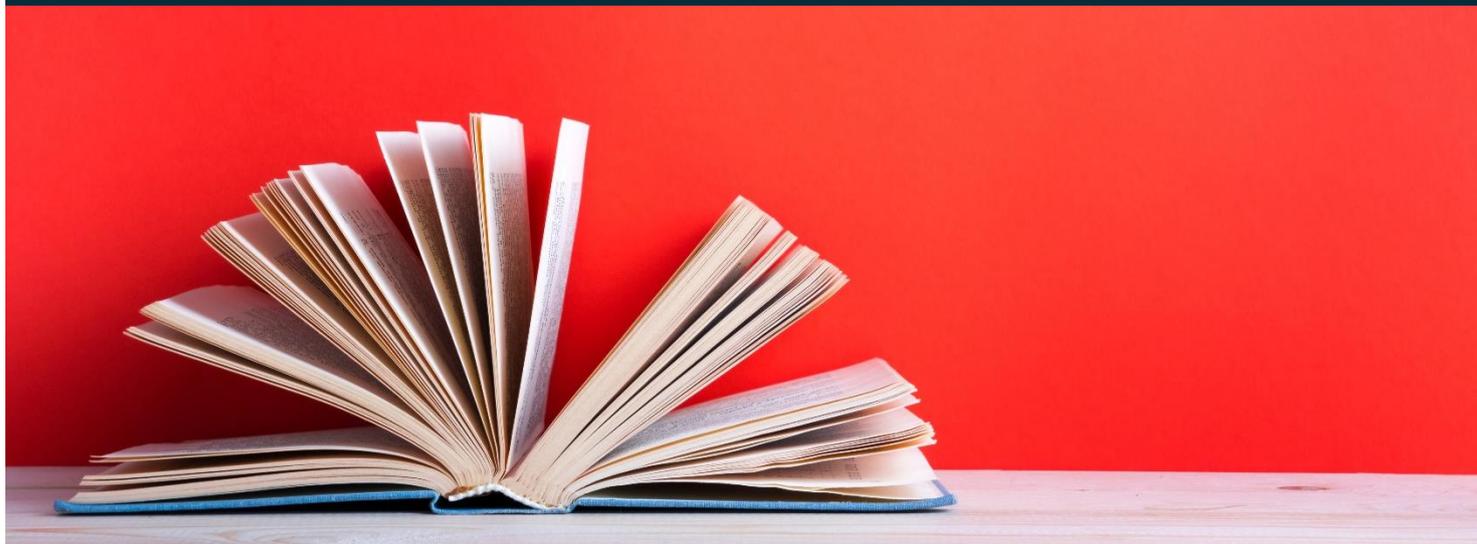


SCHOOL ADMISSIONS

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A GUIDE TO ADMISSION APPEALS AND BEYOND.

The school admissions appeal process is complicated.

Making an appeal is an emotional and potentially confusing experience.

SA Law's practical guide to making an appeal highlights the pitfalls and provides hints and tips to walk you through the process of making an admissions appeal.



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TOP TIPS FOR SCHOOL ADMISSION APPEALS

DO YOUR RESEARCH

Check the precise admission criteria that your preferred school applies in the event of an oversubscription of places.

This may vary. For example, academies, faith schools and other voluntary aided and foundation schools (including those that select some pupils by ability or aptitude) can set their own admissions criteria which may be different to the criteria set by Hertfordshire County Council.

Understand the basis upon which your child has been refused a place. This should be set out clearly in writing by the admissions authority for the school in question.

By law, this letter must tell you:

- Why your application was unsuccessful and expressly state whether the refusal was as a result of the infant class size limit of 30 pupils per class (as to which, see below)
- That you have a right to appeal and tell you how and to whom you should make such an appeal and by when
- Where you can obtain further information
- That you have a right to attend the appeal hearing.

Check how the appeal will be organised. If your preferred school is an academy, a foundation or a voluntary aided school, you should check arrangements for appeals directly with that school as well as with your local council.

"CLAIRE MACKAY IS A VERY PROFESSIONAL INDIVIDUAL, WHO TAKES HER WORK SERIOUSLY. SHE WAS VERY HELPFUL TO US IN FINDING AND PUTTING THE RIGHT REASONS TOGETHER THAT SECURED OUR DAUGHTER A PLACE IN A VERY POPULAR PRIMARY SCHOOL. I CAN DEFINITELY RECOMMEND HER SERVICES."

A FAMILY FROM ST. ALBANS

BE REALISTIC

If you decide to appeal, then be realistic. More appeals fail than succeed. In 2017 in Hertfordshire, 18% of appeals administered by Hertfordshire County Council for a place at secondary schools succeeded. For reception class places, only 2.8% of such appeals succeeded.

KNOW YOUR AUDIENCE

The appeal will be heard by an Appeal Panel composed of either 3 or 5 members.

This will include both lay members (i.e. people who are not involved in either the management of a school or the provision of education) and members with experience of education. Each member of the Appeal Panel should be unbiased. You will be told the names of the Appeal Panel members in advance and you should object if you have any reason to doubt their impartiality.

Be clear on what you will have to demonstrate to the Appeal Panel.

To do this, you need to understand the test that the Appeal Panel must apply in considering your appeal.

"WE RECEIVED A FANTASTIC SERVICE FROM PROFESSIONALS WHO HAD IN DEPTH KNOWLEDGE AND UNDERSTANDING OF THE APPEALS SYSTEM. OUR APPEAL WAS SUCCESSFUL AND I AM SURE THAT WE WOULDN'T HAVE BEEN WITHOUT THE HELP OF SA LAW, WE SIMPLY COULDN'T HAVE PRESENTED OUR WRITTEN CASE WITH THE LEVEL OF ATTENTION TO DETAIL THAT THEY ADDED. I WOULD HIGHLY RECOMMEND THE SERVICE TO ANYONE IN THIS UNFORTUNATE SITUATION."

ANONYMOUS CLIENT

THE PROCESS

SECONDARY AND KS2 PLACES

THE FIRST STAGE TEST

The Appeal Panel first considers for each child:

- Whether the admissions arrangements comply with the relevant legislation and the School Admissions Code;
- Whether the admissions criteria have been correctly and impartially applied to the child;
- Whether the admission of additional children would prejudice the provision of efficient education or the efficient use of resources at the school in question.

The Appeal Panel will uphold the appeal at this stage and you will win a place at the school if:

- It finds that the admissions arrangements do not comply with admissions law or the admissions criteria have not been correctly and impartially applied AND the child would have been offered a place had the arrangements been lawful or had been correctly applied to him/her; OR
- It finds that additional children can be admitted to the school without prejudicing the provision of efficient education or the efficient use of resources.

If your appeal is not upheld at this stage, the Appeal Panel then go on and consider the second stage test.

THE SECOND STAGE TEST

The second stage test applies where none of the criteria for upholding the appeal at the first stage have been met.

It also applies where there is more than one child who would be offered a place as the result of the first stage test but to admit all such children would seriously prejudice the provision of efficient education or the efficient use of resources at the school.

The second stage test is essentially a balancing exercise. The Appeal Panel must:

- Balance the prejudice to the school on the one hand against on the other hand the parents' case for their child to be admitted to the school, taking into account their reasons for preferring that school and what it can offer the child that other schools cannot.

Most cases are decided as a result of this balancing exercise. If the Appeal Panel find that the prejudice to the child of not having a place at the school outweighs the prejudice to the school of taking an additional pupil, the appeal will be upheld. However, if the Appeal Panel finds that there are more children with cases that outweigh the prejudice to the school than the school can actually admit, the Appeal Panel then compares all of the cases and upholds only those which show the strongest case for admission.

Preparation of your case is therefore key. You need to make your case for your child as relevant and as persuasive as possible to maximise your chance of success.

THE PROCESS

KS1 AND RECEPTION PLACES

If however your appeal is in relation to the refusal of a place in an infant class (i.e. Reception, Year 1 or 2), a different test applies. This is because there is a statutory limit of 30 pupils to one teacher. For these cases, an appeal will only succeed if:

- The admission of an additional child would not breach the infant class size limit of 30 pupils to one teacher; or
- The child would have been offered a place if the admission criteria had been correctly and impartially applied – in other words, if there has been an error; or
- The child would have been offered a place if the admissions criteria had complied with the mandatory provisions of the School Admissions Code and the relevant legislation; or
- The decision is perverse – i.e. is one which no reasonable admissions authority would have arrived at – this is very difficult to establish in practice.

If there are more children who satisfy one of the above criteria but the school cannot admit all of them without breaching the infant class size limit, the Appeal Panel must then compare each child's case and decide which to uphold.

It is therefore very important that your appeal grounds deal with each of the points that the Panel will consider and if necessary back this up with evidence.

You will also have the opportunity at the hearing of the appeal to put forward your case orally, question the Appeal Panel and answer any questions that they may ask you. It is essential to be well prepared for this hearing and if you are not used to speaking in public or feel that your emotions may take over, you are entitled to be represented by a professional adviser or a friend at the appeal hearing.

Before the appeal hearing, you will receive a copy of the admission authority's policy and a statement summarising why it was not possible to offer your child a place. You should also be sent a copy of any other document used by the admission authority or governing body as part of its case.

The Appeal Panel can either reject or allow your appeal. These are the only two options open to it.

THE OUTCOME

The outcome of your appeal will be sent to you usually within 5 school days of the appeal hearing. This must be in writing and must contain certain information. If the appeal has been unsuccessful, the letter must clearly detail the factors that were considered and give clear reasons for the decision reached. A failure to do so can result in a challenge in the High Court (see below).

If you are not satisfied with the outcome of the appeal, unfortunately in many cases you have reached the end of the road. You can consider lobbying local councillors and even your MP which in some cases can result in a place being offered. In a limited number of cases, it may be possible to apply to the High Court for a judicial review of the decision of the Appeal Panel. This option is only available if the Appeal Panel's decision discloses an error of law - for example, if inadequate reasons are given or if a member of the Appeal Panel is biased.

A further avenue of redress is to make a complaint to the Local Government Ombudsman ("LGO") if the appeal related to a place at a maintained school. The LGO investigates alleged or apparent maladministration in connection with an authority's administration and alleged or apparent failings in services and the provision of services- such as school admission arrangements and school admission appeals.

MEET THE DEADLINE

Get your appeal form in on time. For appeals for a secondary place, the deadline for most schools in Hertfordshire is **4pm Friday, 29th March 2019**.

For appeals for a primary or infant school place, the deadline in Hertfordshire is **4pm Wednesday, 22nd May 2019**. If you are appealing for a place at an academy, double check whether a different date applies.

FURTHER INFORMATION

SA Law can help you to prepare an appeal.

We recognise that parents want certainty at the outset of what the cost will be and so we offer a fixed fee school admissions appeal package. This fixed fee covers a detailed telephone call with you and the preparation of comprehensive and persuasive grounds of appeal. For a further fixed fee, we can also represent you at the oral hearing of your school admission appeal.



CLARE MACKAY

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Clare is a dispute resolution specialist with broad-ranging expertise. Clare has particular interest in education law. She regularly advises parents on school admissions appeals, appeals against the exclusion of pupils and on making formal complaints against schools, often involving allegations of bullying. She also acts for independent schools on a variety of education issues.

Clare was also a school governor of a popular and oversubscribed infant school for 4 years. As a parent Clare has been through the school admissions process herself and understands how important it is to a parent to secure a place at the right school for their child.



HELEN YOUNG

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Helen is a dispute resolution specialist with a keen interest in education law having grown up in a family of teachers. She therefore understands the demands on school places and currently acts for independent schools as part of her general practice.

Helen is also a school governor of a local secondary school. She regularly advises parents on school admissions appeals, exclusions, complaints of discrimination and SEN. She also conducts breach of contract claims against higher education establishments.