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Guidance

Advice for clerks and appeal panels on school admission appeals

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Introduction

This advice is for admission appeal clerks and panel members.

It provides information to support clerks and panels to conduct their roles effectively, and in accordance with the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) to ensure that appeal hearings are conducted in a fair, transparent and consistent manner.

It should be read in conjunction with the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) and the School Admissions Code (<https://www.gov.uk/government/publications/school-admissions-code--2>). Clerks and panel members should ensure they are fully aware of the legal requirements set out in these codes and in the legislation underpinning them.

These set out the mandatory requirements and take precedence over this advice.

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

Roles and responsibilities

Clerk to the appeal panel

It's the responsibility of the relevant admission authority to convene the panel, including appointing a clerk.

The clerk to an appeal panel must be independent of the school and the education functions of the local authority. They must have knowledge of the School Admissions Code (<https://www.gov.uk/government/publications/school-admissions-code--2>), the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) and other law relating to admissions, including equalities legislation.

The role of the clerk is to make all the necessary administrative arrangements for the appeal and give advice on procedure and admissions law. The School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) sets out certain particular responsibilities of the clerk.

This role includes:

- giving advice to the panel to enable it to carry out its judicial function
- responding to any queries from parents in advance of the appeal hearing
- providing independent and impartial advice to all parties on the appeals process and admissions law when it's requested
- sending all the relevant papers required for the hearing to all parties
- informing all parties about the order of the proceedings in advance of the hearing
- keeping an accurate record of the proceedings
- sending written notification of the panel's decision

Independent appeal panel

The appeal panel is the decision maker. The panel considers the case put forward by both the appellant and the admission authority and comes to an independent conclusion as to whether the admission authority should admit the child in question.

Appeal panels perform a judicial function and must be independent, impartial and transparent in their decision-making at all times. Panel members must not have a vested interest in the outcome of any stages of the appeal or be involved in an earlier stage of the proceedings, for example the decision to refuse admission.

The panel should 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)
- 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

The appeal panel should not include any members whose involvement could raise doubts about impartiality. Regulations disqualify certain specific categories of people from panel membership.

This includes:

- 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

The appeal panel should also not include anyone who has not had the relevant training to hear school admission appeals.

If a panel member has to be temporarily withdrawn, the panel must postpone the remaining hearings until the panel member returns.

If they're unable to return, the admission authority must appoint a replacement and the new panel must rehear all appeals.

Before the hearing

The clerk must collate and send all the papers required for the hearing to both parties and the panel members. This must be done a reasonable time before the day of the hearing.

This includes:

- information about the order of proceedings
- information from the admission authority on how the admission arrangements and the coordinated admissions scheme apply to the appellant's application

- 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
- the parents' written appeal
- names of the panel members
- any new information or evidence not submitted with the initial appeal

The panel must decide whether they'll take any information or evidence not submitted by the specified deadline into consideration. The panel need to take into account its significance and the effect of a possible need to adjourn the hearing.

Should any new information or evidence be submitted after the specified deadline, the clerk should let the relevant parties know the panel's decision on whether it was accepted or rejected before the day of the hearing.

If there is no time for this, for example because the information was submitted the day before the hearing, the clerk should seek a decision from the panel before the hearing begins and inform the parties of that decision. If the new information is accepted, the clerk should provide copies to the panel and the relevant parties.

Appeal hearings

Order of proceedings

Panels can decide to hear appeals in one of 2 ways:

1. The panel may decide to hear both the admission authority's case for refusing admission (Part 1) and the appellant's case for appeal (Part 2) consecutively and then make their decision on whether to uphold the appeal once the hearing has concluded
2. Alternatively, the panel may choose to hear the admission authority's case first (Part 1) and then break to make a decision on whether to uphold the appeal at this stage. If the panel do not uphold the appeal at this stage, the appeal will then proceed to Part 2 and the panel will hear the appellant's case for appeal. The panel will then break to make their decision on whether to uphold the appeal.

Information about the order of proceedings should be sent to all parties before the hearing and also reiterated at the start of the hearing to ensure all parties are clear about what will happen on the day.

Representation

Appellants have the right to bring representation or a friend to accompany them. However, the panel must not allow any representative of the school to support an appeal for a place at that school, either at the hearing itself or by providing letters of support.

The appeal hearing must be conducted in the presence of all panel members and parties, unless the appellant or the admission authority's presenting officer does not attend the hearing. If the presenting officer doesn't attend, the panel may decide to resolve the case using the admission authority's written

evidence if it is satisfied that this does not disadvantage the appellant. If the appellant doesn't attend and it is impractical to offer an alternative date, the appeal may be decided on written evidence.

The clerk must ensure that they do not leave either party alone with the panel. Where one party is unable or has failed to attend, the clerk must remain with the panel and the remaining party at all times.

The panel should ensure they give all parties sufficient opportunity to present their case without unreasonable interruption.

What to do during an appeal hearing

Procedural errors are a key reason for complaints about maladministration and can result in the admission authority having to arrange a new hearing with a fresh panel. This is costly and time consuming. During each stage of the appeal clerks and panels should adhere to the following points and the requirements of the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) to ensure they conduct appeals in a fair and transparent manner.

Introductions

At the start of the hearing, the clerk or the chair of the panel should:

- welcome everyone to the appeal, make introductions and keep a record of everyone in attendance
- introduce the order of proceedings
- confirm whether all the parties received all the appeal papers – if they have not, the panel should consider whether an adjournment is necessary
- clarify that the panel might not take into consideration any new information presented at the hearing

If either party presents new information, the clerk should keep accurate records including what it is and whether the panel accepted it.

The panel may wish to consider suggesting an adjournment if they need more time to consider the additional information.

Throughout the hearing, the clerk should keep an accurate record of the proceedings.

This should include:

- start and end times
- attendance
- all relevant points raised at the hearing
- any adjournments and the reasons for these
- voting and reasons for decisions

These will be a key source of evidence should appellants raise a complaint about the conduct of the hearing.

During the appeal hearing

Throughout the appeal hearing, the clerk should:

- ensure that they record the admission authority's and appellant's case in an accurate and comprehensive manner
- ensure any questions asked by the panel or either of the parties, and the subsequent responses, are recorded accurately
- share with the panel any concerns that they're defaulting on their duties under the School Admissions Code (<https://www.gov.uk/government/publications/school-admissions-code--2>) or School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) or other law relating to admissions, including equalities legislation
- make arrangements to enable the panel to make their decisions in private

Part 1 – Admission authority's case for refusing admission

The panel should provide the presenting officer the opportunity to present the admission authority's case as to why it does not believe it can admit any more children.

During this part of the hearing, the chair and/or panel should:

- ensure the presenting officer has sufficient opportunity to present the admission authority's case without unreasonable interruption
- test and question the case put forward by the presenting officer to ensure sufficient understanding of the issues
- ensure the appellant has the opportunity to ask the presenting officer any questions in relation to the admission authority's case

At the end of Part 1 the chair will need to explain the next stage of the process.

Part 2 – Appellant's case for appeal

In the next part of the appeal hearing, the panel should provide the appellant the opportunity to set out why they believe their child should attend their preferred school.

Appellants should have the same opportunity to present their case as the admission authority's presenting officer.

The chair and/or panel should:

- ensure the appellant feels as comfortable as possible
- ensure the appellant has sufficient opportunity to present their case, without unreasonable interruption
- test and question the case put forward by the appellant, to ensure sufficient understanding of the issues
- provide the presenting officer the opportunity to ask the appellant any questions in relation to their case
- explain the next stage of the process
- advise when appellants are likely to be notified of the outcome of the appeal

Decision making process

The panel must hear all the evidence before making a decision on an appeal.

The panel must make its decision in private and follow the 2 stage decision making process set out in Section 3 of the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) in doing so. There is a different decision making process for infant class size appeals, set out in Section 4 of the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>).

First stage – examining the decision to refuse admission

In the first stage of the decision making process, the panel must consider whether the:

- admission arrangements comply with the School Admissions Code (<https://www.gov.uk/government/publications/school-admissions-code--2>) and all other admissions law
- admission arrangements were correctly and impartially applied in the child's case
- admission of additional children would prejudice the provision of efficient education or the efficient use of resources

This could include taking into consideration:

- the school's published admission number (PAN), however, the admission authority must demonstrate prejudice over and above the fact that the PAN has already been reached
- changes to the school's facilities
- the impact on the organisation and size of classes, the availability of teaching staff, and the effect on pupils already at the school
- the impact of the locally agreed Fair Access Protocol (<https://www.gov.uk/government/publications/fair-access-protocols-in-school-admissions>)
- the effect an additional pupil would have on the school both now and in the future (it's not the panel's role to reassess a school's capacity)

The panel must uphold the appeal at this stage where either:

- it finds that the admission arrangements were not lawful or that the admission arrangements were not correctly and impartially applied in the child's case and the child would have been offered a place had the arrangements been lawful or been correctly and impartially applied
- it finds that the admission of an additional child would not prejudice the provision of efficient education or the efficient use of resources

If the panel is unable to uphold the appeal at the first stage, it must proceed to the second stage of the decision making process.

Second stage – balancing the arguments

At this stage, the panel must balance the arguments put forward by both the admission authority and the appellant. It must take into account the appellant's reasons for wanting their child to attend the school in question, including what it can offer that other schools cannot.

If the panel considers that the appellant's case outweighs the prejudice to the school, it must uphold the appeal.

When making decisions, the panel should:

- consider each point raised by the parties
- communicate to the clerk how each point was considered
- ensure the reasons for the final decision are explicit
- reach a decision by a simple majority of votes cast (where the votes are equally divided the chair has a second or casting vote)
- either uphold or dismiss an appeal without it being subject to any specified conditions

During the decision making process, the clerk should:

- enable the panel to make its decision in private
- advise the panel on the law and procedure without taking part in the decision-making
- prompt the panel to consider all the issues raised by the parties and record the decision the panel has come to on each of the issues raised
- keep an accurate record of the decision making process, particularly the decisions reached by the panel on each of the issues raised by the parties

After the hearing the clerk should notify the parties of the panel's decision within 5 school days wherever possible. If there are likely to be delays the clerk should inform the parties of this.

Appeals for admission to school sixth forms

Applicants and their parents may each appeal a decision to refuse admission to a school sixth form.

Where a young person and their parents appeal separately, admission authorities must arrange the appeals so that they are heard together. However, the panel must give both the parents and the young person the opportunity to present their case. Each may present a different argument.

If the admission authority refused the application because more young people were eligible for a place than there were places available at the sixth form, then the panel should follow the 2 stage decision making process required by the School Admission Appeals Code

(<https://www.gov.uk/government/publications/school-admissions-appeals-code>).

If the admission authority refused an application because the young person did not meet the specified entry requirements, the panel must not make its own assessment of the applicant's ability. It must only consider whether the admission authority's decision was reasonable in light of the information available to it.

Appeals for grammar schools

If a child passes the entrance test but the admission authority does not offer them a place because they offered all the places to those who more closely met the school's admissions criteria, then the panel should follow the 2 stage decision making process required by the School Admission Appeals Code

(<https://www.gov.uk/government/publications/school-admissions-appeals-code>).

However, if a child did not pass the entrance test the panel must consider the appeal differently. First, the panel should establish if a local review to reconsider whether the child is of grammar school standard has taken place. Where a local review has taken place, the panel must only consider whether it was conducted in a fair, consistent and objective way. It must not carry out the review process again.

Where a local review did not take place or where the panel considers that it was not carried out in fair, consistent and objective way, the panel may only uphold the appeal if:

- it is satisfied that there is evidence to demonstrate that the child is of the required academic standards
- where applicable, the appellant's case for appeal outweighs the admission authority's case that the admission of additional children would cause prejudice

The panel must not devise its own methods to assess whether the child is of grammar school ability.

Appeals for boarding schools

If a boarding school has refused a child admission because they offered all the places to those who more closely met the school's admissions criteria, then the panel should follow the 2 stage decision making process required by the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>).

If the school refused a child admission because they deemed the child unsuitable to board, the panel must not make its own assessment of the child's suitability. It must only consider whether the admission authority's decision was reasonable in light of the information available to it.

Infant class size appeals

An appeal is classed as an infant class size appeal where the refusal to offer a place was on the grounds that the admission of the child would breach the infant class size limit, and no measures could be taken to avoid this without prejudicing the provision of efficient education or efficient use of resources.

Panels should hear infant class appeals in the same way as all other appeals. Clerks and panels should ensure that they treat both parties equally and give them both sufficient opportunity to present their case without unreasonable interruption.

Section 4 of the School Admission Appeals Code (<https://www.gov.uk/government/publications/school-admissions-appeals-code>) sets out the basis for upholding an infant class size appeal. Panels should ensure they follow the 2 stage decision making process set out in the code when consider such appeals.

They must consider all of the following, whether the:

- admission of an additional child would breach the infant class size limit
- school's admission arrangements comply with the School Admissions Code (<https://www.gov.uk/government/publications/school-admissions-code--2>) and other admissions law
- school's admission arrangements were correctly and impartially applied in the child's case
- decision to refuse admission was one which a reasonable admission authority would have made in the circumstances of the case

Simply finding that the admission of an additional child would breach the infant class size limit and that the admission arrangements were lawful and applied correctly does not mean the panel should automatically dismiss the appeal.

Panels must ensure they fully consider the appellant's case for appeal. They must examine whether the admission authority's decision to refuse admission was one that a reasonable authority could have made in the circumstances of the case.

However, the threshold for finding that an admission authority's decision was unreasonable is high. Panels should consider relevant case law when making decisions on reasonableness.

Future class size prejudice

Panels should consider whether the admission of an additional child would breach the infant class size limit both in the year group in which the parent is seeking a place and in the subsequent years of the infant phase. This ensures prejudice will not occur when the child moves up through the school.

Example The admission of an additional child in reception may result in prejudice in the subsequent years of the infant phase, such as where a school's usual practice is to move from 3 classes of 20 pupils in reception, to 2 classes of 30 pupils in year 1 or 2.

Multiple appeals

If the admission authority receives multiple appeals for the same school the panel must not make any decisions until they have heard all the appeals.

The panel must ensure that the presenting officer does not produce new evidence in later appeals that they did not present in earlier appeals, as this would mean that appellants presenting cases in earlier appeals would not have the opportunity to consider and respond to the new evidence.

If new evidence comes out during the questioning of the presenting officer, the clerk must ensure that the panel considers what bearing that evidence has on all appeals.

After the appeal hearing

After the hearing the clerk should notify the parties of the panel's decision. The decision letter must contain a summary of relevant factors that each party raised and the panel's considerations. It must also give clear reasons for the panel's decision, including how the panel decided on any points raised by the parties during the hearing.

The clerk or chair must sign the decision letter and send a copy to all parties within 5 school days, wherever possible. The clerk should inform all parties if they expect a delay in sending out the decision letter.