



EQUAL OPPORTUNITIES

We are committed to treating everyone fairly, with courtesy and respect. We realise that everyone is different and your needs might be different. However everyone should receive the same quality of service both from the County Council and the Members of the Appeal Panel, who are independent of the County Council.

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**APPEALS RULES FOR
COMMUNITY, VOLUNTARY
CONTROLLED SCHOOLS AND ACADEMIES (NON FAITH)**

*(made on 30/03/2014 by Durham County Council
as Local Education Authority (LEA), hereafter referred to as the "Local
Authority (LA)" pursuant to Section 94 and Schedule 24 of the School
Standards and Framework Act 1998)*

1. A right of appeal lies against:
 - a) any decision made by the LA as to the school at which education is to be provided for a child; and
 - b) any decision made by or on behalf of the Governors of a community and voluntary controlled school maintained by the LA refusing a child admission to such a school (except academies).
2. The right of appeal may be exercised by the child's parent or parents, or guardian, or any person who has the care of the child.
3. Notice of appeal shall be lodged with Legal and Democratic Services at County Hall, Durham within 20 days of the date of issue of the LA's final decision in writing as to the school at which education is to be provided.

4. The notice of appeal shall be in writing and will provide:-
 - a) the name, address and postcode of the child,
 - b) proof of address of the child (i.e. **two** pieces of evidence)
(photocopies ONLY which will subsequently be destroyed):-
 - Child Benefit Statement
 - Working or Child Tax Credit Statement showing child/children(s) details, if appropriate
 - Bank Statement showing Child Benefit payment (please remove account details)
 - Recent utility bill (eg gas, electric, water, telephone)
 - Recent bank Statement (please remove account details)
 - Mortgage Statement or Tenancy Agreement (within last year)
 - Solicitors letter – exchange of contracts
 - c) if the child has a sibling (sister(s) or brother(s)/step sister(s) or brother(s) living at the same address and the sibling's date of birth (NB: Sibling is defined as children who live as brother or sister in the same house including natural brothers and sisters, half brothers and sisters, adopted brothers or sisters, step brothers or sisters and children of parent/carer's partner).
 - d) the decision against which the appeal is made,
 - e) the grounds upon which the appeal is made,
 - f) the name and address of the person or persons making the appeal,
 - g) in the case where the appellant(s) wish to be represented at the hearing, the name and address of the representative,
 - h) whether the appellant(s) wish the appeal to be considered on the basis of their written representations.
5. The appeal shall be heard by an Appeal Panel of three persons.
6. The Appeal Panel shall be constituted of independent Lay Members and at least one person with experience in education who is acquainted with educational conditions in the area.
7. The Appeal Panel shall not include any person who was amongst those who made the decision appealed against or who took part in discussions as to whether the decision should be made.
8. The Appeal Panel shall not include any person who is a teacher or a teaching assistant at a school/academy in question. The Panel shall not include; members of the LA, members/former members of the Governing Body/Trust of the school/academy in question, any person employed by the LA in a capacity connected with education (except for teachers/teaching assistants), employees of the school/academy in question or any person of whom there are doubts about his/her ability to act impartially.

9. The Chairperson shall be a Lay Member of the Appeal Panel.
10. The Clerk of the Appeal Panel shall be a representative of Legal and Democratic Services.
11.
 - a) The Appeal Panel may, where it considers it appropriate, determine more than one appeal at the same hearing and the procedure at the appeal hearing shall be modified accordingly.
 - b) Normally an appeal will be heard individually although if there is more than one appeal the Appeal Panel may hear the general case of the LA about prejudice to education at the school/academy in the presence of those parents. Thereafter the circumstances of each child would be dealt with individually if the panel finds prejudice.
 - c) Injustice could result if the appeal of one parent at an over-subscribed school/academy were to be decided before the appeal of another for the same school/academy had been considered. Where it is not possible to hear all appeals in relation to one school/academy at the same time the Appeal Panel should therefore, if practicable, adjourn its decision in relation to that school/academy until all have been heard, and then consider them.
 - d) Where two or more appeals are being decided together in respect of the same school/academy, this process may involve considering the consequences of allowing all, none, or only some appeals.
 - e) As explained in Rule 25 below this will involve consideration of the reasons given for the parents' preference and the authority's published admission arrangements. It will then be necessary to consider the consequences for the LA of complying with the parental preference and how serious they would be. The Panel must take account of these conflicting factors and reach a decision. In respect of these 'grouped' appeals the grounds for the decision should include the Panel's views about the whole of the circumstances disclosed by the appeal as well as a decision on each individual case.
12. The time and place of the appeal hearing shall be fixed by the Clerk of the Appeal Panel who shall give at least ten school/academy days' notice in writing to the appellants and to the LA, unless their right is waived by the appellants.
13. Within a reasonable time (normally 7 days) before the appeal hearing the appellants and the Clerk of the Appeal Panel shall be sent a written statement summarising the reasons for the decision appealed against and the application of the admissions policy and relevant legislation to the case under appeal (incorporating a summary of net capacity, a map/plan of the school/academy, and distance from school/academy to home if relevant to the appeal).
14. The appellants shall be entitled to attend the appeal hearing and may be accompanied by a friend or be represented at the discretion of the Appeal Panel in line with the School Admissions Appeal Code.

15. The appellants may, if they wish, choose not to attend the appeal hearing and may allow their appeal to be considered on the basis of their written representations and the procedure at the hearing shall be modified accordingly.
16. If the appellants do not appear at the time and place appointed for the appeal hearing, then the Appeal Panel may at its discretion proceed with the appeal or adjourn the hearing.
17. The appeal shall be heard in private.
18. At the appeal hearing the LA representative shall present the case for the LA first and shall be subject to questioning by the appellants and the Panel (if necessary).
19. The appellants shall then address the Appeal Panel and shall be subject to questioning by the LA representative and the Panel (if necessary).
20. The LA representative will then sum up the case for the LA.
21. The appellants shall have a final right of reply in summing up.
22. The appellants and the LA representative shall then retire and the Appeal Panel shall consider its decision in the presence of its Clerk.
23. The Appeal Panel shall take into account in considering the appeal:-
 - a) any preference expressed by the appellants for the school/academy their child should attend;
 - b) the admission arrangements published by the LA in light of relevant legislation;
 - c) such other matters as the Appeal Panel consider relevant.
24. **Infant Class Size Legislation – Class Size Prejudice**

Infant class size legislation (School Standards and Framework Act 1998 as amended) places a duty on the LA to ensure that no child in Reception, Year 1 or Year 2 is taught in a class of more than 30 children with a single qualified teacher. The LA can argue that prejudice will be caused if the school in question is required to put in measures such as appointing another teacher or changing classroom organisation. An appeal panel cannot force a school into classroom reorganisation.

The Appeal Panel may allow an Appeal once the child/teacher ratio is 30:1 only if satisfied :-

- (a) the decision was not one which a reasonable admission authority would make in the circumstances of the case - i.e. was so unreasonable that **no** reasonable body or person would have made it; or,

- (b) the child would have been offered a place if the admission arrangements had been properly implemented. (The Panel may allow the Appeal if the child **would** have gained a place in the school/academy had the arrangements been carried out correctly **not** just because a mistake had been made); or the child would have been offered a place if the arrangements had not been contrary to mandatory provisions in the School Admissions Code and the School and Standards Framework Act 1998.

25. **Other Appeals**

- (i) Where the child is in Reception, Year 1 or Year 2 and the LA does not rely on infant class size legislation or the child is at Key Stage 2 or beyond.
- (ii) The Appeal Panel shall only allow an Appeal if satisfied that, either:-
 - (a) they believe that there would be **no** prejudice to the provision of efficient education or efficient use of resources if the child were admitted **or**,
 - (b) compliance with the Appellant's preference would prejudice the provision of efficient education or efficient use of resources **but** such prejudice is outweighed by other factors relating to the child or the Appellants.

This is a two-stage process (whereas appeals on infant class size prejudice are not).

Stage 1

The LA must satisfy the Appeal Panel that compliance with the Appellant's preference would prejudice either the provision of efficient education or efficient use of resources.

If the LA fail to satisfy the Appeal Panel on one of either of the categories of prejudice the Appeal Panel must allow the Appeal and order the admission of the child to the preferred school/academy.

If the Appeal Panel find that the child would have been offered a place had the admission arrangements been properly applied, and/or the mandatory provisions of the School Admissions Code or School and Standards Framework Act 1998 been applied properly, the panel must uphold the appeal unless a significant number of children are affected and admitting all would have serious prejudice to the school/academy in question.

Stage 2

If the Appeal Panel finds prejudice as described in Stage 1 the Panel must balance this against the parents' preference and decide if the strength of the parents' case outweighs the prejudice found.

All relevant factors heard at, or relevant to, the Appeal will be considered including the consequences of the decision to both the LA and the parents/carers. The Panel will balance the conflicting factors and reach a decision.

26. If a member of the Appeal Panel is absent from the appeal for other than a brief period, then, unless the appellants agree to continue, the appeal hearing shall be void and the appeal shall be re-heard by another Appeal Panel at a time and place agreed with the appellants or by notice in accordance with Rule 12.
27. The Appeal Panel may adjourn the appeal to such time and place as it thinks fit except that, where the hearing has not been completed and the appellants are present, the time and place of the adjourned hearing shall be agreed with the appellants.
28. In the event of disagreement between the members of the Appeal Panel the appeal shall be decided by a simple majority.
29. The decision of the Appeal Panel and the grounds on which it is made shall be communicated by the Clerk of the Panel in writing to the appellants and to the LA.
30. The decision of the Appeal Panel shall be binding on the LA and on the Governors of any school/academy at which the Appeal Panel determines that a place should be offered to the child. **If your appeal is successful you must take up the place within a reasonable time period of 2 to 3 school weeks.**
31. Documents required under these rules to be served on the appellants may be sent by post or delivered to the last address disclosed by the appellants and documents required to be served on the LA may be sent by post or delivered to the School Admissions and Transport Team, Children and Adults Services, County Hall, Durham, DH1 5UJ and documents required to be served on the Clerk of the Appeal Panel may be sent by post or delivered to Committee Services, Legal and Democratic Services, Corporate Director, Resources, at County Hall, Durham and documents sent by post shall be deemed to have been served when they would in the ordinary course of post have been delivered.
32. Except as provided in these rules in the conduct of the appeal shall be at the discretion of the Appeal Panel.



PARENTS' GUIDE TO THE SCHOOL ADMISSIONS APPEALS PROCEDURE

A Introduction

- 1 If you are not satisfied with the place offered by the Local Authority (LA) for your child you may appeal. Similarly, if the LA refuses your child a place you may appeal. The methods of doing this depend upon which school/academy your child has been allocated.
- 2 If the school is a **Community School, Church of England Voluntary Controlled School or Academy (non-faith)** then the appeal should be made in accordance with **Durham County Council's Appeals Rules** - these are **attached**. This guide is intended to help you to make your appeal but if you are in doubt please refer to the Appeals Rules or contact Legal and Democratic Services at County Hall, Durham to obtain further assistance.
- 3 If the school is a **Church of England Aided or Roman Catholic Voluntary Aided School** then you must appeal to the Governors of the school. The procedure is available from the following addresses:-

Church of England Voluntary Aided Schools

Durham County Council
Legal & Democratic Services
County Hall
Durham

Roman Catholic Voluntary Aided Schools

Diocesan Director of Schools
Diocese of Hexham & Newcastle
Diocesan Education Service
St Vincent's Diocesan Offices
St Cuthbert's House
West Road
Newcastle upon Tyne
NE15 7PY

If the school is an **Academy** you may need to appeal to the Governors of the school and the Governors will need to provide you with documents outlining the procedure involved. Currently only Shotton Hall Academy undertake their own appeals. The rest are undertaken by the LA on behalf of the other academies in County Durham.

- 4 If you are unsure which type of school you are concerned with, this information is given in the composite prospectus for Primary and Secondary School Admissions in County Durham. Further copies are available from schools/academies and the LA School Admissions and Transport Team Tel: 03000 265896.

5. Please note that to qualify for free home to school transport children of compulsory school age are generally required to attend the nearest suitable school, where the distance from home to school is over two miles for children aged under 8 years, and over three miles for children aged 8 to 16 years. In addition, there are extended transport rights for certain eligible children. **We therefore strongly recommend that you consult the home to school transport policy** at www.durham.gov.uk/schooltransport or contact the Transport Helpline on 03000 264444.
6. In respect of a child with a Statement of **Special Educational Needs or an Education, Health and Care Plan**, or a child undergoing a statutory assessment of Special Educational Needs, decisions regarding placement are made by the LA through the Statutory Assessment and Review procedures. Parental right of appeal is to the Special Educational Needs and Disability Tribunal and not to the Admission Appeals Panel.

B How to Appeal

- 1 You will have received a letter that states that a place is not available at your preferred school. If you wish to **Appeal** against this decision you should complete the **Notice of Appeal** which is attached and send it to Legal and Democratic Services, County Hall, Durham, DH1 5UL, so that it arrives within 20 DAYS of the date of the decision letter.
- 2 When filling in the form you should, in support of your case, give all the reasons why you do not agree with the decision. You should also state which school you wish your child to attend **and any other schools in order of preference**. If you have any **medical evidence** to submit as part of your reasons for appeal it is necessary to enclose a Doctor's letter with your Notice of Appeal to confirm the medical position. The LA may with your permission seek to confirm any medical submission by having the child examined by the School Medical Officer and a report made available to the Panel. If you have any religious or philosophical convictions that are of relevance you should bring this to our attention.
- 3 In accordance with the published arrangements for admission to schools your **home address** should be shown on the Notice of Appeal. The address of child minders or other family members who may share in the care of your child must not be used for this purpose.
- 4 You are required to provide evidence of your home address or proof of the address where the child will be living at the time when the child will take up the place at the preferred school. If your appeal involves a **house move** it is in your own interests to provide appropriate evidence of your move to the new address. This should be either confirmation in writing from your solicitor or some other proof that contracts have been exchanged, **otherwise it may not be possible for the Appeal Panel to come to a final decision on the basis of all the relevant information** (see paragraph 4 in Appeal Rules for relevant forms of proof)
- 5 If you **do not wish to attend** you should say so on the Notice of Appeal and you can, if you wish, make a further written statement explaining the reasons

why you are making the appeal. You should send this statement to Legal and Democratic Services with the Notice of Appeal. The Notice of Appeal and any statement will be read by the Appeal Panel and will be taken into account when it makes its decision.

- 6 If you want a **friend or representative** to state your case for you at the hearing you should say so on the Notice of Appeal although it is not necessary to have this representation. If you choose to be represented you must make the necessary arrangements and meet any costs.

It is your right to attend the hearing to state your case and you are strongly encouraged to do so in the interests of your child's education.

C Who Arranges the Appeal?

- 1 The hearing of your appeal will be arranged by Legal and Democratic Services. Although most appeals are held at County Hall in Durham other venues may be used when necessary. It will not be possible to hold hearings in the evenings or at weekends.
- 2 The LA tries to arrange appeals at venues that are equally accessible to all appellants. Please indicate on your notice of appeal whether you have a disability or any personal needs so that an appropriate venue for the appeals concerning your preferred school can be arranged.

D How Much Notice Will Be Given?

- 1 You will be given at least **ten school days notice** of the hearing; longer notice if possible. If you wish to attend the hearing but find that the date is inconvenient please telephone Legal and Democratic Services on Durham 03000 269702 as soon as possible.

E When Will I Know the LA's Reasons for Refusing Admission?

- 1 You will be sent an admission appeal statement by the LA seven days before your hearing giving the reasons for the decision (against which you are appealing) and explaining the admission policy for your case.
- 2 The Appeal Panel will also have been given a copy of this statement, together with your Notice of Appeal and any supporting documents prior to the hearing to enable them to be familiar with all the circumstances of your case.

F Who Will Decide My Appeal?

Your appeal will be heard by a **Panel of three independent** people. None of the members of the Panel shall have been involved with the decision which you are appealing against or have any connection with the school(s)/academy(s) involved. The Panel is independent of the LA and its decisions are binding on the LA, the school/academy, and yourself (except in limited circumstances of procedural irregularity).

G At the Hearing

1 If you have opted to attend the hearing it is appreciated it can be an anxious occasion, especially as it involves the future of your child's education. As a result the Appeal Panel and its Clerk (who acts as adviser to the Appeal Panel on law and procedure) will try to keep the hearing as informal as possible. Try to arrive at the hearing in good time so that you may gather your thoughts. If you do not arrive at the time you have been given the appeal may proceed without you.

2 To enable all the facts to be given at the hearing the following **format** is used:-

- i. The LA representative will put the LA's case first, following which you will be able to ask him/her questions. The Panel may have further questions for the LA's representative.

There may be a short break when you and the LA representative are asked to leave the room in respect to an infant class size legislation case. This will be for the panel to decide if the case is properly presented as an infant class size legislation case. If it is found to be so the panel will have limited grounds for allowing the appeal. You will be asked to state what your arguments are in respect to the limited grounds for appeal (see Rule 24 – Admission Appeals Rules above)

There will be break in all other cases (being dealt with under a two-stage test) for the panel to decide if prejudice has been proven (i.e. it is detrimental to the education of other children in the school/class if your child is allowed to attend). If no prejudice is found by the Panel then your child will be able to attend the school.

- ii. If prejudice is found by the Panel you will then be able to state your case, following which you may be asked questions by the LA's representative.

(Members of the Appeal Panel or the Clerk may also wish to ask questions to clarify points).

- iii The LA's representative will then sum up the LA's case.
- iv You will have the last word, being allowed the opportunity to sum up your case.

After presentation of the case, both the LA's representative and you will retire and the Appeal Panel will consider its decision. This decision will be sent to you, in writing, by the Clerk of the Appeal Panel, together with the reasons for it.

H How is the Decision Made?

1. INFANT CLASS SIZE LEGISLATION – CLASS SIZE PREJUDICE

The Appeal Panel may allow an appeal **ONLY** if satisfied that

- a) your child would have been offered a place at the school if the admission arrangements had been followed correctly (i.e. your child

would have a place at the school if the mistake had not been made) and the child would have been offered a place if the arrangements had not been contrary to mandatory provision in the School Admissions Code and the School and Standards Framework Act 1998 (SSFA 1998). or,

- (b) the decision was not one which a reasonable Admission Authority/Governing Body would make in the circumstances of the case (i.e. so unreasonable that **no** person/body would have made that decision).

2. OTHER APPEALS

If your child is in Reception, Year 1 or Year 2 and the LA does not rely on infant class size prejudice or your child is at Key Stage 2 or beyond the following will apply.

- (i) There will be a two stage decision-making process. The LA must allocate school places until the Published Admission Number (PAN) for the relevant year group is reached using the published oversubscription criteria. Where parents appeal to the Appeals Panel the LA may seek to argue that compliance with your preference would prejudice (adversely affect) the provision of efficient education or the efficient use of resources. If the LA fails to satisfy the Appeal Panel on one of either of the above points your Appeal must be allowed.
 - (ii) If the LA does satisfy the Appeal Panel that prejudice will be caused **then** the Panel must balance this against your preference and decide, after taking all relevant factors into account, whether the strength of your case outweighs the prejudice of allowing your child a place at the school.
 - (iii) However, if the Appeal Panel find that the child would have been offered a place had the admission arrangements been properly applied and/or the mandatory provisions of the School Admissions Code or the School and Standards Framework Act 1998 been applied properly, the Panel must uphold the appeal unless a significant number of children are affected and admitting all would cause serious prejudice to the school in question.
3. Where a number of appeals are to be heard for an oversubscribed school it may be necessary to hear all the appeals before the Appeal Panel makes decisions on individual cases. This is necessary so that the Appeal Panel may acquaint itself of the overall position in relation to one school and the whole of the circumstances involved. Each decision, however, will take into account the individual circumstances of each case.
4. The appeal hearing will not be open to the press and the public.

I Further Information

- 1 The decision of the Appeal Panel will be final and binding on the LA and the school. Whatever the Appeal Panel decide the LA will have to carry out. The LA have no right of appeal against the decision of the Appeal Panel. The

Secretary of State for Education and Employment will only intervene if he is satisfied that the LA have acted unreasonably or failed to discharge duties imposed upon them by the various Education Acts and the SSFA (1998). **If your appeal is successful you must take up the place within a reasonable time period of 2 to 3 school weeks.**

- 2 The Local Commissioner for Administration (the Local Government Ombudsman) also will not seek to duplicate the appeal arrangements. The Ombudsman will be able to investigate alleged cases of maladministration in the way a case has been handled by an Appeal Panel or in the way the case was presented to them by the LA representative or the actions of the LA following the decision of an Appeal Panel. The Ombudsman will not seek to substitute his opinion for the opinion of the Appeal Panel though it is usual for the LA to consider a remedy to any criticism of it by the Ombudsman.
- 3 The supervision of the constitution and working of Appeal Panels is under the auspices of the Council on Tribunals and members of that Council are entitled to attend hearings to observe and report upon the proceedings.