



**Nottinghamshire
County Council**

**ADMINISTRATION OF
SCHOOL ADMISSION
APPEALS**

**GUIDANCE FOR OWN
ADMISSION AUTHORITIES**

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1. Introduction

The Law entitles parents/carers to “express a preference” for schools. They have a right of appeal for a place at any school (including academies and free schools) where they have been refused a place. (NB – under the Nottinghamshire County Council’s co-ordinated scheme, if a higher preference has been offered then the lower preferences are withdrawn and there is no right of appeal for these.)

The aim of this guide is to help own Admission Authority’s to understand their legal responsibilities and prepare for appeal hearings.

2. Admission Authority responsibilities

Under Section 94 of the School Standards and Framework Act 1998, responsibility for making arrangements for appeals against the refusal of a school place rests with the admission authority of the school. The admission authorities of foundation and voluntary aided schools and academies may ask another body, e.g. the local authority, to carry out some or all of the admissions functions on their behalf (including the administration of the appeals process). However, the admission authority remains responsible for ensuring those functions are carried out properly.

The Admission Authority and Appeal Panel **must** act in accordance with the School Admission Appeals Code, the School Admissions (Appeal Arrangements)(England) Regulations 2012, the School Admissions Code, other law relating to admissions and relevant human rights and equalities legislation, for example, the Equality Act 2010. Appeal panels perform a judicial function and **must** be transparent, accessible, independent and impartial, and operate according to the principles of natural justice. The Appeal Panel’s decision is binding on the Admission Authority.

3. Administration of Admission Appeals Process – what we provide

We will appoint a Clerk to the Appeal Panel, on the Admission Authority’s behalf, who is independent of the School and the education functions of the Local Authority and will provide an independent and impartial service. The Clerk will be trained and have knowledge of the School Admission Appeals Code (the Appeals Code) and other relevant Law to enable the Appeal Panel to undertake its judicial function.

The Clerk will appoint an independent Appeal Panel comprised of a Chair and at least two other panel members. As required by the Appeals Code, the Appeal Panel will consist of at least one lay person (definition set out in the Appeals Code) and one person with experience of education, who are acquainted with educational conditions in the Local Authority area, or who are parents of registered pupils at school (but not the school in question). These panel members will be independent of the School and Local Authority and will be appropriately trained.

3a. Indemnity of Panel Members

The Admission Authority **must** indemnify the members of any Appeal Panel against any reasonable legal costs and expenses they incur in connection with any decision or action taken in good faith whilst acting as members of the appeal panel.

3b. Appeals Timetable – including legal deadlines

Admission Authorities **must** set a timetable organising and hearing appeals following the procedure set in the School Admission Appeals Code.

We will provide a timetable which must be published on your website by 28th February each year. This will include information on how an appeal can be lodged.

During the main admissions round appeals **must** be heard within 40 school days of the deadline for lodging appeals. Late admission appeals should be heard within the same deadline where possible, or within 30 days of the appeal being lodged.

For in-year appeals these **must** be heard within 30 school days of the appeal being lodged.

Any appeals submitted after the appropriate deadline **must** still be heard, in accordance with whatever timescale is set out in the published timetable.

4. Administration Process

We provide parents with an online appeals form. Parents/carers who wish to complete the online form should be directed to our website - <http://www.nottinghamshire.gov.uk/education/school-admissions/making-a-school-admission-appeal>

Parents/carers who are unable to use the online form a printed form can requested from our customer contact centre – 0300 500 80 80.

4a. Receipt and acknowledgement of appeals

Appeal forms will be received and logged by the Education Appeals Team at County Hall. We will acknowledge receipt of the appeal to the parent/carer. Any appeal forms sent directly to the school (the Admission Authority) should be forwarded to the Education Appeals Team as soon as possible. Please note that the date the school receives the form must be used to calculate when the appeal must be heard by, so it is imperative that you pass the appeal form to us as quickly as possible for processing.

The appeals team will send the school an email with the details of the child the appeal is for, requesting the school's availability to hear the appeal within the legal deadline. Please be aware that we will not provide you with a copy of the appeal form at this stage.

4b. Arranging the hearing

A date will be arranged that is suitable for both the parents/carers and the school which meets the required deadline as stated in the Appeals Code. In agreeing a date, please ensure that you have allowed enough time to prepare your case and to gather any relevant information from third parties.

The appeals team will arrange the venue (local to the school but not usually at the school), the Clerk and independent panel members. If you have a specific venue you would like to use for your appeals, please let us know.

4c. Paperwork required by the school for the appeal

The paperwork for the appeal **must** be sent out to all parties no later than 10 school days before the appeal. This is; the letter containing the information about the hearing, including the date, time, venue and panel; the parent's case as submitted and the school's case as submitted.

The school **must** provide the appeals team with paperwork for the school's case at least **15 school days** before the hearing to ensure the legal deadlines can be met. When the appeal date has been set we will advise you of the date we will require the paperwork by. You **must** meet this deadline to ensure that we have time to check the accuracy of the information provided and to send the paperwork out by the legal deadline. If the paperwork is not received in time we may have to re-arrange the appeal. The paperwork the school must provide is as follows:-

- a) Statement from the Admission Authority setting out why the application has been refused. The statement must argue the correct type of appeal; either Infant Class Size prejudice or 'normal prejudice'. Further information on this is provided in **Appendix A** to these guidance notes.

N.B. If the Admission Authority has refused admission using Section 3.12 of the Admissions Code due to the child having challenging behaviour then please contact the Education Appeals Team for further advice.

- b) Copy of the original application from parent from the home Local Authority – it is your responsibility to gather this information.
- c) Copy of the letter/email from the home Local Authority clarifying the outcome of the parent/s' application – it is your responsibility to gather this information.
- d) Admission criteria – a copy of the admission criteria for the school for the relevant academic year

If the appeal is for first admission to your school (i.e. Reception, Year 3 if a junior school or Year 7), you **must** also provide the following information:-

- e) Evidence of whether or not the applicant was in catchment. This is usually via a map of the catchment area of the school or a list of addresses in the catchment area. This is to prove to the panel that the application was considered under the correct criterion, i.e. whether or not they were considered as in catchment.
- f) Spreadsheet – showing how the places were offered on offer day according your oversubscription criterion and what has happened since.
- g) Information regarding the child's application showing the criterion considered under, distance measurement and any other relevant information such as whether they have siblings at the school, whether they were considered under any other criterion if relevant such as medical/social needs or whether the parents provided sufficient information to meet a faith criterion.

NB – if your school holds a waiting list for the year group being appealed for then the information detailed in (e) and (g) will need to be provided even if it is an in-year appeal.

Waiting List information – Panel Members **must not** be told where on the waiting list the child is, but the Admission Authority **must** prove that the waiting list is being administered correctly, using the oversubscription criteria and that the correct criterion has been applied to the child.

Examples of the above are available, however, you may prepare your own versions if preferred.

Paperwork should be submitted by email to education.appeals@nottscc.gov.uk or by post to: -

Nottinghamshire County Council
Democratic Services
County Hall
Loughborough Road
West Bridgford
Nottingham
NG2 7QP

As we are an independent service, we are unable to provide support to schools in preparing cases or by providing training for presenting officers. If you require this type of service please contact Legal Services – legal.services@nottscc.gov.uk. As Admission Authority it is your responsibility to make your case to the Appeal Panel via the provision of paperwork and by presenting the case at the hearing.

5. The Hearing

The Admission Authority must provide a presenting officer to attend the hearing to present the decision not to admit the child and to answer detailed questions about the case being heard and about the school.

NB – the presenting officer will need to have an understanding of the Local Authority's co-ordinated scheme the admission authority participated within, if relevant, and be able to answer questions on this as well as a thorough understanding of the case.

Information on the hearing procedures is detailed in **Appendix B** of this guidance. The presenting officer will be required to present the Admission Authority's case to the Appeal Panel, followed by questions from parents/carers and the Appeal Panel. After the parents/carers have presented their case the presenting officer will have an opportunity to ask the parents/carers questions about their case, along with panel members. At the end of the hearing each party will be asked to sum up their cases, with the Admission Authority presenting officer going first.

If there are a number of appeals for the same year group at the school, we will try and group them together and hear them as a **multiple appeal**. This means that all parents/carers will be invited to attend a grouped stage of the hearing for Part 1 (in normal prejudice cases) or Part A (in infant class size prejudice cases) so that they can all hear the school's case together and have the opportunity to ask questions. The Parents/carers then each receive an individual time slot to present their case to the Appeal Panel in private if the appeals move to Stage 2 or Part B. There are a number of advantages with this; it speeds up the process as it means that the school's case only has to be presented once to all those appealing; the parents/carers hear all the questions and responses meaning that they hear all information; and it reinforces the point to parents/carers that the school's case is about the facts and figures of the school and the case is the same whoever is appealing.

6. Decision making and notification

The Appeal Panel will make its decision at the end of all of the appeals for that school at the end of the hearing. The School will be informed of the outcome of the appeal as soon as possible by the education appeals team, either by email or telephone. Decision letters to parents/carers will be sent out within school 5 days of the end of the appeals hearing, they will not be told the decision over the telephone or by email, except in very limited circumstances.

If the Admissions Authority has any questions regarding the Panel's decision they can speak to the Clerk. Please remember that the Clerk did not take part in the decision making.

7. Education and Skills Funding Agency / Local Government and Social Care Ombudsman – Referrals

If a parent/carer is unhappy with how their appeal was processed they have the right to refer their case to the Education and Skills Funding Agency (EFA) for investigation (or the Local Government and Social Care Ombudsman (LGO) if you are a voluntary aided school). The EFA and LGO can investigate complaints about the process of the appeal or how the initial application was dealt with by the Admissions Authority or the Local Authority via the co-ordinated scheme. It is not another level of appeal and investigators cannot question decisions if they were taken properly and fairly by the Admissions Authority or the Appeal Panel.

If an EFA/LGO investigation is initiated we can prepare the case at cost if requested.

8. ANY QUESTIONS?

If you have any questions regarding the process, please do not hesitate to contact the Appeals Team on:-

0115 977 3887

education.appeals@nottscc.gov.uk

Appendix A

PREPARING YOUR STATEMENT

INFANT CLASS SIZE/PREJUDICE APPEAL

If the application has been refused on the grounds that the PAN has been reached and an additional child would result in an infant class of more than 30 pupils to 1 teacher (of which 50% or more are of infant age) then the appeal should be argued as an Infant Class Size Appeal. If the infant class size breach does not occur until future years due to how the school chooses to organise its classes and year groups then the appeal can be argued on the grounds of future infant class size prejudice. If infant class size legislation is not relevant then the Admission Authority must present a normal prejudice argument to the appeal panel.

Infant Class Size/Future Infant Class Size statement

The grounds Appeal Panels can consider under Infant Class Size legislation are limited. They can only look at the following four grounds:-

- a) that the admission of an additional child would not breach infant class size legislation;
- b) that the admission arrangements were not lawful and the child would have got a place if the arrangements had been lawful;
- c) that the admission arrangements were not properly applied in the case in question, and this resulted in the child not getting a place they should have;
- d) that the decision to refuse admission was unreasonable – the test for this is a legal definition with a high threshold of “perverse” i.e. that no authority looking at the decision would have ever refused a place.

In preparing an infant class size/future infant class size statement, the admission authority must provide evidence to prove:-

- that the admission of an additional child would breach infant class size limit. This needs to include what measures the school would have to take if the limit was breached, such as employing an additional teacher and what impact that would have on the resources of the school and education of the pupils already on roll. This should include information on how the classes will be arranged and the number of teachers employed to teach the relevant classes. You do not need to provide contextual information about the school site, classroom size's, lunchtime arrangements etc. as these are not relevant in an Infant Class Size appeal;
- that the admission arrangements are lawful, and the correct procedures to implement the arrangements were followed (consultation, publication, etc. as set out in the School Admissions Code);
- that the admission arrangements were properly implemented overall and in the case in question and that there are no grounds to take the child as an excepted pupil (see paragraph 2.15 of the School Admissions Code); and
- that the decision to refuse admission was one a reasonable authority would take in the circumstances of the case.

Normal Prejudice Appeal (also referred to as a two stage appeal)

For appeals where Infant Class Size Legislation does not apply, then the appeal will be heard following the two stage appeal process.

The hearing is held in two stages, with the Admission Authority presenting their case first and the panel making a decision on this before moving onto the parents/carers case if necessary.

In preparing a statement for a two stage appeal, the Admission Authority must provide evidence to prove:-

- that the admission arrangements are lawful, and the correct procedures to implement the arrangements were followed (consultation, publication, etc. as set out in the School Appeals Code);
- that the admission arrangements were properly implemented overall and in the case in question; and
- that the admission of an additional child(ren) would prejudice the provision of efficient education and/or the efficient use of resources – i.e. that having an extra child in the year group in question would have a negative impact on the resources and education of the children already on roll and what that impact would be. Information on the school must be included such as the class structure, the number of teachers and any issues the school already faces or would face with an additional child, for example, a small hall, restricted movement, any health and safety issues, numbers of toilets, resources, outdoor play space, split lunches, limitations due to the age of the building, and any limitations to expanding the school. These are just examples and there are many other matters you could include.

Appendix B

HEARING PROCEDURES

Infant Class Size Prejudice/Future Infant Class Size Prejudice Appeals Procedure

At the start of the 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.

- (a) The Admission Authority's representative will present the case to explain why the parent/carer's request was refused and why the appeal should not be granted.
- (b) The parent/carer can then ask questions of the Admission Authority's representative, and raise points about what he or she has said. This is followed by questions from the Appeal Panel members.
- (c) The parent/carer and/or a friend or supporter (if they wish) will then have the opportunity to put their case as to why they want a place at the school, with reference to the 4 grounds for allowing an infant class size appeal detailed in section 3 above.
- (d) The Admission Authority's representative can then ask them questions followed by questions from Appeal Panel members.
- (e) Finally both parties will be able to sum up their cases; first the Admission Authority representative and then the parent/carer will have the final word. The Panel will reach its decision in private and will look at the four grounds for allowing this type of appeal.
- (f) A letter giving the decision will be posted out to the parent/carer within 5 school days of the decision being confirmed wherever possible.

Differences to the procedure for multiple appeals

If we receive a large number of appeals for one school, hearings will be dealt with in two stages with all parents/carers invited to attend the first part together to hear the school's case and each parent/carer will then have an individual time slot to present their cases to the Panel if needed.

In relation to the procedure above, the Panel will adjourn after (b) to consider whether the Admission Authority has proven their case that the admission of additional children would breach the Infant Class Size Limit, that the published admission arrangements comply with the relevant laws and that the admission arrangements have been applied correctly in general terms.

If the Panel accepts the admission authority's case then each parent/carer is given the opportunity to present their case in private to the Panel as detailed above. We advise parents to expect to need to attend both appointments.

In multiple appeals, the appeal panel will make a provisional decision at the end of each second stage appeal. A final decision will only be made once all the second stage cases in the multiple appeals have been heard.

Normal Prejudice - Two Stage Appeal Procedure

At the start of the 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.

- (a) The Admission Authority representative will present the case to explain why the parent/carer's request was refused and why the appeal should not be granted.
- (b) The parent/carer can then ask questions of the Admission Authority's representative, and raise points about what he or she has said. This is followed by questions from the Appeal Panel members.
- (c) The parent/carer and the Admission Authority representative will be asked to leave while the Appeal Panel considers whether the admission arrangements comply with the relevant laws, whether the admission arrangements have been properly administered in the case in question, and whether the Admission Authority has proven that to allow the appeal would prejudice either the provision of efficient education and/or the efficient use of resources at the school.

If the Panel decides that the Admission Authority has failed to prove its case the appeal will be allowed at this point and the child will be admitted to the School. The appeal hearing will therefore cease at this point.

If the Panel accepts the Admission Authority's case the appeal hearing will proceed to the second stage.

- (d) It is at this stage that the parent/carer and/or a friend or support (if they wish) can put their reasons to the Panel, stating as fully as they wish why they want their child to attend the school including all relevant points and factors which they feel would override the prejudice that would be caused to the school in having an additional child.
- (e) The Admission Authority's representative can then ask the parent/carer questions followed by questions from Appeal Panel members.
- (f) Finally both parties will be able to sum up their cases; first the Admission Authority representative and then the parent/carer will have the final word. In making its decision, the Panel will balance the information the parent/carer have provided as to why they want a place at the school for their child against the prejudice to the school in taking an additional child before coming to a decision.
- (g) A letter giving the decision will be posted out to the parent/carer within 5 school days of the decision being confirmed wherever possible.

Differences to the procedure in multiple appeals

As explained above, if we receive a large number of appeals for one school, hearings will be dealt with in two stages with all parents/carers invited to attend the first part together to hear the school's case and they will then have an individual time slot to present their cases if needed. (a) to (c) above will be dealt with in Stage 1 with all parents invited to attend, (d) to (f) is the procedure for each individual appeal.

In multiple appeals, the appeal panel will make a provisional decision at the end of each Stage 2 appeal. A final decision will be made once all the Stage 2 cases in the multiple appeals have been heard. We advise parents to expect to need to attend both parties.

NOTE: occasionally some variations of the above procedures may be followed where this is helpful to all parties e.g. where a parent has appealed for places for two siblings.