

Local Government and Social Care

Ombudsman

Advice Team 0300 061 0614

Infant class size appeals

This fact sheet is aimed primarily at parents who have appealed for a place in reception, year 1 or year 2, and who may be considering making a complaint to the Ombudsman. Please also read our fact sheet on [complaints about school admissions](#).

What is an 'infant class size' appeal?

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). This applies even if other adults are always present, and/or some children are absent. There are a few circumstances in which an additional child or children may be classed as an 'exception' and the class sizes goes 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 an exception. They include: twins, children of armed services parents, looked after children, and children who have special educational needs.

So when a parent is appealing for a place in an infant class, the 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.

So will it be an infant class size appeal if the school admits under 30 children each year?

It might, because some schools organise their teaching in mixed-year classes, and it is not for the panel 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. The numbers can sometimes seem quite complicated but we would expect this to be explained to you at the appeal, and properly considered by the panel. If the classes do have less than 30 children in them, the appeal should be an ordinary appeal. Please see our fact sheet on complaints about [school admissions](#).

Can an appeal panel ever uphold an infant class size appeal?

Yes. If the admissions authority has made a mistake in applying the admissions criteria which means you have been wrongly denied a place, then the panel will uphold the appeal. Such mistakes might be:

- not taking account of a sibling at the school
- not measuring the home to school distance accurately
- not considering the child an 'excepted' pupil
- wrongly allocating a place to an out-of-catchment child.

The panel can also uphold an appeal if it considers that the child would have been offered a place if the admissions arrangements had not been 'contrary to mandatory provisions in the School Admissions Code'. This is something which should properly have been sorted out well before an appeal, but if your child missed out on a place because of this, the panel should uphold the appeal.

And the panel can 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 to us that the panel should have upheld their appeal because the decision to refuse a place was perverse. We do not usually uphold the complaint, because the threshold for perverse is extremely high in infant class size appeals.

What might be 'perverse'?

Most parents who have been refused a place at their preferred school 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 you to transport all your family to school on time, or even impossible for you to continue working, is very unlikely to be perverse. The courts have established this.

If the admissions authority had refused a place to a child whose family had had to move house under a witness protection scheme, a panel *might* decide that the decision was perverse. But it is the panel's decision. We will not question that decision if the panel followed the correct procedures in reaching it.

How do I complain?

Please refer to our fact sheet on complaints about [school admissions](#).

If you consider my complaint what will the Ombudsman look for?

We look at all the paperwork connected with the appeal, including the information given to parents about applying for a place, and the notes taken by the clerk during

the appeal. We are looking to see if the appeal was conducted in accordance with the School Admission Appeals Code. We find that most appeals are conducted in accordance with the Code.

What happens if the Ombudsman finds that the council was at fault?

Sometimes we find that an appeal has not been conducted in accordance with the Code. If we cannot tell whether or not the child should have had a place at the school, we will ask for a fresh appeal with a different panel or clerk. There is no guarantee that the fresh appeal will be successful, given the very limited circumstances in which this is possible. But we think it is important that parents feel they have had a fair hearing.

Very occasionally we find that the appeal panel made a mistake that resulted in the appeal being refused when it should have been allowed. In such cases we recommend that the admissions authority offers a place at the school, because this should have been the outcome of the appeal.

How long does an Ombudsman investigation take?

We give priority to complaints about school admissions appeals, because we understand how important it is to reach a final outcome as quickly as possible. But it can still take several weeks, and if your appeal has not been heard until late in the summer term, this may mean we cannot reach a decision before the start of the school year. So you should make arrangements to educate your children while you are waiting for our decision.

Typical examples of some complaints we have considered

Mr L complained that the appeal panel did not properly consider his reasons for wanting a place at the catchment school. He had recently moved to the area and would not be able to transport his children to the nearest alternative school. The catchment school already had 30 children in each of its KS1 classes, so this was an infant class size appeal. We found no fault in the appeal process.

Mrs X complained that, at her appeal, the council presented incorrect information about the number of teachers at the school. We agreed that this was unfair, because both Mrs X and the panel members should have had the correct information before the hearing. The council agreed to arrange a new hearing with a different panel and clerk.

Other sources of information

Advisory Centre of Education (ACE) website at www.ace-ed.org.uk/

Go to the Government website for the [School admission appeals code](#).

Our fact sheets give some general information about the most common type of complaints we receive but they cannot cover every situation. If you are not sure whether we can look into your complaint, please contact us.

We provide a free, independent and impartial service. We consider complaints about the administrative actions of councils and some other authorities. We cannot question what a council has done simply because someone does not agree with it. If we find something has gone wrong, such as poor service, service failure, delay or bad advice and that a person has suffered as a result we aim to get it put right by recommending a suitable remedy.

August 2019