

# Admission to schools in Worcestershire - parents' guide to the appeals process - pupils in infant classes where "infant class size prejudice" rules apply

The County Council as Admission Authority provides first and primary school places throughout Worcestershire. The Admission Authority for a particular school may also be the Governing Body of that school in the case of Academies, Foundation Schools, Free Schools and Voluntary Aided Schools.

This guide explains what happens if you want to appeal the allocation of a school place for your child and your child is, or will be, in an infant class (Years R - Year 2) and the "infant class size prejudice" rules apply. You will have been advised by the Admission Authority if the "infant class size prejudice" rules apply to your appeal. If you have not, then you need to refer to the leaflet on the Council's website entitled "Admission to schools in Worcestershire – parents' guide to the appeals process – two stage decision-making process."

## Education for your child

The law allows you to express a preference for the school you would like your child to attend – 'your preferred school'. However, you do not have an absolute right to choose a school because Admission Authorities must ensure that infant class sizes are limited to a maximum of 30 pupils with a single qualified school teacher. The law says the Admission Authority need not meet your preference if there would be "infant class size prejudice".

## An Appeal Panel - why?

As your preference for the school you would like your child to attend has not been met by the Admission Authority, the law gives you a chance to put your case to an independent Appeal Panel. However, you should be aware that there are **very strict limits placed on what Panels may do, explained in the 'Decision Making' section of this leaflet.**

When you appeal for a place in a first or primary school and the Admission Authority are arguing that there would be "infant class size prejudice" i.e. by allowing your appeal there would be more than 30 pupils in the class, the Appeal Panel's task is to review the decision already made. It does not have the flexibility to say your personal circumstances mean that you should have a place in the school if this would take the number of children in the class above 30. This makes an infant class size appeal different to other school admission appeals and that much more difficult to win.

It is important to note that the admission number of a Reception class may not always be 30. Some schools may mix year groups to make classes of 30. This may not take place in the Reception year but in Year 1 and/or Year 2. The infant class size legislation will still apply for each application for Reception in these

cases as the class size limit of 30 would be reached when the child moves into Year 1 and/or Year 2. This is known as 'future prejudice'.

## How will the appeals take place?

Meetings are held at County Hall, Worcester. **If you have a disability or a special need which would make it difficult for you to attend the hearing at County Hall, please let the Clerk know as soon as possible.**

The School Appeals Timetable sets out the timeframe for arranging Appeals:

[Appealing a school place offer | Worcestershire County Council](#)

## Appeals Process

After you have put the details of your appeal in writing to the Admissions Authority, they pass your details to the Clerk who will organise the independent Appeal Panel which will consider your appeal. The Clerk will send you full details of the procedure for your appeal before the day of the hearing. If you do not wish to attend your hearing, you can opt to have your appeal dealt with on the basis of the all the written information you have submitted. Please let the Clerk know as soon as possible if this is the case.

You will be given 10 school days' notice of the date and arrangements for the appeal hearing. However, in special circumstances and if all parties agree, the 10 school days' notice can be waived.

Before the hearing, you will be sent the Admission Authority's written Statement setting out their case for refusing your request for a particular school. This, together with any correspondence from you, will be sent to the Appeal Panel. It is important that any further information you want passed to the Appeal Panel is provided as soon as possible and at least by the deadline given to you by the Clerk. The Appeal Panel will decide if any late material, received after this, will be considered. You are responsible for making sure that any supporting evidence for your case is made available so it can be circulated to all parties. You cannot ask the Appeal Panel, Clerk or Admission Authority to contact anyone such as a doctor or social worker to confirm aspects of your case.

## Who Attends the Appeals?

The Appeal Panel is made up of three people who are totally independent of the County Council, the Admission Authority and the school/Academy you are appealing for and are generally not from your local area. Any decisions they make are binding on all parties. The Appeal Panel is required to act in accordance with the School Standards and Framework Act 1998 and the Codes on School Admissions and School Admission Appeals. The Appeal Panel performs a judicial function and must be transparent, independent and impartial, whilst operating in accordance with the principles of natural justice.

The Clerk to the Appeal Panel will also be present at the hearing. The Clerk takes no part in the decision making and simply advises the Panel on the correct procedure. The Clerk may bring a colleague who will take notes for the Appeal Panel's benefit. The Clerk has no involvement in the day to day administration of the admissions process.

The Admission Authority will be invited to provide a Presenting Officer for any hearings that are arranged in order to put its case for refusing your request for your preferred school. If you choose to attend your appeal hearing the Presenting Officer will not be able to speak to the Appeal Panel without you being present. The Presenting Officer is not present when the Appeal Panel make their final decision on your appeal.

## What will happen at the hearing?

Every effort is made to try and make the Appeal as informal as possible and not like a Court of Law. There has however, got to be a degree of formality to ensure everyone has their say and everyone has an opportunity to ask questions. You can attend the Appeal in person and can bring a friend, a member of your family or your neighbour along with you, either to help you say what you want or to speak for you or simply to give you support. You cannot bring someone from the school you are appealing for. Appeal Panels would not expect to see the child who is the subject of the Appeal at the hearing.

You may decide to have your appeal dealt with on the basis of all the written information you have submitted, without your attendance. If you are unable to attend the hearing you can get a friend or family member to represent you at the hearing and make your case for you.

General advice is that legal representation ought not to be necessary and that Appeals should normally take place in as informal an atmosphere as possible. If you do decide to be legally represented you need to let the Clerk know well in advance of your hearing.

## How do the Panel make their decision?

Earlier in this leaflet in the section called "Education for your child", it says that the only way the Admission Authority can refuse your preference is where they say class size prejudice would occur. In other words, where the Admission Authority would not be able to meet its duty to limit infant class sizes to 30. The law requires the Admission Authority to limit the number of pupils in each infant class to 30 pupils with a single qualified school teacher. The Admission Authority would be breaking the law if it exceeded this limit.

Where a child has been refused admission to a school on infant class size prejudice grounds, **an Appeal Panel must consider all the following matters:**

- a) whether the admission of an additional child/additional children would breach the infant class size limit of 30 pupils;
- b) whether the admission arrangements (including the area's co-ordinated admission arrangements) complied with the mandatory requirements of

the School Admissions Code and Part 3 of the School Standards and Framework Act 1998;

- c) whether the admission arrangements were correctly and impartially applied in the case(s) in question; and
- d) whether the decision to refuse admission was one which a reasonable authority would have made in the circumstances of the case.

The Appeal Panel's powers are very limited and it can only consider the above matters when deciding your case. The Panel **may only** uphold the appeal where:

- a) it finds that the admission of additional children would not breach the infant class size limit (would not take the class above 30 pupils); or
- b) it finds that 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 with admissions law or had been correctly and impartially applied; or
- c) it decides that the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case. (Note: It is very important to realise that the threshold for finding the Admission Authority's decision was not reasonable is extremely high and based on the legal definition of reasonableness. In order for a Panel to determine that an Admission Authority's decision to refuse admission was unreasonable, it will need to be satisfied that the decision to refuse to admit the particular child was "perverse in light of the admission arrangements", i.e. it was "beyond the range of responses open to a reasonable decision maker" or "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it.")

If you cannot prove any of these points then your appeal will fail.

### **Multiple Appeal Decision Making**

If the Appeal Panel is dealing with multiple appeals i.e. more than one appeal for a particular school, where a number of children would have been offered a place under a) – c) directly above and to admit that number would seriously prejudice the provision of efficient education or the efficient use of resources, the Panel **must** proceed to the second stage.

The Panel **MUST** dismiss the appeal where:

- a) it finds that the admission arrangements did comply with admissions law and were correctly and impartially applied; or
- b) it finds that the admission arrangements did not comply with admissions law or were not correctly and impartially applied but that, if they had complied and had been correctly and impartially applied, the child would not have been offered a place;

and it finds that the decision to refuse admission was one which a reasonable admission authority could have made (see above Note on consideration of 'reasonableness').

## Second Stage – Comparing cases

The Panel **must** compare each appellant's case for their child to be admitted and decide which of them, if any, to uphold. Where the school could admit a certain number of children without breaching the infant class size limit (or without needing to take measures to avoid breaching it that would prejudice the provision of efficient education or the efficient use of resources) the Panel **must** uphold the appeals of at least that number of children. In this situation you will need to consider how you present your appeal as the Panel, in comparing each appellant's case for their child to be admitted, will be looking at each appellant's personal circumstances.

Please note that your appeal **will be dismissed unless you can substantiate one of the above grounds.**

## Single Appeals – On the day of the appeal

If yours is the only Appeal you will be met by the Appeal Clerk who will also introduce you to the Presenting Officer. You will then go into the meeting room with the Clerk and the Presenting Officer to meet the Appeal Panel. The Chairman of the Appeal Panel will give a brief introduction. The Clerk will already have sent you the Admission Authority's case - or Statement - and the person from the Admission Authority (the Presenting Officer) will be asked to explain it. After this you will be given a chance to ask questions about the Statement. Members of the Panel will also ask questions.

You will then be asked to say why your child should go to your preferred school. Please bear in mind the information contained in the "Decision Making" section above and that the Appeal Panel's powers are very limited and that they can **only** consider the points outlined above. When you have finished putting your case the members of the Appeal Panel will have a chance to ask you questions, and the Presenting Officer may also ask questions of you.

The Appeal concludes with the Presenting Officer summing up the Admission Authority's case and you will be asked to sum up yours. **If you feel you have anything left to say please say it at that point.** Once the hearing is over you and the Presenting Officer will be asked to leave the meeting so that the Appeal Panel can make a decision in private.

A single appeal usually lasts around 40 minutes.

## Multiple Appeals – On the day of the appeal

There may be cases where more than one person is appealing for the same school and the hearings are being held over a number of days. Here you will be invited to attend a morning or afternoon hearing with a number of other parents also appealing for that school. At the hearing the group of parents will be met together by the Appeal Clerk who will also introduce parents to the Presenting Officer. The meeting will fall into two parts.

**PART 1** (parents are present as a group for the Admission Authority's case/Statement)

- All parents and the Presenting Officer go into the meeting room and meet the Appeal Panel
- The Presenting Officer will present the Admission Authority's Statement/case
- All parents present and members of the Appeal Panel will be able to ask questions on the Statement.

**PART 2** (each set of parents are seen individually by the Panel at 15-20 minute intervals)

- This is your opportunity to speak to the Panel in private (without the other parents present) on your particular case
- The Panel and the Admission Authority (Presenting Officer) will be able to ask questions on your case
- The Admission Authority will sum up their Statement/case
- You will be able to sum up your case and have the final word.

The second part of the Appeal where you see the Appeal Panel in private to discuss your personal case is arranged so that you have about 15-20 minutes. You will be given a time for this so that you have an approximate idea of when your personal Appeal will start.

## **Do I need to be at the Appeal?**

As outlined above, the Appeal Panel are able to consider your Appeal on any letters or other written material you have sent – in other words by written representation without your attendance.

If you know it will be **impossible** for you to attend an appeal at a certain time, let the Clerk know as soon as possible. If you cannot come to the appeal and there is no-one who can come along in your stead to speak, the Clerk, if able to, will try to make alternative arrangements although given the volume of appeals that have to be arranged it is not always possible to organise another date. **Please remember that if you do not attend the Appeal hearing and the Clerk has not received a reasonable explanation as to why you have not attended, the Panel will consider the Appeal on any letters or written material you have provided.**

## **How long will the Appeal process take?**

A single Appeal usually lasts about 40 minutes. If there is more than one Appeal you will be given a time for the Admission Authority's presentation of the Statement and then a second time for your individual Appeal. **You need to arrive in good time for the first time shown in your letter; this is the start of the Appeal. If you do not arrive on time then your Appeal, and those of other appellants, may be delayed.**

The waiting time may vary from as little as 5-10 minutes up to 2 hours and in some cases more. It is wise, if you are taking time off work, to reckon on either a whole morning or a whole afternoon.

A typical timetable for multiple appeals may be:

**10.00 a.m.** Presentation of the case by the representative of the Admission Authority and questions by parents and members of the Panel.

Individual Appeals:

10.45 a.m.	First Appeal
11.00 a.m.	Second Appeal
11.15 a.m.	Third Appeal
11.30 a.m.	Fourth Appeal
11.45 a.m.	Fifth Appeal
12.00 noon	Sixth Appeal

**PLEASE NOTE THAT:** Appeals are heard during the working day. Dates for meetings are usually during term time however dealing with a large number of appeals sometimes means dates have to be arranged during school holidays. If you are appealing for more than one school, you will have separate hearings for each school which are also likely to be on different days.

## **When will I know the decision of the Appeal Panel?**

It may be possible to email the decision on the day of your appeal or, if there are a number of appeals for a particular school over the course of a few days, on the last day of the hearings when the decisions on all cases are made. The Clerk will write to you with the Appeal Panel's decision as soon as possible after the hearing but not later than five school days, unless there is good reason. The Panel's decision is binding on the Admission Authority.

## **What can I do if my appeal is unsuccessful?**

If you are unsuccessful there is no further right of appeal. You may want to consider placing your child on the waiting list for your preferred school. Waiting lists are maintained by the Admissions Authority and your position on a waiting list has no bearing on your Appeal. In the case of local authority maintained schools, if you are unhappy with the way your case was dealt with you can complain to the Local Government and Social Care Ombudsman (LGO). A complaint to the LGO is not a further appeal and cannot overturn the Appeal Panel's decision. The LGO can only investigate if there has been maladministration i.e. a failure to follow correct procedures or failure to act independently or fairly. If your complaint is about an Academy you will need to contact the Department for Education.

Further information about the appeals process is available on the Government's website here: <https://www.gov.uk/schools-admissions/appealing-a-schools-decision>

The Local Government and Social Care Ombudsman's website is here:  
<https://www.lgo.uk/make-a-complaint/how-to-register-a-complaint>

Whatever you decide to do there is no guarantee of a place for your child at the preferred school. You are therefore advised to consider making alternative arrangements for your child's schooling. This may mean contacting the relevant Admissions Authority which could be an Academy or the School Admissions Team (for local authority maintained schools) to talk about the options open to you. The Admissions Team will be able to talk about alternative schools, transport options and if necessary 'education otherwise'.

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