first year at the secondary school where she had been placed by the authority. The new Act may compound the problem as it extends the powers of the ASNT, which will be charged with cases where there is a proposal to establish whether a plan is required. It also provides for the ASNT to assume responsibility for an appeal from a decision of the education authority, notwithstanding that an appeal is already pending before an appeal committee. The ASNT will also deal with an appeal from a decision of the appeal committee, if the question of a CSP arises before the time for appeal to the sheriff has expired. A sheriff court appeal lodged early may be a pointless appeal. The drawback to the new provisions is greater potential for procedural complexity and delay. The new Act will remedy the problem of remit by the ASNT, which will be to back to the sheriff, in those cases where the transfer was from the sheriff.

### **Political debate**

The debates in the Scottish Parliament in relation to the new Act threw up some interesting insights into the way in which politicians and perhaps some parts of the public view the role of local authorities in relation to placing requests, particularly for children with additional support needs. There was concern that the proceedings before the ASNT were more “adversarial” than had perhaps been anticipated. Given that they are a direct parallel to sheriff court proceedings for children who do not have additional support needs it is hardly surprising that they bear a relationship to sheriff court process, but this was seen as inappropriate. The Minister responsible for education commented to the Education, Lifelong

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<sup>47</sup> 2004 Act, sch 2, para 6(4) and (5) and para 7(8) and (9).

<sup>48</sup> 2004 Act, s. 19(5)(c).

<sup>49</sup> [2007] CSIH 52; 2007 SC 783.

Learning and Culture Committee that the approach of local authorities was “conservative and defensive” and implied criticism that an education authority will seek to “stack the odds in its favour and ensure its position is represented as effectively as possible”. There was some suggestion that lawyers should be kept out of the ASNT, a suggestion that was welcomed by at least one member of the Committee who said “I welcome the Ministers comments about getting rid of lawyers”. The new Act reinforces mediation and dispute resolution serviced and provides for “an advocacy service” for parents and young people, but there is no provision for legal aid in the ASNT.

At the same time there was complaint about the complexity of the legislation. This is with some justification. There have been a number of appeals to the Court of Session on points of interpretation the 2004 Act. It is not the easiest piece of legislation to understand. The new Act does nothing to improve matters. The Act itself is a disordered jumble of measures. The meaning does not leap off the page, and will not do so even when there is a “statutes in force” version, as there is cross-referencing between sections and between the principal part of the 2004 Act and the second schedule. Lawyers are people trained to interpret and assist in the application of the law. Why should education authorities be criticised for bringing to Tribunals those who have skills to exercise in this difficult area. Further, why should parents caught up in difficult and emotive cases based on complex legislation be required to make do with non-lawyers (unless they can afford a lawyer), while parents of children dealing with less emotive cases, and simpler legislation may have access to legal aid for the purpose of placing requests in the sheriff court?

If lawyers are to be criticised for stacking the odds in favour of those they represent and trying to ensure that their client’s position is represented as effectively as possible, then no-one should have attended today’s seminar, because it might just have assisted.

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