



BARNSLEY
Metropolitan Borough Council

CHILDRENS SERVICES DIRECTORATE

PROCEDURE FOR INDEPENDENT ADMISSION APPEALS

INFORMATION FOR PARENTS

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Introduction

This booklet contains all the information parents require on the procedure and details for an independent appeal for admission to a school or academy.

Parents should have read the Admission to School – Advice to Parents booklet since it may be referred to during the appeal.

If you have not got a booklet, a copy can be downloaded from www.barnsley.gov.uk/schooladmissions

Further information and advice on independent appeals can be obtained from:

Community, voluntary controlled,
voluntary aided schools
Council Governance Unit
Town Hall
Barnsley
S70 2TA

Telephone (01226) 773451

Academies
Please contact the
Admissions Team
to check whether
the Local Authority
or the academy will
be arranging the appeal

Telephone (01226) 773677

General information on appeals

- 1 Any member of the Authority may attend as an observer any hearing by an Appeals Panel established by the Authority.
- 2 Parents will be given at least 14 days written notice of the date, time and place of the appeal hearing and will receive at least 7 days prior to the appeal written documentation summarising the reasons for refusing the admission.

Parents must submit their written documentation 7 days prior to the appeal.
- 3 If a parent does not attend the appeal or is not represented by another person the hearing will be held and the case dealt with in the absence of the parent using only the written documentation.
- 4 In some cases, parents who are not successful at the appeal occasionally consider applying again for the same school/academy in the same academic year. Unless there have been significant changes in the circumstances of the parent(s) or the school/academy, the admission authority is not required to reconsider its decision and therefore parents do not have the right of another appeal.
- 5 All independent appeals are organised and follow procedures which are set out in legislation and the Admissions and Appeals Codes.

The important requirements of any independent appeal are:

- (a) Appeals must be in writing stating the grounds on which the appeal is made
- (b) Every parent has the right to attend the independent appeal in order to make their case to the panel
- (c) The parent can be accompanied by a friend or be represented by them
- (d) Independent appeals are heard in private
- (e) The decision of the Appeals Panel is binding on both parents and the Authority
- (f) The decision of the Appeals Panel in writing will be sent to parents in writing

The Admission Authority's Case for Prejudice

Seven days prior to the appeal the parent will receive a copy of the case for not offering their child a place at the school/academy.

The case will comprise of:

- current legislation on admissions
- admissions policy
- number on pupils roll
- capacity of the school
- class/year group organisation
- specific operational and management issues related to the individual school/academy

The case for prejudice for the school/academy will be presented by:

- for community and voluntary controlled schools, a Local Authority Officer supported by the Headteacher of the school
- for voluntary aided schools, a representative of the school
- for academies, a representative of the academy OR a Local Authority Officer supported by the Principal of the academy where the academy's admission arrangements are undertaken by the Local Authority

Complaints

If, having exhausted the Authority's Admissions and appeals procedures, parents have a complaint about the way their case was dealt with they can contact the Commission for Local Administration in England (The "Local Government Ombudsman"). The address is P O Box 4771, Coventry, CV4 0EH. Telephone 0300 061 0614.

If the complaint is in relation to an appeal for an academy parents should contact Admission Appeal Complaints, Academies Central Unit, Education Funding Agency, Earlsdon Park, Butts Road, Coventry, CV1 3BH.

Further information and a complaints form for Academy appeals can be downloaded from:

www.education.gov.uk/schools/adminandfinance/schooladmissions/a00204768/appeals

and returned by email to academyquestions@efa.education.gov.uk. The Education Funding Agency will investigate the complaint on behalf of the Secretary of State.

Types of Appeal

Infant Class Size Appeals

Infant classes are those in which the majority of children turn 5, 6 or 7 during the course of the school year i.e. reception and Key Stage 1 classes. Legislation limits the size of an infant class during an ordinary teaching session to 30 pupils per school teacher. However there are permitted exceptions to the limit (see annex 1).

The Admission Authority must admit pupils up to the published admission number of the school/academy. Once the admission number has been reached further pupils are refused admission if it would create class(es) above 30 pupils.

An infant class with one teacher will be allowed to have more than 30 children in certain very specific circumstances. One of those circumstances is that the pupil was allowed admission by an independent appeal panel, under one of the grounds below:

- a) if the admission of an additional child/children would not breach the infant class size limit
- b) the admission arrangements did not comply with admissions law or were not correctly and impartially applied, and the child would have been offered a place if the arrangements had complied or had been correctly and impartially applied.
- c) The decision was not one which a reasonable admission authority would have made in the circumstances of the case.

Reasonable decision

The Court of Appeal confirmed that in considering this ground for an appeal the panel cannot conduct a rehearing of the original application for admission, although it can have regard to fresh evidence. **In other words, the panel cannot substitute its finding for that of the original admission authority.** It can only ask itself whether the decision to refuse admission was one which a reasonable admission authority would now make in the circumstance if the case.

The court said that those circumstances might include fresh evidence as well as the fact that all of the available places have already been allocated. At the same time, the court said that any such new information would need to be persuasive and confirmed the strictness of the test under this ground. The panel can only uphold the appeal if, having looked at all the relevant information, it considers that the decision by the admission authority to turn down the original admission application was unreasonable.

Unreasonable in this sense means irrational – a decision which no reasonable admission authority properly aware of its duties, would make. Unless it is such a decision, the appeal must fail.

The purpose of this appeal is to review the school's/academy's decision.

Guidance from the Court of Appeal:

That the original decision should stand unless such additional material is persuasive and, taken with the rest of the information available, and any other relevant circumstances, renders the original decision irrational. Relevant circumstances would include, for example, the fact that such material could have been made available to the admission authority at the time it made the original decision, or the fact that all the available places have already been allocated.

The parents need to make a '*particular case which is so compelling that the decision not to admit the child is shown to be perverse*'. It is then for the admission authority to explain the admission arrangements, and if necessary explain the particular problems relating to the school in question. It will be necessary for the admission authority to show that it was objectively fair not to admit the child in question. The appeal panel must be careful not to give the impression that it is merely '*rubber stamping*' the admission authority's initial decision. But at the same time, the panel chair must make clear to the parents that their appeal can only succeed if the panel concludes that '*it was perverse in the light of the admission arrangements to refuse to admit the particular child*' who is the subject of the appeal.

Perverse – acting against all the weight of evidence.

Admission arrangements

In considering an appeal under the ground that the admission arrangements have not been properly implemented the following points apply:

- the information available to the Admission Authority at the time the decision was made;
- the information the Admission Authority needed in order to make a reasonable decision;
- fresh material may be allowed from the parent in order to assist in identifying the original error.

Appeals can only be upheld in cases where it is clear that the child would have been offered a place if the admission arrangements had been properly implemented.

However, even if the admission arrangements had been properly implemented the child may still not have been offered a place.

Procedures to be followed in an infant class size appeal

Parents are advised to attend the appeal.

- 1 The clerk will inform the parents of the process to be followed.
- 2 The presenting officer will explain the case for prejudice in two parts.

Part 1

The presenting officer will give details of the school's/academy's admission arrangements including details of the co-ordinated scheme for admission to school/academy to show that no error was made in dealing with the application.

This will cover Grounds A, B and C for an appeal: **that the child would have been offered a place if the admission arrangements had been properly implemented or the arrangements had complied with the requirements of the School Admissions Code**

Part 2

The presenting officer will explain why the decision not to offer a place at the school/academy was reasonable in the context of the limit on infant class sizes.

This will cover Ground D for an appeal: **that the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.**

- 3 Parent(s) to ask questions of the presenting officer.
- 4 Panel to ask questions of the presenting officer.
- 5 The parent(s) will then be invited to respond to the decision to refuse admission as set out under either grounds for the appeal.
- 6 Presenting officer to ask questions of the parent(s).
- 7 Panel to ask questions of the parent(s).
- 8 Presenting officer and parent(s) to retire from the room.
- 9 Panel decision.

Two Stage Appeal

A two stage appeal is for those children where a place at the school/academy has not been offered because the number of applications received was above the number of places available (admission number).

The oversubscription criteria were applied to all the applications and the application was refused under the criterion of distance.

To admit any further children above the admission number would prejudice the provision of efficient education or the efficient use of resources.

The two stages in this type of appeal are:

First: a factual stage: at which the panel considers whether the Authority's published admission arrangements were correctly applied in the individual's case, and decides whether "prejudice" would arise were the child to be admitted.

If the appeal panel is not satisfied in the first stage that there would be prejudice then the panel will allow the appeal.

However, if they determine that a further admission would cause prejudice the appeal continues to the second stage.

Second: a balancing stage: at which the panel exercises its discretion, balancing between the degree of prejudice and the weight of the parental factors, before arriving at a decision.

Procedure to be followed in a two stage appeal

Parents are advised to attend the appeal in order to present their individual circumstances. However, if parents cannot attend they can be represented at the appeal by a friend or relative, or submit written documentation.

1. Clerk to inform parents of the two stage procedure for the appeal hearing.
2. Presenting Officer to give reasons for the refusal to allow admission (The case for prejudice)
3. Parents to ask questions of the presenting officer on the case they have presented.
4. The Panel to ask questions of the presenting officer
5. Presenting officer, Parent(s) and Friend(s) to retire from the room.
6. Panel to make decision on whether there would be prejudice if further admissions were allowed at the school.
7. On returning to the room the Clerk will announce the Panel's decision.

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- The Authority has not proved the case for prejudice the appeals will be allowed and the hearing is concluded.
 - The Authority's case is proved and prejudice is established, the hearing will move to the next step of the procedure.
8. Parents(s) will be invited to present their individual circumstances as to why their child should be admitted to the school/academy
 9. Presenting officer to ask questions of the Parent(s).
 10. Panel to ask questions of the Parents(s).
 11. Presenting Officer, Parent(s) and Friend(s) to retire from the room.
 12. Panel to consider their decision on the Parent's case.
 13. On returning to the room the clerk will announce the Panel's decision.
 14. The clerk will ask the Parent(s) if they are satisfied with the way in which the appeal has been conducted.
 15. Following the appeal the Clerk will inform, in writing, the Authority and the Parent(s) of the Panel's decision.

Advice and Guidance

The Department for Education (DfE) website offers advice to parents on a wide range of school related issues and has links to both the Admissions and the Appeals Code of Practice.

Website www.education.gov.uk

The DfE provide statutory guidance on school admission appeals in the document:

School Admission Appeals Code of Practice

A copy of this publication can be obtained from:

DfE Publications
PO Box 5050
Sherwood Park
Annesley
Nottingham
NG15 0DJ

Telephone 0845 6022260

Email : dfes@prolog.uk.com

Frequently asked questions

Do I have to attend the appeal panel hearing?

No, but you are strongly advised to attend. You are the best person to tell the Panel why you want your child to go to the preferred school/academy, as you know your situation and will be able to provide information and answer questions to help the Panel make an informed decision.

If you do not attend the appeal, or you are not represented by another person, the hearing will be held and dealt with in your absence using only the written documentation submitted.

Who will be at the appeal hearing?

- You and your partner, or a friend, or supporter
- The Appeal Panel (consisting of three members)
- The Clerk to the Appeal Panel
- Representatives from the Local Authority or school/academy, as appropriate

The Code of Practice does not envisage children attending appeal hearings as the appeal is an opportunity for you to put across your case on behalf of your child.

No panel member will have any connection with the school/academy in question.

What sort of information should I provide?

You are responsible for presenting your case, for deciding what you would like to say at the appeal hearing, and what written documentation you want the Appeal Panel to have.

- If your case is based on medical or social grounds you should provide written evidence from a doctor or other professional to support this. This evidence must relate to how the school can meet those specific needs.
- If your case is based on a house move you should provide evidence of confirmation of the completion of your house purchase, or a tenancy agreement, or any other relevant documentation
- You should also put forward any letters, written reports or documentation or other evidence relevant to your case
- You must not supply letters of support from your child's primary school. The School Admissions Appeals Code states that "*Panels **must not** allow representatives of schools to support individual appeals for places at their schools at the hearing itself or by providing letters of support for appellants, because of possible conflicts of interest and the possibility of unfairness to other appellants*". (Paragraph 2.13).
- Written documentation should be submitted 7 days prior to the appeal.

What if my child has a Statement of Special Educational Need or an Education, Health and Care Plan?

If your child has a Statement of Special Educational Need or an Education, Health and Care Plan, your right of appeal is through an independent Special Educational Needs Tribunal, not an Admission Appeal.

My child has been refused a place because of infant class size legislation. What does this mean?

An infant class is a class in which the majority of pupils will reach the age of 5, 6, or 7 during the school year. These classes are normally Reception, and Years 1 and 2, although it can affect a Year 3 class where mixed groups exist. The law states that subject to limited exceptions, no infant class with one qualified teacher may contain more than 30 pupils.

Does the class size limit apply to mixed nursery/reception Year 2/Year 3 classes?

The duty applies to classes where the majority of children will reach the age of 5, 6 or 7 within the school year. So, if the majority of the children within a class will be aged 5, 6 or 7 by the end of the school year, the class must comply with the statutory limit.

Who can help me prepare for my appeal?

In the first instance, please contact the Clerk to the Appeal Panel who can help you with any queries or concerns you may have, but the Clerk cannot prepare your case for you.

The Advisory Centre for Education (ACE) is an independent national education advice centre which provides information on the education system. ACE produce a booklet "Appealing for a School", which provides advice on the appeals system and also gives advice on what to do if your appeal is unsuccessful. The ACE website is www.ace-ed.org.uk

Who are the Appeal Panel Members?

- one member must have experience in education; be familiar with educational conditions in the Barnsley District; or be a parent of a registered pupil at a school
- one member must be a lay person, i.e. someone 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 any other voluntary capacity)
- the third member will be from either of the above two categories

No panel member will have any connection with the school/academy in question.

What powers does the appeal panel have?

The appeal panel can either refuse or allow your appeal, and the decision is binding upon the school/academy and you.

Multiple Appeals

Dependent upon the number of appeals for particular schools/academies, the appeals process will take place over a number of sessions until all the appeals in that group have been heard.

All parents will be invited as a group to the first session to hear the school's/academy's case at Stage 1.

If the school/academy does not prove that prejudice would arise for all the appellants, then all the appeals will be allowed.

If the Panel find that the school/academy has proven that prejudice would arise, the appeals process will move to Stage 2 of the procedure.

Stage 2 is "in private". No other parents will be present when you present your case to the panel.

When will I know the appeal panel's decision?

At your appeal, the clerk will inform you when to expect to receive the decision letter. This will be as soon as possible after the appeal hearing(s).

If my appeal is unsuccessful, can I appeal again?

Unless there have been significant changes in the circumstances of the parent(s) or the school, the school/academy is not required to reconsider its decision, and therefore parents do not have the right of another appeal.

Can I complain?

The Appeal Panel's decision is binding on all parties, there is no further right of appeal. If you think that the proper procedures have not been followed, you can ask the Local Government Ombudsman (LGO) or the Education Funding Agency (EFA) for academies to investigate. The LGO/EFA would not criticise the decision of a Panel which fairly took into account all the evidence presented by both the parents and the Authority, just because the parents disagreed with the decision reached. If it was found that procedures had not been carried out correctly and you have suffered an injustice, he may suggest that there should be a fresh appeal hearing with different Appeal Panel members. (See page 3 for contact details).

ANNEX 1

There are a limited number of circumstances in which pupils may be admitted as exceptions to the infant class size limit. These exceptions are:

- a) Children admitted outside the normal admissions round with a statement of special educational needs or an Education, Health and Care Plan specifying the school;
- b) Looked after children and previously looked after children admitted outside the normal admission round;
- c) Children admitted after the initial allocation of places because of a procedural error made by the admission authority or local authority in the original application process the child should have been offered a place;
- d) Children admitted after an independent appeal panel upholds an appeal on one of the allowed grounds;
- e) Children moving into the area outside the normal admissions round for whom there is no other available school within a reasonable distance.
- f) Children of UK service personnel admitted outside of the normal admissions round;
- g) Children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil;
- h) Children with special educational needs who are normally educated in a special educational needs unit attached to that school, or registered at a special school and attend an infant class in the mainstream school, (ie. not in the unit), where this has been deemed as beneficial to the child.

These pupils will remain an excepted pupil for the time they are in an infant class or until it becomes possible for an excepted pupil to be provided with education in an infant class in which the limit is not exceeded.