

In-Year School Appeals – Infant Class Size Legislation

A school appeals cannot be set up unless you have submitted your grounds of appeal in writing when responding to the outcome of your school application.

If you do not submit all your information and evidence, the panel has to decide before the hearing starts whether or not to accept the late information. In deciding, the panel will take into account the significance of the late information and the effect of a possible need to adjourn the hearing. It may be necessary to adjourn the hearing to a different date to enable all parties to consider further the late information/evidence submitted.

The Infant Class Size legislation states that infant classes (Reception, Year 1 and Year 2) with one teacher may not contain more than 30 pupils. Following the introduction of infant class size limits, the admission authority does not have to meet parental preference if this would mean having to take 'qualifying measures'. Qualifying measures include employing an additional teacher; building an extra classroom, or a reorganisation of classes.

The Admission Authority can refuse to give a child a place if it would take a class over 30 pupils and cause 'class size prejudice'.

The Independent Appeal Panel may only uphold an appeal if:

- The admission of an additional child would not breach the Infant Class Size limit.
- (b) The admission arrangements did not comply with admissions law, or were not correctly and impartially applied and your child would have been offered a place if the arrangements had complied or had been correctly and impartially applied.
- (c) The decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.

Given the limited nature of the possible grounds on which an appeal may be upheld, infant class size appeals are rarely successful. Parents/Carers often find it frustrating when they realise how very limited the powers of the appeal panel are. This is being drawn to your attention now, so that you can make a more informed decision about going ahead with the appeal. The purpose of this guidance is to clarify the legislation and explain the role of the Panel. It is not meant in any way to discourage you from appealing or attending the hearing which is your legal right.

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. 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.

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. For example, 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 this will be explained to you at the appeal, and properly considered by the panel.

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

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. You have to show that either the admission authority ignored relevant information, or took into account irrelevant information, or that the decision was perverse in light of the admission arrangements.

Mistakes might be

- Not taking account of a sibling at the school.
- Not measuring the home to school distance accurately. If you believe your child's home to school distance has been calculated incorrectly, raise this with the admission authority before the hearing date to enable them to check the distance.

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 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.

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'. 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'. It is a high threshold and means more than extreme inconvenience and/or practical difficulties.

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. In simpler terms it is an illogical decision or irrational/wildly ridiculous decision which is not based on the facts of the case.

Can I still attend the appeal hearing?

Appeal panels must allow parents, who are appealing against their child's non admission to a school, the opportunity to appear in person and to speak at the hearing. You are free to talk about personal factors, such as the convenience of the journey between your home and the school at the appeal hearing, but in this type of appeal the panel cannot take them into account unless they are relevant to the very limited circumstances outlined above.

You may wish to seek advice from other sources such as the Advisory Centre for Education (ACE) on the school appeals process. Advisory Centre for Education operates an advice service and provides online leaflets for parents:

[Link to ACE website](#)