

10 November 2014**Agenda Item: 05****REPORT OF CORPORATE DIRECTOR OF POLICY, PLANNING &
CORPORATE SERVICES****SCHOOL ADMISSIONS APPEALS****Purpose of the Report**

1. To respond to Members' requests for further information on the school admissions appeals process.

Information and AdviceStatutory Context

2. All Admission Authorities (including academies) are required to follow the Department for Education's School Admissions Code when setting and applying their admission arrangements (the Committee agreed the latest version of the admission arrangements for 2015/16 at its meeting on 17 March 2014).
3. There is a statutory requirement to provide a right of appeal for parents/carers for any unsuccessful school applications (first admissions, secondary schools and in-year transfers). Such appeals are held in line with the School Admissions Code and the related School Admissions Appeals Code. It is worth noting that only a very small percentage of applicants do not receive their first preference of school and seek an appeal.

Panel Members and Clerks

4. The County Council is required to appoint independent volunteer Panel Members to deal with admission appeals and their decisions are binding on the Admission Authority. The Council currently has a pool of 49 Panel Members. Each Panel needs at least 1 Member with an education background and 1 Lay Member (Panels of 3 Members are used for logistical and cost reasons although larger sized Panels are permissible). Panel Members have been recruited via advertisements and occasionally via recommendations from other Panel Members. Panels should represent the communities we serve although it is not always possible to get as wide a cross-representation as desired due to the timing of hearings (largely held during office hours) and the time commitment involved.
5. The hearings are usually clerked by officers from Democratic Services or Legal Services. Update and refresher training is organised annually for Clerks and Panel Members, using both in-house and external trainers. Democratic Services also link into the National Association of School Admissions Clerks as a means of sharing best practice.

6. The majority of admission appeal hearings organised by the Council are for the Council's own community and voluntary controlled schools. However, Democratic Services also provide appeals support to a growing number of Academies as part of the Services to Schools offer, thereby bringing in additional income and helping to address concerns that appellants may receive a different quality of service in their appeals for academies.
7. Appeal hearings follow the rules of natural justice. Both parties (admission authority and appellant) present their cases in the presence of each other and the Panel. Translations and interpreters are provided where requested (although very few such requests are received). Multiple hearings are organised where there are more than two sets of appellants applying for the same year group of a school and different decision-making rules apply for such hearings.

Decision-making

8. In all appeals, the Panel's decision-making is undertaken in private and has to be confirmed in writing within 5 working days of a hearing. The Clerk plays no part in the decision-making although has a role in ensuring that each Panel Member provides adequate reasons for their decisions, makes decisions in line with the legal requirements and is consistent in terms of their own decision-making within each hearing.
9. Some concerns have recently been raised about the consistency of decision-making by Panels. In response to such concerns, it should be noted that a Panel is not required to have reference to any decisions of a previous Panel for the same school or other schools in making their decisions. Panel members are expected to make their decisions based on the information presented by both parties in writing and in person at each hearing.

Types of Appeals

10. There are broadly two different types of Admission Appeals:-

(1) Normal prejudice – two stage appeal (can be primary or secondary)

- i) Stage 1 – the Admission Authority has to prove to the Panel that the admission arrangements are lawful and have been correctly and impartially applied and that to admit any further child/children (not the specific child/children appealing) to the school would cause prejudice to the provision of efficient education or to the efficient use of resources.
- ii) Stage 2 – if the Panel accepts the Admission Authority's case at Stage 1 then an appeal moves onto the next stage where the appellant's reasons for wanting the school are considered. The Panel then decides whether the impact on the child outweighs the prejudice to the school.

(2) Infant Class Size (ICS) Prejudice / Future ICS Prejudice

- i) ICS regulations mean that a class where the majority of children are of infant age (Years Reception, 1 & 2) cannot contain more than 30 pupils with a single teacher

(unless the additional pupils meet one of the legally prescribed grounds for being 'excepted pupils').

- ii) ICS Prejudice (and Future ICS prejudice) applies in cases where the admission of a further child / children would result in a class of more than 30 pupils (or would do so in future years) and there are no measures which the school can take to counter that without causing prejudice to the provision of efficient education or to the efficient use of resources.
- iii) In such cases a Panel can only legally allow the appeal where one of the following grounds apply:-
 - a. the admission would not breach the infant class size limit;
 - b. the admission arrangements were not lawful and if they had been the child would have obtained a place;
 - c. the admission arrangements were not correctly and impartially applied and if they had been the child would have obtained a place;
 - d. the decision (to refuse admission) was not one which a reasonable authority would have made in the circumstances of the case.

11. With regard to the consideration of reasonableness in such cases, the Appeals Code underlines the high threshold for finding an admission authority's decision to refuse admission unreasonable. The Local Government Ombudsman, in guidance for appellants, has underlined that circumstances where a parent is expected to get different children to different schools at the same time does not in itself meet the threshold of unreasonableness.

12. It is worth noting that, due to these restricted grounds, the chances of an appellant being successful in an ICS appeal are far slimmer than in normal prejudice appeals. The following figures for the 2014/15 academic year (up to 1 September 2014) help to illustrate that point:-

Appeal Type	Heard	Successful	Unsuccessful
Infant Class Size	252	7 (2.8%)	245 (97.2%)
Future Infant Class Size	19	2 (10.5%)	17 (89.5%)
Normal Prejudice	101	49 (48.5%)	52 (51.5%)
Total	372	58 (15.6%)	314 (84.4%)

13. In the past, some Panel Members have raised concerns about the lack of discretion they can exercise in ICS appeals compared to normal prejudice appeals. One of the existing Panel Members has recently contacted their local MP to express similar concerns about the ICS regulations and processes and the subsequent impact upon families. A briefing has been arranged for the MP to help explain the process and to clarify Members' concerns. A number of other MPs have also raised concerns on behalf of their constituents this year.

14. The following table provides a breakdown of the total number of appeals lodged and heard for the Council's community and voluntary controlled schools and their outcomes in recent academic years:-

Academic year	08/09	09/10	10/11	11/12	12/13	13/14	14/15
Primary (incl. ICS)							
Lodged	412	472	492	595	422	481	512
Withdrawn settled	196	192	184	280	133	131	140
Heard	216	280	308	315	289	350	372
Successful	69	109	108	77	57	77	58
Unsuccessful	147	171	200	238	232	273	314
Secondary							
Lodged	230	194	158	87	47	3	0
Withdrawn settled	90	100	56	32	20	2	0
Heard	140	94	102	55	27	1	0
Successful	73	66	63	21	11	1	0
Unsuccessful	67	28	39	34	16	0	0
Total							
Total Lodged	642	666	650	682	469	484	512
Total Heard	356	374	410	370	316	351	372
Total Successful	142	175	171	98	68	78	58
Total Unsuccessful	214	199	239	272	248	273	314

Complaints Process

15. Following an appeal hearing, appellants can complain to the Local Government Ombudsman (for maintained schools) or to the Education Funding Agency (for Academies) if they feel that their application or subsequent appeal was not properly dealt with. The County Council has dealt with thirteen Ombudsman investigations for this academic year, which is in line with numbers in recent years. Of those thirteen investigations, only two so far have had a negative finding, with the Ombudsman investigator recommending that a place be offered to one child and a fresh hearing be arranged in the other case.

Other Options Considered

16. To not provide an update but Members have requested further information on the admission appeals process.

Reason for Recommendations

17. To maximise understanding of the appeals process amongst County Councillors and other elected representatives.

Statutory and Policy Implications

18. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Implications for Service Users

Democratic Services continually review their practice around education appeals to maximise levels of understanding and participation from both parties (admission authorities and appellants) in the process.

RECOMMENDATIONS

- 1) That Members note the information on the school admissions appeals process contained in the report.

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For any enquiries about this report please contact Keith Ford, Team Manager Democratic Services

Constitutional Comments

19. As this report is only for noting, Constitutional comments are not required.

Financial Comments (SEM 17/10/14)

20. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- School Admissions Code (published)
- School Admissions Appeals Code (published)
- Local Government Ombudsman Findings (contains exempt elements)

Electoral Division(s) and Member(s) Affected

- All

