

SIAA Response

Section 70 of the Education (Scotland) Act – draft guidance for users of the section 70 complaints process

November 2017

1. Introduction information (pages 2-4 of the guidance document)

Is the information provided in the introduction clearly set out?

No

If this document is intended to be accessible for parents, carers and children, it should be clearer about what constitutes a breach of duty on behalf of an educational establishment. The document should be presented in two different versions – one for parents and carers, and another for children. Providing only one version of this document will limit its accessibility to different audiences. There should also be specific information highlighted for staff in Local Authorities and third sector organisations who support children and carers.

The guidance document fails to clearly explain how Scottish Ministers may make an order declaring responsible bodies to be in default of the duties they are supposed to uphold. It also fails to specifically highlight that it will be Her Majesty's Inspectors of Education (HIME) that will carry out an inspections of the alleged failed duties of an educational body. This information is highlighted on page 14, but it would be clearer if it was included earlier on in the document.

2. Before Making A Reference Under Section 70 (page 4)

Is this information sufficiently clear?

No

There needs to be more information provided about how a parent, carer or young person may seek support from an independent advocate. A power balance exists between a Local Authority and a parent or carer, and also between a Local Authority and a child. The Scottish Government needs to provide greater recognition of this imbalance in its guidance, so that support mechanisms at a local level are clearly highlighted for parents, carers and children. While we agree that issues that arise between Local Authorities and young people or parents should be dealt with on a local level where possible, we are concerned that Local Authorities may in some cases attempt to dissuade individuals from making a reference under Section 70.

Interaction with other complaints mechanisms (pages 5-7)

Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Yes

More information should be provided about how Additional Support Needs Tribunals for Scotland (ASNTS) operate, and there should be specific reference to the role that independent advocates play in the tribunal process. It is not enough to only refer to independent mediation as a means of children, parents and carers to understand their rights and gather information. Mediation assumes there is a power balance between children, parents and carers, and Local Authorities. The guidelines should explain how independent advocates can support children who attend or do not attend their tribunals, and that independent advocates have a fundamental role in supporting children to express their views.

3. The Section 70 complaints process (pages 8 and 9)

Is this information clear? Is the structure correct? Is there any information which should be added or removed.

No

While we welcome that there are now statutory timeframes in place to ensure that requests are dealt with as a fast as possible, we are concerned that parents, carers and young people may feel put off by submitting a complaint within the Reference Establishment Period. 15 days may prove to be too short a period of time for Ministers to establish how concerned parties engaged in alternative dispute resolution mechanisms. If the initial evidence that is submitted is not deemed substantive enough by Scottish Ministers, there may be particular time constraints for parties to submit further evidence in such a short period of time.

The Scottish Government also needs to make a specific definition of 'substantive' available to the public, as it is currently too vague and imprecise. It should be made clearer how HMIE will establish whether this evidence is substantive enough.

5. How to make a reference (page 10)

Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Yes

Although there is a reference to Govan Law Centre's Education Law Unit, we are concerned that this process may be perceived as too complex and lengthy by concerned parties wishing to submit a reference. Instead, what is needed is clear and specific reference to complicated legislation. It would be in these parties' interest for more information to be provided in clear English about how they would submit a reference, rather than in legalistic terms. The Scottish Government should also provide a link to the Education (Scotland) Act 2016.

6. How to respond to a reference (Page 11)

Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Unsure

7. The role of HM Inspectors of Education and Application Form (page 12)

Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Unsure

8. Guidance Structure

Does the structure help the reader to follow/use the guidance effectively?

No

The explanation of how HMIE engages with Scottish Ministers should be included earlier on in the document. Also, there should be a clear and accessible explanation of how HIME will carry out their investigation of a complaint.

Are there any other comments you would wish to make about the draft guidance?

We would like it to be made clear exactly how concerned parties would be informed about Section 70. This guidance assumes that concerned parties were already aware about the mechanisms in place to report a breach of duty by education bodies. However, specific steps need to be taken to raise awareness specifically amongst parents, children, third sector organisations and Local Authorities. The Scottish Government needs to establish a communications strategy to inform all these groups individually about how to submit a complaint under Section 70. There cannot be one document that meets the needs of all these groups

We would also like Scottish Ministers to annually collate all the complaints that are submitted to them under Section 70, and submit these to the Scottish Parliament, where they can be scrutinised by the Education and Skills Committee. This would allow the Government, Education Authorities, and voluntary sector organisations to identify common grievances or systematic issues that are alleged to exist across education bodies.

The Scottish Independent Advocacy Alliance (SIAA) is Scotland's national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

SIAA is a Scottish Charitable Incorporated Organisation Charity number SC033576

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