

How to: run an effective admissions appeals panel

A Word about the Human Rights Act, 1998

How to use this document

The Appeals Code expects panel members and clerks to have an understanding of relevant law. This includes the Human Rights Act 1998. The Code does not require them to be professional lawyers or legal experts. This document provides a summary of the Act and rights that may be relevant to appeals brought. If there is any doubt as to the legal position professional legal advice should be sought and the clerk should advise this as the prudent course of action.

1. Introduction

All public bodies in the UK, including local authorities, must ensure that legislation, procedures and regulations are compatible with European Convention on Human Rights. Any claims relating to Human Rights will be against the education provider.

2. What are rights?

Absolute rights are those that cannot be infringed.

Limited Rights are those that can, under explicit circumstances identified in the Convention, be limited.

Qualified Rights are rights that can be interfered with if what is done -

- has a legal basis
- is necessary in a democratic society i.e. it fulfils a pressing social need, pursues a legitimate aim and is proportionate to the aims being pursued
- is related to the aim set out in the relevant article

e.g. the prevention of crime, the protection of public order, health, or morals

Qualified rights are: -

- the right to respect for private and family life
- rights relating to religion
- the right to freedom of expression
- the right to freedom of assembly and association
- the right to the peaceful enjoyment of property
- the right to education

The Convention allows rights to be interfered with to support a democratic society.

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3. Important concepts

proportionality

Interference with a Convention Right must not be excessive, arbitrary or unfair, or have too severe an impact on a particular group or individual.

victim

Is someone directly affected. Only a person, or a recognised group, considered a 'victim' can bring proceedings against a public authority. A trade union cannot bring proceedings, unless it is a victim itself. However, it can assist members with advice and representation.

margin of appreciation

Allows domestic courts to decide the merits of a decision, policy or law and the reason for its adoption. This is recognition that member states are better able to evaluate local needs and conditions than the court in Strasbourg. (A state cannot act to reduce an absolute right.)

onus of proof

Is on the person taking the case (the applicant) but where the right is qualified it is up to the authority (respondent) to show the restriction was justified and proportionate.

living instrument

Means the Convention is interpreted in the light of present day conditions.

3. Implications for education and admissions

Article 2 of Protocol 1 - The right to education

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

This is a qualified right and subject to a reservation which is:-

"The right is compatible with provision of efficient instruction and training and the avoidance of unreasonable public expenditure."

The right to education means access to

- educational institutions existing at a given time
- an effective education
- official recognition of the studies a student has completed

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A number of other rights also may apply to education, e.g.:

- Article 3 No person shall be subjected to torture or inhuman treatment or punishment
- Article 5 Everyone has the right to liberty and security of person except in a number of defined circumstances
- Article 6 Everyone is entitled to a fair and public hearing by an independent and impartial tribunal
- Article 8 Everyone has the right to respect for his private and family life, home and his correspondence
- Article 9 Everyone has the right to freedom of thought conscience or religion
- Article 10 Everyone has the right to freedom of expression
- Article 14 Prohibition of discrimination

4. Examples of possible implications for admissions and appeals

Article 6: Everyone is entitled to a fair and public hearing by an independent and impartial tribunal.

Example 1 An appeal against the refusal to admit a child to a chosen school.

An admission authority may be able to justify this on grounds of expenditure. Care must be taken, however, to ensure no discrimination takes place.

Example 2 Does the way the appeal is arranged and heard allow the appellant a satisfactory opportunity to put their case

Article 9: Everyone has the right to freedom of thought, conscience or religion.

This has to be separated into the right to hold religious beliefs and how people carry out their beliefs. The latter can be restricted to protect the rights and freedoms of others. At present parents have rights to withdraw children from religious instruction.

Article 2 of Protocol 1 refers to "education in accordance with the religious and philosophical convictions of parents" This is qualified. Such convictions must be worthy of respect in a democratic society and not incompatible with human dignity and personal integrity.

Example 3 An appeal against refusal on the basis that other schools cannot provide suitable education.

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Article 10: Everyone has the right to freedom of expression.

This carries with it duties and responsibilities. It can be interfered with to ensure effective education and the rights of others are not diminished. Its application in education may be seen in certain subject areas such as sex education, modern studies, citizenship studies and other areas of the curriculum where expressing opinions may be part of the learning process.

(see above Article 8 regarding confidential reports.)

Challenges may be made using a number of articles e.g.

Example 4 An appeal may be based on the fact the pupil is or is likely to suffer from bullying and harassment in other schools

This may involve Protocol 1, Article 2, the right to education, Article 3, inhuman and degrading treatment and Article 14, prohibition of discrimination. If bullying and harassment is allowed to go unchecked it can be argued that the personal integrity of the child is violated, access to education denied and access to convention rights denied on grounds of e.g. gender, race, ethnicity or sexual orientation.

Example 5 An appeal may be based on the Special Educational Needs of a child

Some parents wish their children to be educated in mainstream schools while others prefer special educational needs establishments. To date The Commission has rejected claims by parents for special schools on the ground that an authority has "a wide measure of discretion as to how to make the best use possible of the resources available to them in the interests of disabled children generally." (Simpson v UK (1989) 64 DR 188 at 195)

Challenges to a local authority's refusal to provide schooling according to the wishes of parents would only succeed if the education was clearly inappropriate for the child or inadequate.

It is important to remember that the European Convention of Human Rights was written in particular circumstances at a particular point in history to protect civil and political rights within a democratic society.

Remember the intention of The Human Rights Act, 1998 is –

"to help create a society in which people's rights and responsibilities are properly balanced and where an awareness of the Convention rights permeates our government and legal systems at all levels."

(Government's Task Force on Human Rights)