

Standards Committee – 18th July 2016

Elected Members – School Admission Appeals

Summary of report:

The report is to provide a briefing to Elected Members in relation to school admission appeals as in recent years it is becoming a more frequent occurrence to find elected Members attending school admission appeals to advocate on behalf of parents.

Background papers:

None

Recommendation:

1. To note the content of the report;
2. That a briefing note be produced specifically for Members on the appeals process and circulated in May each year ready for the September intake appeals which are generally heard throughout June and July each year.

1.0 Background

- 1.1 The school admissions system in England is governed by the (1) Schools Admissions Code, (2) School Admissions Appeals Code (along with supporting statutory regulations) and (3) School Admissions (Infant Class Sizes) (England) Regulations 2012. In simple terms the first regulates how the admissions criteria for a school is set up, and the second sets up the formal appeals system and procedures that must be followed if a parent appeals against the refusal to grant a place at a school they applied for. The third governs the limitations placed on admission authorities in restricting infant classes (which consists of Reception, Year 1 & Year 2 or 5, 6 and 7 year-olds) to no more than 30 pupils per qualified teacher, subject to some very limited 'permitted exceptions'.
- 1.2 Admissions appeals are dealt under the School Admissions Appeal Code 2012 (which should be read alongside the School Admissions (Appeals Arrangements) (England) Regulations 2012). It applies to all appeals lodged in respect to any maintained schools in England (including academies), the purpose of which is to ensure that "admission appeals are heard in a fair and lawful way".
- 1.3 **Non Infant Size Class Admission Appeals**
- 1.4 Each school or academy has a designated Admission Authority that is responsible for the whole admissions process. It should be clear from the admissions paperwork who the Admission Authority is for a particular school.

Each Admission Authority must publish its own admission appeals timetable for organising and hearing appeals on their web site by 28 February each year.

- 1.5 Parents must follow the appeals process and strict time limits apply to lodge an appeal (which must be in writing setting out their grounds of appeal). The time allowed has been increased to “at least 20 school days “(Note: The actual length of time given will have been set by the individual Admission Authority in their timetable). This appeal letter and any supporting documents are extremely important because they should set out the parental case for why their child should be granted a place at the school in question.
- 1.6 There is an opportunity to submit late evidence and the deadline for this will be fixed as part of the Admission Authority timetable. The submission of late evidence should be avoided if at all possible because as it will be at the Panel’s discretion as to whether or not it will allow late evidence to be submitted.
- 1.7 The appeal hearing is operated on a two stage process. In relation to the first stage the appeal code sets out: -

“3.2 The panel must consider the following matters in relation to each child that is the subject of an appeal: -

Stage 1

- a) *whether the admission arrangements (including the area’s coordinated admission arrangements) complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998; and*
- b) *whether the admission arrangements were correctly and impartially applied in the case in question.*

Stage 2

3.3 The panel must then decide whether the admission of additional children would prejudice the provision of efficient education or the efficient use of resources.”

- 1.8 It is rare that an admission authority would be mistaken in respect of 3.2 a) or b). However, the paragraph 3.3 issue can be critical in achieving as successful outcome to the appeal. If the Admission Authority cannot prove prejudice the Panel has to uphold the appeal at this first stage. Case law has determined at this stage the characteristics and circumstances of the particular child in question will not, except in extreme cases, be relevant to the question of whether the admission will cause prejudice (R (on the application of M) v Haringey Independent Appeal Panel [2010] EWCA Civ 1103). Furthermore, the Code requires that an Admission Authority must, in non-infant class size appeals, be able to demonstrate prejudice over and above the fact that the

Published Admission Number has already been reached. What this means in practice is that for a school to successfully pass this test it would have to demonstrate, within the report to the panel, how and where the impact of an additional child or children would prejudice the efficient education or efficient use of resources. This is usually done by a school providing information on health and safety aspects, physical accommodation and levels of SEN pupils and / or with additional educational needs amongst other areas.

- 1.9 If the numbers of appeals for a place at a particular school are so numerous that granting all of those children a place would cause prejudice for the school, then a parent's individual case (and all the others) has to proceed to stage 2 of the appeal process.
- 1.10 If the appeal has to proceed to the second stage the panel must balance the prejudice to the school against the appellant's case for their child to be admitted to the school. It must take into account the appellant's reasons for expressing a preference for the school, including what that school can offer the child that the allocated or other schools cannot. If the panel considers that the appellant's case outweighs the prejudice to the school it must uphold the appeal. [Paragraph 3.8].
- 1.11 Since most appeals proceed to the second stage, for the majority of parents their written case and the evidence they produce to support it will be critically important. The Panel will have seen this in advance. The hearing will be the chance to re-enforce that case.
- 1.12 Parents should be aware that where there are lots of other appeals relating to the same school paragraph 3.9 (below) will come into play.

“where the panel finds there are more cases which outweigh prejudice than the school can admit, it must then compare the cases and uphold those with the strongest case for admission. Where a certain number of children could be admitted without causing prejudice, the panel must uphold the appeals of at least that number of children.”

- 1.13 In other words the parental case must be strong enough to prevail over any of the other cases when the panel has to make comparisons. In practice this can be a very high hurdle to overcome.
- 1.14 Parents who embark on the admissions appeal process can find it hard and stressful. In relative terms there are only a small number of appeals that succeed each year. Grammar schools, faith schools and infant school appeals have additional factors that have to be considered.
- 1.15 **Infant Class Size Appeals**
- 1.16 The law states that there must not be more than 30 children in an infant class (that is, classes containing reception, year 1 and year 2 children) per qualified teacher. This applies even if other adults are always present (i.e. teaching

assistants), and / or some children are absent. There are a few circumstances in which an additional child or children may be classed as a 'permitted exception' which causes an infant size class to go over 30. But if children leave and the class size returns to 30, that does not mean extra children can be admitted again. The Government has listed the circumstances in which a child can be classed as a 'permitted exception'. There are 8 categories identified which includes; twins or children from multiple births, children of armed services parents, looked after children (or previously looked after children), and children who have special educational needs to name a few.

- 1.17 So when a parent is appealing for a place in an infant class, the panel's task is to review the decision already made. This must be assessed on the information provided by the parent at the time the Authority made its decision. It does not have the flexibility to say that a parent's personal circumstances mean that they 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 significantly different and much harder for a parent to win when compared to a non-infant class size appeal.
- 1.18 Because some schools organise their teaching in mixed-year classes, this sometimes means that infant class size prejudice will not occur until a subsequent year and it is outside of the panel's remit to direct how the school organises its classes. Where a school admits 20 children each year, but teaches reception, year 1 and year 2 in two classes of 30, an appeal for a place would be an infant class size appeal. Another example is where some schools admit 45 in 2 reception classes and then combines classes with missed ages in years 1 and 2. When the children move on to the following year when classes are combined and classes reach the infant class size limit. This is known as future infant class size prejudice. The numbers can sometimes seem quite complicated but this would be explained to you in the admission authority's report to the appeal panel, and would be properly considered by the panel. If the classes do have less than 30 children in them, the appeal should be an ordinary non-infant class size appeal.
- 1.19 If the admissions authority has made a mistake in applying the admissions criteria which means that a parent has been wrongly denied a place to which their child would have been entitled to if the error had not occurred, then the panel will uphold the appeal. Such mistakes might be: -
- not taking account of a sibling at the school*
 - the admission authority misplacing an on-time application (backed up by evidence)
 - not measuring the home to school distance accurately
 - not placing a child under the right admission criteria*

** it is important to note, however, that, in such examples, it can only be deemed a mistake on the Authority's behalf where a parent submitted the information in their application form and submitted it on-time. For example if a parent failed to put a sibling connection on their form, then the Panel can only make a decision on how the Authority made its*

decision (at the time it made that decision) and on the information it had at its disposal. Remember, the panel's job is to review the original decision on the information available at that time.

- 1.20 The panel can also uphold an appeal if it considers that the child would have been offered a place if the admissions arrangements had been 'contrary to mandatory provisions in the School Admissions Code' which also resulted in a child being denied a place that they would have been entitled to. This is something which should properly have been sorted out well before an appeal, but if the child missed out on a place under these circumstances. In such cases, the panel should uphold the appeal.
- 1.21 The panel can also uphold an appeal if it considers that the decision not to offer a place was 'perverse in light of the published admission arrangements'. Parents often complain that the panel should have upheld their appeal because the decision to refuse a place was perverse. The threshold for the perversity test, however, is extremely high in infant class size appeals.
- 1.22 The following is an extract from the Local Government Ombudsman website in relation to the perversity test: -

*"Most parents who have been refused a place at their preferred school may consider this refusal to be perverse. But the word has a stronger meaning in its legal sense. It means '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'. A decision that makes it impossible for a parent to transport their family to school on-time, or even impossible for them to continue working, is very unlikely to be perverse. The courts have established this".**

* Again, this is based on the information provided to the Authority by the parent at the time it took its decision.

1.23 **Recourse arising from an Appeal**

- 1.24 Parents have the right to complain to the Ombudsman for all maintained schools and to the Education Funding Agency (EFA) for all Academies and voluntary aided / controlled schools where they believe that there has been maladministration in their case. Any case made to the Ombudsman or EFA must be on any aspect of the Appeals Procedure solely as it is not another chance for a parent to have another appeal. The Ombudsman or EFA will investigate the complaint to determine if maladministration within the Appeals process has occurred, or not. Depending upon the determination made, the Ombudsman or EFA will generally decide one of 3 things: -

1. that there is no case to answer and maladministration has not occurred;

2. that maladministration has occurred to a level where it would recommend that a fresh appeal in front of a fresh appeals panel and Clerk be convened;
3. that maladministration has occurred to a level where it recommends the admission authority to consider offering the child in question a place at the school in question.

It is worth noting that both the Ombudsman and EFA do not have powers to directly overturn an appeal panel's decision.

- 1.25 The only other recourse available would be for a parent to apply for a judicial review through the courts. This would have to be done solely on an error of law, which would be extremely rare in the vast majority of cases. Parents should be made aware that if they wished to proceed with a judicial review, it is a very costly exercise.

1.26 The role of a Councillor at an appeal hearing

- 1.27 The reason for setting out the appeals process in such detail is that members will appreciate that the way the legislation is set out there are only specific grounds for upholding appeals and that a lot of appeals statistically are unsuccessful. These appeals are as stated previously very stressful for parents and children, and the hearings have potential to be highly emotive and confrontational. On some occasions elected members are asked to represent parents, or support them in their appeal. This can often be at short notice. Whilst in the majority of cases elected members represent parents extremely well in such appeals, there have been occasions where elected members, in representing parents, have done so in such a manner that they have inadvertently not presented the case for the parents in the best manner possible. This has probably been mainly through a lack of understanding about the process and law governing such appeals. Elected Members are perfectly at liberty to represent parents if they wish to do so but it may be useful for all elected members to receive a briefing in respect of school admission appeals in order that they can fully represent parents if they choose to do so, but also so they understand the limitations and legalities surrounding the appeals process.

- 1.28 Further to the above, it was felt that it would be helpful to set out some examples of bad and good practice for the benefit of elected Members should you be asked to advocate on behalf of a parent or parents at a school admission appeal hearing.

1.29 Bad practice;

Examples of behavior to avoid include: -

- Shouting at appeal panel members;
- Implying that the office of Councillor gives an elected Member influence over the Clerk or Panel;

- Briefing parents on politically motivated issues to raise as questions in appeal hearings;
- Listing a long political CV at the beginning of hearings.

1.30 Good practice;

1.31 The biggest aspect a Councillor is likely to face in representing a parent at an appeal is to manage their expectations.

Whilst parents are sent a wealth of information before they attend an appeal, they often do not fully understand the limitations placed on panels (particularly in relation to infant class size appeals) and / or are so emotional that they feel they have a chance to win their appeal even where their case might not necessarily be that strong.

For this reason, if you are called to represent a parent at an appeal, in your capacity as an elected Member, consider the following points: -

- inform the parent of the limitations of the appeal panel;
- at the appeal, try to ensure that you focus on relevant facts which a Panel can take into consideration (& conversely avoid raising irrelevant points which are outside of a panel's remit)
- where a parent is contesting or asserting something specific, please ensure evidence / proof is submitted as the panel will attach limited weight to verbal assertions when compared to written evidence.

2.0 Resource and legal considerations:

2.1 None directly related to this report. The complaints procedure is being managed within Legal and Democratic Services from existing resources. If there is a considerable increase in complaints or the council receives a very serious and complex complaint, consideration may need to be given to outsourcing some work if the demand cannot be met from existing resources.

3.0 Performance and Risk Management issues:

3.1 Performance and risk management are a feature of all council functions. It is important that council policies and procedures are reviewed and updated on a regular basis. If the council fails to do this there is an increased risk that the council will be subject to legal challenge or litigation.

3.2 In terms of performance it is important that both Elected Members have a clear framework of standards to follow in delivering services to the community. These frameworks provide accountability and transparency in respect of the way in which the council delivers services.

4.0 Equality Implications:

4.1 In maintaining up to date policies and procedures the council will ensure that services are delivered fairly in an open and transparent manner. There are

specific requirements in both codes that elected members and officers observe equalities. It is important that complaints are dealt with in a fair and transparent manner.

5.0 Consultation:

5.1 There is no requirement to consult on this report.

Author:

Tony Cox
Head of Legal and Democratic Services
☎ 01922 654822
✉ coxt@walsall.gov.uk