



School admissions

Are parents and pupils getting a fair hearing?

Focus Report: learning the lessons from complaints

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Introduction

Each year thousands of parents of four to five-year-olds and parents of children entering their final year at primary school are faced with a major decision – which school will be best for their child and how can they ensure that their child gets a place at that school? All parents want the best education for their child, and increasing public awareness of school exam and test results means that some schools continue to prove more popular than others.

Local admission arrangements are developed to respond to the needs of families and local communities, with parents entitled to state a preference of school. But the fact that many schools are oversubscribed leaves many parents disappointed and determined to appeal for a place at their preferred school.

Admission appeals are governed by a code of practice to ensure that hearings are impartial, structured and fair to all parties. The Local Government Ombudsman receives more than 1,000 complaints every year about school admission appeals, and in about 28 per cent of those cases we find fault with the appeal process.

The Ombudsman welcomes the Government's announcement of its intention to simplify the school admissions and appeals codes of practice, to make them more understandable and accessible.

This Focus Report identifies the faults that we find most often. It shows the injustice caused when things go wrong, illustrated by the stories of people who have complained to us. It sets out good practice for school admission appeal panels.

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The school admissions system

The system of allocation of school places in England is co-ordinated by the local authority in each council area. It allows parents to express their preferred local school before places are allocated in line with each school's admissions policy.

The body that decides the admission criteria for a school is known as 'the admission authority'. For community and voluntary controlled schools this is the local authority, but for voluntary aided, foundation schools and academies¹ it is the school's governing body. The local authority publishes the admission criteria for all schools in its area.

Local authorities also play a vital role in monitoring schools' compliance with the law. They report each year to the Schools Adjudicator on the fairness and legality of admission policies for all schools in their area.

The right of appeal

The system gives parents the right to appeal against an authority's decision if they are not allocated a place at their preferred school.

This right of appeal is to a panel made up of members of the public who are independent of the chosen school *and* independent of the local authority. Appeal panels must be arranged by the relevant school admission authority – which is either the local authority or the governing body of the school itself. In most cases, however, the local authority plays an important role in selecting, training and organising appeal panels and ensuring a good supply of suitable panel members.

In 2009/10 approximately 85,000 admission appeals were lodged in England and 72% of these appeals went on to be heard by an independent panel².

The appeal hearing

The aims of the appeal hearing are:

- > to allow the **school** to demonstrate how the admission of another child would 'prejudice' (or prevent) the provision of efficient education or the efficient use of resources for other pupils, and
- > to allow the **parents** an opportunity to explain why their child's needs and circumstances might outweigh this case.

The panel has the power to decide whether or not the child should be admitted to the school on this basis.

The conduct of appeal hearings is governed by a *Code of practice*³ which aims above all to ensure that hearings are impartial, structured and fair to everyone involved. A vital function of the code is to provide procedural guidance and ensure that communication is clear and consistent at all stages of the process.

Note: New, simplified versions of the *Code of practice on school admissions* and the *Code of practice on school admission appeals* are to be introduced by the Department for Education in February 2012, but the principles of fairness, transparency and impartiality will remain unchanged.

Justice for parents: the role of the Ombudsman

Parents who believe that they have not received a fair and impartial hearing of their appeal for a school place have the right to complain to the Local Government Ombudsman. This does not include complaints about admission appeals to academies or free schools as they are not in the Ombudsmen's jurisdiction.

The Ombudsman cannot overturn an appeal panel's decision but, if she finds that faults of the panel have led to injustice for the complainant, she can:

- > ask the admission authority to hold a fresh appeal with a different panel
- > ask the admission authority to offer a place at the preferred school (*this would only happen in cases where the published admission criteria were applied wrongly*), or
- > recommend that the admission authority reviews its admission criteria and/or appeal procedures.

The Ombudsman is unlikely to request a fresh appeal on the basis of a single minor fault but will consider on balance whether the panel's faults have called into question the overall fairness of the hearing or adversely affected the outcome of the appeal.

The Ombudsman received 1,195 complaints about admissions in 2010/11; of these 28% led to some kind of remedy for the parents – most commonly, a fresh appeal.

Focus on injustice: where can things go wrong?

Each case is different and receives individual attention, but the Ombudsman is alert to trends and themes both within schools and across authority areas. Analysis of recent complaints about admission appeals show that faults in appeals occur most often in the following areas.

Communication before the hearing – why was the child not given a place?

The admission authority must write to parents giving clear information about why their child has not been granted a place and details of their right to appeal. If parents decide to appeal they must be allowed the opportunity to prepare as strong a case as possible. This means that parents need to understand why it would cause problems for the school to award their child a place (this is the school's case for 'prejudice') and also to understand as much about the panel and the conduct of the hearing as possible.

Common faults include:

- > the admission authority failing to provide adequate written information in good time before the appeal hearing about why the child was not offered a place and why the school is unable to admit additional pupils, and
- > the admission authority presenting parents with arguments and information orally at the hearing rather than allowing them to consider the information in advance.

Case study 1

Mr Smith applied for a place for his son Evan at a popular high school that he believed was the nearest to where the family lived. When Evan was not offered a place, he decided to appeal.

Mr Smith received a letter before the appeal explaining that, as the school had too many applications, the distance between home and school had been used to decide which children should be offered places. On this basis, Evan's application had not been successful.

Mr Smith attended the first stage of the appeal hearing along with several other parents. After the school's representative presented its case, Mr Smith was not sure whether or not the panel had accepted that the school was full, as the parents were not told and he had not fully understood the discussion.

Later Mr Smith presented his own son's case to the panel but, although he was given sufficient time to explain his point of view and answer the panel's questions, he felt intimidated and unable to explain his situation properly. He was told that the school had based its decision on information about home-to-school distances provided by the council. When Mr Smith asked whether the information was correct he was told that it should be as it had come from the council. Mr Smith left the meeting feeling unsure if the panel had looked at his case properly, and was still puzzled about why distance was an issue, as this felt like his local school.

Mr Smith received a letter saying his appeal had been unsuccessful, but the letter did not explain why the panel had decided this. Mr Smith decided to complain to the Ombudsman as he did not feel that the panel had properly considered his case.

We found that Mr Smith had not been given enough information before the appeal that he could understand and use to challenge the school's case. The panel had accepted the school's case that the distance had been calculated correctly without seeking evidence of how it had been calculated. This meant the appeal had not been properly run.

Mr Smith was pleased to be offered a fresh appeal with a different panel and, following his complaint to us, he felt that he understood the appeal process more clearly and was more confident about putting his case forward.

The case for prejudice – can the school take any more pupils?

Having provided written information in advance to the panel and the parent, an officer representing the admission authority will present its case explaining why it believes it cannot admit more pupils to the school. The panel must satisfy itself that the school's case is robust and that it has proved that admitting additional pupils would be detrimental. In recent years, infant class sizes have been limited to 30 and, while there are few grounds on which a panel could override this, it is still important that the school's case is clearly explained to parents and properly explored by the panel. Parents must be allowed to ask questions about the school's case.

Common faults include:

- > the admission authority failing to provide evidence that the school cannot accommodate additional pupils
- > a panel failing to challenge the admission authority's case that admitting more pupils would be detrimental, and
- > a panel accepting an argument that the school is full – even when the school later acknowledges that it could admit a few more pupils.

Case study 2

Mrs Jones was disappointed when a high-performing secondary school near her house said it could not take her 11-year-old daughter, Katie. So she took her case to the appeal panel.

At the hearing, the school's representative argued that the school was full to capacity. He said that admitting any more pupils would increase class sizes and prejudice the education of other children.

After questioning both the school's representative and the parents, panel members accepted the school's case. And when we investigated this complaint, we agreed they had good reason to do so, based on the information given.

But problems arose later that day when the same panel considered the case of a different child, called George. Unlike Katie, George had attended a so-called 'feeder school', a primary that regularly sent children to this particular secondary.

At George's hearing, the school's headteacher talked about feeder schools and suggested that the school might accept feeder school applicants. The panel went on to hear that the school could in fact cope with 12 more children, both facts relevant to Katie's case.

We concluded that this information was at odds with the case put forward by the school in relation to Katie.

We decided that the panel should have shared this information with all those making an appeal. It should have given them a chance to comment and then revised its previous decision. It failed to do any of this so we judged the appeal process unfair.

The school offered fresh appeals with a different panel to Mrs Jones and all the other unsuccessful appellants.

A panel fails to act impartially – whose side are they on?

The *Code of practice* provides clear guidance on the selection, training and conduct of panel members with the emphasis on absolute impartiality and transparency of decision making. The panel is independent of the admission authority and must be seen and perceived by parents to be so. The status of the parents and of the authority's presenting officer are the same – so neither should ever be left alone with the panel. The credibility of the panel is also demonstrated by the rigour with which it questions the information provided by the admission authority as well as that provided by the parents.

Common faults include:

- > the presenting officer entering the meeting with the panel and remaining with them after the hearing, leaving parents unsure about the panel's impartiality
- > panels going back to admission authorities for clarification of information after the parents have left, or even calling back the presenting officer, and
- > asking questions of the admission authority but not of the parents.

Case study 3

Mr and Mrs Patel's daughter Asha scored 350 in a grammar school entrance test – the pass mark was 353. They thought Asha had been disadvantaged because an invigilator offered the children an unscheduled toilet break between parts of a test, then started the next section before she returned. They decided to take their case to appeal.

At the appeal, Mr and Mrs Patel thought the school's version of the events at the test was wrong. The panel asked the school for more information before making its decision and referred to this in its decision letter to Mr and Mrs Patel, enclosing a copy of the school's response.

We decided that the panel should have given Mr and Mrs Patel the chance to respond to the extra information provided by the school *before* the panel went on to make its decision. The *Code of practice* says panels should do this. If they had been given the opportunity, Mr and Mrs Patel would have challenged the factual accuracy of the school's letter.

We decided that this meant the appeal had not been run properly, and that the school should offer a fresh appeal to Mr and Mrs Patel, which it agreed to do.

Procedural mistakes during the hearing – do they know what they're doing?

Panels can have either three or five members and must include at least one person with experience in education, but all panellists are expected to have undertaken recent training on their role. The clerk to the panel must also be appropriately trained, be able to offer procedural advice to the panel and to parents during the hearing and have access to legal advice should this be required. Nevertheless, parents are sometimes left in doubt as to the panel's understanding of the *Code of practice* and what constitutes a fair hearing.

Common faults include:

- > panels hearing cases affecting different members of the same family as one appeal with one hearing
- > panels not satisfying themselves that the admission arrangements were applied correctly to the child in question. These concerns apply to all admission arrangements, but distance (from home to school) and faith criteria can give rise to particular concerns, and
- > panels taking account of irrelevant information.

Case study 4

Mrs Forrester's son Robert had been unhappy since starting high school as a result of bullying. She decided to apply for places at another secondary school for Robert and his younger brother James, hoping that she could get the boys settled for the summer term and before Robert started his GCSE years.

The school offered a year 8 place to James, who started in April, but following her appeal, Mrs Forrester was given a date in June for the hearing of Robert's case. She was by now so concerned about Robert's progress that she decided to educate him at home pending the outcome of her appeal.

The appeal hearing did not go well and Mrs Forrester felt as though the panel had made its decision before she entered the room. Whilst she was given an opportunity to answer questions, some of the questions she was asked did not appear to be relevant to Robert's situation and the school's representative seemed unwilling to accept that he was no longer on the roll of his previous school.

Our investigation showed that the school and the panel had made a lot of mistakes. The school was its own admissions authority and had taken far too long to arrange the appeal hearing. Information given to parents did not mention the role of the Ombudsman and told parents that their only recourse was to the Secretary of State. Although panel members were magistrates there was no evidence that they or the clerk to the panel had received relevant training on school admission appeals and they went on to make some basic errors.

Before the hearing, the panel had accepted without question that the year group was full, even though it had not been provided with any detail of why, and it did not give parents any opportunity to challenge the school's case. The clerk's notes of the discussions about Robert's case were very brief and did not record the reasons for the panel's decision or whether it was unanimous. Mrs Forrester's decision letter did not give clear reasons why the panel did not accept Robert's case and, rather than being signed by the chair or clerk to the panel, it was signed by the clerk to the school governors who, besides being partial, was not even present at the meeting.

Not surprisingly Mrs Forrester left the process with no clear understanding of why her appeal had failed and no confidence that the panel had understood Robert's situation. The impression she had gained was that the panel was not fully independent of the school and seemed to rely very much on the school representative for guidance. The school accepted its mistakes and was prepared to organise a fresh appeal with a new clerk and panel.

Notes of the hearing – what does the record show?

The clerk is not a member of the panel but has a crucial role to play in ensuring that the proceedings are conducted fairly. The proper conduct of the hearing is vital, and a clear written record of the panel's discussion and decision making will be needed after the hearing. Good communication between the clerk and the panel's chair is important before, during and after the appeal hearing.

Common faults include:

- > poor recording by the clerk of the panel's
 - deliberations
 - decisions
 - reasons for decisions, and
 - results of panellists' voting.

Case study 5

Ms Lewis was initially refused a place at the infant school she wanted for her four-year-old daughter, Kira. She did not need to appeal because the council agreed with her that there had been a mistake in the admission process. Kira was automatically given a place, although this meant that there would be 31 children in the school's reception class, instead of the normal 30.

When Ms Lewis later found out that an appeal panel had allowed four other children into the class, she complained to the Ombudsman that admitting these extra children would be detrimental to Kira's education. She knew that the rules on admissions meant that infant class sizes should be restricted to 30 except in very special circumstances like hers. Although it had additional classroom space, the school would not have sufficient funds to employ another teacher so another class could not be created.

We looked at how the panel had considered these appeals by examining the clerk's notes and asking him and the panel members questions about what had happened. We found that the school's representative had been unable to provide all the information that the panel required. In fact, the appeals were adjourned several times while the school gathered more information and advice was sought from the council.

This meant that the clerk became more and more confused about the panel's thinking. He said that the panel had first of all decided that the school had demonstrated its case but then later changed its mind. At one stage the panel asked for legal advice from the council's solicitor. Panel members said that they thought they had been advised that if they allowed one appeal they had to allow all four, although the solicitor could not recall giving them such advice. The clerk's notes were of no help as they did not record what advice was given.

In the end the panel decided to uphold the appeals for all four children. This decision was flawed. In fact, panels can only uphold appeals for infant classes in very limited circumstances and none of these applied here.

Investigating this complaint, we concluded that the school had failed to provide sufficient evidence before the hearing and that there was confusion and administrative fault in the way the appeal panel worked. Because of these errors, the school would have to find a way to employ an extra teacher to cope with the additional children in future years.

As a result of our investigation, the school reviewed its admission procedures and decided to make sure that its case was presented more clearly and accurately in future. Given that the council had arranged the panel and clerk on behalf of the school we also shared our concerns with panel members and the council to ensure that lessons were learned.

Communication after the hearing – why was the appeal unsuccessful?

As soon as possible after the hearing, the clerk to the panel must write to every parent with the panel's decision. The letter must include clear and detailed reasons for the decision and must be free of jargon. Parents are looking for evidence that the panel listened, understood and considered their case on its own merits, and they understandably may call the entire proceedings into question if the letter contains mistakes or is not personalised to their own situation.

Common faults include:

- > decision letters fail to give reasons for decisions, so parents cannot understand why their appeal did not succeed, and
- > failure to refer to and deal with a major point relied on by the parents.

Case study 6

Mrs Harris was refused a place for her 11-year-old son John at a foundation school. She appealed because John had attended a feeder primary school and many of the children in his class had been given a place. Mrs Harris did not want John to be separated from his friends and felt that this would disadvantage his future education. Her appeal was unsuccessful.

At the appeal hearing, the school argued that offering John a place would prejudice the education of children already at the school. But its written statement, which was notably brief, said that it would be able to take extra children on top of the published admission total of 246. It said the school was planning to increase the total number of pupils to 252 the following year.

The school was not questioned about this statement, and we decided that if it had been the panel would have seen that the school had not proved its case.

In its decision letter – which was also notably brief – the panel confirmed that admitting John would have prejudiced the education of other children. It also said it had considered the parents' case, but gave no reasons for rejecting it.

This meant it was not possible for Mrs Harris to understand a decision that was so important to her and to the future of her son.

We found there was fault in the appeal process. The school's governors accepted what we said and agreed to hold a fresh appeal as soon as they possibly could.

Priority areas for improvement

The Ombudsman is impartial but is likely to be critical when, on balance, a panel's faults have called into question the overall fairness of a hearing, causing injustice to the parent and child. Recent cases show that the following areas are most in need of improvement.

We recommend that admission appeal panels:

- > ensure that comprehensive, clear written information has been sent to parents in good time before the appeal hearing
- > make sure the case for 'prejudice' is fully explained and understood by parents and panel members
- > follow procedural rules to ensure that parents are treated in exactly the same way as representatives of the admission authority
- > ensure each case is properly understood and addressed on its individual merits
- > make sure notes of the proceedings are full and legible, and
- > provide plain English decision letters to parents making very clear why the appeal has not succeeded.

Further information

Visit our website at: www.lgo.org.uk

If you have a complaint you would like to make about your local council, you can contact us on: 0300 061 0614.

1 The Ombudsman is not able to consider complaints about admission appeals to academies or free schools.

2 Department for Education Statistical First Release: *Admission Appeals for Maintained Primary and Secondary Schools in England 2009/10*. 22 June 2011.

3 *Code of practice on school admission appeals 2009*