

# FAQs for Breach School Appeals

## What is a Breach Appeal?

A school appeal is heard as a 'Breach' case where the admission of an additional child would breach Infant Class Size Legislation. As per this legislation, it is against the law to have more than 30 children in a class for Reception, Year 1 and Year 2 with a single qualified teacher.

## My child was not offered a place at my preferred school, what can I do?

If you were not offered a place at the school that you applied for, you can join their waiting list and you also have the statutory right to appeal this decision. You can lodge an appeal by Tuesday 17<sup>th</sup> May 2022 for a school you have applied for but were not offered.

We recommend that you still accept the place that your child was offered as this will not affect your appeal and will guarantee that your child has a school place if your appeal is unsuccessful.

## Why was I not offered a place at the school I applied for?

Your application was considered in accordance with the School Admissions Code and the school's published admission arrangements. Every school has a Published Admission Number (PAN). The PAN is the maximum number of pupils that they will admit to each year group.

Where a school receives more applications than their PAN, your application is considered against the schools' oversubscription criteria. If you were not offered your preferred school, this is usually because the school is full and there were other children who were closer in meeting the school's oversubscription criteria.

## How do I lodge an appeal?

If you are a Medway resident, you should have already been issued with an appeal form with your offer letter, or please visit your local authority's website for a form. This will need to be returned to the school. If you are not a Medway resident, please contact the school for further advise.

## When will the appeal take place?

If you lodge your appeal before 17 May 2022, your appeal will take place before 19 July 2022. Any appeals received after 17 May 2022 will be take place when reasonably possible.

## Who will consider my appeal?

Your appeal will be considered by an Independent Appeal Panel. This panel will be made up of 3 people who are independent of the school, the Trust, and the Local Authority. At least one of these Panel Members will have experience in education and at least one will be a lay person. These Panel Members will make the decision on whether to uphold your appeal or not. If the panel upholds your appeal the school must offer your child a place.

There will also be a Clerk in attendance, they are independent of the school, are responsible for keeping an official record of what is discussed and give independent and impartial advice on the appeals process and admissions law to the Panel Members.

## How will my appeal be heard?

Due to the exceptional circumstances relating to the COVID-19 pandemic, it is intended that your appeal will be heard remotely based on written submissions only. This decision has been made to ensure that all appeals are heard in a fair and consistent way in the event of any changes to

national/regional lockdowns or restrictions and to ensure that your appeal is heard before the start of the summer break.

This means that you will not be required to attend a meeting and your appeal will be considered using the written submission(s) you have included in your appeal form. It is, therefore, very important that in your appeal form, you provide the panel with a detailed written statement that includes all the information you feel would support your case.

If you have an equality consideration that prevents you from providing a written statement and you do not have reasonable support to do so, you are to make the school aware at your earliest convenience. Although the Panel would have a duty to consider your reasons, there would need to be clear grounds for them to identify an alternative format for your appeal to be heard.

### **Infant Class Size Legislation**

Every school has a Published Admission Number (PAN). The PAN is the maximum number of pupils that they will admit to each year group. The majority of appeals for admission into Reception, Year 1 or Year 2 at an infant or primary school will be heard as 'Infant Class Size Appeals'.

Statutory limits on class size mean that, apart from some very limited exceptions, infant classes of 5-, 6- and 7-year olds may not contain more than 30 pupils with a single teacher.

Where the published admissions number of a school allows for classes of 30 pupils, then the Admission Authority will have refused admission on the grounds that to admit one more child would breach the infant class size limit. Although some Reception classes may be below 30, if classes in Years 1 & 2 are combined making 30, then this is known as future breach.

Although you have a legal right to appeal under this criteria, there are very limited circumstances in which a Panel can direct a child to be admitted to a school.

The Panel has first to consider if the Infant Class Size legislation applies to your appeal.

The Panel **must** consider all the following matters:

- a) whether the admission of an additional child/additional children would breach the infant class size limit;
- b) whether the admission arrangements (including the area's co-ordinated admission arrangements) complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998;
- c) whether the admission arrangements were correctly and impartially applied in the case(s) in question; and
- d) whether the decision to refuse admission was one which a reasonable admission authority would have made in the circumstances of the case.

In Infant Class Size Appeals, the Panel can only uphold an appeal if they are satisfied that one of the above reasons does not apply in your case.

As grounds for upholding an appeal of this type are very limited, the success rate is minimal. In considering whether you wish to appeal in such circumstances, you must be aware that your personal reasons for wanting the school, however strongly you feel, cannot be taken into account, unless any of the above circumstances apply.

Parents are often distressed that their personal reasons were not considered due to the very limited criteria, therefore, please think carefully before submitting an appeal of this type.

For an appeal to be successful under "Ground (d)" the Panel will need to be satisfied that the decision to refuse to admit a particular child was "perverse in the light of the admissions

arrangements” i.e. it was “beyond the range of responses open to a reasonable decision maker” or “a decision which is so outrageous in its defiance of logic that no sensible person could have arrived at it.”

### **What happens at an appeal hearing?**

The Panel must decide:

- If the school’s admission arrangements were correctly and impartially applied in the child’s case.
- Whether the admission of an additional child/additional children would breach the infant class size limit (as detailed above); and
- Whether the decision to refuse admission was one which a reasonable admission authority would have made in the circumstances of the case.

### **What information should I provide for my appeal?**

Firstly, ensure that you have read the generic defence statement provided by the school which sets out the reasons that the school are unable to admit any additional children.

As your appeal will be conducted as a paper-based exercise only, panel members will not have the opportunity to ask you any further questions in relation to your case.

As previously stated, your personal reasons for wanting a place at your preferred school are not able to be considered, unless any of the criteria previous mentioned have not been met. Please clearly outline the reason for your appeal on your appeal form. As your appeal will be conducted as a paper-based exercise only, panel members will not have the opportunity to ask you any further questions in relation to your case.

If you believe that the admissions authority did not apply their admission arrangements correctly and this resulted in your child not being offered a place at the school, you should explain why you believe this is the case and refer to the part of the admission arrangements that you believe has not been applied correctly.

You may wish to consider some of the following points in relation to your submission if you do not feel the admission arrangements have been correctly carried out:

- What can the school you want provide for your child that the offered school cannot?
- How will you get your child to the school allocated?
- What’s the journey like to the school allocated?
- Are there any health/equality act issues raised in the case?
- What are the problems you will face if your child does not get a place at the school?
- What support do you have locally?
- What alternative arrangements will you make if the appeal is not successful?

### **Can I provide information about my child’s or my health or medical needs?**

Yes, if you believe that your child’s or your health or medical needs are relevant to your case you can include this in your appeal. However, please be aware that in order for this to have been considered against the school’s oversubscription criteria, this information must have been submitted to the school at the time of making your application.

### **Can I provide additional evidence after I have already submitted my appeal?**

Ideally, you should provide all of your evidence at the time that you submit your appeal. However, you are able to add additional information and/or evidence to your appeal at a later stage providing it is at least 5 calendar days before the date of the appeal hearing. After this point no further information can be added, as the Panel Members will not have sufficient time to consider this as part of your case.

You will be provided with a copy of all of the case documents including your appeal form, the school's individual defence statement and any other relevant information at least 10 calendar days in advance of the appeal date. All paperwork will be issued to you electronically and further instructions will be issued to you nearer the time.

### **What information will the panel need from the school?**

The school will provide a generic defence statement with the information that a panel will need. This may include:

- Was the child's application considered correctly and impartially in accordance with the School Admission Code and the school's published admission arrangements?
- How do the school organise their classes?
- Is there an exception in this case that allows us to break the law (Infant Class Size Legislation)?
- How do you measure the home/school distance and how do you ensure it is correct?  
*Distances and routes calculated will represent the shortest route to school from the child's home address using roads and paths that are known to the graphical information software (GIS) utilised by School Admissions and Transport.*

### **How will the panel make a decision?**

After an appeal has been heard the panel will make a decision to either uphold or not uphold your appeal. The panel will need to ascertain whether adding an additional child to the school would breach Infant Class Size Legislation.

### **When will I be informed of the outcome?**

The Clerk will normally notify you of the outcome within 7 calendar days. If the panel is hearing a large number of appeals, this will be 7 calendar days after the last appeal is considered.

The decision of the Independent Appeal Panel is binding to both the school and the parents and only the courts, by way of a judicial review, can overturn a decision.

If the panel upholds your appeal, the school must admit your child.

If the panel does not uphold your appeal your child will not be offered a place at the school.

### **If my appeal is unsuccessful, what else can I do?**

If you haven't already, we recommend that you add your child's name to the school's waiting list, even if you have accepted a place at another school. Schools must operate a waiting list for at least the first term of each school year of admission (until 31<sup>st</sup> December). Children who are on the waiting list are ranked by how closely they match the school's oversubscription criteria, not how long they've been on the list.

It is your responsibility to secure suitable education for your child and you may want to apply to an alternative school. If your child is without a school place, contact your Local Authorities Admission Team who will be able to advise and inform you of other available places in your local area.

**If my appeal is unsuccessful, can I appeal again?**

You can only appeal to the same school once per academic year.