

PARENTAL PREFERENCE APPEALS

A PARENTS' GUIDE TO THE APPEAL PROCESS IN SOLIHULL

1. Introduction

You will have applied for a school and not been offered a place. The Admission Authority (AA) has not met your preference because the year group you require is **full, and there are no more places left**. The AA believes that admitting your child would prejudice the provision of efficient education or efficient use of resources. The Appeal Panel has to decide whether:

- The AA has made a mistake;
- The year group is actually full; and
- Weigh up who suffers the biggest disadvantage your child if s/he is not given a place or the school if your child is given a place by the Appeal Panel.

This guide explains what happens if you decide to appeal. For the list of schools SMBC hear appeals for, please refer to our website.

2. I thought I could choose the school I wanted my child to attend?

NO: The School Standards and Framework Act 1998, allows you to express a **preference** for the school you would like your child to attend. You do not have a legal right to choose a school. The law states that the AA need not meet your preference if the year group in question has reached its admission number i.e. the year group is full to capacity, and as a result compliance with your preference would prejudice the provision of efficient education or efficient use of resources.

3. Why is there an appeal hearing?

The law gives you the right to appeal because your child has been refused a place at your preferred school.

The Appeal Panel is completely independent of the Council, AA and Schools/Academies, and any decisions it makes are binding on all parties. The Appeal Panel is legally 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, accessible, independent and impartial, while operating in accordance with the principles of natural justice.

You may have applied for more than one school and been refused all of them, or some of them. You have the right to appeal for the school(s) you have been refused. If you decide to appeal you will have to attend separate hearings for each school you are appealing for. You can not appeal against the School you have been offered. Please note appeals are heard during the working day.

If you have requested an in-year appeal (e.g. your child is already in school) these will be heard on the same day wherever possible.

4. What happens if I have been offered one of my preferred schools, can I still appeal?

YES: You still have the right to appeal for any other school you have been refused. For example, you may have been offered your third preference school, but still want to appeal for your second and first preference schools. However, the Appeal Panel will be made aware that you have been offered one of your preferences.

5. What happens before the Appeal Hearing?

If you decide to appeal **you must fill** in an appeal form giving written reasons for your appeal. You must send it to the Appeal Clerk in accordance with the timetable. This timetable is published on our website by the end of February every academic year. Please refer to there for the applicable dates.

Having checked the mentioned timetable, if you know of any dates when you will not be available, please tell the Appeal Clerk as soon as possible. Once appeal dates have been set it is very difficult to change them given the volume of appeals that have to be heard. Please note you can only appeal once in any one academic year.

6. What happens once appeal dates have been arranged?

You will be given 10 school days' notice of the time and date of the appeal hearing. You will also be told who is on the Appeal Panel and who will be acting as the Appeal Clerk. However, in special circumstances and if all parties agree, the 10 school days' notice can be waived.

Before the hearing, the AA will send you a written statement setting out their case for refusing your request for a particular school. This information, along with correspondence from you will also be sent to the Appeal Panel. It is therefore, important that any additional information you want passed on to the Appeal Panel is given to the Appeal Clerk **3 school days** before your hearing. The date this falls on will be specified in your invitation letter, for your appeal hearing.

The Appeal Panel will decide whether any late material will be considered, taking into account its significance and the effect of adjourning the hearing.

You may have already submitted supporting information with your application to School Admissions. This **will not** have been passed on to the Appeal Clerk and you will need to submit a further copy of this before your appeal hearing. All information provided by you will also be sent to the AA, so ensuring a complete exchange of information between all parties.

7. Do I need to attend the appeal?

Please note, we hear our appeals virtually – via Microsoft teams.

You can attend the appeal hearing (virtually) and tell the Appeal Panel in your own words, your case. Alternatively, you may decide to have your appeal dealt with on the basis of the written information you have submitted. If you decide on the written route the Appeal Clerk will ensure that the Appeal Panel is given all the correspondence you have submitted before making a decision. If you choose not to attend in person, this will limit the Appeal Panel's opportunity to ask you questions.

8. Who will be attending the appeal hearing?

- You, if you choose to attend and you partner, relative or friend
- The Appeal Panel (3 Members)
- The Appeal Clerk
- A presenting Officer from the Local Authority (LA) who will explain why you were refused a school place. (The LA Officer will also act on behalf of Academies)

9. Who are the Appeal Panel Members?

The Appeal Panel are not members of the Council and are described as being independent and lay members.

No member of the Appeal Panel will have any connection with either your preferred school or the school you may have been allocated. No member of the Appeal Panel will have been involved in any previous decisions regarding your application and no member of the Appeal Panel will have a vested interest in the outcome of your appeal.

10. What Powers does the Appeal Panel have?

The Appeal Panel can either refuse or allow your appeal. **It has no other power.** The Appeal Panel cannot:

- Attach any conditions if it allows your appeal;
- Hear complaints or objections on wider aspects of the local admission policies and practices e.g. it cannot change the catchment area of a school or the admission arrangements; or
- Change your child's waiting list position.

The Appeal Panel must consider if the admission arrangements are lawful and if the admission arrangements have been properly implemented, including the qualifying scheme. (The qualifying scheme is a mechanism for ensuring, so far as reasonably practicable, that every parent of a child living in the area who has applied for a school place is sent an offer of one, and only one, school place.)

If a mistake has been made, which has directly cost your child a place at the school the Appeal Panel will normally allow your appeal.

11. Waiting lists - what are they?

If you have not been offered a place at your preferred school you can request that your child be placed on a waiting list. The AA will draw up the waiting list and you need to be aware that the appeal process and the waiting list are two completely separate things.

If you decide to appeal, this will not affect your waiting list position. The Appeal Panel has no authority or power to move your child up or down the waiting list. If you require more information on your child's waiting list position you should contact School Admissions. The Appeal Panel cannot take account of your waiting list position, so this should not be discussed at the appeal hearing.

12. What is the role of the Appeal Clerk?

The Appeal Clerk is present to ensure the appeal is conducted fairly. The Appeal Clerk has no say in the decision but is there to:

- Explain the basic procedure and to deal with any questions you may have;
- Make sure each party is heard in turn;
- Ensure relevant facts are established;
- Be an independent source of advice on the law and procedure; and
- After the appeal hearing, notify all parties concerned of the Appeal Panel's decision.

The Appeal Clerk works for the Director Resources and Deputy Chief Executive, and has no connection to the Schools/Academies.

13. What is the role of the presenting officer at the Appeal Hearing?

The Local Authority officer representing the AA or Academy will be responsible for setting out why a place could not be offered to your child at your preferred school and answer any questions regarding the admission arrangements and application process.

The presenting officer will never be left alone with the Appeal Panel, and is not present when the Appeal Panel makes their final decision on your appeal.

14. Can I bring someone with me to help me present my case?

You may bring a member of your family, a friend, or partner along with you, either to help you say what you want or to speak for you or simply give you support. You **cannot** bring someone from a School.

15. What happens if I do not attend the hearing?

Given the volume of appeals that have to be arranged it is not always possible to arrange another date. However, it is important that you contact the Appeal Clerk as soon as possible if you cannot attend your appeal hearing. If another date cannot be arranged, your appeal will be heard in your absence and decided on the written information that is available at the hearing.

If you are not at the appeal hearing and have not offered any explanation regarding your absence your appeal will be heard in your absence based on the written information you have provided.

16. Can I withdraw my appeal?

YES: You can withdraw your appeal by telephoning or emailing the School Appeals team.

17. Is it like a Court of Law?

NO: The appeal is conducted as informally as possible and is not like a court of law. Legal representation should be the exception rather than the rule. However, if you do decide to be legally represented, you will need to tell the Appeal Clerk well in advance of your appeal hearing, and you will have to bear your own legal costs.

18. May I bring my child to the appeal hearing?

NO: the Appeal Panel do not expect them to be there.

19. Where does the appeal hearing take place?

Appeals are held virtually, via Microsoft teams.

20. Can I appeal if I don't live in Solihull?

YES: The same appeal procedure is followed for all appeals. However, if you do not live in Solihull you would be well advised to contact your own Council (Birmingham, Coventry, Worcestershire or Warwickshire) about school places. Do not wait until after your appeal has been heard or you may find your options are limited when it comes to finding a school which still has vacancies.

21. Is there a Feeder system in place in Solihull?

Generally, no. If your child attends Langley Primary School for example there is no guarantee your child will be offered a place at Langley School. However, attendance at a named primary school does feature in the admission arrangements for Tudor Grange Academy and Arden. Further information can be found on their websites.

There is a feeder system in relation to transfer from infant school to junior school. Children attending an infant school are guaranteed a place at the linked junior school if they apply on time. For more information on how these links work contact School Admissions.

There is **no feeder** system from nursery to reception. This means that even if your child attends nursery there is **no** guarantee of a place in the infant class at the same school.

22. What happens at the Appeal Hearing?

The Appeal Clerk will introduce him/herself to you, and explain the process. S/he will then introduce you to the presenting officer before inviting you to meet the Appeal Panel.

The Appeal Panel Chairman will introduce the Appeal Panel to you and make sure all parties are comfortable and ready to start the appeal hearing. You will be allocated 30 minutes for your appeal hearing, and you can be assured that the Appeal Panel will have read the information provided by you and the AA in advance and therefore know the background to your appeal. You would be advised therefore, rather than read out word for word your appeal statement, to concentrate on what you consider to be the most significant points you want to get across to the Appeal Panel. The Appeal Panel will follow the following order:-

- Case presented by the AA;
- Questions to the presenting officer from parents and Appeal Panel Members
- Your case;
- Questions to you from the presenting officer and Appeal Panel Members;
- Summing up of the case by the presenting officer; and
- Summing up of the case by you.

Once the appeal hearing is over you and the presenting officer will be asked to leave, so the Appeal Panel can make a decision in private.

23. What can I say?

You should feel free to say whatever you think is relevant to your case. The Appeal Clerk and Chairman of the Appeal Panel will want to make sure that you do not leave the appeal hearing thinking things have been left unsaid. The Appeal Panel has to make their decision on the information they have been given; they cannot guess, presume or assume. You should also be aware that the appeal hearing is held in private and everything that is said is strictly confidential.

24. Can I ask the Appeal Panel to contact anyone, such as my Doctor, Social Worker to confirm what I have said on my appeal form or at the appeal hearing?

NO: You are responsible for making sure that the Appeal Panel has any written supporting evidence at the appeal hearing. You cannot ask the Appeal Clerk to collect evidence on your behalf either.

25. Does the Appeal Panel need any supporting evidence about my reasons for appealing?

Yes for example:

- If your appeal is based on medical or social grounds, you should, wherever possible, provide written evidence from a doctor or other professional, such as education psychologist or social worker to support this;
- If your appeal is based on a house move you should provide evidence that you now live in your new home and proof that you cannot return to your old home, e.g. proof of sale or other relevant documentation;

If appropriate, the presenting officer may contact your child's school and/or other agencies to verify the circumstances of your appeal.

26. How does the Appeal Panel make a decision for a child over the age of 7?

The Appeal Panel, having heard and read the case for both parties, will consider all the information available very carefully, before making their final decision. The Appeal Panel must follow a two stage decision making process:-

First stage- Examining the decision to refuse admission

The Appeal Panel must consider:

- a) Do the admission arrangements (including the qualifying scheme) comply with the mandatory requirements of the School Admission Code and Part 3 of the School Standards and Framework Act 1998?
- b) Were the admission arrangements correctly and impartially applied? (It is not enough that a mistake has been made, the Appeal Panel must be satisfied that the mistake has directly cost your child a place at the school);
- c) Would the admission of your child prejudice the provision of efficient education or efficient use of resources?

The Appeal Panel can only uphold your appeal at the first stage if they find the admission arrangements did not comply with the admissions law or had not been correctly and impartially applied, and your child would have been offered a place if the arrangements had complied or had been impartially applied; **OR** the Appeal Panel find the admission of your child would not prejudice the provision of efficient education or efficient use of resources i.e. the school could cope with an additional child.

However, if the Appeal Panel agrees with (a- c) then it will move to the second stage:

Second Stage Balancing the Argument

The Panel will balance the prejudice to the school against your case, in doing this the Panel will take in to account your reasons for wanting that particular school. If the Appeal Panel considers that your case outweighs the prejudice caused the appeal should be **upheld**.

The Appeal Clerk will write to you confirming the decision and provide reasons for the decision, normally within 5 days of the Appeal Panel reaching their decision.

27. What is prejudice?

The Appeal Panel must take into account the school's published admission number, and the admission authority must be able to demonstrate prejudice over and above the fact that the published admission number has already been reached.

The Appeal Panel cannot reassess the capacity of the school, but must consider the impact on the school of admitting an additional child. In reaching a decision as to whether or not there would be prejudice the Appeal Panel could consider what effect an additional admission would have on the school in the current and following academic years as the year group moves through the school (future years prejudice).

28. What is an infant class?

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. Infant classes **must not** contain more than 30 pupils with a single school teacher. They are called reception, year 1, and year 2.

When you appeal for a place in an infant class, the Appeal Panel's task is to **review the decision already made**. It does not have the flexibility to say that your personal circumstances mean that you should have a place at the school, if this would take the number of children in the class over 30. This makes an infant class size appeal different to other school admissions appeals

29. If my child is already in the Nursery unit do they automatically get a place in reception?

NO: You may have been fortunate enough to get a place in a school's nursery unit, but this does not guarantee you a place in reception as the admission criteria does not allow for the allocation of reception places based on which nursery your child attended. This would have been explained to you when you applied for your nursery place and when you applied for your reception place.

30. How does the Appeal Panel decide whether to allow or refuse my infant class size appeal?

The Appeal Panel's powers are **very limited** and the Appeal Panel must follow a two stage process:

First Stage – Examining the decision to refuse admission

The Appeal Panel must consider:

- a) Would the admission of your child breach infant class size limit i.e. there would be more than 30 pupils per teacher per class?
- b) Do the admission arrangements (including the qualifying scheme) comply with the mandatory requirements of the School Admission Code and Part 3 of the School Standards and Framework Act 1998?
- c) Were the admission arrangements correctly and impartially applied in your case (even if a mistake has been made you will need to demonstrate that the mistake directly cost your child a place at the school); and

d) Was the decision to refuse your child admission one which a reasonable admission authority would have made in the circumstances of the case? I.e. based on the information you gave to the AA before places were offered.

If the Appeal Panel finds the admission of your child would breach infant class size, the admission arrangements were lawful, correctly and impartially applied and the decision to refuse your application was reasonable, **then your appeal will fail at this stage.**

If the Appeal Panel, when dealing with multiple appeals, finds a number of places would have been offered because faults were found with (a to d) above, but to admit that number of children would seriously prejudice the provision of efficient education or efficient use of resources, the Appeal Panel will move to the second stage.

Second Stage - Where faults have been found and comparing cases

The Appeal Panel will compare the case each parent puts for their child to be admitted and decide which, if any, to uphold. If the Appeal Panel feel 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 efficient use of resources) the Appeal Panel will uphold the appeals of at least that number of children.

31. What does reasonable mean?

The threshold for finding that the AA's decision to refuse admission was not reasonable is extremely high and based on the legal definition of reasonable. The Appeal Panel need to be satisfied that the decision not to admit your child was "*perverse in the 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 no sensible person who had applied his mind to the question could have arrived at it*".

Most parents who have been refused a place at their preferred school consider this refusal to be perverse/unreasonable, but a decision that makes it impossible for you to transport all your family to school on time, or even impossible for you to continue working, is very unlikely to be perverse/unreasonable. The courts have established this. Likewise in accepting a place at nursery and having been made aware when accepting the place this does not guarantee a place in reception, does not make the decision to refuse unreasonable.

If the AA had refused a place to a child whose family had been forced to move house under a witness protection scheme, an Appeal Panel might decide that the decision was perverse/unreasonable. But it is the Appeal Panel's decision.

32. What do the circumstances of the case mean?

The onus is on parents to ensure all relevant information is provided at the time of application, and not after places have been offered, for example a sibling connection.

The onus is also on the AA to ensure that all relevant information submitted on time has been considered before offers have been made.

33. What does perverse mean in this situation?

In simple terms it is an illogical decision or irrational/wildly ridiculous decision which is not based on the facts of the case which include:

- The published admission arrangements;
- The internal operation of the school; and
- The circumstances of your case.

34. Can I tell the Appeal Panel why I want my child to go to the school?

You have to decide what you want to tell the Appeal Panel, but you need to bear in mind the Appeal Panel's powers are limited and you need to focus on showing that either:

- The admission of your child would not breach the infant class size limit of 30;
- The admission arrangements did not comply with the mandatory requirements of the Code or Act;
- The admission arrangements were not correctly or impartially applied and a mistake has been made in your case, which has directly cost your child a place at the school; or
- The decision was perverse/unreasonable as described in sections 31-33 above.

35. If my appeal is refused can I appeal again?

NO: There is no appeal against the decision of the Appeal Panel.

36. What can I do if I am unhappy about the appeal process?

For non-academy schools if you think that the proper appeal procedures have not been followed you can ask the Local Government Ombudsman to investigate. This must be done within 12 months of receiving the outcome of your appeal. This is not a right of appeal, as the Local Government Ombudsman can only investigate complaints about maladministration on the part of the Appeal Panel.

Maladministration means that there has been a fault in the way something has been done or not done e.g. the Appeal Panel did not follow the proper procedure. The Local Government Ombudsman cannot investigate a complaint simply because you disagree with the decision reached. You can contact the Local Government Ombudsman at <http://www.lgo.org.uk/making-a-complaint/>

If your appeal involves an academy your complaint should be directed to Admission Appeal Complaints, Academies Central Unit, Education Funding Agency, Earlsdon Park, Butts Road, Coventry CV1 3BH.

You can apply for a judicial review but this must be done within 3 months of receiving your decision.

Useful addresses

Enquiries about this guide and the appeal process in Solihull should be addressed to:

Clerk to the Appeal Panel
School Appeals
Council House
Manor Square
Solihull
B91 3QB

school.appeals@solihull.gov.uk

Enquiries about other aspects of admissions and alternative school preferences should be addressed to:

School Admission
Solihull Metropolitan Borough Council
Council House
Solihull
B91 3QB

admissions@solihull.gov.uk