

SCHOOL ADMISSIONS

APPEAL PANELS

Guidance for Parents

Infant Age Children

**Policy, Performance and
Corporate Services Department
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GUIDANCE FOR PARENTS ATTENDING SCHOOL APPEAL HEARINGS FOR INFANT AGE CHILDREN

1. Introduction

The Education Act 1996 requires every admission authority to make arrangements for parents to express a preference for the school they want their child to attend and to give reasons for their preference.

The admission authority must comply with the parents' preference unless any of the following would arise:-

Prejudice to the provision of efficient education or the efficient use of resources; (This is explained in more detail in paragraph 8)

Where the preferred school is a voluntary aided or foundation school and admission would be incompatible with any special arrangements for preserving its religious character;

Where the school is wholly selective by high ability or by aptitude, and the admission of the pupil would not be compatible with such selection under the admission arrangements;

Where the child has been permanently excluded from two or more schools and at least one exclusion took place after 1 September 1997;

Where admission would be incompatible with co-ordinated admission arrangements covering two or more maintained schools;

Where to admit would be incompatible with the duty to meet infant class size limits, because the admission would require measures to be taken to comply with those limits which would cause prejudice to efficient education or efficient use of resources.

A new School Admission Appeals Code came into force on 10 February 2008. A copy of this may be seen on the Department for Children, Schools and Families website (www.dcsf.gov.uk/sacode/), in your local library, or obtained from

The Stationery Office Ltd, PO Box 590, Norwich MLO, NR3 1QZ
(www.tso.co.uk).

You have a right of appeal, when the school you prefer for your child has no places available in the relevant year group or class and therefore your application for a place has been refused by the admission authority.

The admission authority is the Children, Families and Cultural Services Department in the case of community and voluntary controlled schools and the governing body for foundation and voluntary aided (mostly church) schools.

2. Infant Class Size Prejudice

Infant class size prejudice only applies to Reception, Year 1 and Year 2 classes. If you are seeking a place for your child in a Reception, Year 1 or Year 2 class, your request may have been turned down because of infant class size prejudice. The law is that there should be no more than 30 pupils in an infant class with a single teacher. Your application may have been refused because to admit your child would mean more than 30 pupils in a class, and cause the Department to take “qualifying measures” such as employing an extra teacher or building an extra classroom.

If your application was refused because of “infant class size prejudice” it will say so in the letter telling you about the refusal. The way your appeal will be handled is different from other appeals. This is explained later in these notes (see pages 6 and 9).

3. How Do I Make an Appeal?

You will have been sent an appeal form with this booklet. The appeal form is an important part of your case to the Appeal Panel. You should complete it carefully and return the form to:-

Policy, Performance and Corporate Services Department (ref KF)
Nottinghamshire County Council
County Hall
West Bridgford
Nottingham NG2 7QP

For appeals during the normal admissions round, please return your form by 16 May 2011. For other appeals, please return the form within 28 days of the date of the refusal letter.

4. Before the Hearing

Arrangements

The arrangements for your appeal are made by the Policy, Performance and Corporate Services Department at County Hall. We must give you at least ten school days notice of the date, time and place of the Appeal Panel's hearing (unless you agree to a shorter period).

At least 7 working days before the date of the hearing (unless you have agreed to a shorter period than this) we will send you a copy of the admission authority's statement, and all the documents which you want the Appeal Panel to see. The statement will summarise why it has not been possible to offer a place at your preferred school.

5. What do I need to do?

Your Appeal

You are responsible for presenting your case.

Most parents attend the appeal hearing. We would strongly advise that you do so. If you do not wish to attend, your appeal will be decided on the information available to the Panel, including any written information you have sent. If you wish to submit any further information, we recommend that this is sent to us as early as possible before the Appeal Panel hearing. This will give the Panel and the authority the opportunity to consider the information. The school you have appealed for is not able to support you in your appeal.

Who may attend

If you wish, you may bring a friend or supporter to help you present your case.

Special Requirements

Please let us know if you have any special requirements which we will try to meet as far as the venue is concerned.

Interpreter

You may have an interpreter at your appeal hearing. If you would like us to arrange an interpreter for you please let us know as soon as possible which language you require. Alternatively, if you would prefer, you may arrange your own.

Personal Circumstances

If your case is based on medical or social grounds, you should wherever possible, provide written evidence from a medical practitioner or other professional to support this.

If your case is based on a house move, you should provide written evidence such as a letter from a solicitor or conveyancer, or from a landlord/local authority/housing association who you are renting the property from, to confirm your residency.

6. The Hearing

How long will my appeal hearing take?

You will be allocated a specific time for your appeal hearing. These are usually scheduled at 30 or 45 minute intervals during the day.

Occasionally some appeals take longer and there might be a delay in starting your appeal.

Outline of the procedure

The procedure for your appeal will depend on the reason why your application was refused. This reason should be made clear in the letter from the Department refusing your child a place and in the statement which is sent to you a week before the hearing.

Adjournments

Sometimes it may be necessary for there to be an adjournment of the hearing so that further information can be obtained or so that everyone has time to read some information which has been circulated. These adjournments are usually fairly short but there maybe occasions when it is necessary to adjourn the hearing to another date.

6.1 Infant Class Size Prejudice Appeals

If your application was refused because of infant class size prejudice, the law limits the grounds on which the Appeals Panel can allow your appeal to the following:

- Your child would have been offered a place if the admission arrangements had been properly implemented. In other words, the Department has not followed its published arrangements, either by mistake or deliberately. The Appeal Panel can only allow your appeal if your child would have been admitted if the admission arrangements had been properly implemented.
- Your child would have been offered a place if the mandatory provisions of the School Standards and Framework Act 1998 and School Admissions Code had been followed.
- The decision was not one which a reasonable authority would make in the circumstances of the case. An unreasonable decision would be one that is completely illogical or irrational, taking into account all the relevant facts of the case. You may refer to personal factors on your appeal form or at the hearing, and the Appeal Panel will take them into account when considering whether the decision to refuse your application was a reasonable one.

If there are a number of appeals for the same school, we may decide to hold the appeals in two parts. In the first the representative of the admission authority puts their case to all the appellants, and in the second part, you have time in private to put your reasons for wanting a place at the school.

6.2 Other Appeals

At other sorts of appeal there is a two-stage process. The first stage is where the Panel will decide as a matter of fact whether prejudice would arise if any child were to be admitted to the preferred school. The first stage, therefore, is not about your child's circumstances, but is about the school. The onus at this stage is for the representative of the admission authority to prove that prejudice would arise. The representative will also have to show that the admission arrangements have been properly implemented and that the mandatory provisions of the School Standards and Framework Act 1998 and School Admissions Code have been followed.

If the Appeal Panel decides that efficiency would be prejudiced by complying with the preference, that there have been no mistakes in the admission arrangements and that the mandatory provisions of the School Standards and Framework Act 1998 and School Admissions Code have been followed, then the appeal moves to the second stage. This is where the Panel will exercise its discretion in deciding whether the degree of prejudice outweighs any factors you may present to the Panel to support your preference.

Multiple Appeals

Where there are a large number of appeals for one school, hearings are held over a number of days. Stage 1 of your appeal hearing would usually be dealt with during an evening starting at 6 or 6.30 pm and all parents who are appealing are invited to attend. Depending on the number of appeals for a school, Stage 1 can also be held during the day.

If the Department proves its case at Stage 1, each parent will be invited to present their individual case to the Panel at a time allocated over the next few days. We usually allow 30 minutes for your appeal to allow time for your case to be discussed by the Panel and properly recorded before the next appeal hearing starts. The Panel makes decisions after all of the appeals have been heard.

6.3 All Appeals

The appeal will be heard in private, except that a member of the Administrative Justice and Tribunals Council may attend as an observer at any meeting of an Appeal Panel. However, this happens infrequently.

When you arrive at the venue for the hearing, please report to the reception desk, where you will be directed to the waiting area for the appeals.

Every effort is made to ensure that the hearing is as informal as possible.

Meetings of the Appeal Panel are held in different parts of the County to try and avoid parents having to travel long distances.

7. Who is on the Appeals Panel?

Who will consider my appeal?

The Panel, which is a completely independent body, will have either 3 or 5 members and include:-

at least one member who has experience in education, who has knowledge of education conditions in the area or who is a parent of a registered pupil at a school; and

at least one Lay Member, that is, someone without personal experience in the management of any school or the provision of education in any school (other than experience gained in a voluntary capacity or as a school governor).

Before your appeal, we will tell you who the Panel members and Clerk will be. You should tell us as soon as possible if you think you have a connection with any of them. However it may be necessary to change the Panel members or Clerk, due to unavoidable circumstances

Who else will be present?

A Clerk to the Appeal Panel is also present to ensure the appeal is conducted fairly. The Clerk does not have any say at all in the Panel's decision but is there to:

explain the basic procedure and deal with any questions you may have.

ensure the relevant facts are presented.

make sure each party is heard in turn.

be an independent source of advice on procedures.

record the proceedings, decision and reasons, and notify all concerned of the Panel's decision.

Also present at the hearing there may be an Administrative Officer who in addition to the Clerk will make a detailed note of the proceedings. These are not a verbatim transcript, nor do they constitute minutes of the Appeal Hearing, but are taken solely to assist the Panel's decision making process. The Admission Appeals Code states that these notes remain the property of the Appeal Panel and are not normally available to any of the parties to the appeal.

Normally a Local Education Officer will represent the admissions authority.

What powers does the Appeal Panel have?

The Appeal Panel will either accept or reject your appeal. If it accepts your appeal, your child must be offered a place at the school you want. If that Panel finds that there have been any unlawful admission arrangements, it must refer them to the Schools Adjudicator.

The decision of the Appeal Panel is final. The Appeal Panel will not comment on any allocation of a place made by the admission authority, nor can it allocate places at a school other than the one you have appealed for.

8. What Happens at the Appeal hearing?

At the start of the appeal hearing the Chair will introduce everyone present. The Clerk will then explain how the hearing will proceed and check everyone has the same paperwork before them.

8.1 Infant Class Size Prejudice Appeals

- (a) The Department's representative will explain why your request was refused and why the appeal should not be granted.
- (b) You can then ask questions of the Department's representative, and raise points about what he or she has said.
- (c) The Members of the Appeal Panel can ask questions of the Department's representative.
- (d) It is at this stage that you and a friend or supporter (if you wish) can put your reasons to the Panel, stating why you want your child to attend your preferred school and explaining your circumstances.
- (e) The Department's representative can ask you questions.
- (f) The members of the Panel then have the opportunity to ask questions.
- (g) The Department's representative will sum up their case.
- (h) You have your opportunity to sum up your case.
- (i) You and the Department's representative will be asked to leave while the Panel reaches its decision.
- (j) In reaching its decision, the Panel will look at whether the admission authority implemented the admission procedures properly, whether the mandatory provisions of the School Standards and Framework Act 1998 and School Admissions Code have been followed, and whether the admission authority behaved reasonably.

The Clerk to the Panel will remain to advise solely on any points of law and procedure which may arise whilst the Panel members are considering their decision. The Clerk will not take any part in the making of the decision.

8.2 Other appeals

- (a) The Department's representative will explain why your request was refused and why the appeal should not be granted.
- (b) You can then ask questions of the Department's representative.
- (c) The Members of the Appeal Panel can ask questions of the Department's representative.

You and the Department's representative will be asked to leave while the Appeal Panel considers whether the admission arrangements have been properly administered, whether the mandatory provisions of the School Standards and Framework Act 1998 and School Admissions Code have been followed, and whether the Authority has proved that to allow the appeal would prejudice either the provision of efficient education or the efficient use of resources, or both.

If the Panel decides that the Department's representative has failed to prove its case, the appeal will be allowed, and your child will be admitted to the preferred school. The appeal hearing will therefore cease at this point.

If the Panel is satisfied, on the evidence presented, that the admission arrangements have been properly followed, that the mandatory provisions of the School Standards and Framework Act 1998 and School Admissions Code have been followed, and that to admit further pupils to the school would prejudice the provision of efficient education or use of resources, the appeal hearing will proceed to the second stage.

- (d) It is at this stage that you and a friend or supporter (if you wish) can put your reasons to the Panel, stating as fully as you wish why you want your child to attend your preferred school
- (e) The Department's representative can ask you questions.
- (f) The members of the Panel then have the opportunity to ask questions.

- (g) The Department's representative will sum up their case.
- (h) You can sum up your case.
- (i) You and the Department's representative will be asked to leave while the Panel reaches its decision.

The Clerk to the Panel will remain to advise solely on any points of law and procedure which may arise while the Panel members are considering their decision. The Clerk will not take any part in the making of the decision.

NOTE:- Occasionally some variations of the above procedures may be desirable.

9. How Does the Panel Decide Whether to Uphold or Reject the Appeal?

The result of your appeal will depend on the strength of your case. If yours is an infant class size prejudice appeal, your appeal can only be allowed if the Panel decides that the admission authority did not properly implement the admission procedures, contravened the mandatory provisions of the School Standards and Framework Act 1998 and School Admissions Code have been followed or behaved unreasonably.

In most other admission appeals the Panel goes through two stages. In the first stage, the Panel hears the case put by the admission authority, explaining why it did not offer you a place at your preferred school. The Panel decides whether there was a good reason for turning down the application (the phrase used is "whether the admission would be prejudicial to the efficient education or efficient use of resources"). An example might be where a school has very small classrooms and could not fit your child in without making the space too cramped for good teaching and learning.

If the Panel does decide that there would be prejudice, it will begin the second stage of the appeal, where the Panel hears your case, and your reasons for appealing against the decision. You can mention all of the reasons why that school would be the best for your child, and what special factors justify your child getting in, in spite of the reason for turning you down. The Panel then make a

"balancing judgement", and decides whether the benefits to your child of going to the school you are appealing for outweigh the prejudice for the school and the other children of having one more pupil in the class. If the Appeal Panel decides that your case is stronger, it will uphold your appeal and the admission authority is then under a duty to admit your child to the school.

10. The Appeal Panel's Decision

Decisions are taken by a simple majority, with the Chair having a second or casting vote if necessary. The decision of the Appeal Panel is binding upon the County Council or governing body if your appeal is upheld. There is no further right of appeal to the County Council or governing body against the rejection of your appeal if your appeal is rejected.

11. How do I find out the decision of the Panel?

You will usually be telephoned after the hearing to inform you of the decision. As soon as possible after the hearing a letter will be sent to you setting out the decision and the reasons for it.

12. What if I have a complaint about my appeal hearing?

If you feel that your appeal hearing was not properly conducted you can complain to the Local Government Ombudsman. The Ombudsman has jurisdiction over the proceedings of the Appeal Panel, and may investigate allegations of maladministration leading to injustice. The Ombudsman has no statutory power to overturn the decision of an Appeal Panel, but can only draw to the County Council's attention a finding of maladministration. One of the remedies the Ombudsman sometimes suggests is that there should be a fresh appeal with different Appeal Panel members. Although the decision of the original Panel is final, admission authorities do have the discretion to arrange a new Panel following an Ombudsman's recommendation and can undertake to accept the decision of the Panel should it uphold your appeal.

The address for the Ombudsman is:-

Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH

Website: www.lgo.org.uk

Telephone: 0845 602 1983 or 024 7682 1960

13. What if I feel the decision of the Appeal Panel was wrong in law?

If anyone concerned with the appeal - you as the parent, or the Department – considered that the decision of the Appeal Panel was legally in error, either of them could seek to challenge the decision of the Appeal Panel by means of what is known as judicial review. This is legally very complex and, unless legally aided, can be costly. In essence such an application to the Court would only succeed if it can be shown that the Appeal Panel has mis-directed itself in law, or had on the evidence made such an unreasonable decision that in the view of the Court no reasonable Appeal Panel, taking into account all the relevant factors and disregarding irrelevancies could have taken such a decision. If you wish to consider this course of action you should take independent legal advice.

14. Can I complain to the Secretary of State?

The Secretary of State for Children, Schools and Families cannot review decisions of individual Appeal Panels but can consider:

- Whether the admission authority correctly constituted the Appeal Panel.
- Whether the admission authority has acted reasonably in exercising its function in respect of the appeal process or has failed to discharge any legal duty in relation to that process, eg in constituting the Panel or by acting in breach of the mandatory provisions of the Appeals Code.

The address for the Secretary of State is:-

Secretary of State
Department for Children, Schools and Families
Sanctuary Buildings
Great Smith Street
LONDON
SW1P 3BT

Telephone: 0870 000 2288

Website: www.dcsf.gov.uk

15. Questions Often Asked by Parents

(a) Why do I have to appeal? - I thought parents could choose a school

As indicated in paragraph 1, the law enables parents to "express a preference". The Parents' Charter explains that you have "the right to say which school you prefer" and "a right to a place in the school you want unless it is full to capacity with pupils who have a stronger claim". It is for this reason that your application for a place at the school of your choice has been refused.

(b) How do I know if my application was turned down on the grounds of "infant class size prejudice"?

This should be explained in the letter from the Local Education Office telling you that your application was unsuccessful. It will also be explained in the statement prepared by the Local Education Office and sent to you a week before the hearing. You should check this statement carefully before the meeting.

(c) Should I attend the Appeal Hearing?

Yes, if at all possible, you or someone who can put your case should attend. You know your situation best and will be able to provide information to help the Appeal Panel reach a decision.

(d) What are my chances of succeeding with this appeal?

This will depend on a number of factors such as the situation at preferred school, the strength of your own case and the strength of the cases of other appellants for a place at this school.

(e) Is there another appeal?

There is no further formal appeal against the decision of the Appeal Panel.

(f) Can I appeal again if my appeal is rejected?

It is not normally possible to appeal again for the same school year. This is because the admission authority will not consider

repeat applications for the same school unless you or the school have a significant and material change in circumstances relevant to your application. If you feel there has been such a change in circumstances you should contact the Department for advice on whether your child may be admitted to the school. If they decide again not to admit the child, you may be able to make a fresh appeal. This will be heard by a fresh Panel consisting of different members and if possible with a different Clerk.

(g) What if places become available at the school later in the year?

You should contact the Area Education Base for the school to let the school know of your continuing interest. Occasionally places do become available, and subject to the published admission criteria, might be allocated later in the year.

16. Further Information

(a) Policy Performance and Corporate Services Department

If you would like any further information about the process please ring Nottingham (0115) 9773141/ 9772483/ 9773887.

The address is:- Policy, Performance and Corporate Services
Department
Nottinghamshire County Council
County Hall
West Bridgford
Nottingham NG2 7QP

E-mail: education.appeals@nottsc.gov.uk

(b) Advisory Centre for Education (ACE)

The Advisory Centre for Education (ACE) is an independent national education advice centre which provides information on the education system.

ACE operates a national advice line and produces a wide range of publications. They publish a booklet entitled "Appealing for a school" which provides advice on the appeals system. Guidance is given on how to appeal, how to present your case to the Appeal Panel, what happens at the Panel meeting, how the decision is

made and further courses of action. The booklet also gives advice on what to do if your appeal is unsuccessful.

ACE is based at:-

Advisory Centre for Education (ACE)
1C Aberdeen Studios
22 Highbury Grove
LONDON N5 2DQ

General Advice Line: Freephone 0808 800 5793
(Mon-Tues 9.00 am-5.00 pm, Weds-Fri 10.00 am-5.00 pm)

Web-site www.ace-ed.org.uk

(c) **Department for Children, Schools and Families (DCSF)**

The Department's website is www.dcsf.gov.uk.

(d) **County Council Admissions Team**

If you want to find out about where places are available at alternative schools you need to speak to:-

Northbase Admission Team 01623 433 499