

# **School Admission Appeals**

## **A Guide for Parents and Carers**

**Clerk to Bracknell Forest Independent  
Education Appeals Panel**

**Democratic and Registration Services  
Corporate Services Department**

**November 2009**

**This booklet and the appeal form are  
available in large print on request.  
Please phone 01344 352209**

# SCHOOL ADMISSION APPEALS - A GUIDE FOR PARENTS AND CARERS

## Contents

	Page
<b>PART 1 - INTRODUCTION</b>	1
<b>PART 2 - YOUR RIGHTS</b>	
Your Right to Express a Preference	2
Your Right to an Appeal	2
Other Rights:	3
Human Rights Act 1998	3
Disability Discrimination Act 1995	3
Race Relations Act 1976	3
Sex Discrimination Act 1975	4
Equality Act 2006	4
<b>PART 3 – STANDARD ADMISSION APPEALS</b>	
Making your Appeal	5
How Are Appeals Determined	5
Multiple Appeals	7
Sixth Form Appeals	8
<b>PART 4 – INFANT CLASS SIZE APPEALS</b>	
Infant Class Size Prejudice	9
Making Your Appeal	10
<b>PART 5 - SUBMITTING YOUR APPEAL</b>	
How an Appeal is Made	13
Supporting Documentation	13
What papers do the Panel receive?	13
Acknowledgement of the appeal	14
When are appeals heard?	14
Can I submit additional material?	14
Where are appeals heard?	15
<b>PART 6 – THE APPEAL PANEL AND THE DECISION</b>	
The Panel	16
The Clerk	16
Your Attendance at the Hearing	17
Preparation for the Hearing	17
What happens at the hearing?	18
Order of the Hearing	18
The Panel's Decision	18
Is the Appeal Panel's Decision Final?	20
<b>PART 7- DISABILITY DISCRIMINATION ACT</b>	
Introduction	21
What is the Meaning of “Disability” and “Disabled Person”?	21
What is the Meaning of “Discrimination”?	22
What are the Outcomes of an Appeal?	24
<b>PART 8 – FURTHER INFORMATION AND ADVICE</b>	25

## **PART 1 - INTRODUCTION**

Making an appeal can be a daunting process. It involves you completing an appeal form and attending a hearing in front of an appeal panel to argue your case. This booklet is aimed to help you prepare your appeal, including preparing for the hearing, and also outlines the main aspects of the appeals process. You will find that not all parts of the guidance are relevant to you, but you are advised to read the relevant parts prior to completing your appeal form and attending the hearing.

This guidance is based on the main legal provisions and the School Admission Appeals Code issued by Secretary of State for Children, Schools and Families, and also reflects local practice in Bracknell Forest. However, this booklet is not a full statement of the law or guidance. There are more details on where you can find further information in Part 8 of this guidance.

### General Points

**In order to proceed with an appeal, you need to have a letter from the Local Authority which refuses your child a place at the school.** Please contact the Council's School Admissions Team on (01344) 354144 or (01344) 354023, if you require assistance in this regard. Please do not complete the enclosed form, if you have not received such a letter.

Do not use the enclosed form but contact the school directly if you wish to appeal for a place at one of the following schools:

- Binfield Church of England Primary School (01344) 860106
- St Joseph's Catholic Primary School (01344) 425246
- St Michael's Church of England Primary School, Sandhurst (01252) 873360
- Ranelagh Church of England School (01344) 421233

Do not use the enclosed form if you are appealing for a place at a school in another Local Authority, for example in Windsor and Maidenhead, Reading or Wokingham. In these cases you should seek an appeal form directly from the relevant Local Authority.

Once you have completed your appeal form, you should return it to:

**Clerk to the Appeal Panel  
Democratic and Registration Services  
Easthampstead House, Town Square  
BRACKNELL  
RG12 1AQ**

**If after reading the guidance, you have any further queries, you may contact the Clerk's office on 01344 352209.**

## PART 2 - YOUR RIGHTS

As a parent or carer you have several rights in relation to the education of your child or children.

### YOUR RIGHT TO EXPRESS A PREFERENCE

You have a right (*under section 86 of the School Standards and Framework Act 1998*) to express a preference as to the school at which you wish education to be provided for your child or children. "Expressing a preference" is not the same as "making a choice". However, the Local Authority and the governing body of a school has a duty to comply with your preference, EXCEPT where:

- to admit the child would prejudice the provision of efficient education or the efficient use of resources (This is explained in Part 3, page 5);
- to admit the child would be incompatible with the duty to meet infant class size limits, because the admission would require measures to be taken to comply with those limits which would cause prejudice to efficient education or efficient use of resources (This is explained in Part 4, page 9);
- where the admission of the pupil would not be compatible with selection by ability under the admission arrangements, for example entry to the sixth form of a school (This is explained in Part 3, page 8); and
- the child has been permanently excluded from two or more schools, since 1 September 1997.

### YOUR RIGHT TO AN APPEAL

Where you have not been offered a place for your child at your preferred school, you have a right (*under Section 94 of the School Standards and Framework Act 1998*) to an appeal to be determined by an independent appeal panel. You also have a right to appear at the appeal hearing and to make representations in person. This right of appeal also applies where a place was offered, but has been withdrawn.

In addition, where your son or daughter is transferring into the sixth form (that is, from Year 11 to Year 12) at their current school or seeking admission to a sixth form at another school there is a right of appeal, if your preference cannot be met.

You may appeal for a place for your child at more than one school, as long as you have been refused a place at the school. **You are asked to complete a separate appeal form for each school in these circumstances.**

## **OTHER RIGHTS**

### The Human Rights Act 1998

The Human Rights Act 1998 gives you the right of access to education but this right does not extend to securing a place at a particular school. Admission authorities however, do need to consider parents' reasons for expressing a preference when they make decisions about the allocation of school places, though this may not necessarily result in the allocation of a place. These might include your right to ensure that your child's education conforms to your own religious or philosophical convictions (so far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure).

You have a right to a fair hearing for your appeal by an independent and impartial appeal panel within a reasonable time. This means that the appeal panel must be independent both of you and of the Local Authority. You have the right to present your case to the panel under conditions which do not place you at a substantial disadvantage compared to the Local Authority or the school governing body. The appeal panel must not show bias or give you any grounds for legitimately doubting whether they are being impartial.

### Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001)

Local Authorities are under a duty not to discriminate against disabled pupils and prospective disabled pupils in their access to education. Local Authorities must not discriminate against a disabled child:

- in the arrangements it makes for determining pupil admissions to schools;
- in the terms on which it offers to admit a disabled child to a school;
- by refusing or deliberately omitting to accept an application for admission.

There are more details on the Disability Discrimination Act 1995 in Part 7 (pages 21 - 24).

### Race Relations Acts 1976 and 2000

It is unlawful for admission authorities to discriminate against applicants on the basis of race, colour, nationality or national or ethnic origin. There is also a duty for schools and Local Authorities to promote racial equality. They must, therefore, have regard to the need to eliminate unlawful racial discrimination; promote equality of opportunity; and promote good relations between people of different racial groups.

### Sex Discrimination Act 1975

Under the Sex Discrimination Act 1975, admission authorities must not discriminate between boys and girls in the way they admit them to a school except where the school in question is a single sex school. There are no single sex schools in Bracknell Forest. Admission arrangements for a co-educational school may not be used to achieve a fixed proportion of boys and girls at the school, as this may be in breach of the Sex Discrimination Act.

### Equality Act 2006

It is unlawful for admission policies to discriminate against children on the grounds of religion or belief (including lack of religion or belief) however schools with a religious ethos can restrict the provision of goods, facilities and services, or restrict the use or disposal of their premises, to ensure that the tenets of the schools faith are not conflicted. Therefore places at religious schools in Bracknell Forest are open to all however where places are oversubscribed the use of religious criteria to rank applicants is not discrimination as long as they are applied fairly and equally to all.

## **PART 3 - STANDARD ADMISSION APPEALS**

**You should read this part of the guidance, if you are appealing for your child's admission:**

- **into any year group at any school from Year 3 to Year 11;**  
**OR**
- **into Reception, Year 1 or Year 2 of an infant or primary school, where infant class size prejudice has NOT been cited as the reason for refusal;**  
**OR**
- **into the sixth form of either your child's current school or into the sixth form of another school.**

### **MAKING YOUR APPEAL**

You must make your appeal in writing. In Bracknell Forest, you are asked to complete and return an appeal form to state the 'grounds' on which your appeal is based. This means your appeal statement should set out your reasons for seeking a place at your preferred school. You need to state all the reasons why you want a place for your child at your preferred school – for example you should state why you want your preferred school in particular and what it can offer your child that other schools cannot. You may state any reasons why you consider an alternative school as unsuitable or less suitable. The Local Authority may in its statement to the appeal panel submit that your child has been allocated a place at an alternative school or that there are other suitable schools with places. You may at the same time submit any documentation in support of your appeal (See page 13).

### **HOW ARE APPEALS DETERMINED?**

**When an appeal panel determines a standard admission appeal, it should consider the following questions:**

#### **First Stage: establishing the facts**

- a) Whether the school's published admission arrangements:
  - i) comply with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998
  - ii) were correctly applied in respect of your application and whether there would be prejudice in the provision of efficient education or the efficient use of resources if an additional pupil were to be admitted to the school?

#### **Second Stage: balancing the arguments**

- b) Whether the factors in your case outweigh the factors presented by the Local Authority?

(Where you make a claim disability discrimination, the appeal panel will also have to make a determination in this regard – see Part 7, pages 20 - 23)

### Correct and Impartial Application of the Oversubscription Criteria

When there are more applications for a school than there are places, the available places should be allocated in accordance with published criteria – these criteria are referred to as the oversubscription or admissions criteria. At an appeal hearing, the Local Authority, together with the school, must satisfy the appeal panel that the oversubscription criteria for the school concerned have been correctly and impartially applied.

It must also be satisfied that the arrangements did not contravene mandatory provisions in the School Admissions Code and the School Standards and Framework Act (SSFA) 1998.

If the panel finds that the oversubscription criteria have not been correctly and impartially applied and the admission arrangements contravened the School Admissions Code and SSFA 1998, and your child would have been offered a place if they had been, the panel must uphold your appeal. However if a significant number of children are affected and the admission of all of them would cause serious prejudice to the school then the panel would have to move onto Stage 2.

In order to establish that the arrangements have been correctly and impartially applied, the Local Authority, together with the school, should provide a written statement both to you and the panel, summarising how the admission arrangements for the school applied to your application, with any relevant background information. This statement should be sent to you by the appeal panel clerk at least seven working days prior to the hearing.

### Prejudice in the Provision of Efficient Education or the Efficient Use of Resources

The term 'prejudice' means that there would be an adverse effect on the provision of education or the efficient use of resources at the school. The law says that prejudice may not arise if the number of pupils in a particular year group is less than the admission number for that year group. (the admission number is the number of pupils normally admitted to the school.) The Local Authority must satisfy the appeal panel that the duty to allocate your child a place at your preferred school does not apply because compliance with your preference would prejudice the provision of efficient education or the efficient use of resources at the school. It is not enough for the Local Authority to show that the published admission number has been reached, it should also demonstrate what prejudice would be caused by the additional admission.

In order to establish prejudice the Local Authority, together with the school, should provide both you and the panel a written statement summarising how places at the school were allocated and any relevant background information, and a written statement summarising the reasons for the decision. It should include full

supporting information that prejudice to the provision of efficient education or use of resources would arise from the admission of the child (or children) concerned. Any statement referring to accommodation, class sizes, capacity etc should be supported by factual information. Evidence may be produced in the form of layout plans of a building. This statement should be sent to you by the appeal panel clerk at least seven working days prior to the hearing.

The panel must also consider the impact of the locally agreed In-Year Fair Access Protocol.

If the panel is not satisfied that prejudice would occur, the panel must, in the case of a single appeal for a particular school, allow the appeal and allocate a place for the child. Where two or more appeals are considered a slightly different approach is followed. (see 'multiple appeals' on page 7).

If the panel is satisfied that prejudice would occur then they must go to the second stage.

#### Does your case outweigh the case of the Local Education Authority?

Where your appeal is not allowed after the panel's consideration of the first two questions, the panel will then consider:

- a) your reasons for applying to the particular school; and
- b) the consequences for the school and the other children at the school, if your child were to be admitted and how serious those consequences would be.

The Panel may also consider any reference in the submission from the Local Authority that the child has been offered a place at an alternative school; and equally, any reasons which you state as to why any alternative school would be unsuitable or less suitable. If the panel finds that your case outweighs the case of the admission authority, it will allow your appeal.

#### Multiple Appeals

The term 'multiple appeals' applies in instances where there are two or more appeals for a particular year group at a particular school. As with individual appeals, the panel should normally determine the same questions:

#### Have the oversubscription criteria and the admission arrangements been correctly and impartially applied in respect of your application?

There is no difference in the approach to this question.

#### Would there be prejudice in the provision of efficient education or the efficient use of resources if an additional pupil were to be admitted to the school?

Where the panel is not satisfied that there would be prejudice in the provision of efficient education or the efficient use of resources if an additional pupil were to be

admitted to the school, and the panel decides that all the children could be admitted without prejudice to the school it must uphold all the appeals.

Where the panel is satisfied that there would be prejudice in the provision of efficient education or the efficient use of resources if an additional pupil were to be admitted to the school, the appeals are considered under:

Do the factors in your case outweigh the factors presented by the Local Education Authority?

Where prejudice is found, the panel must decide whether and which of the individual parental preferences outweigh the prejudice. The panel will consider the individual circumstances of each case and decide whether each case outweighs the case of local education authority. If there are several cases which outweigh the prejudice to the school but the panel decides that the school could not cope with that number, the panel must then compare all cases and decide which of them to uphold.

## **SIXTH FORM APPEALS**

### **Right to Appeal on Entry or Transfer to a Sixth Form**

Where a pupil is either transferring into the sixth form (Year 12) of his or her current school or seeking admission to the sixth form of another school, where he or she is refused a place, there is a right of appeal to an independent appeal panel.

### **Process for Determining Sixth Form Appeals**

- Where your child has been refused admission because there are more eligible children than places available and other over subscription criteria have been applied then the panel should follow the normal two-stage process as described on pages 5 - 7.
- In circumstances where you wish to appeal despite your child not reaching the specified entry requirements the panel **must not** attempt to make its own assessment of your child's ability but consider whether the original decision that your child was not of the required standard was reasonable in light of the information before the decision maker.
- You also have the right of appeal should your child be refused a place outside of the normal admission round.

## **PART 4 - INFANT CLASS SIZE APPEALS**

**You should read this part of the guidance if you are appealing for a place in Reception, Year 1 or Year 2 at a primary or infant school AND your letter of refusal refers to infant class size prejudice or the legal requirement for no more than 30 pupils in a class with a single teacher.**

**(This part of the guidance is not relevant to you, if you are appealing for a place at a secondary school, including sixth form, or for Years 3, 4, 5 or 6 at a primary or a junior school.)**

### **INFANT CLASS SIZE PREJUDICE**

The term 'infant class' refers to classes in Reception (ages 4-5), Year 1 (ages 5-6) and Year 2 (ages 6-7). Local Authorities must adhere to a legal requirement that that there should be no more than 30 pupils in an infant class with a single teacher, subject to certain exceptions (see below).

A school may therefore refuse to admit a child in circumstances where admitting the child would mean more than 30 pupils in a class with a single teacher and would result in the need for measures such as the construction of an extra classroom or the employment of an additional teacher.

#### Exceptions

There are a small number of exceptions to the infant class size limit – these may occur in circumstances where:

- a) children with statements of special educational needs that are admitted to the school outside the normal admissions round;
- b) a child moves into an area outside the normal admission round and there is no other available school within a reasonable distance of his or her home;
- c) a child is initially refused admission to a school but is subsequently offered a place because there was an error in the original decision made by those implementing the admission arrangements;
- d) a child is looked after and is admitted outside the normal admissions round;
- e) an appeal panel allows an appeal because either the decision not to offer a place was not one a reasonable authority would make in the circumstances of the case or your child would have been offered a place if the admission arrangements had been correctly and impartially applied;
- f) a child who is a registered pupil at a special school and who, by arrangement with another school which is not a special school, receive part of their education at that other school; and

- g) a child normally educated in a special school or special educational needs unit attached to a mainstream school attends an infant class in the mainstream school, where this has been deemed as beneficial to the child.

In most cases an exception is only permitted for the remainder of the school year in question thereafter measures must be taken for the following year to ensure that the class falls within the infant class size limit, or it will be unlawfully large.

## **MAKING YOUR APPEAL**

You must make your an appeal in writing. In Bracknell Forest, you are asked to complete and return an appeal form to state the 'grounds' or reasons on which your appeal is based. With infant class size appeals the grounds are limited to:

- a) **The child would have been offered a place if the admission procedures had been properly implemented,**
- b) **The child would have been offered a place if the arrangements had not been contrary to the mandatory provisions in the School Admissions Code and the School Standards and Framework Act (SSFA) 1998; and/or**
- c) **The decision not to offer a place at the school was not one a reasonable Local Authority would make in the circumstances of the case.**

This means your appeal statement should focus on the above two grounds. In making a determination on your appeal, the appeal panel will consider the following two questions:

- (a & b) **Were the school's published admission arrangements properly implemented and did not contravene the mandatory provisions? If they had been properly implemented, would your child have been offered a place?**

The appeal panel should consider the school's published admission arrangements for the admission of pupils, and decide whether they were properly implemented in your child's case and whether they contravened the School Admissions Code and SSFA 1998.

In order to establish that the arrangements have been properly implemented, the Local Authority, together with the school, should provide a written statement both to you and the panel, summarising how the admission arrangements for the school applied to your application. This statement should be sent to you by the appeal panel clerk at least seven working days prior to the hearing.

In determining your appeal as part of the proper application of the admission arrangements, the panel should only consider:

- the material available to the local education authority or the school when it made its decision; and
- any material that the authority or the school would have been aware of if it had acted reasonably.

The panel may consider fresh material from you such as a statement, identifying any original error. The panel should only uphold the appeal in cases where it is clear that the child would have been offered a place if the admission arrangements had been properly implemented.

Examples of circumstances where appeals may be allowed on this ground include:

- the Local Authority may have overlooked the fact that your child had a sibling already at the school;
- the Local Authority may have miscalculated the distance from your home to the school;
- the Local Authority may have used criteria other than the published oversubscription criteria to allocate places at the school.

However, even if the panel finds evidence of an error in the admission arrangements, it can only allow your appeal where it is satisfied that your child would have been offered a place, if the admission arrangements had been implemented correctly or were not contrary to mandatory provisions in the School Admissions Code or SSFA 1998.

## **(2) Was the decision not one which a reasonable authority would make?**

If the appeal panel does not allow your appeal under the above ground, it will consider whether the Local Authority's decision was not one which a reasonable authority would make in the circumstances of the case. Under this ground, the panel can consider material available to the Local Authority when it made its decision and any material that the authority would have been aware of if it had acted reasonably. The panel may also consider evidence submitted by you to show what your circumstances were at the time the decision was made.

However, the original decision should stand unless such additional material is persuasive and, taken with the rest of the information available, and any other relevant circumstances, renders the original decision irrational. Relevant circumstances would include, for example, the fact that such material could have been made available to the Local Authority at the time it made the original decision, or if the information you originally provided had got lost.

In considering the reasonableness of the Local Authority's decision, the panel must determine whether it would be "perverse in the light of the admission arrangements"<sup>1</sup> 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 or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it"<sup>2</sup> to refuse to admit your child.

The panel should take into consideration:

- the reasons for the published admission arrangements;
- your preference and the reasons for it;
- your particular family circumstances; and
- the practical consequences for both the school and other children competing for places in the relevant infant class or classes if your child were to be admitted.

It is not enough for the Local Authority to show that the admission number has already been reached, it should also demonstrate what measures it would have to take to comply with class size limits if your child were to be admitted. At the hearing you may question the case presented by the Local Authority and raise points of your own in support of a contention that admission of an additional child would not cause such prejudice.

**In the 2006/07 academic year 18.4% of infant class size appeals were successful nationally.**

**In Bracknell Forest, between 2001 and 2007 there were 86 infant class size appeals and only 1 of these was allowed.**

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<sup>1</sup> The School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow [2002] EWCA Civ 900

<sup>2</sup> Council of Civil Service Unions v Minister for the Civil Service [1984] 3 All ER 935

## **PART 5 - SUBMITTING YOUR APPEAL**

**This Part of the guidance applies to all types of appeal.**

### **HOW AN APPEAL IS MADE**

By law you must make your appeal in writing. In Bracknell Forest, you are asked to complete and return an appeal form to state the 'grounds' on which your appeal is based. This means your appeal statement should set out your reasons for seeking a place at your preferred school. There is more detail on this in Parts 3 and 4. You may at the same time submit any documentation in support of your appeal.

### **SUPPORTING DOCUMENTATION**

You should consider when preparing your appeal whether to include copies of any supporting documentation. These are some examples of documentation that might support statements in your appeal:

- letters or statements from doctors, other health professionals or social workers;
- in circumstances where denominational reasons form part of the appeal, a letter or statement from a member of the clergy;
- in circumstances where a change of address is relevant to your appeal, letters or statements from a solicitor (or others) confirming a change of address.

**You should return your completed appeal form, together with any documentation to:**

**Clerk to the Appeal Panel  
Democratic and Registration Services  
Easthampstead House, Town Square  
Bracknell, RG12 1AQ**

### **WHAT PAPERS DOES THE PANEL RECEIVE?**

The appeal panel considers all the documents which you submit and the response to your appeal, prepared by the Local Authority and the school. You should ensure that any documents or supporting information, which you consider are relevant to your appeal, are put before the panel. Previous correspondence with the Director of Children, Young People and Learning or the school will not automatically be included in the appeal panel's papers. The appeal panel will not seek evidence from a third party on your behalf, but it may ask you (with advance warning) to provide evidence on matters such as medical conditions. It is your responsibility to submit any supporting information or documentation to the clerk, so that it can be forwarded to the panel. The material will also be copied to the representative of the Local Authority.

## **ACKNOWLEDGEMENT OF THE APPEAL**

The clerk will acknowledge receipt of your form as soon as possible and will send a copy of your appeal to the Director of Children, Young People and Learning, who, together with the school, will prepare a written response to your appeal, which will be sent to you no later than seven working days before the hearing.

## **WHEN ARE APPEALS HEARD?**

Secondary admissions round – appeals for on time applications must heard by 6 July (or the next working day if 6 July falls on a weekend. Appeals in Bracknell Forest are usually held in May.

Primary admissions round – appeals must heard within 40 school days of the appeal being lodged, or before the end of the summer term, whichever is sooner. Appeals in Bracknell Forest are usually held in June/July.

Appeals for late applications – should be included with those being heard for the same admissions round but if this is not feasible, they must be heard within 30 school days of the appeal being lodged.

School sixth forms appeals – must be heard within 40 school days of the appeal being lodged.

In-year appeals – must be heard within 30 school days of the appeals being lodged.

Appeals are rarely heard during school holidays and take place during the day. Where your appeal is part of an admission round to a school, it will be considered by the same appeal panel which considers the other appeals for the school.

By law you are entitled to 10 school days notice of the date and time of the appeal hearing. It may not always be possible to offer you an alternative date and time, but if there are exceptional reasons why you cannot attend, it may be possible to offer you an alternative. If it is not practical to offer an alternative and you cannot attend, the appeal will have to be decided on whatever information is available.

## **CAN I SUBMIT ADDITIONAL MATERIAL?**

If, after you have received the response from the Local Authority to your appeal, you wish to submit additional written material, you may do so. It is helpful if this material is sent to the clerk in advance so that it can be circulated to the Local Authority and the panel. Whilst you may submit additional material in support of your appeal right up to and including the hearing it may be necessary to adjourn the hearing if significant information is received less than three working days before the hearing date, which the panel considers may need further investigation or which the admission authority may need time to respond. In certain instances this might require the hearing continuing on another day. An example of where an adjournment may be necessary is where substantial new information is raised at the hearing, such as a detailed report from a medical or other professional.

The Local Authority must provide all the information which you reasonably ask for, so that you are in a position to question the Local Authority's case.

### **WHERE ARE APPEALS HEARD?**

Appeals do not take place at the school. They are heard at Easthampstead House, Town Square, Bracknell. A map will be sent to you with the paperwork you receive seven working days before your appeal date.

## **PART 6 – THE APPEAL PANEL AND THE DECISION**

### **THE PANEL**

By law the appeal panel should comprise three or five persons. In Bracknell Forest, it is usual practice to operate with panels of three. Whether your appeal is heard by a panel of five or a panel of three, there will be:

- a) at least one lay member. Lay members are people without personal experience in the management or provision of education in any school (though it is permissible to use people who have experience as governors of other schools, or who have been involved in education in any other voluntary capacity); and
- b) at least one person with experience in education who is acquainted with educational conditions in the area, or who is the parent of a registered pupil at a school.

### **INDEPENDENCE**

The appeal panel is independent of the Local Authority and the school. No member of the Panel will have been involved in the decision not to offer a place to your child nor will they have any connection with the school you are appealing for or any other school at which your child has been offered a place. You will be advised of the name and category of each panel member in advance of the hearing so that you can contact the Clerk if you have any concerns regarding impartiality.

### **THE CLERK**

The clerk to the appeal panel is based in the Council's Corporate Services Department and is not connected to the Children, Young People and Learning Department. The clerk's responsibilities include:

- arranging appeal hearings, including the circulation of papers to those entitled to attend the appeal hearing;
- advising on law, guidance and procedure at the appeal hearing;
- taking notes at the hearing;
- recording the panel's decisions and the reasons for them; and
- advising those entitled to attend of the panel's decisions and the reasons for them.

### **THE PRESENTING OFFICER**

The presenting officer is the representative of the Local Authority who attends the appeal hearing to present the case of the Local Authority and the school to the panel. The presenting officer may be accompanied by a member of staff from the school such as the head teacher or a member of the school's governing body who will only answer questions relating to the school.

## **YOUR ATTENDANCE**

You have a right to attend the hearing and your attendance is strongly encouraged. You are allowed to bring someone with you to help you put your case. You may also be represented formally by a solicitor, although you should note that the Council cannot pay any of your costs. Experience has shown that it is seldom necessary for you to be formally represented.

Please note that your friend or adviser, interpreter or signer may speak on your behalf at the hearing. The friend or adviser can be a Choice Adviser, a locally elected politician, or an employee of the local education authority such as an educational social worker, SEN adviser or learning mentor, provided that this will not lead to a conflict of interest.

Employees of the school in question must not attend to support individual appeals or provide letters of support for you.

Please contact Democratic and Registration Services on 01344 352209 if you require the services of a translator or signer, or require any other arrangements in order to help you to attend the hearing and this will be arranged for you.

Please inform the clerk in advance if you do decide to be formally represented or accompanied by a friend or adviser.

Attendance at appeals can be distressing for some children, therefore unless there are exceptional reasons, your child **should not** attend.

In summary the following may be present at an appeal hearing:

- the three or five members of the appeal panel;
- the clerk;
- you, together with any representative or friend; and
- the presenting officer, who may be accompanied by a representative, such as the head teacher, a senior teacher or governor from the school.

## **WHAT IF I CANNOT ATTEND OR DO NOT WISH TO ATTEND?**

If you are unable to attend the hearing and it is not reasonably practicable to offer you an alternative date or if you decide not to attend, your appeal will be decided on the information available to the appeal panel, including the written information that you have sent. If you cannot attend it is important that you submit all the information that you want the appeal panel to consider.

## **PREPARATION FOR THE HEARING**

To prepare for the hearing, you should:

- consider whether you wish to submit any additional material in support of your case, (however, circulation of material raising substantially new issues

may lead to a request for an adjournment if received less than 3 working days before the hearing).

- make a note of any statements in the Local Authority's case, which you would wish to ask questions about or have clarified at the hearing.
- prepare your responses to likely questions at the hearing, such as:
  - Have you visited your preferred school?
  - Have you considered or visited alternative schools? - If not, why not?
  - How would your son or daughter travel to and from your preferred school?
  - (If you have moved to the area), did you consider or investigate local school provision prior to your move?
- be ready with any factual clarifications of your case such as the dates of previous changes of address or school.

## **WHAT HAPPENS AT THE HEARING?**

At the beginning of the hearing the Chairman will

- welcome you to the appeal and introduce the others present;
- stress that the panel is independent from the Local Authority and any school cited in the papers and that the panel's decision is binding;
- check that all those present have received copies of the papers;
- outline the order to be followed at the hearing; and
- briefly explain the decision making process.

### **Order of the Hearing**

- 1) The Local Authority's representative will state their case.
- 2) You may put questions to the Local Authority's representative, and any representative from the school.
- 3) Members of the panel may put questions to the Local Authority's representative, and any representative from the school.
- 4) You will then put your case.
- 5) The Local Authority's representative may put questions to you on your case.
- 6) Members of the panel may put questions to you on your case.
- 7) The Local Authority's representative and you have the opportunity to sum up.

You and the Local Authority's representative, together with any representative from the school, will then withdraw. The clerk will remain with the panel to record the decision and the panel's reasons.

## **THE PANEL'S DECISION**

### **Allow or Refuse**

The panel can either allow OR refuse your appeal. The panel has no other powers. For example, the panel has no power to make decisions in relation to:

- the operation of any waiting list at the school in question;
- general education provision or school organisation in the area; or
- the administrative arrangements in relation to the admissions process.

## Letting You Know

Within seven days, the clerk will write to let you know the appeal panel's decision. The decision letter will include the panel's reasons for its decision. For standard appeals, the decision letter should state:

- whether the panel found the admission arrangements had been correctly and impartially applied in respect of your application;
- whether the panel found the admission arrangements had not contravened the mandatory provisions and whether there would be prejudice in the provision of education or the efficient use of resources at the school, if another pupil were to be admitted;
- whether the factors in your case outweighed those of the Local Authority and why your individual circumstances were sufficient or insufficient to outweigh the prejudice arguments of the Local Authority.

For infant class size appeals, the decision letter should indicate:

- whether the panel found the admission arrangements had been correctly applied in respect of your application and did not contravene the mandatory provisions; and
- whether the decision not to offer a place was not one which a reasonable authority would make in the circumstances of the case.

If your appeal is unsuccessful and you do not want the place at the alternative school allocated, you may contact the Children, Young People and Learning Department to find out if any other schools have places available.

## **IS THE APPEAL PANEL'S DECISION FINAL?**

The decision of the appeal panel is binding on the Local Authority and the school. There is no further right of appeal against the Panel's decision. You may remain on the school's waiting list, if the school operates a list. You may also apply for a place at the school in a later academic year. However, you may, depending on the published admission arrangements, apply to the school again in the same academic year and if you are again refused a place, you have a right of appeal. Where there is a material change of your circumstances since the original application such as the development of a medical condition or a change of address, you should be able to submit a further application to the school, receive a fresh determination of your application and have a further right of appeal.

A panel made up of different members will consider your new appeal and, where possible, will be supported by a different clerk.

### The Local Government Ombudsman

The Local Government Ombudsman can investigate written complaints from you about the actions of an appeal panel. This is not a right of appeal and complaints should relate to issues such as a failure to follow correct procedures or a failure to act independently or fairly, rather than you thinking that the decision was wrong. If after an investigation, the Ombudsman finds 'maladministration', one of the remedies might be a fresh appeal conducted before a differently constituted appeal panel.

If you would like to make a complaint please contact Democratic and Registration Services on 01344 352209 who will be able to provide you with the contact details.

### Secretary of State for Children, Schools and Families

The Secretary of State for Children, Schools and Families cannot review or overturn decisions of appeal panels but can consider:

- whether the appeal panel was correctly constituted; and
- whether the Local Authority had acted reasonably in exercising functions in respect of the appeal process.

### Judicial Review

If you consider that the decision of the appeal panel was legally flawed, you may seek to apply for a judicial review. This means making an application to the High Court. In such circumstances, you will need to seek your own legal advice. The Council cannot help you with costs. Likewise, the Local Authority may also seek a judicial review of the decision of an appeal panel, if it considers it is legally flawed.

## **PART 7 - DISABILITY DISCRIMINATION ACT 1995**

### **INTRODUCTION**

School admission appeal panels also have responsibilities relating to claims of unlawful discrimination relating to disability: where parents make a claim that there has been unlawful discrimination in the admission arrangements based on their child's disability, admission appeal panels are required to determine that claim.

This part of the guidance outlines as briefly as possible the main provisions, but it is not intended to be a full statement of the law. If you consider that you wish to make a claim of unlawful disability discrimination as part of your appeal for admission, you may need to seek advice from one of the organisations listed at the end of this guidance or other independent advice. The relevant legal provisions are listed at the end of the guidance, together with details of guidance issued by the Equality and Human Rights Commission.

### **HOW ARE SCHOOLS AFFECTED BY THE DISABILITY DISCRIMINATION ACT?**

Schools are affected in several ways, but in terms of pupil admissions, education authorities and schools must not discriminate against a disabled person:

- in the arrangements they make for determining admission to the school (including any criteria for deciding who will be admitted to the school when it is over-subscribed, and including the operation of those criteria);
- in the terms on which they offer a pupil admission; and
- by refusing or deliberately omitting to accept an application for admission from someone who is disabled.

Schools must also take reasonable steps to ensure that in relation to the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.

### **WHAT IS THE MEANING OF “DISABILITY” AND “DISABLED PERSON”?**

The Disability Discrimination Act 1995 states that a person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities. However, this definition requires further explanation:

- The term physical impairment is a condition affecting the body, perhaps through sight or hearing loss, a mobility difficulty or health condition.
- The term mental impairment is a condition affecting 'mental functioning', for example a learning disability or mental health condition such as manic depression.
- The term 'substantial adverse effect' means an effect which is more than minor or trivial.

- The term ‘long-term effect’ relates to an impairment which has lasted, or is likely to last, 12 months or more from the onset, or for the rest of your life.
- “Normal day to day activities” are those which are carried out by most people on a fairly regular and frequent basis. The definition includes: mobility; doing something with your hands; physical co-ordination; continence; ability to lift, carry or move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; or perception of the risk of physical danger.

### WHAT IS THE MEANING OF “DISCRIMINATION”?

For a school or Local Authority, discrimination against a disabled person may occur in two ways:

- (a) If for a reason which relates to the person’s disability, it treats the person less favourably than it treats or would treat others to whom that reason does not or would not apply and it cannot show that the treatment in question is justified. This is sometimes called the “less favourable treatment” duty.
- (b) It fails to the disabled person’s detriment to take reasonable steps to ensure that disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled. This is often referred to as the “reasonable adjustments” duty.

### WHAT IS “LESS FAVOURABLE TREATMENT”?

In determining whether unlawful discrimination, based on less favourable treatment, an appeal panel would need to consider the following questions:

- (a) Is the less favourable treatment for a reason that is related to the child's disability?
- (b) Is it less favourable treatment than someone gets if the reason does not apply to him/her? and
- (c) Is it less favourable treatment that can be justified?

In considering the above questions, guidance from the Disability Rights Commission quotes the following example:

- (a) Is the less favourable treatment for a reason that is related to the child's disability?

A father seeks admission to a primary school for his son, who has epilepsy. The school tells him that they cannot take the boy unless he stops having fits. In effect, the school is placing conditions on the boy’s admission because he might have fits. Having fits is an intrinsic part of the boy’s epilepsy. **The reason for the less favourable treatment is one that relates to the boy’s disability.**

- (b) Is it less favourable treatment than someone gets if the reason does not apply to him/her?

In the case of the above example of the boy with epilepsy, whose admission to the school was going to be conditional on his stopping having fits, the comparison has to be made between the treatment that he got and the treatment someone else got, or would get, if they did not have fits. In this case, other children did not have this condition placed on their admission, nor would they have. **So, for a reason that relates to his disability, this boy is being treated less favourably than another child to whom that reason does not apply.**

- (c) Is it less favourable treatment that can be justified?

In the first example the admission of a boy with epilepsy is made conditional on his stopping having fits. So, for a reason that relates to his disability, this boy is being treated less favourably than another child to whom that reason does not apply. The next question is whether this is justified. **The school does not seek to justify the less favourable treatment of the boy and it is likely that it is unlawful discrimination.**

Less favourable treatment can be justified if there is a reason which is both material to the circumstances of the particular case and substantial. It is also allowed if it is the result of a permitted form of selection.

### **WHAT IS THE “REASONABLE ADJUSTMENT” DUTY?**

Reasonable steps must be taken to ensure that disabled pupils and prospective disabled pupils are not placed at a substantial disadvantage in comparison with those who are not disabled. Reasonable adjustments must be made for disabled children generally but discrimination only occurs if failure to make adjustments leads to the detriment of an individual child.

In the reasonable adjustments duty, the comparison to be made is between disabled children and children who are not disabled. Discrimination may occur where a disabled child is at a substantial disadvantage in this comparison, and because the school has failed to take reasonable steps to prevent that disadvantage.

In considering what might constitute a substantial disadvantage, the school will need to take account of a number of factors. These may include: the time and effort that might need to be expended by a disabled child; the inconvenience, indignity or discomfort a disabled child might suffer; the loss of opportunity or the diminished progress that a disabled child may make in comparison with his or her peers who are not disabled.

## **HOW DO I MAKE A CLAIM AS PART OF MY ADMISSION APPEAL?**

Where a decision not to offer a place has been made and you feel that the local education authority has discriminated against your child contrary to provisions in the Disability Discrimination Act 1995, which have been outlined in this leaflet, you may make a claim under the appeal arrangements. If you wish to do this, you should state this clearly on the appeal form and indicate your reasons for making such a claim and if necessary provide supporting evidence of your claim.

## **HOW DOES THE PANEL DEAL WITH THE CLAIM?**

Where you make a claim of disability discrimination, the appeal panel will determine your claim within the meaning of the Disability Discrimination Act 1995. In considering your claim, the appeal panel must take into account the Disability Rights Commission's guidance in their Code of Practice for Schools. The appeal panel, along with its usual deliberations:

- must consider whether the admission criteria were correctly and impartially applied;
- must consider whether your child is disabled; and
- must determine, where it finds that your child is disabled, whether there has been discrimination within the meaning of the Disability Discrimination Act.

## **WHAT ARE THE OUTCOMES OF AN APPEAL?**

There are two possible outcomes following an appeal: either your appeal will be allowed or your appeal will be refused (and in each case, the panel will record its reasons for the decision). However, the panel has no other powers, for example, it cannot make recommendations to the Local Authority or the school about changing its administrative procedures and it cannot make any awards of compensation.

Even where the appeal panel finds that disability discrimination has not occurred as part of the admission arrangements, your appeal may still be allowed for other reasons, for example:

- the Local Authority may not demonstrate to the panel that prejudice would occur in the provision of education and the efficient use of resources at the school if another pupil were to be admitted;
- the panel may find that the factors in your case may outweigh the factors presented as part of the local education authority's case;
- in the case of infant class size appeals, the panel may find that the decision not to offer a place was not one that a reasonable Local Authority would make in the circumstances.

## PART 8 - FURTHER INFORMATION AND ADVICE

- The ADVISORY CENTRE FOR EDUCATION (ACE) provides advice for parents on admissions and admission appeals. Leaflets are available on its website.

Advice Line: 0808 800 5793 (Monday to Friday 10am – 5pm)  
Text the keyword ASKACE to 68808

Address: Advisory Centre for Education (ACE) Ltd  
1c Aberdeen Studios  
22 Highbury Grove  
London  
N5 2DQ.

Website: [www.ace-ed.org.uk/advice](http://www.ace-ed.org.uk/advice)

- The EQUALITY AND HUMAN RIGHTS COMMISSION has advice on disability, race and sex discrimination.

Telephone: 0845 604 6610  
Textphone: 0845 604 6620  
Fax: 0845 604 6630

Address: Equality and Human Rights Commission Helpline  
FREEPOST RRLL – GHUX – CTRX  
Arndale House  
Arndale Centre  
Manchester  
M4 3EQ

Website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### The Law

The text of all Acts of Parliament from 1988 and all regulations from 1987 have been published on the website of Her Majesty's Stationery Office: [www.opsi.gov.uk](http://www.opsi.gov.uk)

Particularly relevant to school admissions and appeals are:

- The School Standards and Framework Act 1998 - Sections 84-98 (as amended by sections 40 of the Education and Inspections Act 2006)
- The School Admission Appeals The Education (Admissions Appeals Arrangements) (England) Regulations 2007

In relation to disability the following are particularly relevant:

- Parts I and IV of the Disability Discrimination Act 1995, in particular sections 1, 2, 3, 28A, 28B and 28K and Schedules 1 and 2. (Note: Sections 28A, 28B

and 28K were inserted into the Disability Discrimination Act by the Special Educational Needs and Disability Act 2001)

- The Disability Discrimination (Meaning of Disability) Regulations 1996 (SI 1996/1455)