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Guidance

Advice for admission authorities on school admission appeals

Updated 24 April 2020

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Introduction

This advice is for school admission authorities.

School admission authorities have 2 distinct roles in relation to school admission appeals, to both:

- arrange for an independent appeal panel to hear appeals for a place at your school
- present evidence to the independent appeal panel as to why the admission authority refused to admit the child who is the subject of the appeal

This advice provides information on both.

It provides information about arranging for an independent appeal panel to hear appeals for a place at your school, including:

- setting up independent appeal panels
- ensuring that panel members and clerks are properly trained
- ensuring admission appeals are conducted in a fair, transparent and consistent manner

It also provides advice on how an admission authority can present its case to an appeal panel, along with the type of evidence panels may wish to see, in order to establish if prejudice will occur should the school admit an additional child.

You should read this advice in conjunction with the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>), the School Admissions Code (<https://www.gov.uk/government/publications/school-admissions-code--2>) and other laws that affect admissions and admission appeals in England. The codes and the legislation underpinning them set out mandatory requirements for admission authorities and take precedence over this advice.

It's your legal obligation to ensure these duties are met throughout the appeals process.

Informing parents about their right of appeal

Parents of children refused a place at a school for which they have applied have the right to appeal to an independent appeal panel. This includes where a child is in the process of, or has already been allocated, an alternative school place for example via the local Fair Access Protocol (<https://www.gov.uk/government/publications/fair-access-protocols-in-school-admissions>) or otherwise.

Where a young person is refused admission by a sixth form attached to a school, they and their parents have the same right of appeal.

When parents are notified of the decision to refuse a place at your school, they must be:

- provided with the reason why you refused admission
- informed of their right to appeal to an independent appeal panel
- provided with information on how they can appeal

This must include:

- that appeals must be submitted in writing
- the deadline for submitting an appeal
- how they submit the appeal

For infant class size appeals, you must also provide information on the limited circumstances in which a panel can uphold an appeal.

Making arrangements for organising and hearing appeals

You have the responsibility for arranging appeals against the refusal of a place at your school.

You can either:

- establish your own independent appeal panel
- make joint arrangements for hearing appeals with other admission authorities in the area
- use the appeals service provided by the local authority (there may be a charge for this)
- contract the process out to a commercial organisation running appeals for schools (there will be a charge for this)

You'll remain responsible for ensuring that the appeals function for your school is carried out effectively and in accordance with statutory requirements.

Setting up the independent appeal panel

You must appoint a clerk to the appeal panel, who is independent of the school and the education functions of the local authority.

The clerk must have knowledge of both the School Admissions Code

(<https://www.gov.uk/government/publications/school-admissions-code--2>) and the School Admissions Appeals Codes (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) and other laws relating to admissions, including equalities legislation.

You must also appoint an independent appeal panel, which must consist of a chair and at least 2 other panel members, of which one is:

- a lay person, someone without personal experience of managing a school or the provision of education in a school (except as a school governor or in another voluntary capacity) and
- someone with experience in education (such as a teacher), who is acquainted with the educational conditions in the local area, or who is the parent of a registered pupil in a (different) school

You should ensure that panel members are selected on the basis that they can make fair and objective decisions. For schools with a religious designation, you should not select panel members solely based on their faith.

It's important that panel members are independent and retain their independence at all times.

You should not appoint a panel member whose involvement could raise doubts about impartiality.

This would include:

- employees of the local authority, school or academy trust
- a member or former member of the governing body
- a teacher or teaching assistant at the school
- a person involved in admission decisions at the school
- a member of the local authority
- a close friend of the appellant

You also must not appoint a person who has not had the relevant training to hear school admission appeals.

Regulations disqualify the above categories of people from panel membership.

Training

You must ensure that clerks and panel members have the appropriate and up to date training before taking part in any part of the appeals process.

As a minimum you must arrange and fund appropriate training on:

- the law relating to school admissions and admission appeals
- panel members' duties under the Human Rights Act 1998 and the Equalities Act 2010
- procedural fairness and natural justice
- the specific roles of particular members, such as clerking and chairing skills

It's your responsibility to ensure that appeal panels are set up correctly and with the appropriate training.

Failure to do so could result in complaints, which may result in the need to rehear appeals.

Funding

In relation to centrally retained Dedicated Schools Grant (DSG) funding, local authorities must treat all maintained schools and schools that are their own admission authority in their area equitably.

This is set out in Section 156.2 of the schools revenue funding operational guide

(<https://www.gov.uk/government/publications/pre-16-schools-funding-guidance-for-2019-to-2020>).

This means, if local authorities retain funding from the budgets of all schools to provide an admission appeals service without charge to community and voluntary controlled schools, they must also provide this service without charge to academies, voluntary aided schools and foundation schools, although these schools may instead choose to make their own, self-funded arrangements.

Alternatively, where local authorities delegate funding for appeals to all schools in their individual budgets, they may charge the budgets of their maintained schools for the costs associated with administering admission appeals on their behalf. Academies, voluntary aided schools and foundation schools may also wish to buy into the appeals services provided by the local authority or can make alternative arrangements.

Indemnity

Admission authorities must indemnify panel members against any reasonable legal costs they incur in connection with any decision or action taken in good faith whilst acting as panel members.

Appeals timetable

By 28 February each year, you must set out on your or the school's website a timetable for organising and hearing appeals.

This must:

- include a deadline for lodging appeals, which allows appellants at least 20 school days from the date of notification that their application was unsuccessful, in order to prepare and submit their written appeal
- ensure that appellants receive written notification of the date and arrangements of their hearing, at least 10 school days before the hearing
- include reasonable deadlines for appellants to submit additional evidence not submitted with the initial appeal, for admission authorities to submit their evidence, and for the clerk to send the appeal papers to the panel and parties
- ensure that the panel clerk sends out the decision letters within 5 school days of the hearing wherever possible

You must ensure that the panel hears appeals submitted on time within the following timescales:

- for applications made in the normal admissions round, appeals must be heard within 40 school days from the deadline for lodging appeals
- for late applications, appeals should be heard within 40 school days from the deadline for lodging appeals where possible, or within 30 school days of the appeal being submitted
- for in-year application appeals, the panel must hear appeals within 30 school days of them being submitted

For applications to sixth form:

- where the offer of a place would have been conditional upon exam results, the panel must hear appeals within 30 school days of confirmation of those results
- where the offer of a place would not have been conditional upon exam results, appeals must be heard within 40 school days of the deadline for lodging appeals

If you receive an appeal after the appropriate deadline, you must still arrange for the panel to hear the appeal. Timescales for hearing such appeals should be set out in the published appeals timetable.

The appeal hearing

You must ensure the following are in place for the hearing:

- an appropriate venue that is accessible to appellants

- suitable waiting areas for appellants and presenting officers to wait separately from the panel before and between appeals
- the panel is able to hold the appeal hearings in private, and conduct them in the presence of all panel members and parties
- that the same panel hears multiple appeals for a school, as far as reasonably possible

Notes and records of proceedings

It's your responsibility to ensure that notes and records of appeal proceedings are held securely for a minimum of 2 years.

Further appeals

If an appellant is unsuccessful in their appeal, they do not have the right to a second appeal for the same school place, in the same academic year. However, if you've accepted a second application from them due to an exceptional change in circumstances and you refuse this again, you must give applicants the opportunity to appeal again. You must arrange a second appeal panel with different members from the first.

They may also appeal following the refusal of a school place in subsequent academic years.

Complaints about appeals

You must inform appellants about the arrangements for making a complaint about their appeal, if they believe it was not carried out correctly.

You should provide information about where appellants can direct their complaints and what types of complaints can be investigated.

For complaints about an appeal for a maintained school, you should direct appellants to the Local Government and Social Care Ombudsman (<https://www.lgo.org.uk>).

For complaints about an appeal for an academy, you should direct appellants to the Education and Skills Funding Agency (<https://www.gov.uk/schools-admissions/appealing-a-schools-decision>).

Further information can also be found on the academy admission appeal panel complaints factsheet (<https://www.gov.uk/government/publications/academy-independent-admission-appeal-panel-complaints>).

Presenting the admission authority's case to the appeal panel

Once you've made arrangements to hear appeals for your school, your role is then to make the case to the independent appeal panel as to why your school cannot admit any more children, and how doing so would prejudice the provision of efficient education or the efficient use of resources.

Presenting officer

You must provide a presenting officer to attend the hearing and present the admission authority's case to the panel. It's important that you select a member of staff who is well acquainted with the school to carry out this role.

It's likely that the panel will ask detailed and challenging questions about the case being heard and the characteristics of the school, such as:

- the school's capacity
- classroom sizes
- the availability of staff
- the impact the admission of additional pupils will have on resources
- the school's reasons for refusing admission

It's also likely that the panel will question the presenting officer about the school's admission arrangements and how they were applied to the child in question.

If no presenting officer attends the hearing, the panel can decide to proceed with the hearing based on the written evidence submitted by the admission authority, if it is satisfied this will not disadvantage the appellant. It's the panel's discretion whether to postpone an appeal hearing if no presenting officer is able to attend the hearing.

Production of evidence

You must supply the panel with all it needs to conduct the hearing in a fair and transparent manner.

This includes supplying the clerk with all the relevant documents needed to conduct the hearing, within the timescales set out, including:

- details of the school's admission arrangements
- how the admission arrangements and the coordinated admissions scheme were applied to the child in question
- the reasons for the decision to refuse admission
- an explanation as to how the admission of an additional child would cause prejudice to the provision of efficient education or efficient use of resources

You must ensure that you supply any such documents sufficiently in advance of the date of the hearing, as set out in the specified timescales. The clerk is responsible for ensuring that all parties to the appeal have the documents a reasonable time in advance.

You must also comply with reasonable requests from parents for information which they need to help them prepare their appeal.

Demonstrating prejudice

Unless you put forward a robust case to demonstrate that admitting an additional child to the school would prejudice the provision of efficient education or efficient use of resources, the panel may uphold the appeal in the appellant's favour and you would be required to admit the child.

This means you should aim to demonstrate how admitting another child at the school will have an adverse impact on the school's resources and how this will compromise the quality of education received by the existing pupils at the school.

Simply demonstrating that the school has reached its published admission number will not be sufficient. In both the written statement and at the hearing, you must be able to demonstrate prejudice beyond the fact that the school has already reached its published admissions number.

In circumstances set out in its local authority's Fair Access Protocol (<https://www.gov.uk/government/publications/fair-access-protocols-in-school-admissions>), an admission authority may be able to refuse to admit a child outside the normal admissions round even though places are available (see paragraph 3.12 of the School Admissions Code (<https://www.gov.uk/government/publications/school-admissions-code--2>)).

Where you've refused a place on this basis you will need to demonstrate how prejudice will occur despite places being available. This may include presenting information in relation to the child in question and how admitting such a child would cause prejudice.

Factors considered by the panel

In making their decisions as to whether or not prejudice will occur should an additional child be admitted to the school, the panel may consider the following factors:

- the effect an additional child would have on the school in the current and following academic years as the year group moves through the school
- whether any changes have been made to the school's physical accommodation or organisation since the admission number was originally set for the relevant year group
- the impact of the locally agreed Fair Access Protocol (<https://www.gov.uk/government/publications/fair-access-protocols-in-school-admissions>)
- the impact on the organisation and size of classes, the availability of teaching staff, and the effect on children already at the school

As such, you should focus on presenting evidence relating to these factors. This could include presenting evidence to demonstrate the following where relevant.

Any pressures on staffing and their workloads, for example:

- numbers of teaching and non-teaching staff and the impact additional children will have on their ability to deliver effective education
- the number of children with high needs registered on roll and the impact this may have on both teaching and non-teaching staff, as well as the existing pupils at the school

Any restrictions in the school's facilities, for example:

- classroom sizes and the number of children they can accommodate
- size of shared spaces such as dining areas, assembly areas, sporting facilities, examination areas and the number of children they can accommodate
- any pressures on physical space which may result in health and safety concerns

Any evidence must be specific to the school and the impact it'll have on the school in delivering effective education. For example, the comparison of school data with national averages will not be sufficient in demonstrating prejudice will occur should an additional child be admitted to the school.

Making speculative statements of prejudice occurring in the future, for example speculation about possible budget cuts or the reduction of staffing levels, are unlikely to be sufficient in demonstrating prejudice.

Infant class size appeals

For an infant class size appeal, you should focus on demonstrating how the admission of an additional child would breach the infant class size limit and that the decision to refuse admission was not unreasonable. This could include, if appropriate, demonstrating that the circumstances of the case were given sufficient consideration before the decision to refuse admission was made.

Examples of evidence

Information around the number of teaching staff at the school, and why the school cannot deploy further teaching staff to accommodate the additional infant aged pupils.

Information on the number of infant classes at the school - note that the physical size of classrooms are less relevant in an infant class size appeal, as the legislation limits the size of such classes to 30 pupils per school teacher, regardless of the physical size of the classroom.

The organisation of classes in the other subsequent years of the infant phase - panels take into account whether the admission of an additional child would breach the infant class size limit, not only in the year in which the parent is seeking a place, but also in all other subsequent years of the infant phase. The admission of an additional child in reception may result in prejudice in the subsequent years of the infant phase. For example, where a school's usual practice is to move from 3 classes of 20 in reception to 2 classes of 30 in year 1 or 2.

The presenting officer should also aim to demonstrate to the panel that how the circumstances of the case were given sufficient consideration, before the decision to refuse admission was made.