

# **Schools' Guidance in Preparing for Admission Appeals**

**February 2016**



## CONTENTS

## Page

1.	The Right to Appeal	2
2.	Informing parents of their Right to Appeal	2
3.	The Appeals Timetable	2
4.	Preparing the school's written submission	3
5.	The Role of the Presenting Officer	7
6.	Arranging a suitable venue	8
7.	Appointing a properly constituted Panel and Clerk	8
8.	The Appeal Hearing	9
9.	Infant Class Size Appeals	10
10.	Appeals for KS2 and above	11
11.	Appeals for Admission to year 12	12
12.	Decision letters	12
13.	Freedom of Information Act 2000 & Data Protection Act 1998	13
14.	Further help and queries	13
<b>APPENDIX 1: Checklist for Appeal Hearings</b>		14
<b>APPENDIX 2: Example statement for Infant Class Size appeal</b>		16
<b>APPENDIX 3: Example statement for Primary School appeal (<i>where ICS does not apply</i>)</b>		20
<b>APPENDIX 4: Example statement for Secondary School appeal</b>		24

# SCHOOL ADMISSION APPEALS

## PREPARATION FOR THE APPEAL HEARING

This booklet has been produced for Admission Authorities, to assist them in preparing for statutory school admission appeals. It also aims to assist schools that have opted to administer their own school appeals by providing helpful advice to supplement the guidance contained in the School Admission Appeals Code (SAAC) issued by the Department of Education (DfE).

### 1. The Right to Appeal

The School Standards and Framework Act (SSFA) 1998 gives parents the right to appeal against a decision to refuse their child admission to one or more of their preferred school(s). The act also puts a duty on Governing Bodies of Foundation, Trust, Voluntary Aided, Free Schools and Academies to make arrangements to enable parents to appeal for entry to their school. School admission appeals must be organised in accordance with the SAAC published by the DfE.

### 2. Informing parents of their Right to Appeal

Parents/carers have the legal right to appeal against the refusal of a place at any school they applied for. Parents unsuccessful in gaining a place at their preferred school(s) **must** be advised by the admission authority (either the local authority or the governing body) of the following information in writing:

- why the application was denied in light of the published admission arrangements and if relevant, whether the refusal was a consequence of the infant class size limit;
- notification of the right to appeal and details of how to appeal;
- where to obtain further information; and
- their right to attend the appeal hearing to make verbal representation.

The letter must not restrict the grounds on which a parent/carer can make an appeal, but should, where applicable, inform them of the limited circumstances in which an infant class appeal can be upheld. In addition, comments on the likelihood of success should not be made, but reference can be made to the percentage of successful appeals nationally, or in Hertfordshire, in previous years.

### 3. The Appeals Timetable

There is a duty for admission authorities to publish their appeals timetable on their website by **28 February** each year (para 2.2 of SAAC). Timescales and deadlines with regard to this are set out below:

- Initially, any deadline for lodging appeals must give appellants **at least 20 school days** from the date of notification that their application was unsuccessful.
- Appeals for on-time applications for year of entry and/or transfer must be heard **within 40 school days** of the deadline for lodging appeals.

- Appeals resulting from late applications should be heard within 40 school days of the deadline where possible or within 30 school days of the appeal being lodged, whichever is the later.
- Appeals for 'in year' admission must be heard **within 30 school days** of being lodged.
- Appellants must be sent notice of their appeal hearing date and time at least **10 school days** in advance of the hearing, unless otherwise exceptionally agreed.
- A copy of the appeal papers, including names of the panel members, must be sent to all parties a reasonable time prior to the hearing.

The SAAC states that you must give a deadline for the submission of any further evidence from appellants that was not sent with the initial appeal. Appellants also have to be informed that any evidence received after this date might not be considered at the appeal.

In the absence of stated deadlines Hertfordshire's Appeal Service will continue to use the timescales given in the previous Code, as this is perceived as best practice. That is, papers will be sent to all parties 7 working days prior to the hearing and the published deadline for submitting late evidence will be 4 working days prior to the hearing date.

Using these timescales means that Foundation, Trust, Voluntary Aided, Free schools and Academies using Hertfordshire's Appeals Service will be required to submit a copy of the school's case and any accompanying papers at least 9 working days prior to the hearing date to allow for photocopying.

#### **4. Preparing the school's written submission**

It is important that the school's case is up to date and accurate. It is also best practice to ensure that any general statement has a recent date and signature.

The SAAC gives the following guidance on what information **must** be included in the Governing Body's written statement (see **Appendix 1 – Checklist for Appeal Hearings**).

- All relevant documents needed to conduct the hearing in a fair and transparent manner in accordance with the specified timetable;
- Details of how the admission arrangements and the co-ordinated scheme apply to the appellant's application;
- The reasons for the decision to refuse admission, where possible include a copy of the refusal letter; the Admission and Transport team may be able to help you with this;
- A written statement summarising how places at the school were allocated and how these arrangements apply to the parent's application, with any relevant background information. This should include how many places were allocated

in each category. This must be done without disclosing personal details of applicants that would enable the identification of individuals. If the school has admitted over its Published Admission Number (PAN) an explanation of why this was done, with reference to the School Admissions Code (SAC) if appropriate, will be required by the appeal panel.

**Our experience shows it is also essential to include with this:**

- details of the number of applications received for the year group and which categories of the admission policy these applications were in;
  - the Published Admission Number for the school;
  - how many places were offered within each category of the admission policy;
  - a copy of the parent's original application form;
  - the category the appellant is in and why they were refused a place;
  - **for In Year applications** - the time scale used by the school for submitting applications through to offering places.
- A copy of the admission policy plus any other paperwork that forms part of the application must be included with the written statement. Admission policies can and do change over the years, so remember to use the admission policy relevant to the year group in question.
  - **For Infant Class Size appeals** - that a breach of the Infant Class Size limit would arise from the admission of the child (or children) concerned and there are no measures that the school could take to avoid this without prejudicing the provision of efficient education or efficient use of resources.

It should be made clear in the written statement if the Admission Authority is defending its decision on the basis of infant class size legislation. Schools must consider if future prejudice would arise if additional pupils were to be admitted. This is particularly important if the school vertically groups in higher year groups.

- **For all other appeals** - an explanation as to how the admission of an additional child would cause prejudice to the provision of efficient education or use of resources. It may be useful to include the following information:
  - The impact additional pupils will have on the school in terms of teaching staff, accommodation, resources and health and safety etc;
  - Details of what prejudice would occur to any aspects of school life if an additional child were to be admitted
  - Details of how classes are organised, especially if the school vertically groups;
  - The numbers of pupils on roll, and within each year group;

- The number of pupils with Statements of Special Educational Needs or Educational Health and Care Plans as well as those identified as requiring additional support, with details of any additional resources required to meet their needs such as additional adults or equipment in the classrooms.
- A response to point(s) raised by the parent as part of their case. It is important to pay attention to the appellant's case and identify areas you need to address to avoid possible lengthy adjournments;
- Appeal Panels have a duty to consider if the school's published admission arrangements comply with the mandatory requirements of the School Admissions Code and the SSFA 1998 and your statement should contain reference to this. It is suggested you include a sentence that states that the Governing Body has carried out all the necessary requirements, as detailed in legislation and guidance, to ensure that the school's published admission arrangements comply with the mandatory requirements of the School Admissions Code and the SSFA 1998. More details on the necessary requirements can be found in the School Admissions Code 2014.

If an Appeal Panel considers that any admission arrangements do not comply with the mandatory requirements of the School Admissions Code and the SSFA 1998 they must refer these to the Local Authority and the school where it is its own Admission Authority. The DfE have confirmed that this duty relates to any aspect of the admission arrangements and not just the relevant admission criteria. It has also been confirmed that even where admission arrangements are referred, the Appeal Panel must still proceed and make a decision on the appeal(s) before it.

- It is also useful to include a map showing any catchment area and the distance from the appellant's home to the school. Where a parish boundary is used as part of the admission criteria, maps showing this should be included if possible.
- If the parent applied under exceptional circumstances (eg medical/social), you should include details on how and by whom this application was considered as detailed in your admission criteria, the decision reached and the reasons for the decision.
- where distance criteria have been used the Admission Authority **must** demonstrate how this was applied to the appellants' application compared to those offered a place. This should confirm the distance used for the applicant, the distance of the last child so far offered a place, including any offered from the continuing interest list, and the methodology used to calculate the distances.
- ***For In Year applications*** - where all places were allocated at an earlier date it is enough to explain that no places were available and state the admission category the child would have fallen into if the appellant had applied on time.

**For all appeals it may also be useful to include some or all of the following where relevant:**

- A summary of the size of classrooms. Current class organisation and pupil numbers in classes/year groups, together with current staffing levels. This could include a map/plan of the school if that would be helpful. Any statement referring to accommodation, class sizes, capacity etc must be supported by factual information.
- The relevant extract of the area's coordinated admissions scheme where this is relevant to the appeal.
- Details of how the locally agreed In-Year Fair Access Protocol operates.
- Copies of any additional information or documents, which the Admission Authority wishes to rely on as part of its case, including anything submitted by the parent. This should include copies of any correspondence between the school and the parent with regards to their application.

**Remember:** The SAAC states that there should be no grounds for the Admission Authority to produce substantial new information at the appeal, so it's vital that you provide all information you may wish to rely on with the Governors statement.

**Note: when submitting a copy of the schools case to the Appeals office you do not need to include a copy of the appellant's appeal form or accompanying evidence already sent to you by the Appeals Team.**

The SAAC states that Panel Members must not take into account where the Admission Authority has placed a child on the waiting list or the fact that parents of other children on the waiting list are not appealing. Appeal Panels must not determine where a child should be placed on the waiting list so there must be no mention of the relevant child's place on the waiting list in the written statement.

Parents have the right to submit additional evidence any time up to the published deadline for submitting late evidence. As stated earlier, each Admission Authority must now publish a date by which late evidence should be submitted. The Appeal Panel must decide whether any information submitted after this date is to be considered, taking into account its significance and the effect of a possible need to adjourn. To avoid any lengthy adjournments, we would advise the school to ensure that the case is as full and as strong as possible.

There are three template statements included in the appendices of this guidance: one for an appeal relating to Infant Class Size legislation (**Appendix 2**), and two for normal prejudice - one for primary (**Appendix 3**) and one for secondary (**Appendix 4**), to assist you with drawing up your case for appeal.

## **5. The Role of the Presenting Officer**

It is the responsibility of the admission authority to provide a presenting officer to present the reasons for the decision to refuse admission and to answer detailed questions about the school and the case being heard.

The officer is usually a member of the Governing Body who sits on the Admissions Committee, but may also be a member of staff or a professional presenting officer\*, formally appointed by the Governing Body.

\*Diocesan Boards or the Local Authority's Admission and Transport team may be able to offer advice about appointing a professional presenting officer.

The presenting officer must be able to demonstrate how the parent's application has been processed against the school's published admission criteria, providing as much detail as possible. Copies of all correspondence between the admission authority and the parent relating to the application should be submitted in support of the admission authority's case, in addition to the Governors statement. Where the Local Authority has been involved through administering the co-ordinated scheme, copies of documentation relating to the parents application can be obtained from the Admissions and Transport team, for example a copy of the parents application form. Admissions and Transport may also be able to confirm what alternative schools have been suggested or offered, information which could be added to the school's case.

Panel members are expected to play an active part in questioning both the presenting officer and the parents, so the presenting officer must be well prepared to answer detailed questions and to explain why a place could not be allocated. He/she may be asked about the relevant admission arrangements and the school itself, including its day to day organisation, numbers of children and teaching groups in each year group, details of SEN students, classroom and core area sizes and records of any accidents. In addition, they may be asked to explain how the admission process works and whether there are separate arrangements for 'in year' applications.

Importantly, the presenting officer must have up to date information (as at the date of appeal) regarding the number of places allocated and accepted and, where appropriate, the distance of the last child so far allocated a place, including any allocated from the continuing interest list.

The SAAC is silent on whether an additional school representative may accompany the presenting officer. However, as parents are permitted to call witnesses, it is generally felt that a representative of the school can accompany the presenting officer but only as a witness to answer questions put to them about the school. (It is important to give clear guidelines at the start of the appeal as to how this will work).

If a presenting officer attends alone, please ensure he/she has the contact details of a person at the school that can help if additional information is requested at the hearing. If necessary the presenting officer will be expected to telephone to obtain information quickly to avoid lengthy adjournments.

## 6. Arranging a suitable venue

Guidance is given in the SAAC stating that admission authorities must ensure appeals are heard in private. Admission authorities must also ensure that the venue:

- is accessible to parents;
- has a suitable area for appellants and presenting officers to wait separately from each other away from the panel before and between appeals;
- will not be disturbed by activity outside the room; and
- must be accessible for people with disabilities

**NOTE:** The panel **must not** be left alone with the presenting officer or the appellant at any time.

Hertfordshire Appeals Service will also try to ensure that:

- any venue is accessible by public transport;
- there is adequate parking available for those attending;
- that a suitable size room is available, ie able to seat a minimum of 10 at a table, for the hearings to take place;
- that water is provided for those attending; and
- that it has toilet facilities.

## 7. Appointing a properly constituted Panel and Clerk

Parents have the legal right to appeal to an Independent Appeal Panel. The Appeal Panel must not include anyone involved in the original decision to refuse a place, anyone who is a member of the Local Authority which maintains the school, a governor, teacher or anyone with any association, either past or present, with the school in question.

If the Appeal Panel upholds an appeal and decides that the child should go to the school that is the subject of the appeal, a place **must** be allocated. The decision is binding on all those concerned.

Each Appeal Panel must have at least three members and consist of the following persons with at least one from each category:

- Lay people – someone without personal experience in the management or provision of education in any school, except as a school governor or in another voluntary capacity;
- People who have experience in education, who are acquainted with educational conditions in the local authority area, or who are parents of registered pupils at a school.

All panel members **must** have received the prescribed training set out in the SAAC before being eligible to serve and should attend any further update briefings relevant to the functioning of the panel.

**NB – as the Admission Authority, if you are not using Hertfordshire’s Appeals Service to administer your appeals, you are responsible for ensuring that your panel members qualify under this legislation. Failure to do so gives scope for a claim of**

**maladministration. The clerk is required to confirm that all panel members have received the necessary training.**

Panel members are eligible to receive travel and subsistence allowances in accordance with sections 173 and 174 of the Local Government Act 1972. They can also be compensated for any loss of earnings or individual expenses incurred as a result of attending an appeal hearing or training. Where the governors have opted to use Hertfordshire's Appeal Service, we appoint panel members and will cover these allowances or expenses. However, if your Governing Body has decided to administer their own appeals you will need to pay these allowances. The SAAC states that governing bodies or academy trusts should set the rate of payment with regard to the rate set by the Local Authority. If you have any queries on this you should contact Hertfordshire's Appeals Team who can advise you.

An independent clerk must also be appointed in order to constitute and assist the panel and to ensure that its independence and impartiality (both actual and perceived), are not compromised in any way. The clerk's role is to carry out the following functions:

- The administrative functions as set out in the SAAC;
- Ensure that panel members have received the mandatory training;
- Provide the main point of contact between the parties and the panel;
- Provide independent advice on the SAAC, legislation and procedures;
- Ensure the panel is not left alone with any of the parties;
- Provide assistance and information to all the parties to the appeal before, during and after the hearing;
- Keep an accurate and full record of the proceedings, and
- Deal with any post-decision complaints and challenges in the courts.

Again, if your Governing Body has opted to use Hertfordshire's Appeal Service the appointment of a clerk comes as part of the package provided.

## **8. The Appeal Hearing**

At the start of the hearing the Chairman will welcome the parent(s) and representative(s) of the Admission Authority and introduce everyone present. He or she will explain how the hearing will proceed and ensure that the parent and representative are given a proper opportunity to put their case.

The representative of the Admission Authority will put the case for the school first and the parent and Appeal Panel will be given the opportunity to ask questions. The parent will then be given the opportunity to give all their reasons for wanting a place at their preferred school and why they feel they should be offered a place. The representative will be allowed to ask the parent questions. Panel Members may ask questions at any time. Both the Admission Authority representative and the parent

will then be given the opportunity to sum up but no new information can be given at this stage.

**Representation** - You should be aware that representatives of schools are not allowed to support individual appeals for places at their school at the hearing itself or by providing letters of support for appellants. This is due to possible conflicts of interest and the possibility of unfairness to other appellants, see para 2.13 of the SAAC. We would advise you to ensure that all members of school staff and the Governing Body are made aware of this and the need to refuse requests if prospective parents approach them.

The SAAC states that, when conducting multiple appeals for the same school and year group, the school's case must always be the same.

## **9. Infant Class Size Appeals**

You should be aware that legislation has changed and a child admitted as an "excepted pupil" now remains "excepted" for the entire time they remain at that school in an infant class.

Places refused under infant class size legislation are done so on the following basis:

"to admit an additional child to the relevant year group would breach the infant class size limit and there are no measures the school could take to avoid this without prejudicing the provision of efficient education and efficient use of resources". Please refer to paragraph 4.2 of the current SAAC.

Appeal Panels considering appeals that arise as a result of the legal limit on infant classes of 30 pupils to one teacher are restricted in what they can consider. Where class size limits apply, an Appeal Panel can only uphold an appeal if it is satisfied that:

- the admission of additional children will not breach the infant class size limit or there are measures the Admission Authority could take to avoid any breach without causing prejudice; or
- the child would have been offered a place if the admission arrangements had been properly implemented; or
- the child would have been offered a place if the admission arrangements had not been contrary to the mandatory provisions in the School Admissions Code and the SSFA 1998; or
- the decision was not one, which a reasonable Admission Authority would have made in the circumstances of the case.

The narrow legal definition of 'unreasonable' means that the decision to refuse the child a place was "perverse in the light of the admission arrangements", i.e. it was "beyond the range of responses open to a reasonable decision maker" or "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it".

If the Appeal Panel identifies any unlawful admission criteria during the course of its deliberations it must refer these immediately to the Local Authority and the Admission Authority if the appeal is for a school that is its own Admission Authority. However, it is not the role of the Appeal Panel to reassess the capacity of the school.

For these appeals, the Admission Authority will have refused admission on the grounds that the admission of an additional child would breach the Infant Class Size limit and there are no measures it could take to avoid this without prejudice to efficient education or the efficient use of resources. The Appeal Panel will consider whether the Admission Authority has made a case for stating that a breach of the infant class size limit would occur. It is not enough for the Admission Authority to show that the published admission number for its school has been reached; it should demonstrate what measures it would need to take to comply with class size limits if an additional child were to be admitted and what prejudice would be caused by those measures.

In multiple appeals, where an error has occurred affecting a number of children who would have been given places but to admit that number would seriously prejudice the provision of efficient education and efficient use of resources, the Appeal Panel must move to a second stage. At this stage, it must compare cases and decide which of them, if any, to uphold.

**Note :** If once all places have been allocated the classes contain less than 30 in the infant year groups at the school then this legislation will not apply. Any appeals in these circumstances will be heard under normal prejudice used for Key Stage 2 classes and above, as detailed below.

## **10. Appeals for KS2 and above**

Where parents are appealing for places not affected by limits on infant classes, the Appeal Panel balances the reasons the parent gives for wanting the school against any prejudice to efficient education and efficient use of resources, i.e. any adverse impact on the school, which would occur if the pupil were to be admitted.

This type of appeal hearing is a two-stage process. At the first stage, the Appeal Panel must consider whether the school's published admission arrangements:

- 1) comply with the mandatory requirements of the School Admissions code and Part 3 of the SSFA 1998; and
- 2) were correctly and impartially applied to the child in question.

If the Appeal Panel is not satisfied on either or both of these counts it must decide if the child would have been offered a place if the admission arrangements had not contravened the mandatory provisions or had been properly applied. If the panel determine that the individual child has been wrongly denied a place the appeal **must** be upheld. As with all appeals, the Appeal Panel has a duty to immediately refer to the Local Authority, and the school if the appeal is for a school that is its own Admission Authority, any unlawful admission criteria identified during the course of its deliberations.

The Appeal Panel must then decide if prejudice would be caused by the admission of an additional child(ren). The Admission Authority must be able to demonstrate this over and above the fact that the published admission number has been reached.

It is not the role of the Appeal Panel to reassess the capacity of the school but it should consider the impact of admitting additional children in terms of the organisation and size of classes, availability of teaching staff and the effect on children already at the school. If the Appeal Panel finds that there would be prejudice it must move to the second stage.

If there are multiple appeals for the same year group and the Appeal Panel decide that a number of children would have been offered places, at the first stage, but to admit that number would seriously prejudice the provision of efficient education and the efficient use of resources, it must proceed to the second stage.

At the second stage, the Appeal Panel must consider whether the parents' grounds for their child to be admitted outweigh any prejudice to the school. The admission authority may submit as part of its evidence the name of any alternative school the child has been offered but in return, parents can state why the alternative school is unsuitable. The Appeal Panel must take into account the appellant's reasons for expressing a preference for a particular school, including what that school can offer that other schools cannot.

In multiple appeals, the Appeal Panel must not compare individual cases. However, if having made its decisions on individual cases an Appeal Panel decides that there are more cases that outweigh the school's prejudice argument than the school could realistically cope with it must compare the cases and uphold those with the strongest grounds for admission. Where it believes a certain number of children could be admitted without causing prejudice, the Appeal Panel must uphold that number of appeals.

## **11. Appeals for Admission to Year 12**

A child already attending a school who is refused permission to transfer to Year 12 at that school because of failing to reach the specified entry standard, has the right of appeal, as does the parent. In addition, if a child is refused admission to Year 12 because that particular school is oversubscribed, both the parent and the child have the right of appeal. In these cases the process detailed above will be followed. If both the parent and the child lodge separate appeals for the same school they must be heard together.

## **12. Decision letters**

After all the appeals have been heard for a school, a detailed decision letter will be drafted by the clerk based on the panel's record of decision which will be prepared by Hertfordshire's Appeals Service. This letter will be sent to the parent, and for those that are successful, a copy will also be sent to the school. Otherwise the admission authority will only be notified of the outcome.

### **13. Freedom Of Information Act 2000 & Data Protection Act 1998**

The School Admission Appeals Code 2012 states that notes and records of proceedings taken by the clerk must be kept securely for a minimum of 2 years. Notes and records in relation to appeals organised by the Hertfordshire's School Appeals Service are securely stored on behalf of the Admission Authority, and kept for 8 years before destroying. The Code states that these records and notes are, in most cases, exempt from disclosure under the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). In addition, the Information Commissioner's Office accepts that appeal panels are not public authorities for the purpose of the FOIA.

However, parents may make a subject access request under the Data protection Act 1998 to access personal data contained in these notes.

Admission Authorities are subject to FOIA and if you wish to retain copies of appeal papers and/or decision letters you should seek your own legal advice regarding the position should you be asked to release this information.

### **14. Further help or queries**

If you have any questions about any aspect of the appeals process, please email the School Appeals Team on [school.appeals@hertfordshire.gov.uk](mailto:school.appeals@hertfordshire.gov.uk) or ring the helpline 01992 588548. Alternatively, you can write to us at:

School Appeals Team  
Room 164  
Postal Point CHO120  
County Hall  
Pegs Lane  
Hertford  
SG13 8DF

## CHECKLIST FOR APPEAL HEARINGS

Once a date has been agreed it is the admission authority's responsibility to submit to the Schools Appeals Team its written submission. This must include details of how the school's admission arrangements and the co-ordinated scheme apply to the appellants application, the reasons for the decision to refuse admission and an explanation as to how the admission of an additional child would cause prejudice to the provision of efficient education or efficient use of resources.

**Please see "Preparing the school's written submission" in Section 4 for more detail, but in summary in order to do this effectively the following must be included:**

- The published admission policy of the school.
- Relevant extract of the coordinated admissions scheme and where relevant details of the locally agreed In-Year Fair Access Protocol.
- The Published Admission Number (PAN) of the relevant year group and how places were allocated in line with the school's published admission policy.
- Where school places are allocated on distance from the school or distance was used as a tie-breaker, details of how this was applied to the parents' application compared to those offered a place.
- A written statement summarising the reason for the decision to refuse a place.
- Information to show that to admit another child would prejudice the provision of efficient education and/or the efficient use of resources.
- For Infant Class Size (ICS) appeals - state clearly the relevant measures (e.g. financial implications, lack of teaching space, staffing implications) that would need to be taken to ensure that all key stage 1 classes comply with the class size limit of no more than 30 pupils to one teacher.

You may also wish to include the following information in the written statement:

- Current class organisation and pupil numbers in classes/year groups, together with current staffing levels.
- Summary of the school's classroom sizes
- The numbers of children with Special Educational Needs requirements.
- A plan of the school, with classroom sizes shown may be included if it is felt to be helpful. Areas of congestion/widths of corridors/ equipment shortfalls etc, likely to impinge on efficient management, education or safety could also be identified.
- For infant class size appeals – whether the school has any 'excepted pupils' as outlined in paragraph 2.15 of the School Admissions Code, an explanation should be given as to why the infant class size limit has been breached.

- Any correspondence between the school and the appellant and details of any actions taken by the school in response to an appellant's request for information.

Please remember:

- Where there is an admissions waiting list for the school, **do not** include the appellant's position, or the position of other children on the waiting list in the school's written submission.
- It is important when preparing the school's written submission that all the information and documents that will be relied upon during the hearing are included.
- Do not include any personal data regarding the admission of other children to the school.
- The admission authority will retain the responsibility for ensuring documentation is complete and accurate.
- Do not include a copy of the appellant's appeal form or any additional submission originally sent to you by the Appeals Team.

**In preparation for appeal hearings, please refer to the School Admissions Code and the School Admission Appeals Code published by the Department of Education**

Points to remember regarding appeal hearing venues:

- The venue for the appeal has to be appropriate and accessible to appellants. It must have a suitable area for appellants and the presenting officer to wait separately from the panel before and between appeals.
- If the appeals hearings are taking place at the school, you **must** ensure that the appeal hearings are held in private.
- One party **must not** be left alone with the panel in the absence of the other. If appeal hearings are taking place at the school no school employees should enter the room that appeal hearings are taking place in.

**February 2016**

**EXAMPLE STATEMENT FOR  
INFANT CLASS SIZE ADMISSION APPEAL**

**PRIMARY ADMISSION APPEAL <ACADEMIC YEAR>**

**Statement subject to Infant Class Size prejudice on behalf of the Governors of  
<NAME OF SCHOOL>**

- 1. Arrangements applying to appeals for children who would be admitted to an infant class in the academic year <ACADEMIC YEAR>.**
  - 1.1. Regulations made under Section 1 of the School Standards and Framework Act 1998 limit the size of an infant class to 30 pupils per school teacher. Only in very limited circumstances can admission over the limit be permitted.
  - 1.2. These restricted powers to admit children apply where the admission authority has said that to admit the child would cause prejudice to efficient education or the efficient use of resources by reason of measures that would be required to be taken in order to ensure that the limit on class sizes of one teacher per every thirty children is met at the school. This is commonly known as 'infant class size prejudice'.
  - 1.3. The school will have 60 children in Reception in <ACADEMIC YEAR>. Under law an appeal panel can only determine that a place should be offered to a child refused admission to a school on "class size prejudice" grounds where it is satisfied:
    - 1.3.1. that the admission of additional children would not breach the infant class size limit; or
    - 1.3.2. that the admission arrangements did not comply with admissions law or were not correctly and impartially applied and the child would have been offered a place if the arrangements had complied or had been correctly and impartially applied; or
    - 1.3.3. that the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.
  - 1.4. However, the Panel must dismiss the appeal where:
    - 1.4.1. it finds that the admission arrangements did comply with the admissions law and were correctly and impartially applied; or
    - 1.4.2. it finds that the admission arrangements did not comply with admissions law or were not correctly and impartially applied but that, if they had complied and been correctly and impartially applied, the child would not have been offered a place; and
    - 1.4.3. it finds that the decision to refuse admission was one which a

reasonable admission authority could have made.

## 2. The Infant Class Size limit

- 2.1. The present case is a case where admission of the child would cause prejudice to efficient education and the efficient use of resources. The admission of an additional child would breach the infant class size limit and there are no measures that can be taken to avoid this without prejudicing the provision of efficient education or efficient use of resources.
- 2.2. The Published Admission Number (PAN) at <NAME OF SCHOOL> is 60.
- 2.3. The expected class organisation and year group numbers for <ACADEMIC YEAR> are shown in the table below:

Class	Year Group							Total
	R	1	2	3	4	5	6	
Class 1	30							30
Class 2	30							30
Class 3		30						30
Class 4		30						30
Class 5			30					30
Class 6				30				30
Class 7					35			35
Class 8						34		34
Class 9							34	34
<b>Total</b>	<b>60</b>	<b>60</b>	<b>30</b>	<b>30</b>	<b>35</b>	<b>34</b>	<b>34</b>	<b>283</b>

- 2.4. The school has in previous years had a lower PAN. In 2012/13 and 2011/12 the PAN was 30 and prior to this the PAN was 34. Year 4 is above PAN due to a successful appeal.  
60 children were admitted for <ACADEMIC YEAR> using the published, determined arrangements. There were 180 on time applications.

## 2.5 Class Teachers

- 2.5.1. The school has 9 full time equivalent class teachers. There is one full-time equivalent teacher assigned to teach each class.

## 2.6 Leadership and Support

- 2.6.1. In addition to class teachers the school has a full-time Headteacher, and a 0.6 FTE Special Educational Needs Coordinator. Class teachers cover the roles of Deputy Head and Assistant Head, and there is a 0.6 FTE teacher to cover Planning, Preparation and Assessment (PPA) time.

2.6.2. The school has 11 part time Higher Level Teaching Assistants (HLTAs), Learning Support Assistants (LSAs) and Teaching Assistants (TAs). HLTAs, LSAs and TAs do not meet the definition of 'class teacher' made under the School Standards and Framework Act 1998.

2.7 The school does not employ enough class teachers to allow two per class in Reception. To employ an additional class teacher for an additional child would be an inefficient use of the school's resources. Those staff members without class responsibility undertake defined management and support roles, which could not be removed without prejudicing the provision of efficient education at the school.

### **3. Admissions Arrangements**

3.1. All pupils have been allocated places in accordance with the school's published admission arrangements, which comply with the mandatory requirements of the School Admissions Code and the School Standards and Framework Act, 1998.

3.2. A breakdown of allocations is shown on the enclosed allocation summary report.

### **4. Reasonableness of the decision to refuse admission**

4.1. The threshold for finding that an admission authority's decision to refuse admission was not one that a reasonable authority would have made is high. The panel must be satisfied that the decision to refuse to admit the child was 'perverse in the light of the admission arrangements' i.e. it was 'beyond the range of responses open to a reasonable decision maker' or 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it' (Paragraph 4.10 of the School Admission Appeals Code)

4.2. The present case is not so exceptional that the decision to refuse can be deemed as unreasonable. The application has been considered in accordance with all of the admission arrangements for the school, all relevant legislation and available information. An alternative suitable place is available and transport can be provided if the child is eligible according to Hertfordshire's Home to School Transport policy.

### **5. Conclusion**

5.1. All available places at the school have been allocated in accordance with the published admission rules.

5.2. The Schools Standards and Framework Act (SSFA) 1998, Section 86, sets out the duties on the LA to make arrangements for enabling parents to express a preference and for complying with that preference. However, the duty imposed by subsection (2) does not apply if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources.

- 5.3. This prejudice can be caused by reason of measures that would need to be taken in order to comply with the class size limit of one teacher for every thirty children laid down in law. The County Council submits that this is therefore a case where the Appeal Panel can only legally admit the child if the County Council's decision to refuse admission was one in which:
- a) the Appeal Panel was satisfied that the child would have been offered a place if the arrangements had complied with the mandatory provisions in the School Admissions Code and the School Standards and Framework Act [SSFA] 1998 or had been correctly and impartially applied; or
  - b) the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.
- 5.4. This is not a case where the County Council has wrongly applied its admission arrangements, or where those arrangements contravene the School Admissions Code and School Standards and Framework Act. Nor is it a case where the decision is so unreasonable no reasonable Admission Authority would have made it. The County Council therefore submits that there is no legal basis for admitting the child to the school and therefore regretfully requests that it is not upheld.

**Governing Body of <NAME OF SCHOOL>  
<DATE>**

## APPENDIX 3

# EXAMPLE STATEMENT FOR PRIMARY SCHOOL APPEAL (WHERE ICS LEGISLATION DOES NOT APPLY)

### IN YEAR ADMISSION APPEAL <ACADEMIC YEAR> Statement on behalf of <NAME OF SCHOOL> Governing Body

#### 1 Information about <NAME OF SCHOOL>

- 1.1 <NAME OF SCHOOL> caters for children aged 7 to 11 years old.
- 1.2 The Published Admission Number (PAN) for <ACADEMIC YEAR> is 60.
- 1.3 The year group numbers and class organisation for the academic year <ACADEMIC YEAR> are as follows:

	Year Group				Totals
	3	4	5	6	
<b>Class 1</b>	30				<b>30</b>
<b>Class 2</b>	30				<b>30</b>
<b>Class 3</b>		30			<b>30</b>
<b>Class 4</b>		32			<b>32</b>
<b>Class 5</b>			30		<b>30</b>
<b>Class 6</b>			30		<b>30</b>
<b>Class 7</b>				30	<b>30</b>
<b>Class 8</b>				30	<b>30</b>
<b>Totals</b>	<b>60</b>	<b>62</b>	<b>60</b>	<b>60</b>	<b>242</b>

- 1.4 Year 4 is above PAN due to previous successful appeals.
- 1.5 All pupils were allocated in accordance with the admitting authorities published admission criteria, which comply with the mandatory requirements of the School Admissions Code and the School Standards and Framework Act, 1998.
- 1.6 There is a low level of mobility at the school.

#### 2. Staffing

##### Class Teachers

- 2.1 The school has 8 full time equivalent class teachers, 7 of which are full time and 2 are part time. There is 1 full time equivalent teacher assigned to each class. The Deputy Head teacher also has teaching responsibilities.
- 2.2 In addition to class teachers the school has a full-time Head teacher, a 0.6 full-time equivalent (FTE) Special Educational Needs Coordinator and a 0.8 FTE teacher to cover Planning, Preparation and Assessment (PPA) time.

- 2.3 The school has 10 Teaching Assistants (TAs) and 1 Higher Level Teaching Assistant (HLTAs), 2 full time and 9 part time, who do not meet the definition of 'class teacher' made under the School Standards and Framework Act 1998.

### **3 Accommodation**

- 3.1 *[The school opened in 1961 as a JMI School. Following pressure for places in the area a separate infants' school was built in 1970 on the same site. The Junior School has eight teaching rooms, a hall and separate dining area.]\** An area of the dining room is used for support teaching and there are two small rooms for group work, accommodating only four and six children respectively.
- 3.2 The building was designed long before the National Curriculum was implemented and the Key Stage 2 activities in science, technology and information technology, music and sport require more space and equipment storage than when the school was planned. Computers take up much space in classrooms. Design and technology, music and laptop computer trolleys have to be moved from classroom to classroom and require storage when not in use.
- 3.3 The fiction and non-fiction library is built into the main school corridor and each classroom also has fixed and mobile book storage. Packed lunch boxes are also stored in the corridor or classrooms. There is also considerable pressure on space in the main hall when the whole school assembles and in the dining area which has to operate a double shift system at lunch-time, and doubles up for group reading, practical activities, support teaching and as a changing area.
- 3.4 The school does not have a dedicated IT room for the children to use desktop computers.
- 3.5 All children play on an L-shaped playground and the playing field is too far away for safe use at break times. The playing field is shared with the Infants School, but there are no toilets nearby, so extra supervision is required for any children who need escorting between the main school and the field.
- 3.6 *[There are currently 90 children in year 2 of the linked Infant school. It has been identified that the junior school does not have space for a bulge year and will therefore be provided with a mobile classroom to accommodate the additional children.]\** It is unlikely that the hall will be able to accommodate the whole school for assemblies, and the school will have to alter their lunchtime arrangements. School trips will also have to be managed differently, at greater cost. The size of the playground will be reduced by the mobile classroom, so it will be difficult to manage behaviour of the whole school plus the additional 30 children in a restricted space.

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\* Applies to Junior Schools only.

## 4 Children with Special Needs

4.1 The school has a number of pupils with special educational needs. All the classes also contain an increasing number of pupils from the very able range who need extension programmes.

4.2 The number of children on-roll at the school with an identified special need in the academic year <ACADEMIC YEAR> as follows:

Year Group	SEN Support	Statement/ EHC Plan	Total
Year 3	8	1	9
Year 4	3	1	4
Year 5	5	1	6
Year 6	7	1	8
<b>Total</b>	<b>23</b>	<b>4</b>	<b>27</b>

4.2 Currently approximately 11% of the children on roll at the school are registered on the school's Special Educational Needs register.

4.3 There are two children in Year 5 with particularly complex needs. One child is statemented and the other has complex emotional needs.

## 5 Quality of Teaching

5.1 As children develop, the spread of achievement within a class widens and the gap between the most and least able becomes more pronounced. The class teacher is responsible for their different abilities and rates of progress. Careful planning to co-ordinate the work of the support teachers is vital and demanding upon the class teacher's time, particularly with the demands of the Primary National Strategy. If the numbers in a class go above 30 teachers are less able to give the same quality of individual attention that the children require.

5.2 Teachers are required to set targets for all pupils and monitor their progress closely with termly management reviews so that where necessary any interventions can be agreed. The tracking of pupil progress and their attainment are now key elements within teachers' performance management so there is a considerable workload for all teachers outside the classroom in meeting these obligations. Information on pupil progress is shared with parents and pupils on a regular basis since Ofsted expect pupils to know what they need to do to improve. Given these requirements the addition of another child in the class has an impact on the teacher's capacity to carry out these tasks for pupils already within the school

5.3 The Government has changed the assessment system for pupils at Key Stage 2 so that the former levels used in identifying progress are replaced by generic statements about age related assessment. The expectations of what is meant by age related expectations within the new national curriculum have been significantly increased with pupils now expected to achieve work in Year

4 which was previously covered in Year 6. The whole thrust of the new curriculum is to raise the challenge for pupils.

- 5.4 Schools are seeking to help pupils in Years 3 to 6 catch up with these new requirements which will form the basis of revised KS2 SATs from summer 2016. The emphasis is on measuring and accelerating progress which presents an even greater challenge for pupils in vulnerable groups.
- 5.5 Teachers are undergoing considerable professional development to assist them with the implementation of these changes and have had to make major changes in lesson and curriculum planning. Given the emphasis on individual progress and closing the gap for disadvantaged pupils the addition of another child in the class would add to the considerable pressures on the class teacher.
- 5.6 The school is committed to providing support to existing pupils and would ask the appeals panel to take into consideration the impact of an additional pupil on the school.

## **6. Conclusion**

- 6.1 All available places in <ACADEMIC YEAR> at <NAME OF SCHOOL> have been allocated in accordance with the published admission rules.
- 6.2 The School Standards and Framework Act 1998, Section 86, sets out the duties of the Local Authorities to make arrangements for enabling parents to express a preference and for complying with that preference. However, the duty imposed by subsection (2) does not apply if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources.
- 6.3 As in the circumstances described above any additional child would place additional pressure on school facilities and teacher's time, prejudice to efficient education and the efficient use of resources would occur in this case and therefore the County Council regrettably requests that this appeal should not be upheld.

**Governing Body of <NAME OF SCHOOL>**

**<DATE>**

## EXAMPLE STATEMENT FOR SECONDARY SCHOOL APPEAL

### SECONDARY APPEAL <ACADEMIC YEAR> Statement on behalf of <NAME OF SCHOOL> Governing Body

#### 1. Information about <NAME OF SCHOOL>

- 1.1. <NAME OF SCHOOL> is an all ability mixed academy for pupils between 11 and 18 years of age.
- 1.2. The Published Admission Number (PAN) for <NAME OF SCHOOL> is 165.
- 1.3. The School converted to Academy Status in August 2013. Whilst the Governing Body is now the admitting authority for the school, places are offered on behalf of the governing body by Hertfordshire County Council in accordance with the published admission rules for the school.
- 1.4. For 2013/14 admissions the school consulted and varied the rules to ensure more <NAME OF TOWN> children secured places at the school.
- 1.5. Up to and including September 2011, the Published Admission Number (PAN) was 160 which reflected the Indicated Admission Number (IAN) at that time. There were a number of changes in September 2012 which increased the number of teaching rooms available to the school and allowed the school's PAN to increase to 165 for the Year 7 intake from 2012/13 onwards.
- 1.6. Year group numbers for the academic year <ACADEMIC YEAR> are expected to be as follows:

Year Group	Number in year
Year 7	166
Year 8	165
Year 9	167
Year 10	162
Year 11	160
Year 12	150 *
Year 13	133*
<b>Total</b>	<b>1103</b>

\*Sixth form numbers are predicted figures based on current cohort numbers, applications and anticipated results.

- 1.7. There were 610 applications for entry into Year 7 in September <YEAR>. 166 places were originally allocated to the school as the last child admitted within the <NAME OF PARISH> parish was a twin.
- 1.8. The school participates in the Fair Access Protocol for secondary schools with the Local Authority and has admitted students under this protocol in years 10 and 11.

## **2. Class Organisation and Curriculum**

- 2.1 The Headteacher and staff of <NAME OF SCHOOL> are very concerned that each new student should settle quickly into the school and should be happy, and feel secure and motivated to work in the new surroundings. The KS3 organisation is of paramount importance for all students in Years 7 and 8. This is crucial in ensuring that each student is given the level of care and guidance that is so important at the beginning of secondary education. Each Year 7 student has a “buddy” to assist with transition into secondary school.
- 2.2 Year 7 students are set from the start of the September term in Mathematics, Science and French. Higher ability sets often have larger groups of children in them to allow students who learn at a slower pace to be taught in smaller groups to meet the wide range of educational needs. The school organises KS3 in six groups for most subjects. The group size for sets of higher ability students has exceeded 30 in years 8 and 9 which presents timetabling problems because of the dimensions of some classrooms and is educationally undesirable.
- 2.3 In other subjects in Year 7 students are taught in six mixed ability tutor groups. In Year 7 all learn French and taster programmes are run for Spanish, and Ancient Civilisation, and then students currently opt to study one of these or Drama from Year 8 onwards.
- 2.4 Technology is taught in eight mixed ability groups and class sizes can be as high as 21 pupils. The recommendation in the Health & Safety guidance is 20 and risk assessments have to be carried out on groups that exceed the maximum.

- 2.5 Technology is a very popular subject at the school, and many choose this as an option to study in KS4. There is a shortage of the necessary specialist accommodation in the Technology areas which has been identified in the Suitability Assessment survey.
- 2.6 Students in all year groups are organised in six form groups as part of the House system, with the Tutor following the same class throughout the school wherever possible. There are a number of teaching rooms used by all years including Year 7 which are small and cannot comfortably accommodate more than 26 students. Overall twenty of the thirty four general teaching rooms in the school are smaller than 50 square metres and of these seven are less than 40 square metres in size. The limitation on space is such that student equipment has to be stored outside classrooms; a situation that is undesirable.
- 2.7 The school has had specialist <SUBJECT> status since September 2003. All students receive specialist Science teaching in the Science block. There is pressure on space in this area because all students study Science until the end of Key Stage 4.
- 2.8 Over half the pupils in the Sixth Form take Science subjects; this greatly increases the usage of these facilities.
- 2.9 The science block has been refurbished over the past 10 years. This has improved the facility; however the available space has not increased and there is concern about the size of teaching groups becoming too large to provide the necessary amount of supervised practical work. Utilisation of the science laboratories has been calculated at 95% of the available teaching time, which is considerably higher than the Government recommended figure.
- 2.10 The school has insufficient indoor sports facilities. There is one small Gymnasium and a Hall that is used as an additional occasional facility. The Hall is also used for examinations as well as other large school events throughout the year.
- 2.11 Whilst the school has improved the sports facilities from September 2012 to include a larger all weather area and additional changing facilities, planning limitations on the site and lack of funding mean that there is no prospect of a Sports Hall or other indoor sports facility being provided.
- 2.12 In 2014 the school secured funding from the EFA for a sixth form centre which comprises a large common room upstairs and three classrooms for sixth form use. This building was completed in June 2014. This released the existing common room area in the main building and the school has bid for grant aid to

refurbish this into an Arts/technology area. The school's sixth form has grown by over 25% in the last five years which made the case for this building.

### 3 Special Needs

3.1 The number of children attending the school with identified Special Needs in <ACADEMIC YEAR> is expected to be as follows:

<b>Year Group</b>	<b>SEN Support</b>	<b>Statement/ EHC Plan</b>	<b>Total</b>
<b>Year 7</b>	*	0	<b>0</b>
<b>Year 8</b>	18	1	<b>19</b>
<b>Year 9</b>	17	1	<b>18</b>
<b>Year 10</b>	13	1	<b>14</b>
<b>Year 11</b>	8	0	<b>8</b>
<b>Total</b>	<b>56</b>	<b>3</b>	<b>59</b>

### 4 Core Facilities

4.1 The main school building dates from 1910, when there were far fewer students in the school, and has narrow corridors and steep and narrow stairways. The Gymnasium, Science and Lower blocks were constructed in the 1970's when student numbers were 50% of the current level.

4.2 The school has been using three small rooms in the nearby Music School since September 2012 and during 2012/13 a mobile was replaced with a two classroom buildings.

4.3 Many of the students' lockers have to be sited in the corridors because there is insufficient space within the classrooms. There can be congestion at the change of lessons and at lunchtime due to the movement of students in both buildings, but particularly within the older building.

4.4 There is limited dining space, and the high level of demand for school meals means that a rolling timetable operates during the lunch time to ensure all pupils can be accommodated.

## **5 Conclusion**

- 5.1 The Governing Body is clear that <NAME OF SCHOOL> cannot take any further admissions in Year 7 for <ACADEMIC YEAR>.
- 5.2 Any additional admission will make it harder to deliver the quality of education, which parents rightly expect. The Schools Standards and Framework Act 1998, Section 86, sets out the duties on Local Authorities to make arrangements for enabling parents to express a preference and for complying with that preference. However, the duty imposed by subsection (2) does not apply if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources. Such prejudice would occur in this case and therefore the Governing Body regretfully requests that this appeal should not be upheld.

**Governing Body of <NAME OF SCHOOL>**

**<DATE>**