

School Appeals
Digest On Appeals Guide

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Admission Appeals Guide Digest

Improving your chances of success in your
child's admission appeal

School Appeals

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Chapter 1

Introduction

This **Admissions Appeals Guide** has been written to help you in your preparations for a school admission appeal.

The school that your child attends is very important to you, and, for most parents/guardians, the appeal represents your one and only chance to secure a place at your preferred school. If this opportunity is lost the outcome for you and your child could be very considerable.

The decision of the Appeal Panel will depend on the evidence presented by both sides.

This is why it is crucial that your case is presented in the best possible way.

The **Admissions Appeals Guide** covers all aspects of the appeal process, from familiarising you with the admissions process, through collecting evidence for your appeal and what questions you should ask, to who will be sitting on the Appeal Panel and making the decision. Key Stage 1 appeals (for children aged 5, 6 and 7) are different and are covered as well.

In most cases, representatives of the Admissions Authority, the Appeal Panel members, and the Clerk who will be working on your appeal receive appropriate training. While we cannot give you relevant, individual training, we *can* help you to be better prepared when your appeal is heard.

What the **Admissions Appeals Guide** *cannot* do is to guarantee that your appeal will be successful. That will depend on the strength of your case against the case of the Admissions Authority and whether the Appeal Panel believe that the issues raised by you outweigh the case put forward by the Admissions Authority.

The **Admissions Appeals Guide** is comprehensive and therefore is quite extensive. This is quite deliberate. It does not cover every eventuality but in some cases does give some examples. Some elements of the admission process are subject to local interpretation and it would therefore be impossible to cover all likely situations. However it is intended to cover the majority of situations that you are likely to come across.

In addition, the subject headings are listed at the beginning, so that you can either read through the Guide as a book or use it as a reference and pick out the headings that are of particular interest.

The chapters are arranged in a logical sequence. However, the decision process has been placed before the chapter on preparation because it is important for you to understand *how* decisions are made. If you understand this process it will help you to prepare a better case.

Chapter 2

The admissions process

On 1 April 1999 the Department of Education and Employment (now Department for Education and Skills, as of June 2001) introduced a Code of Practice that sets out the procedures to be used by Admissions Authorities in England when allocating places for children at schools. At the same time the National Assembly for Wales issued a similar Code to be used in Wales. Any differences will be highlighted. The Code covers all admissions.

2.1 Number of places and who is eligible

The Codes of Practice state that the prospectus of every school must state:

(a) **How many places** are available at the school each year.

This means, the standard number (related to the physical capacity of the school) and the published admission limit.

For *aided schools* this will be decided in consultation with the Local Education Authority (LEA).

(b) **Who is eligible** for a place at the school.

2.2 When there are more pupils than places

If the Admissions Authority receives more applications than there are places, the over-subscription criteria are used to rank applications in order of priority.

It must be clear how pupils are to be ranked if their applications are equal on the basis of the above. For example, distance from the school could be used as a tiebreaker.

2.3 Waiting lists

The Admissions Authority may keep a waiting list of applicants who can be offered places if prospective pupils withdraw and numbers fall below the published admission limit.

The pupils on the waiting list should be ranked in accordance with the published admission arrangements.

2.4 Places given on appeal

Any places given on appeal will be **in addition** to places admitted up to the published admission list.

Unsuccessful applications

3.1 Why wasn't my application successful?

Your application was not successful because the school that you applied to received more applications than there were places available.

In the circumstances, the Admissions Authority applied the published admission criteria.

The Admissions Authority decided that there were children with a higher priority than your child who were offered places up to the published admission limit of the year group before your application could be approved.

Your application was therefore rejected.

3.2 Next step

You are now entitled to appeal to an independent Appeal Panel to consider your application.

The Appeal Panel has power to approve your appeal and to offer your child a place if it considers that your case is strong enough.

If the Appeal Panel does not consider your case is strong enough it will reject your appeal.

Chapter 4

The Appeal

4.1 What happens at the appeal?

The appeal will be conducted in accordance with the Code of Practice issued by the Department for Education and Employment (now the Department for Education and Skills) and the National Assembly for Wales.

The appeal will have a formal order and structure.

4.2 The Appeal Panel at the hearing

The Appeal Panel will try to make the hearing as informal as possible.

4.3 Recommended order

The order of the appeal given below is recommended but can be changed at the discretion of the Appeal Panel.

4.4 The Admissions Authority's case

The Admissions Authority will be invited to present its case as to why it was unable to offer your child a place at your preferred school.

4.5 Questions to the Admissions Authority

The presentation of the Admissions Authority's case is followed by an opportunity for both you and the Appeal Panel to ask questions of the Admissions Authority with a view to clarifying any matters that are either unclear or uncertain.

4.6 Your case

You will be invited to present your case as to why you feel that a place should be offered at your preferred school.

4.7 Questions to you

The presentation of your case will be followed by an opportunity for the Admissions Authority and the Appeal Panel to ask you questions with a view to clarifying any matters that are either unclear or uncertain.

4.8 Summing up

Finally, there will be an opportunity for both sides to sum up.

The Admissions Authority will sum up first, and you will sum up second.

4.9 After the summing up

After both sides have summed up, you will all be asked to leave the room to enable the Appeal Panel to consider the evidence.

Chapter 5

The Appeal Panel

5.1 Who can be on the Appeal Panel

The constitution of the Appeal Panel is set out in Chapter 3 of the Code of Practice.

This states that the Appeal Panel must consist of members appointed by the Admissions Authority from the following categories:

a) People who are eligible to be **lay members**.

This means people without personal experience in the management of any school or the provision of education in any school (disregarding experience as a school governor or in another voluntary capacity). There must be at least one lay member on the Appeal Panel.

b) People who have **experience in education**.

This means people who are familiar with educational conditions in the area, or who are parents of registered pupils at a school. At least one panel member must fall within this category.

5.2 How many Panel members will there be?

The Code of Practice states that there must be either three or five members.

All the Appeal Panel members are voluntary and generally most Admissions Authorities will find it difficult to recruit five members. Therefore in the vast majority of appeals the Appeal Panel will comprise three members.

5.3 The Appeal Panel's decision

The Appeal Panel is completely independent and is free to make a decision in accordance with the Code of Practice and any other guidance that has been issued.

The decision of the Appeal Panel is **binding** on the Admissions Authority.

Chapter 6

Preparation for the appeal

6.1 Who to appeal to

If you have decided that the school that your child has been allocated is not acceptable you will be informed by the Admissions Authority **who** to appeal to and the **time limit** during which your appeal should be lodged. However this is an administrative and not a statutory limit.

6.2 Time limit

This will **normally be at least 14 days after you have received notification** from the Admissions Authority of the allocation.

6.3 The appeal form and supporting evidence

You will normally be expected to set out on the appeal form the reasons for your appeal.

Whilst you are requested to submit any supporting evidence as soon as possible, you are given the opportunity to submit late papers as a result of issues raised by the Admissions Authority.

6.4 Who is the Admissions Authority?

Admissions Authorities are defined in Section 88 of the School Standards and Framework Act 1998.

The Local Education Authority is the Admissions Authority for community and voluntary controlled schools or the governing body if the LEA has delegated responsibility for admission arrangements.

However, where community schools have been given delegated responsibility for admissions, the Local Education Authority is still responsible for arranging appeals.

The Admissions Authority is the governing body in a foundation or voluntary aided school.

6.5 The different types of appeal

There are two distinct types of appeal. These are:

1. **Prejudice** appeals
2. **Infant class size** appeals

6.6 Starting to prepare your case

Once you have decided to appeal you will need to start preparing your case.

Initially this may include:

- making notes about the issues that you want to raise,
- starting to contact anyone that you would like to provide written support for your case.

6.7 Notice period for the appeal date

The Code of Practice requires the Admissions Authority to advise you at least **14 days (10 working days)** before the date of your appeal.

However, you can agree to waive this if you wish to take advantage of a **cancellation**.

6.8 The Admissions Authority's statement

The Admissions Authority will send you a statement.

The Code of Practice requires this statement to be sent to you **7 days (5 working days)** before the hearing.

The statement should comprise:

- a) A written statement summarising how the admissions arrangements for the school(s) apply to your application, with any relevant background information.
- b) A written statement summarising the reasons for the decision. For example, full supporting information that prejudice to the provision of efficient education or use of resources would arise from the admission of the child (or children) concerned.

6.9 Other information or documentation for the panel

Copies of any information or documents that are to be put to the Appeal Panel at the hearing, including anything that has been submitted by you as parents/guardians, will be given to the Admissions Authority.

Chapter 7

The decision

7.1 The two types of appeal

The Code of Practice refers to two types of appeal.

1. The first type relates to decisions made in respect of appeals where '**Prejudice**' is an issue.
2. The second type is **Infant class size** appeals.

Prejudice appeals

Paragraphs 7.2 to 7.5 deal with Prejudice appeals.

7.2 The decision process

The decision process that Appeal Panels must follow was considered in a court case.

The Court held that that there are two distinct parts to the decision.

7.3 The first part of the decision

The first stage is for the Appeal Panel to decide if the Admissions Authority has made a case that to admit any more children to the year group in question would create **prejudice** (this means problems) either to:

- efficient education,
- or*
- the efficient use of the Authority's resources.

7.4 The second part of the decision

The second stage has been referred to as the *balancing exercise*.

Here, the Appeal Panel accepts that there will be prejudice to the school, but *balances* this against all the issues that you have raised.

If the Appeal Panel accepts that the case put forward by the Admissions Authority is stronger than your case the appeal will be dismissed.

However, if the Appeal Panel accept that the issues that you have raised are stronger than the Admissions Authority's case the appeal will be allowed.

7.5 If the appeal goes to the second stage

In this second stage the Appeal Panel will *balance* all the issues that you have raised in support of your appeal.

If the Appeal Panel believes that the issues you have raised outweigh the prejudice to the school your appeal will be allowed.

If the Appeal Panel does not agree that the issues outweigh the prejudice to the school your appeal will be dismissed.

Infant class size appeals

Paragraphs 7.6 to 7.13 deal with Infant class size appeals.

7.6 Appeals for children in Key Stage 1

The infant class size appeals for children in Key Stage 1 (classes for children aged 5, 6, and 7) are different from prejudice appeals.

In these types of appeal the Admissions Authority will try to convince the Appeal Panel that they will need to take *qualifying measures* if the class exceeds:

- 30 children,
- or*
- a ratio of 30 children to 1 teacher.

7.7 Qualifying measures

There are two *qualifying measures*.

These are:

1. the employment of an additional teacher,
2. the provision of additional accommodation.

It is only necessary for the Admissions Authority to demonstrate either **one** or the other.

7.8 If the argument of qualifying measures is rejected

If the Appeal Panel does not accept that qualifying measures will need to be taken, the decision will be carried out in accordance with paragraphs 7.2 to 7.5 above.

7.9 If the argument of qualifying measures is accepted

If the Appeal Panel accepts that the Admissions Authority will need to take “qualifying measures” the grounds on which an appeal can succeed are limited to two.

These are:

1. Did the Admissions Authority stick to its own rules, as published in its admission arrangements?
2. Did the Admissions Authority act *unreasonably*?

7.10 If it is decided the Admissions Authority broke its own rules

If the Appeal Panel accepts that the Admissions Authority broke its own rules, either deliberately or by mistake, then your appeal can succeed *but only if your child would have been admitted if they had been applied properly.*

It is **not** sufficient to demonstrate that a mistake had been made.

7.11 The definition of 'unreasonable behaviour'

The law defines 'unreasonable' very carefully in these cases.

For the decision to be 'unreasonable' it must be *completely illogical or not based on the facts of the case.*

7.12 The facts of the case

The *facts of the case* include:

- the admission arrangements,
- the number of classrooms at the school,
- other factors to do with the school or the admission arrangements.

They do **not** include facts particular to your child or any special reason you might have for wanting your child to go to that school (the convenience of the journey between your home and the school, for example).

7.13 Personal factors

You are free to talk about personal factors at the appeal hearing if you want to.

However, in this type of appeal the Appeal Panel cannot take them into account unless they are relevant to one or other of the two grounds they are allowed to look at. The Panel can take personal issues into consideration but they must also take into account the fact that the classes are full and to exceed them could require the school to take qualifying measures so that the law is not broken.

8.1 Strengthening your case

In order to put as strong a case as possible you will need to consider what evidence will strengthen your case.

8.2 Examples of evidence

It is not possible to cover all the likely issues that you might wish to raise, but any information that you can obtain to support your case will help.

For example:

- If you are claiming transport difficulties a copy or an extract of the relevant bus timetable will help. A letter from your employer demonstrating the difficulties that you will be faced with may also help.
- If you are claiming it may not be possible for you to carry on working with your current employer if your child attends the allocated school, a letter from your employer setting out the implications may help.

These are **examples** of the type of issues that you might wish to raise. It is not a comprehensive list.

The case for the Admissions Authority

Prejudice appeals

Paragraphs 9.1 to 9.4 deal with Prejudice appeals.

9.1 What case will the Admissions Authority put forward?

In this type of appeal the Admissions Authority will seek to convince the Appeal Panel that the admission of any children above the published admission limit will create prejudice **either** to:

- the efficient use of resources,
- or*
- the efficient education of the children already admitted.

9.2 Prejudice to the efficient use of resources

The Admissions Authority is likely to state that it is inefficient to put children into a school that in their view is full if this will result in resources being withdrawn from a school that is not full.

If the preferred school is full, the Local Education Authority may offer a place at an alternative school where there are places available. It could be that the alternative school is some distance away.

9.3 Prejudice to efficient education

Prejudice to the efficient education of the children already admitted is sometimes more difficult for the Admissions Authority to argue.

It is not enough for the Admissions authority to show that the standard number or published admission limit has been reached.

It should also demonstrate **what** prejudice would be caused by the additional admission.

9.4 The admissions limit and application of the published admissions criteria

As part of its case the Admissions Authority will have to demonstrate that:

- the applications for the school exceeded the published admission limit,
- and*
- that in those circumstances the published admissions criteria had been applied for oversubscribed schools.

N.B. This applies to appeals involving pupils transferring to either middle or junior schools, or secondary schools in the following September.

For **occasional transfers** it will be necessary for the Admissions Authority to demonstrate that the school has either reached the published admission limit or has exceeded it.

Infant class size appeals

Paragraphs 9.5 to 9.6 deal with Infant class size appeals.

9.5 Class size and teacher to pupil ratio

In this type of appeal the Admissions Authority will seek to convince the Appeal Panel that the admission of one child above the permitted class size of 30 or a ratio of more than 30 children to 1 teacher will result in the Admissions Authority having to take 'qualifying measures'.

9.6 Why this is important to the appeal

These issues are very important because:

If the Appeal Panel accepts that qualifying measures **will** need to be taken, the grounds on which your appeal can succeed will be limited to the two grounds referred to in paragraphs 7.2 to 7.5.

If, on the other hand, the Appeal Panel does **not** accept that qualifying measures will need to be taken, the decision will be made under the prejudice appeals described in paragraphs 7.6 to 7.13.

Chapter 10

Preparing my case

10.1 Who can present your case?

You can.

The Code of Practice makes it clear that you are entitled to present your case as you see fit.

It is not likely that it will be necessary for witnesses to attend.

Someone else can.

If you do not feel able to present your case you are at liberty to ask:

- a friend
 - a relative
 - a professional person (such as a solicitor)
- to present the case for you.

*If someone else is presenting the case, you **must** notify the Admissions Authority beforehand.*

However, Appeal Panels usually prefer to hear from the parents/guardians rather than a professional paid to represent them. This is a matter that you will need to consider very carefully.

10.2 Confidentiality

There may be some issues that you believe are very personal and you are reluctant to raise them.

Be reassured that the appeal papers are confidential and whilst they are read by the Appeal Panel members, they will not discuss them with anyone outside the appeal forum.

Prejudice Appeals

Paragraphs 10.3 to 10.6 deal with Prejudice appeals.

10.3 Legitimate reasons

In preparing your case take time to consider all the issues that you want to raise and make a note of them.

The Code of Practice accepts that legitimate reasons include *both*:

- concerns about the allocated school
- positive reasons about the preferred school.

10.4 Evidence and support from others

In general it is a good idea to provide third party support (that is, evidence from someone or somewhere other than yourself) for your case.

It is not that the Appeal Panel will not believe you, but any evidence that is supported from a professional source (such as a doctor) can only help and not hinder your case.

10.5 Convincing the Appeal Panel that your child should attend the preferred school

You may think that if you are able to convince the Appeal Panel that the allocated school is not appropriate then you will win your appeal and your child will be able to attend the preferred school.

Unfortunately this is not the case.

You will also need to convince the Appeal Panel that there are *compelling reasons* why your child should be given a place at the preferred school.

10.6 Reasons for wishing your child to attend the preferred school

There will probably be many reasons. Probably the most popular reason is that it is a very good school. Many parents/guardians will feel the same way, and that is why it is oversubscribed.

You will need to convince the Appeal Panel that the preferred school is the *only* school for your child and that any other school that might be offered would not be appropriate.

How can you do this? How can you convince the Appeal Panel to allow your appeal and allow your child to attend a school that is already full?

The reasons need to be *compelling* enough to outweigh the prejudice to the school.

Infant class size appeals

Paragraphs 10.7 to 10.8 deal with Infant class size appeals.

10.7 Presenting the class size limit case

You present the same case at this type of appeal as you would at the prejudice appeal as set out in 10.3 to 10.6 and leave it to the Appeal Panel to decide.

After all, you do not know that the Appeal Panel will accept the case put forward by the Admissions Authority.

It is quite legitimate for you to put forward personal reasons for wanting your child to attend the preferred school even if in the end the Appeal Panel is unable to take them into consideration.

However, don't forget you may also need to focus on whether the Admissions Authority made a mistake.

You should know from the Admission Authority's statement, which you should receive 7 days (5 working days) before the hearing, the grounds on which the Admissions Authority is going to base its case.

**10.8 Regulations
that provide
some
exceptions**

The government has introduced some regulations that provide some exceptions.

The regulations are called the Education (Infant Class Sizes) (England) Regulations 1998.

Chapter 11

What happens if my appeal is unsuccessful?

11.1 What next?

The decision of the Appeal Panel is binding on the Admissions Authority, but you still have a number of **options** if your appeal is unsuccessful.

11.2 Option 1: Appealing to the same school again

In some cases, parents/guardians who have been unsuccessful may seek to appeal again for the same school in the same academic year.

However, unless there has been a *significant and material change* in circumstances of either the parents/guardians or the school in question, the Admissions Authority may not be required to 're-determine' the application (that is, to reach a fresh determination or decision).

Where there has been no re-determination, no fresh appeal can be made.

11.3 Examples of changes in circumstances

Examples of changes in circumstances could include medical reasons since the time the original application was made, or that you have moved nearer to the school.

11.4 If 'a change in circumstances' is accepted

If it has been accepted that there has been a material change in circumstances and the Admission Authority still decides not to admit your child, you will be entitled to a fresh appeal.

To ensure that you receive a fair hearing the Code of Practice recommends that the Appeal Panel that hears the second appeal consists of different members and if possible a different clerk.

11.5 Option 2: applying to the Ombudsman

If you feel unhappy with the way that your appeal has been conducted the Local Government Ombudsman can investigate written complaints about *maladministration*.

Please note that this is **not** a right of appeal and **must** relate to issues such as excessive delay, rather than the fact that you feel that the decision is wrong.

11.6 If maladministration has occurred

A fresh appeal conducted before a differently constituted Appeal Panel may be recommended in cases where the Local Government Ombudsman, having considered a complaint about the actions of an Appeal Panel, finds that there was maladministration and that this caused injustice.

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There should also be a different clerk to the Appeal Panel where possible.

In those circumstances it is likely that the Ombudsman would recommend that the new Appeal Panel should have the same powers as the original one.

In addition, Admission Authorities may for their own reasons decide to have a further appeal in response to a complaint.

Although the decision of the original Appeal Panel is final, Admissions Authorities do have the discretion to arrange a new appeal following an

11.7 Contacting the Ombudsman

The three regional centres of the Local Government Ombudsman are:

21 Queen Anne's Gate, London SW1H 9BH
Telephone: 020 7915 3298

No. 2, The Oakes, Westwood Way, Westwood Business Park,
Coventry CV4 8JB
Telephone: 02476 695999

2 Beverly House, 17 Shipton Road, York YO30 5FZ
Telephone: 01904 663200

You can contact the Ombudsman on the web at www.open.gov.uk/lgo

The Ombudsman for Wales:

Derwen House, Court Road
Bridgend, Mid Glamorgan CF31 1BN
Telephone: 01656 61325

You can contact the Ombudsman on the web at www.ombudsman-wales.org

11.8 Option 3: Applying for a Judicial Review

You could apply to the courts for a Judicial Review of the appeal decision.

The courts could set aside the decision and order a rehearing.

This route is normally only open to parents/guardians if it is felt that the decision was flawed or that a mistake had been made either in the admission or appeal process.

A Review hearing is unlikely to succeed if you simply disagree with the decision.

If you feel that a mistake has been made or that the decision is flawed

11.9 Other options

You could be appeal against your second or third preferred school if the admissions process allowed you to express more than one preference.

You could also approach the Admissions Authority to see what they recommend.

Chapter 12

Useful Web Addresses

<i>Advisory Centre for Education</i>	www.ace-ed.org.uk
<i>Association of Educational Psychologists</i>	www.aep.org.uk
<i>British Dyslexia Association</i>	www.bda-dyslexia.org.uk
<i>Contact a Family</i>	www.cafamily.org.uk
<i>Council on Tribunals</i>	www.council-on-tribunals.gov.uk
<i>Department for Education and Skills</i>	www.dfes.gov.uk
<i>Independent Panel for Special Education Advice</i>	www.ipsea.org.uk/index/htm
<i>National Assembly for Wales</i>	www.wales.gov.uk
<i>Office for Standards in Education</i>	www.ofsted.gov.uk
<i>Ombudsman</i>	www.lgo.gov.uk
<i>Ombudsman for Wales</i>	www.ombudsman-wales.org
<i>Special Educational Needs Tribunal</i>	www.dfee.gov.uk/sen/sentrib.htm
<i>The British Psychological Society</i>	www.bps.org.uk

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