

# School admission appeals: are parents being heard?

**Focus report: learning lessons from complaints**  
September 2014

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To protect identities, real names are not used in this report.

# 1. Introduction

All parents want the best education for their children and some schools are more popular than others. Each year many families face disappointment when their preferred school is over-subscribed and their children are not offered a place.

The admission appeals process exists to ensure parents and children have the opportunity to make an appeal for a place and to have it heard fairly and impartially. This report is about the complaints we receive when parents and children have cause to be concerned that their appeal has not been carried out fairly.

In 2013/14 the Local Government Ombudsman (LGO) received 747 complaints about school admission appeals. This figure indicates a **decrease over the last four years of 50% coinciding with the growth in academies and free schools** which are not in our jurisdiction. This report highlights some of the issues arising from complaints we upheld, many of which are problems similar to those identified in our [last report](#) in 2011. The stories which follow demonstrate what can go wrong during the admissions appeals process in relation to:

- > excepted pupils, for example those children from families in the Armed Forces;
- > the proper process for infant class appeals;
- > arrangements for in-year admissions, when families move into a new area;
- > sixth form admissions;
- > information and clerking;
- > taking proper account of special circumstances.

By sharing the lessons from our complaints we hope this report will support admission authorities and schools to reflect on their own arrangements to ensure they are as effective as they can be. There is also a key role for councillors to hold bodies to account and we provide some notes to help reassure themselves that their local appeals process is fair and independent.

We hope the report will also help parents to understand their rights in the admission appeals process, and be aware that they are entitled to independent resolution by the LGO if they have an unresolved complaint regarding a school within our remit.

## 2. Legal context

Parents are entitled to express their preference for the school they wish their children to attend, but do not have outright entitlement to a place at the school they like best. Local admission arrangements are made in each area and if a school is oversubscribed, the parent and child may be disappointed. At that point, parents can appeal for a place at their preferred school.

If a parent believes an appeal hearing has not been conducted fairly, they can complain to the [Local Government Ombudsman](#). We have the power to investigate complaints about local authority community schools, voluntary controlled and voluntary aided schools and foundation schools. Academies and free schools operate independently of local authorities and we do not have powers to investigate complaints about these.

Our investigations will often take into account local admission policies. The Office of the Schools Adjudicator is responsible for clarifying the legal position on admissions policies in schools.

### The right of appeal

The admission 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.

The aims of the appeal hearing are:

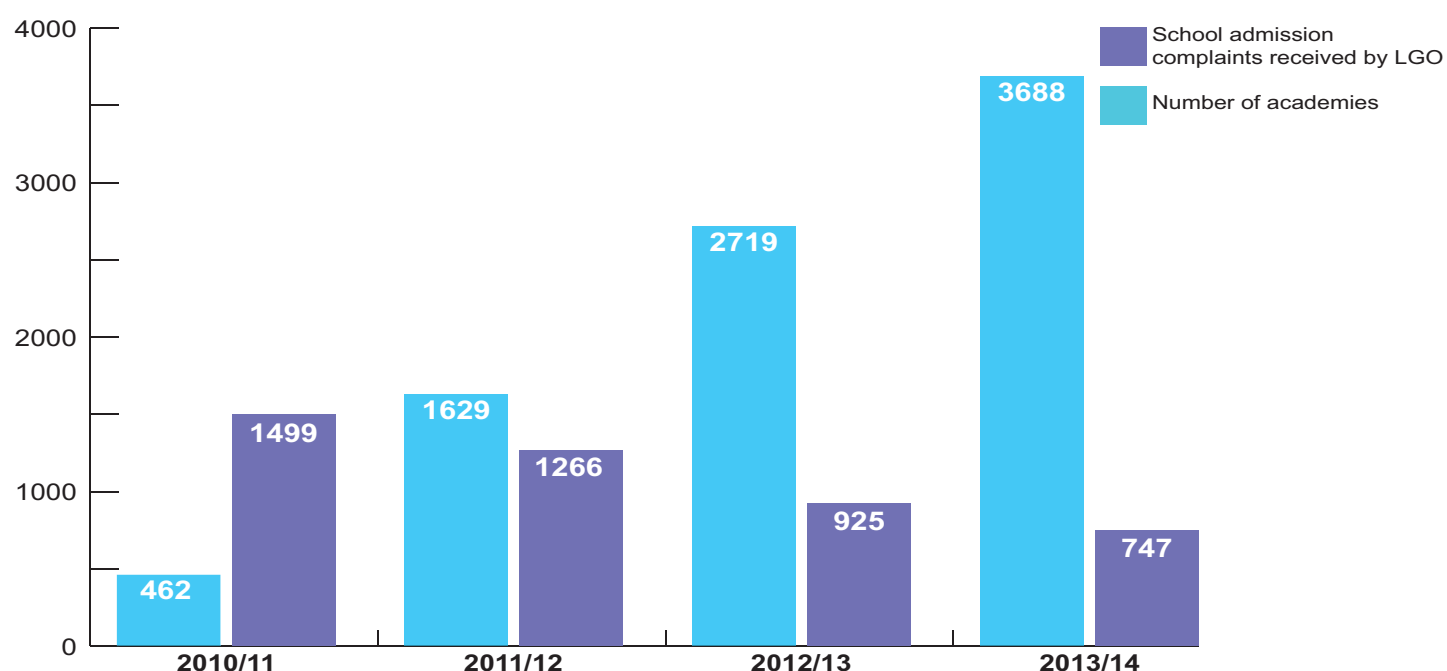
- > to allow the school to demonstrate how the admission of another child would 'prejudice' (or prevent) the provision of efficient education or the efficient use of resources for other pupils; and
- > to allow the parents an opportunity to explain why their child's needs and circumstances might outweigh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

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

The conduct of appeal hearings is governed by a Code of practice that aims to ensure that hearings are impartial, structured and fair to everyone involved. A vital function of the Code<sup>1</sup> is to provide procedural guidance and ensure that communication is clear and consistent at all stages of the process.

[\[1 School Admission Appeals Code, 2012\]](#)

# 3. Complaint numbers and trends



The number of complaints we receive about school admission appeals has followed a downward trend in recent years. In 2013/14, the 747 complaints and enquiries received was 50% less than the 1,499 we received in 2010/11. Data from the first quarter of the current year indicate that we may expect numbers to follow a similar pattern for 2014/15.

Over the same period, the number of academies and free schools, which we do not have jurisdictional powers to investigate, has increased significantly from 462 to 3,688<sup>2</sup>. Department for Education statistics<sup>3</sup> show that academies and free schools made up a third of all school admissions for entry into the 2013/14 academic year. This would indicate that the main reason for a fall in complaints to the LGO is because the number of people who are eligible to complain to us has substantially reduced.

The LGO upheld 25% of all complaints last year where we carried out a detailed investigation, meaning that we found fault in some way in how the admission authority or school had acted.

## Pressure on places

For the 2013/14 academic year, there were 1,443,870 admissions in England and 50,550 appeals lodged, of which 13,785 related to academies and free schools<sup>3</sup>.

Comparable figures are not available to assess whether the recent trends in national admission appeals have mirrored those of the complaints to us, however research suggests that schools are likely to experience pressure for places in the near future. Projections for the number of pupils in all state funded schools show there will be close to 1 million additional pupils (full time equivalent aged up to and including 15) between 2013 and 2021 – an increase of just over 13%<sup>4</sup>.

Analysis of DfE figures by the Local Government Association suggests that as many as two in three councils in England could see more children looking to start primary school than they have places for, by September 2016<sup>5</sup>. In certain parts of the country the problem is especially acute, with the analysis claiming that particular boroughs of London will need to increase their school capacity by 25% or more by the same timeframe.

[2 Source: Open Academies Projects]

[3 Department for Education Admissions Appeals statistics: figures based on appeals lodged by 1 September 2013]

[4 Department for Education: National Pupil projections - future trends in pupil numbers - March 2013]

[5 Local Government Association: Councils warn of rising demand for primary school places: September 2013]



## 4. Key issues: remedying injustice & improving services

Behind every complaint to the LGO there is a child facing uncertainty about which school they will attend, and concerned parents worried about their son or daughter's education. In this section we highlight some of the cases we have dealt with recently. These complaints are a small sample of the issues that we have addressed, but they represent recurring themes where we have found fault in the way the system has been applied. In each case our role has been to remedy any injustice caused to individual pupils and parents, and to use the learning from complaints to avoid the same mistakes in future. We hope these stories will help improve the appeals system for the next school year and assist parents in exercising their right to choice.

### Excepted pupils and appeals for infant classes

When a parent appeals for a place in an infant class of 30 pupils there are normally very limited grounds for a successful appeal. This is because the law says that an admission authority cannot admit more than 30 pupils to a key stage 1 class.

However, there are certain circumstances when an admission authority can choose to admit a child into an infant class of 30 pupils. This is when the child fulfils one of the 'excepted pupil criteria' which are found in the School Admissions Code<sup>6</sup>. One of the 'excepted criteria' is children of UK service personnel that are admitted outside the normal admission round – an example of child from an Armed Forces family not being considered as such is shown in the case study below.

If an admission authority chooses not to offer a place to a child that fulfils an 'excepted pupil criterion' then any subsequent appeal should follow the process described in the 'The right of appeal' section earlier in this report. It should not follow the more restrictive 'infant class size' appeal process. We have found fault with admission authorities for failing to consider whether or not to admit children under the excepted pupil criteria, and for using the incorrect appeal process.

#### James's story - child from Armed Forces family disadvantaged

Roger was a serving member of HM Armed Forces. He was unable to make an application for a school place for his son, James, during the normal admissions round because he was posted in Germany.

In March he telephoned the council's admissions helpline and explained that he would be returning to the area from his posting, and wanted information about how to apply for a school place. Later that month he completed an application which named three preferred schools.

In May, Roger appealed against the council's decision not to offer his son a place at one of his preferred schools. He explained that he had returned from Germany having served in the Army, and asked the panel to reconsider the decision not to offer James a place in light of this information.

The panel members considered the case under infant class size procedures. They found that the admission of an extra child would breach the infant class limit of 30 pupils and decided that the admissions arrangements had been applied properly. Because of this, the panel rejected the appeal.

We found the council had not provided enough information in its prospectus about admission arrangements for children of families in HM Armed Forces. We also thought the panel had not been able to show that it had properly considered Roger's connection with the Army, and how this may affect the procedures followed by the appeal panel.

In response to our investigation, the council agreed to provide a fresh appeal for James. It also agreed to make improvements to the information it provides in its prospectus and its application forms about the arrangements it made for children of families in HM Armed Forces.



## 4. Key issues: remedying injustice & improving services

### In-year admissions

When a family moves into a new area, the parents or carers will normally apply for places for their children at local schools. Sometimes it is difficult to find a school with places available, because the parents are applying during the school year.

When a child comes into the area, the council should take active steps to identify a school and should not let a child remain out of school for longer than absolutely necessary. However, sometimes we receive complaints about children arriving in a new area and, despite the best efforts of their parents, remaining without a school for too long.

#### Cathy's story - left out of school after moving home

Cathy is the six-year-old child of a single mother, Jeanette. They moved home and applied to the council for a school place. The council received the application in March. Jeanette listed six preferences, the maximum allowed on the form.

There were no vacancies at any of her preferred schools. The council did not offer her a place for her child at any other school. It says there would have been a vacancy at a seventh school but it did not think it would be constructive to offer her a place there as she would probably refuse it on grounds of distance from home.

Jeanette contacted the council several times to find out what was happening with her application. The council said it gave her information about her position on the waiting list but she was not given any other advice or information.

On 4 September she complained to us. She said she had been unable to get any work as she had to stay home to look after her daughter.

On 13 September the council offered Cathy a place at the seventh school which was over seven kilometres from her home. It provided help with home to school transport.

We found that the council's actions were inadequate. The council took no action to identify a place after telling Cathy her preferred six schools were full. It did not offer any advice or alternative education. Nor did it offer Jeanette a right of appeal against the refusal of any of the places she applied for. Its only strategy was to keep Cathy on the waiting lists until a vacancy arose.

The council accepted it should have offered Cathy a place sooner and given Jeanette the opportunity to appeal. It apologised to Jeanette. We also asked the council to pay Jeanette £1,000 compensation for the loss of a term of school. The council paid the remedy and has since allocated the child a place at another school.



## 4. Key issues: remedying injustice & improving services

### Appeals for school sixth forms

The law says that school sixth forms must follow the requirements of the School Admissions Code when they determine their admission arrangements. Although they are permitted to take account of a young person's GCSE results, they cannot take account of behaviour or attendance records from previous schools when deciding whether to offer a place to a young person, and the admission arrangements must be clear and objective.

If a young person is refused entry to a school sixth form, they have a right to appeal to an independent appeal panel. Appeal panels must follow the process set out earlier in this report.

We have found fault with school sixth forms for operating admission procedures which do not comply with these requirements, and for not running appeals in accordance with the law.

#### Ben's story - unfair admission policy at sixth form

A school refused to admit Ben to its sixth form because of an incident of poor behaviour in the previous school year which resulted in a temporary exclusion. The school said entry to its sixth form from year 11 was dependent on good behaviour and that pupils had to fit in with the 'ethos' of the school.

In June, Ben complained to the Ombudsman about the school's decision. In response to the Ombudsman's enquiries, the school said it would arrange an appeal for Ben, but it would not happen until mid-September, after Ben had received his GCSE results and after the new school term had started. We decided Ben should not have to wait such a long time for an appeal and decided to continue with our investigation into the complaint.

We found the school had not acted properly when it refused Ben entry to the sixth form. The school should not have taken account of Ben's behaviour records from year 11. We also considered the school had had subjective admission arrangements, because it was not possible to objectively measure whether a pupil fitted in with the school's 'ethos'.

In response to our investigation, the school agreed to offer Ben a place in the sixth form. It agreed to change its admission arrangements to the school so that it only took account of academic achievements when deciding whether or not to offer places to young people.



## 4. Key issues: remedying injustice & improving services

### Inaccurate information & poorly clerked appeals

Appeal clerks must send appellants all the written materials within a reasonable time before their appeal. The admission authority's written case must be accurate, and clearly explain why the place at the school was refused, and on what grounds the appeal is being opposed.

Sometimes an admission authority might introduce new evidence at the appeal itself. This is acceptable, but if it happens, the panel should offer to adjourn the hearing so that the appellant can consider the new information. Appeals can often be daunting experiences for parents, and they may be too nervous to ask for an adjournment themselves – it is important that clerks and panellists are aware of this.

It is also important that the clerk keeps an accurate record of the panellists' decision making, and sends a letter to the appellant within five days of the appeal which clearly explains the reasons for the panel's decision.

We sometimes find cases where the whole process is not administered properly, with the admission authority failing to provide correct information to parents in advance of the hearing, followed by a poorly managed hearing, and decision letters which fall below an acceptable standard.

#### Rose's story - catalogue of administrative errors at hearing

Frank and Jessica applied for a place in a reception class for their daughter, Rose. The council, as the admission authority, rejected their application on the grounds that the school had already reached its published admissions number of 28 pupils, and if it admitted any more children it would be prejudicial to the running of the school.

When Frank and Jessica appealed against the decision, the council told them the appeal would follow the infant class size procedures. This meant there were very limited chances of it being successful. In addition to this, prior to the hearing the council sent Frank and Jessica paperwork relating to another child whose parents were appealing for a place at the school.

At the appeal hearing, the presenting officer produced the correct papers for Rose, but the panel did not provide Frank and Jessica an opportunity to consider them. The panel went on to reject the appeal, but initially failed to send Frank and Jessica a decision letter, and instead informed them of its decision over the telephone.

We found a catalogue of errors in the appeal process. The council was wrong to arrange an appeal on infant class size procedures. This is because there were only 28 pupils in the class, and the infant class size procedure only becomes relevant in appeals for places in infant classes which have reached the statutory limit of 30 pupils.

We also found the appeal panel should have adjourned the hearing so that Frank and Jessica had an opportunity to consider the new information the council produced on the day of hearing. We also found the clerk's notes of the appeal did not properly record the reasons for the panellists' decision, and the clerk failed to send a decision letter in the correct time frame.

In response, the council offered to hold a fresh appeal which followed the correct procedures and it agreed to advise its appeal panels to offer to adjourn hearings if new information was presented during an appeal.

## 4. Key issues: remedying injustice & improving services

### Failure to consider each child individually

When a parent appeals for places for more than one child, the appeals are sometimes organised to be heard during the same sitting. If this is done correctly, it causes no injustice, but in some cases, the panel fails to consider each child separately. Sometimes this means that the individual circumstances in each child's case are not weighed up properly and it is not possible to tell how the decision was made for each individual.

We consider this practice to be a breach of natural justice, because every person who takes a matter before a public body such as an independent appeal panel is entitled to a fair hearing and this is not possible if the cases for two different children are not differentiated. This is the case even if the arguments raised on behalf of both/all children are similar.

Where councils fail to do this we normally recommend a fresh hearing and clearly indicate that the appeal for each child should be considered separately. One hearing may follow another within the same sitting, but the clerk's note must show clearly how each separate appeal was heard and how its decision was made. The clerk should also ensure that a decision letter is sent in relation to each child.

#### Hannah's story - not being treated as an individual

Hannah's mum appealed for a place for her at a school, arguing that the school she had been offered was too far away for her to walk and there would be difficulties transporting her to school. She complained to us on behalf of Hannah, but at the same time, she had also appealed for a place at the school for her other daughter. In Hannah's case, she was appealing for a place in reception, but in her sister's case, she was appealing for a place in Year 1.

We looked at the notes to the hearing and it was clear that the panel had considered both children together. Nor did the panel's decision letter differentiate between them. The arguments Hannah's mum made in the appeal for Hannah and her sister were similar, but it is an important matter of principle that the appeals for two individuals should be heard separately – whatever arguments the parent wishes to use on their behalf.

We recommended a fresh hearing for a place for Hannah at her preferred school and the same outcome for her sister in a separate investigation.



## 4. Key issues: remedying injustice & improving services

### Taking into account irrelevant information

When hearing appeals, the independent appeal panel must only consider information which is relevant. Generally, what is relevant is clear, but sometimes a panel can have difficulty understanding what to consider and what to disregard. For example, the Admissions Code makes it clear that a panel must not allow a representative of the school to support an individual appeal, as this could create a conflict of interest and unfairness to other appellants. The panel needs to be aware that there are several ways in which this can happen, as illustrated below.

#### **Jake's story - appeals panel influenced by the school**

Jake's dad applied for a place at a faith school for his son. His daughter was already attending the school. Previously, non-Catholic siblings had had high priority but by the time Jake's dad applied, that had changed.

Even so, he heard that five other people with non-Catholic siblings were given places at the school on appeal. For that reason, he could not understand why his own child was denied a place when he appealed.

We looked at the other five other appeals and in some cases, the panel had allowed itself to take into account support from the school, which is a breach of the Admissions Code. The panel had also taken into consideration 'commitments' the school had made before the rules changed to allow siblings to have places. These were strictly irrelevant because the admission criteria for the school had changed. The panel should not have taken either of these things into account.

To remedy the situation we asked the school to offer Jake a place.



## 4. Key issues: remedying injustice & improving services

### Failing to consider disability discrimination properly

The law sets out certain 'protected characteristics' and disability is one of those. If a parent tells an appeal panel that they think their child has been discriminated against because of their disability, the panel must consider this properly. Appeal panels are trained to do this and some councils have a form they can fill in to make sure they make a fair decision and record it properly. In some cases, panels fail to give disability discrimination proper consideration and when this happens, we criticise the panel.

#### **Kirsten's story - disability discrimination not properly considered**

Kirsten had dyslexia and it was agreed by the council that she should be given a separate room in which to take her selection tests for grammar schools. This was so that she could read the questions out loud without disturbing others. On the day, she was put in a smaller room, but with other children with range of disabilities, so she could not read out loud.

Kirsten failed the tests and her mother appealed for a place, arguing that she was of grammar school ability – she just had not had a proper chance at the test because she could not read aloud. In effect, she was saying that her child had been discriminated against on grounds of her disability. The panel should have filled in the council's discrimination form, so ensuring that they considered discrimination in the way they were trained to do and recorded what they found.

The council agreed this should have been done and arranged a fresh hearing for the child.

# 5. Putting things right

## How we remedy injustice

We cannot overturn an appeal panel's decision but, if we find that faults of the panel have led to injustice for the complainant, we 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.

We are 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.

## Promoting good practice

We recommend the following best practice to ensure hearings are fair for all.

- > If a child comes into the area, the council should take active steps to identify a school and should not let a child remain out of school for longer than absolutely necessary.
- > If an appeal is based on a child being an 'excepted pupil' it should be heard as an ordinary 'prejudice appeal', not an 'infant class size appeal'. This means it should follow the process described in the 'The right of appeal' section earlier in this report.
- > Appeal clerks must send appellants all the written materials within a reasonable time before their appeal and must consider offering an adjournment if the parents have not had a chance to read and think about them before the hearing.
- > Appeal panels must consider each child separately. Although it is not fault for the same panel to hear the cases for different children during the same appeal hearing, they must separate their consideration of each child's case and record each decision separately.
- > Appeal panels must be careful to consider all relevant evidence – and no irrelevant evidence.
- > If a parent raises a discrimination issue, the panel should consider this in the way it has been trained. It should make a careful record of how it has considered it and the decision.

## Promoting local accountability - support for scrutiny

Local authorities in England have an important role to play in supporting parental choice of school and fair local admission arrangements. Elected members should ensure that the admission appeal process is independent, fair and robust in accordance with statutory guidance. They should reassure themselves:

- > the recruitment and appointment of independent admission appeal panel members is open and transparent;
- > that panel members, in particular Chairs, are adequately trained and supported by professional clerks;
- > that panel clerks are kept up to date on the law, guidance and best practice;
- > that admission criteria are being effectively and fairly applied;
- > the information and advice for parents about the appeal process is clear, readily available and signposted e.g the appeals timetable must be published in line with timescales set out in the Schools Admissions Code.

# 6. The role of the Ombudsman

For 40 years the Ombudsman has independently and impartially investigated complaints about councils and other bodies within our jurisdiction. Our services are free of charge.

If we find something wrong, we can ask the council or admission authority to take action to put it right. What we ask them to do will depend on the particular complaint, how serious the fault was and how the complainant was affected.

We have no legal power to force councils or admission authorities to follow our recommendations, but they almost always do. Some of the things we might ask them to do if the complaint is about a school admission appeal are:

- > arrange for a fresh hearing
- > offer a child a place, if we find they should have been offered one in a correctly heard appeal;
- > recommend a review of the admission criteria and/or appeal procedures.

## Further information

Visit our website at [www.lgo.org.uk](http://www.lgo.org.uk)

If you have a complaint you would like to make about a council you can contact us on:

0300 061 0614.

## Local Government Ombudsman

**PO Box 4771**

**Coventry**

**CV4 0EH**

**Phone: 0300 061 0614**

**Web: [www.lgo.org.uk](http://www.lgo.org.uk)**

**Twitter: @LGOmbudsman**