

School Admission Appeals for Reception, Year 1 and Year 2 Classes (Key Stage 1)

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1. General information

Following Covid we have returned to hearing Appeals face to face as far as possible, however this may be subject to change, dependant on the current Covid situation, or the capacity for parties to attend. If we are unable to hear an Appeal face to face for whatever reason we will hear it via Zoom. We will keep you notified of this, and support where necessary to attend in this way.

If we have to hear an Appeal via Zoom, or you choose to participate in this way, please be aware that we do not give permission for the session to be recorded. Please also be aware of where you are when you are attending, remembering that the other participants can see you, and also in terms of the information you might be sharing, who else might be able to hear you.

As Appeal Clerks are largely still working from home. As far as possible we will communicate with you by email, including sending you copies of Appeal paperwork and your decision letter. Depending on the information we are sharing with you, we may need to password protect the information. We will either agree a password with you in advance or email you separately with a password that we will use for your documents. If you need help in opening these documents, just let us know.

2. Infant class size appeals

If your child has been refused a place at the school of your choice, you have the right to appeal to an Independent Appeal Panel. The Appeal Panel will hear evidence from the Admission Authority (usually the school) as to why your child cannot go to the school, and from you (you are known as the appellant) as to why you think your child should go to the school. The Panel then make an informed decision on your case.

It is very difficult to win an appeal for school places in Reception, Year 1 or Year 2 because infant class size legislation restricts the size of these classes to a maximum of 30 children per class with one class teacher.

The Panel's task is to review the decision already made. **It does not have the flexibility to say that your personal circumstances mean that you should have a place at the school**, if this would take the number of children in the class over 30.

The grounds an Appeal Panel can consider are very limited and, nationally, only 9.5% of these appeals in 2021-22 were successful. This is being drawn to your attention now, so that you can make a more informed decision about going ahead with the appeal. The purpose of this guidance is to clarify the legislation and explain the role of the Panel. It is not meant in any way to discourage you from appealing or attending the Hearing which is your legal right.

2.1 Grounds for upholding a Key Stage 1 Appeal

By law, an appeal for a school place in a Reception, Year 1 or Year 2 class can only be successful if the following circumstances apply. You are advised to consider carefully whether your case falls within the grounds.

- a) If the admission of an additional child would not increase the size of the class to more than 30 pupils to one class teacher.
- b) If the admission arrangements (how school places are allocated) do not comply with the law.
- c) If the Admissions Authority made a mistake when they were allocating school places and had the mistake not been made, your child would have been allocated a place.
- d) If the decision to refuse a place at the school was **unreasonable*** given the circumstances of your child's case.

* **'Unreasonable'** is specifically defined in law for school admission appeals. It means that the decision would have to be 'outrageous' and 'perverse' and not based on the facts of the case. Unreasonable in its legal sense means 'beyond the range of responses open to a reasonable decision maker', or 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it'.

As examples:

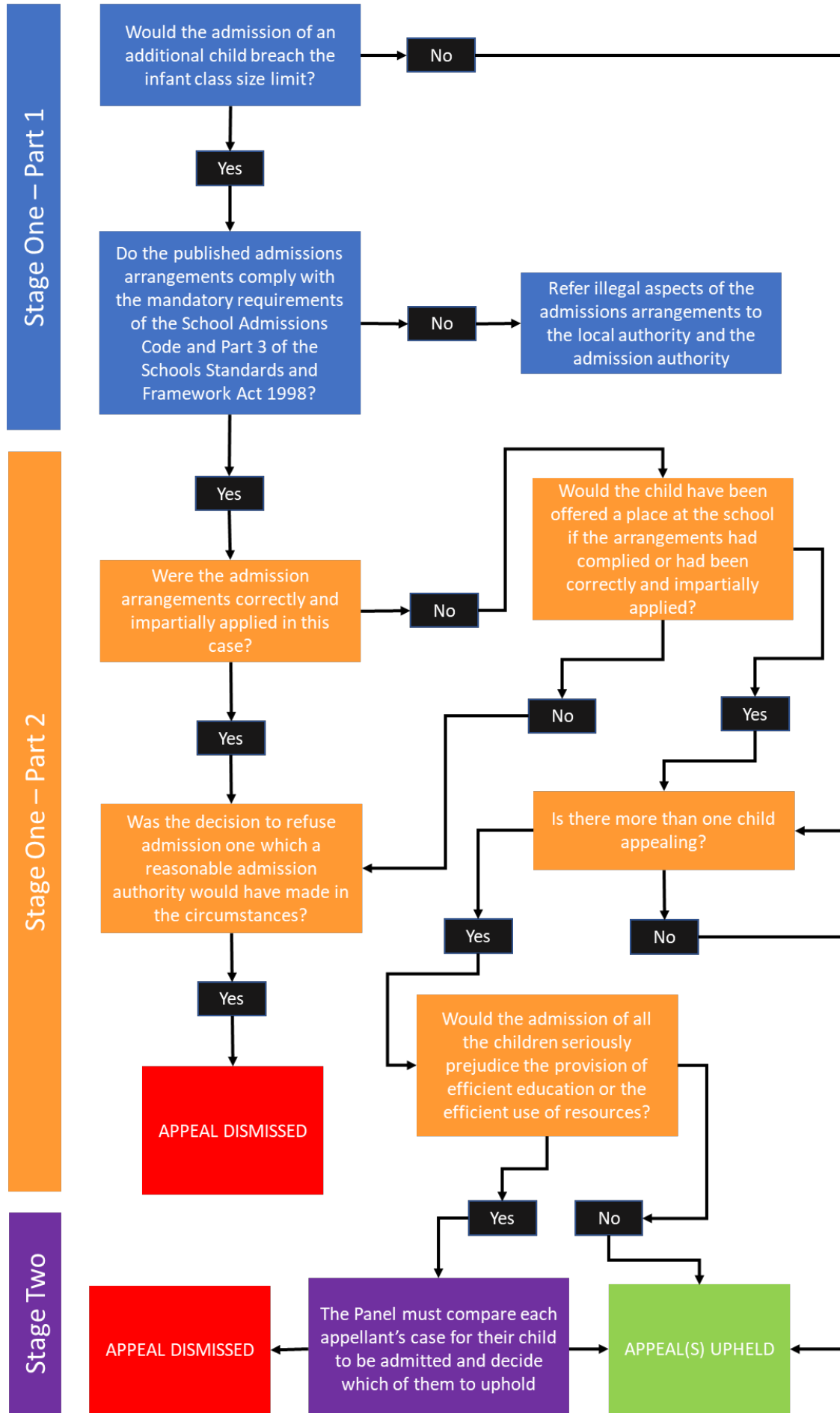
- A decision that makes it impossible for you to transport all your family to school on time, or even impossible for you to continue working, is very unlikely to be perverse.
- A decision to refuse a place to a child whose family have had to move house under a witness protection scheme **might** be seen as perverse but it is for the panel to decide if that is the case.

It is therefore important to understand before proceeding with an appeal that Independent Appeal Panels Hearing an infant class size appeal have no power to consider personal reasons such as:

- childcare arrangements
- children attending different schools
- travel or work arrangements
- academic performance
- health and medical grounds (except where this need can only be met by the school you are appealing for and this claim is supported by professional evidence)

The Panel **must** dismiss cases that are based on these reasons alone.

Admission Appeals – Infant Class Size (Yrs Reception, 1 & 2)



3. What to expect before your appeal hearing

3.1 Before the appeal hearing

The Clerk will invite you to a hearing to present your case. You will be given at least 10 school days' notice of the date and time and venue of the hearing (unless you agree to a shorter notice period). The Clerk will send a copy of the information that the Admission Authority will present to the hearing, before the set date. This will include the reasons why the school has refused your child a place. You will also receive the names of the panel members. If you have any further evidence to support your appeal, you **must** provide this to the Clerk **at least 7 working days before the Hearing**. The Panel does not usually accept evidence after that date.

3.2 Evidence for your appeal

Any evidence you want the panel to consider must be submitted in advance of the Hearing or it may not be considered. This evidence should also have been provided to the school at the time of your application. For example, if your case is based on medical or social reasons then you should provide written evidence from a doctor, medical practitioner or other professional to support this.

4. What to expect at the appeal hearing

4.1 Attending the appeal hearing

You can choose to be accompanied at the Hearing by a friend or be represented by a friend or some other person. An employee of the school in question cannot attend in this capacity or provide letters of support. If you wish to bring a witness with you, please let the clerk know as soon as possible. The evidence to be given by witnesses must be relevant to the issues involved in the appeal and not just repeat information provided by another party. If you need further advice please contact the clerk.

If you attend the Hearing you will be given time to present your case and are free to talk about personal factors, such as the convenience of the journey between your home and the school at the appeal Hearing, but in this type of appeal the panel cannot take them into account unless they are relevant to the very limited circumstances outlined above. If you do not attend the Hearing, the Appeal Panel will hear your appeal based on the written information you have provided.

The Appeal Panel is made up of at least three trained members: a person with experience of education, a lay person (without personal experience of provision of education) and a Chair. The Clerk is independent of the Panel and the Admission Authority, does not take part in the decision making and ensures that the Panel follows the correct procedure.

4.2 The appeal hearing – single appeals

The procedure outlined below is for when there is **only one** appeal for a year group at a school. The process is slightly different for a multiple appeal. The procedure for a multiple appeal is detailed in section 4.4.

The Hearing will be as informal as possible and will be heard in private. The Chair of the Appeal Panel introduces everyone and explains the order of the proceedings as follows:

1. The representative of the admission authority will explain the admission arrangements, the application of the admission arrangements and why your child had been refused admission, including the steps which would need to be taken should another child be admitted over the 30 pupil class size limit.
2. You and the panel members will ask any questions of the admission authority's representative and challenge their case.
3. You will put your case for your child's admission to your preferred school.
4. The admission authority's representative and the panel members will ask questions of you.
5. The admission authority's representative will sum up its case.
6. You will be given the opportunity to sum up your case.

When the Appeal Panel has heard all the evidence you and the Admission Authority representative will be asked to leave.

4.3 The Decision

The Appeal Panel will carefully consider all that they have read and heard and come to a decision. If the panel decides that:

- a) the admission of additional children would **not** breach the infant class size limit; **or**
- b) that the admission arrangements did not comply with admissions law **and** your child would have been offered a place if the arrangements had complied; **and/or**
- c) that the admission arrangements had not been correctly and impartially applied **and** your child would have been offered a place if the arrangements had been correctly and impartially applied; **and/or**
- d) the decision to refuse a place at the school was not one which a reasonable admission authority would have made in the circumstances of the case.

Then your appeal will be upheld. The panel can **only** uphold your appeal if it finds that **any** of a) to d) apply.

4.4 Multiple appeals

If you are appealing after being refused a school place on 'national offer day' then it is likely that your appeal will be heard as a multiple appeal. A multiple appeal is when there is more than one appeal for the same year group at a school.

Where a number of appeals have been received for the same year group at a school it is expected that the same panel will consider all the appeals for that school at the same meeting. In those circumstances the procedure outlined in paragraph 4 will be divided into two parts with all appellants invited to attend Stage one Part I at the same time with a private individual appointment for Stage one Part II.

4.5 Stage one – examining the decision to refuse admission

To ensure all appellants hear the same evidence from the admissions authority regarding the admission arrangements but to allow appellants privacy for their own circumstances, there are two parts to stage one infant class size multiple appeals.

At the start of the Hearing the Chair will welcome all parties and introduce those present, then the following procedure will be followed:

4.6 Stage one – Part 1

The panel will first decide on whether:

- a) the admission of any additional children would breach the infant class size limit; and
- b) if the admission arrangements were lawful.

To allow the panel to do this, the following procedure will be followed:

1. The representative of the admission authority will explain the admission arrangements, the application of the admission arrangements and why yours and the other appellants' children had been refused admission, including the steps which would need to be taken should another child be admitted over the 30 pupil class size limit.
2. You, other appellants, and the panel members will ask any questions of the admission authority's representative and challenge their case.
3. You and the other appellants leave the meeting, together with the admission authority's representative, to enable the panel to make a decision on a) and b) above.

The clerk will remain with the panel to provide advice on law and procedure. They will take no part in the decision making process. At no point will either you or the admission authority's representative be in the room alone with the panel.

At this stage the panel can **only uphold** your appeal if it decides that a) applies and the admission of additional children would **not** breach the infant class size limit.

If the panel does decide that a) applies then your appeal and those of the other appellants will be upheld and the Hearing will conclude **unless** the number of children appealing for a place is a number that would seriously prejudice the provision of efficient education or the efficient use of resources in the school. For example, there are 20 appellants but the panel concluded that the school could take a further 10 children without prejudicing the provision of efficient education or the efficient use of resources.

In these circumstances the Hearing will continue to Part 2 to hear about your individual circumstances and then the Second stage – Comparing cases, before it can make its decision.

If the panel decides that admitting more children would breach the infant class size limit but that b) applies and the admission arrangements were unlawful, the appeal must proceed to Part 2 to allow you to present your case in private and for the panel to determine whether, if they had been lawful, your child would have been offered a place.

If the panel decide that neither a) nor b) above applies then the appeal will proceed to Part 2.

4.7 Stage one – Part 2

In Part 2 the panel will consider the particular circumstances of your case. This part of the Hearing will be held in private, without the attendance of the other appellants, at the time sent to you by the clerk in advance of the Hearing.

The order of proceedings will be as follows:

1. The representative of the admission authority will explain how the admission arrangements were applied to your child.
2. You and the panel members will ask any questions of the admission authority's representative.
3. You will put your case for your child's admission to your preferred school.
4. The admission authority's representative and the panel members will ask questions of you.
5. The admission authority's representative will sum up its case.
6. You will be given the opportunity to sum up your case.

When the Appeal Panel has heard all the evidence you and the Admission Authority representative will be asked to leave.

No decision will be taken on any individual case until Part 2 and, if necessary Stage two, for all the appeals for the school have been completed.

At this stage the panel can only uphold your appeal if it decides that:

- c) the admission arrangements had not been correctly and impartially applied to your child **and your child** would have been offered a place if the arrangements had been correctly and impartially applied; **and/or**
- d) the decision to refuse a place at the school was not one which a reasonable admission authority would have made in the circumstances of the case.

If your appeal proceeds to Part 2 because at Part 1 the panel found that to admit another child would not breach the infant class size limit but to admit all of the appellants would seriously prejudice the provision of education at the school, the panel will be taking their decision based on c) and d) above **and then** in accordance with Stage Two – comparing cases.

If your appeal proceeds to Part 2 because the panel found the admission arrangements were unlawful they will consider whether if they had been lawful your child would have been offered a place at the same time as considering c) and d) above.

If the admittance of the number of children whose appeals the panel decides have met the limited circumstances required for an appeal to be upheld would seriously prejudice the provision of efficient education or the efficient use of resources in the school, the panel must proceed to Stage two – Comparing cases.

4.8 Stage Two – comparing cases

Stage two will only be undertaken where, at either Part 1 or Part 2 of Stage one, the number of appellant children which meet the limited criteria for upholding an appeal would seriously prejudice the provision of efficient education or the efficient use of resources at the school if they were to be admitted.

At this stage the panel will compare the cases of the children to be admitted for each of the appellants who met the criteria and decide which of them to uphold.

There is a flowchart of this process on page 4.

5. What to expect after your appeal hearing

5.1 After the Hearing

You will be emailed the outcome of your Appeal the day after the Appeal is held. The Clerk will also write to you, usually within 5 working days of the Hearing, advising you of the Appeal Panel decision and the reasons why they came to that decision. The decision is binding on you and the school and can only be overturned through the courts by Judicial Review.

If your Appeal was not successful, you can contact the Admissions and Information Service for advice on places at other schools: Contact telephone number: 0191 2787878 email: admissions.information@newcastle.gov.uk

For a non-Academy school: If you believe the Appeal was not conducted properly you may complain to the Local Government & Social Care Ombudsman (LGO). Telephone: 0300 0610614 or follow the links on <http://www.lgo.org.uk>

For an Academy school: If you believe that the Appeal was not conducted properly (for example, there were only two Panel members) you may complain to the Education and Skills Funding Agency, and follow the links from their website: www.gov.uk/government/organisations/education-and-skills-funding-agency/about/complaints-procedure.

You cannot appeal twice in the same school year for a place at the same school unless there is a major change in your circumstances. You can apply for a place at the school in the following year and if your application is refused you have the right to appeal again.

6. Frequently asked questions – before the appeal

6.1 What is an admission appeal?

If a parent or carer is refused the school of their choice they are entitled to appeal against the decision. An Education Appeal Panel is a formal procedure held in accordance with the School Admission Appeals Code, and is independent of the council, the Admission Authority, and the school. It is the opportunity for the Admission Authority to present why your child was not offered a place at the school of your choice, and for you to present why you feel your child needs to go to that school. Both cases are heard by an independent Panel who will reach a decision on whether your child should be admitted to that school.

6.2 How quickly do you have to hear my appeal?

- For school applications made in the normal admissions round appeals must be heard within 40 school days.
- For late applications appeals should be heard within 40 school days from the deadline for lodging Appeals where possible, or within 30 school days of the Appeal being lodged.
- An in-year admission Appeal must be heard within 30 school days.
- For applications to sixth forms the deadline is 30 school days if the offer would have been conditional upon exam results or 40 school days if the offer would not have been conditional upon exam results.

We do not routinely acknowledge receipt of appeal forms, if you would like to confirm that we have received your form, please email us on schoolappeals@newcastle.gov.uk or contact the Clerk on 0191 277 7427.

6.3 What support can I have if I choose to appeal?

We can help you with an interpreter for the Appeal. Please advise us if you think this would help.

The Admissions and Information team are always there to help you find a school for your child and can be contacted even if you have an Appeal pending. You can decide to withdraw your Appeal if you find a place for your child you are happy with.

6.4 What are the grounds for going to appeal?

The grounds for appeal are detailed at section 2.1. You are advised to consider carefully whether your case falls within the grounds.

6.5 What are not grounds for appeal?

Your childcare arrangements, working or study arrangements, transport difficulties, who else attends the school of your choice, your dissatisfaction with your allocated school, the fact that your child attended the school nursery and home to school distance generally are not grounds for appeal.

6.6 What does 'unreasonable' mean?

For the purposes of School Admission Appeals unreasonable means that the decision would have to be 'outrageous' and 'perverse' and not based on the facts of the case.

6.7 What does 'perverse' mean?

People who have been refused a place at their preferred school may consider this decision to be perverse. The word has a stronger meaning however in its legal sense. It means 'beyond the range of responses open to a reasonable decision maker', or 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it'. A decision that makes it impossible for you to transport all your family to school on time, or even impossible for you to continue working, it is unlikely to be perverse.

6.8 What can the appeal panel consider as part of my evidence?

The Panel has to consider the information and material that was available at the time that the Admission Authority made its decision about your child, and also evidence that you supply about your situation at that time (eg your address). You can submit anything you think is relevant which may support your case.

6.9 What can the appeal panel not consider?

Supporting information from the school you are appealing for.

6.10 How many appeals are successful?

It is very difficult to win an appeal for school places in Reception, Year 1 or Year 2 (Key Stage 1) because infant class size legislation restricts the size of these classes to a maximum of 30 children per class with one class teacher. The grounds an Appeal Panel can consider are very limited, and nationally in 2021-22 only 9.5% of these appeals were upheld. Nationally, 33.2% of other Primary years, and 21.1% Secondary Appeals were upheld.

6.11 Can I change my mind? Can I stop the appeal?

Yes, please inform the Clerk as soon as you decide you don't want to proceed with the Appeal.

6.12 Where can I find out more about admission appeals?

The Local Government and Social Care Ombudsman at:

<http://www.lgo.org.uk/publications/fact-sheets/complaints-about-school-admissions/>

The Advisory Centre for Education (ACE) at www.ace-ed.org.uk

The Department for Education website at:

www.education.gov.uk/schools/adminandfinance/schooladmissions

The Government services and information website at:

<https://www.gov.uk/schools-admissions/appealing-a-schools-decision>

CORAM Children's Legal Centre at www.childrenslegalcentre.com

Newcastle Law Centre at www.newcastlelawcentre.co.uk can advise on school admission appeals. Email reception@newcastlelawcentre.co.uk or call 0191 2304777 for more information.

7. Frequently asked questions – during the appeal

7.1 What happens at the appeal?

7.1.1 Single Appeal

- When it is time for your Appeal to be heard, everyone goes into the Hearing together: the Clerk, the Admission Authority representative and you.
- The Chair of the Appeal Panel introduces everyone and explains the order of the proceedings as follows:
 1. Stage 1 – Case for the Admission Authority. If there are a lot of appeals for the same school year group, all appellants are invited to attend this part of the Hearing together, but will put the case for their own child separately.
 2. Questioning by you (the appellant) and Panel.
 3. Case for the appellant – this is your chance to present your case.
 4. Questioning by the Admission Authority and Panel.
 5. Summing up by Admission Authority.
 6. Summing up by you (the appellant).
- When the Appeal Panel has heard all the evidence, the Admission Authority representative and you will be asked to leave.

7.1.2 Multiple Appeal

A multiple Appeal happens when there is more than one appellant for the same year group in the same school. The Clerk brings the Appeals together, and stage one, part 1 of the Appeal, the case from the Admission Authority, is heard with all appellants together. Stage one part 2 is the appellants individual cases, which are heard separately. Appellants will be asked to attend both parts of stage one.

A multiple appeal may progress to stage two, if so you will not be present for this stage as this is where the panel will compare cases should this be necessary.

7.2 How long will it take?

There is no set time limit, but most Appeals will take no longer than an hour.

7.3 What is Infant Class Size legislation?

The law states that there must not be more than 30 children in an infant class per qualified teacher in Key Stage 1 (that is, classes containing reception, year 1 and year 2 children). This applies even if other adults are always present, or some children are absent.

7.4 What are mixed year classes?

Some schools organise their teaching in mixed year classes, where they may combine two or more different year groups in one class. This may be due to the size of the school, economic necessity or because the school choose to teach in this way as they think it is better for the pupils.

7.5 Who will be at the appeal?

At least three independent panel members who make decisions about your case, the Clerk who organises the Panel and ensures the Panel follows procedures, and the Admission Authority representative and possibly a representative from the school who will present why your child did not get a place.

7.6 Who are the Panel?

The Panel is made up of at least three members; a person with experience of education, someone without direct experience of managing in education and a Chair. They are independent and will not know you, will not be familiar with your case, and will have had no involvement with the school you are appealing for. They are volunteers and are trained.

7.7 Can someone come with me?

You can bring someone with you, but it is helpful for the Panel to know this in advance, and in what capacity they are coming (eg as a friend, for support, to advise you). You cannot bring someone with you from the school in question or the Admission Authority. We also understand that sometimes you may need to bring a child or your children with you.

7.8 What if I don't come to the appeal?

We do ask you to let us know if you are planning to attend. If you don't turn up we will hear the Appeal in your absence based on the written information you have supplied. Your Appeal will not be considered any differently if you do not attend.

7.9 How does the Panel make their decision?

If the panel decides that:

- a) the admission of additional children would **not** breach the infant class size limit; **or**
- b) that the admission arrangements did not comply with admissions law **and** your child would have been offered a place if the arrangements had complied; **and/or**
- c) that the admission arrangements had not been correctly and impartially applied **and** your child would have been offered a place if the arrangements had been correctly and impartially applied; **and/or**
- d) the decision to refuse a place at the school was not one which a reasonable admission authority would have made in the circumstances of the case.

Then your appeal will be upheld. The panel can **only** uphold your appeal if it finds that **any** of a) to d) apply.

8. Frequently asked questions – after the appeal

8.1 How do I find out the result of the appeal?

You will be emailed the outcome of your Appeal the day after the Appeal is held. The Clerk will write to you, usually within 5 working days, advising you of the decision and the reasons why the Panel came to that decision.

8.2 What can I do if I'm not happy with the Panel decision?

If you believe the Appeal was not conducted properly you may complain to the Local Government and Social Care Ombudsman (LGO). Telephone 0300 0610614 or follow the links on <http://www.lgo.org.uk> The LGO may choose to investigate how the Appeal was conducted, however even if they find that procedures were not properly followed this does not mean that they will overturn the Panel's refusal of a place. They may recommend that the Appeal is re-heard with a different Panel or Clerk.

If the Appeal was for an Academy school you should complain to the Education and Skills Funding Agency, and follow the links from their website:
www.gov.uk/government/organisations/education-and-skills-funding-agency/about/complaints-procedure.

8.3 What if my appeal is successful?

The school and the Admission Authority will be informed by the Clerk of the Appeal outcome. You may wish to contact the school to make arrangements for your child's admission.

8.4 What if my appeal is unsuccessful?

You can contact the Admissions and Information Team for advice on places that are available at other schools, on 0191 2787878 or admissions.information@newcastle.gov.uk

8.5 Can I have another appeal?

You cannot appeal twice in the same school year for a place at the same school unless there is a major change in your circumstances.