

# COMPLAINTS PROCEDURE FOR THE ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND 2016

## Application

1. This procedure applies in relation to complaints about the conduct of a convener or member of the Additional Support Needs Tribunals for Scotland (ASNTS).

## Functions of the President of ASNTS

2. The President of ASNTS has appointed the Judicial Office for Scotland to—
- (a) supervise the operation generally of this procedure and report to the President about that matter as appropriate;
  - (b) carry out other functions specified by this procedure.

## Judicial Office

3. References in this procedure to the Judicial Office are to the Judicial Office for Scotland which supports the Lord President as head of the Scottish judiciary.

## Making a complaint

4. (1) A complaint may be made by submitting a complaint document to the Judicial Office.

(2) A “complaint document” is a document in writing which—

- a) is legible;
- b) contains one or more detailed allegations of misconduct on the part of a named or identifiable convener or member of ASNTS;
- c) gives the date or dates of the alleged misconduct; and
- d) states the name of the person alleging misconduct and details of an address to which correspondence may be sent.

(3) A complaint document is to be accompanied by all documents within the control of the person complaining upon which that person seeks to rely.

(4) If the tribunal member or convener concerned—

- a) is under investigation by or is subject to an ongoing disciplinary procedure by any other competent professional disciplinary body or tribunal; and
- b) the fact of that investigation or procedure is known to the person complaining, the person complaining should include that information in the complaint document.

(5) A complaint document will not be accepted where it (or any communication associated with it) indicates that the person complaining does not consent to the convener or member concerned to see a copy of the complaint document or any document accompanying it.

## Initial assessment of complaint

5. (1) The Judicial Office is to carry out an initial assessment of the allegation(s) of misconduct.

(2) If the Judicial Office considers that an allegation falls within paragraph (3), it is to dismiss that allegation.

- (3) An allegation falls into this paragraph if—
- a) it does not contain sufficient information to enable a proper understanding of the allegation to be achieved;
  - b) it is about a decision of the Tribunal;
  - c) it raises a matter which has already been dealt with (whether under this procedure or otherwise), and does not present any material new evidence;
- (4) Where an allegation is dismissed under paragraph (3), the Judicial Office is to provide written reasons why the allegation has been dismissed to the person complaining.
- (5) Where an allegation is not dismissed under paragraph (3), the Judicial Office is to write to the person complaining to inform that person of that fact and submit the complaint to the President of the ASNTS for consideration.

### **Assessment of Complaint by President of ASNTS**

6. (1) Where a complaint is received by the President of ASNTS from the Judicial Office, the convener or member to whom to complaint relates will be sent a copy by the President of ASNTS within 7 working days<sup>i</sup> and will be asked to comment on the allegations made within 7 working days of receipt.

- a) Tribunal members and the convener must respond without discussing the nature of the complaint, or response to it, with each other.
- b) Except where the consent of the convener or member is given, copies of the member's or convener's response to the complaint will not be copied to the complainer.
- c) Where appropriate, the President of ASNTS will seek comments from the case officer or any other people who were present during the conduct complained of.
- d) The President of ASNTS may have regard to the record of proceedings and the audio-recording of the hearing, and may, if appropriate, interview any person in relation to the complaint.

### **Notification of Outcome**

7. (1) The President of ASNTS is to write to the complainer and the convener or member who was the subject of the complaint, detailing the findings and any action which she proposes to take.
- (2) In the event that a complaint of a serious nature against the convener or member is upheld, the President of ASNTS may refer the conduct to the Scottish Ministers under the terms of paragraph 6 of schedule 1 to the Education (Additional Support for Learning) (Scotland) Act 2004, as amended, which provides that the Scottish Ministers may remove a Tribunal member or convener if they are unfit for office by reason of inability, neglect of duty or misbehaviour.

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<sup>i</sup> The "working day" means a day which is not, (a) Saturday; (b) Sunday; or (c) a day which is a Public Holiday