

Draft School Admission Appeals Code

For Consultation Only

The School Admission Appeals Code

<u>Contents:</u>	<u>Page</u>
Statutory basis for the Code	3
Introduction	5
Constitution of Appeal Panels	6
Membership	
Training	
Indemnity	
Costs	
Appeal Hearings	8
Timetable	
Notifying appellants of the right to appeal and the appeal hearing	
Production of evidence from the admission authority prior to the hearing	
Attendance and representation	
The appeal hearing	
The order and nature of the hearing	
Guiding principles for appeal panels	
Reaching a decision	
Notification of the decision	
Notes and records of proceedings	
Reaching Decisions on Appeals	12
Three stage process	
Individual appeals	
Multiple appeals	
Appeals for grammar schools	
Appeals for admission to sixth forms	
Boarding schools	
Waiting lists	
Expressing a preference and Fair Access Protocols	
Children with statements of Special Educational Needs	
Infant Class Size Appeals	18
Considering infant class size prejudice	
Multiple infant class size appeals	
Other appeals and complaints	20
Further Appeals	
Complaints about appeals	
Appeals by governing bodies against local authority decisions to admit twice excluded children	

Statutory basis for the School Admission Appeals Code

1. The School Admission Appeals Code (“the Code”) has been issued under section 84 of the School Standards and Framework Act 1998 (‘SSFA 1998’). The Code has been made following a consultation under section 85(2) of the SSFA 1998 and after being laid before Parliament for forty days.
2. This Code comes into force on [date] and applies to all appeals commencing on or after that date. The Code applies to admissions to all maintained schools in England. It should be read alongside the School Admissions Code and other guidance and law that affect admissions and admission appeals in England. References to ‘the Code’ or ‘this Code’ include this part and the following chapters.
3. The Code imposes mandatory requirements and refers to statutory requirements in relation to the discharge of functions by the bodies listed below. These bodies have a statutory duty to act in accordance with the relevant provisions of the Code:
 - a) **Admission authorities** as defined in section 88(1)(a) and (b) of the SSFA 1998¹
 - b) **Governing bodies and local authorities (when not admission authorities)**
 - c) **Schools Adjudicators**
 - d) **Admission Appeal Panels.**
4. Academies, by which we mean Academy Schools², Free Schools, University Technical Colleges and Studio Schools, are state-funded, non fee-paying independent schools set up under a funding agreement between the Secretary of State and the proprietor of an Academy (most commonly, and hereafter, referred to as an Academy Trust). Under their Funding Agreements, Academies are contractually bound to comply with the Code and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.
5. Objections to the admission arrangements of both maintained schools and Academies³ can be made to the Schools Adjudicator whose decisions are binding and enforceable.

¹ For community and voluntary controlled schools the admission authority is usually the local authority, but it may be the governing body if the local authority with the governing body’s agreement has delegated responsibility to it for determining admission arrangements. Governing bodies are the admission authorities for foundation schools (including Trust schools) and voluntary aided schools

² Subject to the Education Bill receiving Royal Assent. Clause 52 introduces three types of Academies.

³ Subject to the Education Bill receiving Royal Assent (Clause 62). Currently objections in relation to Academies are dealt with by the Young People’s Learning Agency on behalf of the Secretary of State.

Type of school	Who is the admission authority?	Who deals with complaints about arrangements?	Who is responsible for arranging/providing for an appeal against refusal of a place at a school?
Academy schools and Free Schools	Academy Trust	Schools Adjudicator <small>*subject to Royal Assent of Education Bill</small>	Academy Trust
Community schools	Local Authority	Schools Adjudicator	Local Authority
Foundation schools	Governing body	Schools Adjudicator	Governing body
Voluntary aided schools ⁴	Governing body	Schools Adjudicator	Governing body
Voluntary controlled schools	Local Authority	Schools Adjudicator	Local Authority

6. Where mandatory requirements are imposed by this Code or by statutory provision it is stated that these bodies ‘**must**’ comply with the particular requirement or provision. Where this Code or the law prohibits practices, it is stated that the relevant body or bodies ‘**must not**’ use this practice.
7. The Code deals with two separate categories of admission appeals:
- Appeals by parents, and in certain circumstances by children, against a decision as to the school at which education is to be provided for the child, and
 - Appeals by governing bodies of community or voluntary controlled schools against a decision by the local authority, as their admission authority, to admit to their school a child who has been permanently excluded from two or more schools.
8. Children have the right to appeal against an admission authority’s decision to refuse admission of a child:
- to a school sixth-form; or
 - to a school at which they wish to receive education other than school sixth form education. This applies where the child is above compulsory school age or will have ceased to be of compulsory school age by the time they would have received education at the school.

⁴ Voluntary aided and foundation schools often elect the local authority to be their admission authority.

School Admission Appeals Code – 2011 Revised Code

Introduction

This School Admission Appeals Code (“the Code”) sets out the government’s requirements in relation to appeals against school admission decisions and, in conjunction with the School Admissions Code, reflects its wider policy on school admissions.

School admissions are not run by central government and admission authorities need to have freedom to run the appeals process, subject to minimum requirements designed to ensure fairness and transparency. Our aspiration is that the provision of more good school places and timely and relevant information to parents will reduce the degree of uncertainty parents may feel and the need to appeal.

Appeal panels perform a judicial function and have to be transparent, accessible, independent and impartial, and operate according to principles of natural justice. The requirements set out in the Code are mandatory – admission authorities and appeal panels must comply with them. They must also comply with other relevant law – for example the Equalities Act 2010.

In drawing up this simpler, shorter Code, we are guided by the principle that admission authorities are best placed to decide how to meet those requirements. The Code builds on good practice already employed by many admission authorities. Because local circumstances vary, the Code does not seek to give guidance on every possible situation.

Whilst the Code sets out requirements relating to appeal hearings we would advise all those considering whether to appeal to speak to the local authority or the school in the first instance.

The appeals process for parents who apply at the normal round of admissions usually takes place between April and July. Appeals in respect of in-year admissions will be heard within 30 working days. The detailed timetable of the appeals process will be set by admission authorities and published on their websites.

Section 1: Constitution of Appeal Panels

- 1.1. Admission authorities are responsible for arranging appeals and **must** act in accordance with this Code, the School Admissions Code, other law relating to admissions⁵, and relevant human rights and equalities legislation.

Membership

- 1.2. Admission authorities **must** appoint a clerk to the appeal panel who is independent of the school and the education functions of the local authority. The clerk **must** have knowledge of this Code, the School Admissions Code, other law relating to admissions and other relevant law (see para 1.6), and be able to offer advice to enable the panel to undertake their judicial function.
- 1.3. The clerk, acting on behalf of the admission authority, **must** appoint an independent appeal panel that is comprised of a chair and at least two other panel members, one of whom is a lay person and one with experience in education. Admission authorities **must** ensure that panel members are independent and retain their independence for the duration of their service.
- 1.4. The clerk to the panel **must not** allow any person who is or has been a member of the home local authority or governing body of the school in question, or is or has been employed by the home local authority in a capacity connected with education, or by the governing body or the school in question, to be a member of the appeal panel concerned⁶.
- 1.5. Where a panel starts with three members, and one has to temporarily withdraw (for example because of illness), the panel **must** postpone the remaining hearings until the third panel member returns or the admission authority appoints a third member. Where a member is unable to return for a part-heard hearing the appeal **must** be reheard.

Training

- 1.6. Panel members **must not** take part in hearings until they have received appropriate training. Admission authorities **must** arrange and fund up-to-date training for appeal panel members on any aspect felt to be relevant to the functioning of the panel, but as a minimum, this **must** include the law relating to admissions; their duties under the Human Rights Act 1998 and Equality Act 2010; procedural fairness and natural justice; diversity awareness; and the roles of particular panel members (for example, chairing skills).

Indemnity

- 1.7. Admission authorities **must** indemnify the members of any appeal panel against any reasonable legal costs and expenses they incur in connection with any decision or action taken in good faith whilst acting as members of the appeal panel.

⁵ The main provisions relating to admissions are in chapter 1 of Part 3 of the School Standards and Framework Act 1998.

⁶ For Academies, the governing body of a school should be read as the Academy Trust.

Costs

- 1.8. Local authorities **must** allocate reasonable funds to governing bodies of maintained schools which are admission authorities to meet admission appeals costs, including training for panel members, unless the school and local authority agree that the local authority will carry out the administration on the governing body's behalf⁷.
- 1.9. Panel members are eligible to receive travel and subsistence allowances and they can also be compensated for any loss of earnings or any individual expenses, including child minding costs, that are necessarily incurred as a result of attending an appeal panel or associated training⁸. The payment is set by the local authority which **must** have regard to the recommendations of its independent remuneration panel⁹.

⁷ Academies receive funding directly from central government, but would be expected to pay expenses at the rate set by the relevant local authority.

⁸ In accordance with the application of s173 and s174 of the Local Government Act 1972 as provided for by the Education (Admission Appeals Arrangements) (England) Regulations 2008 (SI 2008/2899)(to be amended).

⁹ As provided for in the Local Authorities (Members Allowances) Regulations 2003 (SI 2003/1021).

Section 2: Appeal Hearings

Timetable

- 2.1 Admission authorities **must** set a reasonable timetable for organising and hearing appeals that **must** include deadlines for lodging appeals; for giving notice to parents of appeal hearings; for requesting evidence and other information from parents; for admission authorities to send evidence to the clerk; for the clerk to send appeal papers to the panel and parties; and for sending out decision letters. All admission authorities **must** publish such an appeals timetable on their websites by 28 February each year.
- 2.2 Admission authorities **must** send parents any information needed to help them prepare their case for appeal and **must not** limit the grounds on which appeals can be made.
- 2.3 Admission authorities **must** ensure appeals are heard within the following timescales:
- For applications to primary and secondary schools made in the normal round of admissions, appeals **must** be heard within 40 working days from the deadline for lodging appeals.
 - For late applications made for primary and secondary schools in the normal round of admissions, appeals **must** be heard within 40 working days from the deadline for lodging appeals, where possible, or by the end of the summer term.
 - For applications to sixth forms, appeals **must** be heard within 30 working days from the confirmation of the GCSE results that the offer depends on. Appeals lodged after the beginning of the autumn school term **must** be treated as appeals for in-year admissions.
 - For applications for in-year admissions (for applications received outside the normal round of admissions), appeals **must** be heard within 30 working days of the appeal being lodged.

Notifying appellants of the right to appeal and the appeal hearing

- 2.4 Admission authorities **must** allow appellants at least 30 working days from the date of notification that their application was unsuccessful, to prepare and submit their written appeal. Admission authorities **must** organise the hearing of appeals submitted after their specified deadline, but can do that to a timescale set by them. When a local authority or an admission authority sends a decision on the allocation of a school place, it **must** include the reason why admission was refused; the right to appeal; the deadline for lodging an appeal and the contact details for the authority. Parents **must** be informed that they need to set out their grounds for appeal in writing and requested to submit any initial supporting evidence or other information that they want to be considered at the hearing if they wish to appeal.
- 2.5 Admission authorities **must**, no later than 15 working days before the hearing, notify appellants of the details of, and arrangements for, the hearing. This includes requesting that the appellant submits any further evidence or information that was not sent with the initial appeal by a specified date. Admission authorities **must** ask appellants whether they intend to call any witness evidence or be represented at the hearing and inform them that any information or evidence not received in advance of the hearing may not be considered at the appeal.

- 2.6 Admission authorities **must** explain to the appellant that where an appellant fails, or is unable, to attend and it is also impractical to offer an alternative date, the appeal will go ahead and be decided on the written information submitted.

Production of evidence from the admission authority prior to the hearing

- 2.7 In accordance with timetable specified, the admission authority **must** supply the clerk to the appeal panel with all relevant documents needed to conduct the hearing in a fair and transparent manner, including details of how the admission arrangements and the co-ordinated admissions scheme apply to the appellant's application, factual information, the reasons for the decision and an explanation as to how admission of an additional child would cause prejudice to the provision of efficient education or use of resources.
- 2.8 The clerk **must** send all the papers required for the hearing, including the names of the panel members, to both parties and members of the panel, a reasonable time before the date of the hearing. This will allow opportunity for any objections regarding impartiality to be notified to the clerk. An appeal panel **must** decide whether any material not submitted in advance is to be considered by taking into account its significance and the effect of a possible need to adjourn the hearing.

Attendance and representation

- 2.9 The admission authority **must** provide a presenting officer who is responsible for presenting their decision not to admit the child, and is prepared to answer detailed questions about the case being heard and the school. If no presenting officer is available, the panel can decide to resolve the case by using the evidence submitted by the admission authority if it is satisfied that to do so will not cause prejudice to the appellant.
- 2.10 Appeal panels **must** allow appellants the opportunity to appear in person and make oral representations. Appellants may be represented, or accompanied by a friend. Although not usually necessary, witness evidence is permitted where the appeal panel thinks it is appropriate. Appeal panels **must** comply with their duties under the Equality Act 2010 when considering an appellant's attendance and representation at the appeal.
- 2.11 Panels **must not** allow representatives of schools to support individual appeals for places at their school at the hearing itself, or by providing letters of support for appellants, because of possible conflicts of interest and the possibility of unfairness to other appellants.

The appeal hearing

- 2.12 Admission authorities **must** take all reasonable steps to ensure the venue is appropriate, accessible to appellants, and has a suitable area for appellants and presenting officers to wait separately from the panel before and between appeals.

- 2.13 Admission authorities **must** ensure that appeal hearings are held in private¹⁰, and are conducted in the presence of all panel members and parties in attendance. Where both parties are in attendance, one party **must not** be left alone with the panel in the absence of the other. Where one party has not attended the clerk **must** remain with the panel at all times.

The order and nature of the hearing

- 2.14 It is part of the clerk's role to notify all parties of the order of proceedings in advance of the hearing. The appeal panel **must** ensure that there is good time for all parties to make their case and to be questioned on any detail in that case. There **must** also be good time for any summing up by all parties. Once all parties have concluded their evidence, the panel **must** withdraw to reach a decision as to whether to uphold or reject the appeal.

Guiding principles for appeal panels

- 2.15 Appeal panels **must** operate according to the principles of natural justice. Those most directly relevant to appeals are:
- members of the panel **must not** have a vested interest in the outcome, or any involvement in an earlier stage, of the proceedings;
 - each side **must** be given the opportunity to state their case without unreasonable interruption; and
 - written material and evidence **must** have been seen by all the parties.

Reaching a decision

- 2.16 Section 3 of this Code provides guidance on decisions, but appeal panels **must** either uphold or reject an appeal and **must not** uphold an appeal subject to any specified conditions. Under section 94(6) of the SSFA 1998, a panel's decision that a child shall be admitted to a school is binding on the admission authority concerned.
- 2.17 Panels **must** ensure that decisions on appeals where there is not unanimous agreement are reached by a simple majority of votes cast. Where there are equal numbers of votes the panel chair has a second or casting vote.

Notification of the decision

- 2.18 The panel **must** communicate the decision of each appeal, including the reasons for that decision, in writing to the appellant and admission authority. The clerk **must** sign the decision letter and send it to the parties as soon as possible after the hearing but not later than five working days, unless there is good reason. When notifying appellants of a successful appeal outside the normal admissions round, the letter **must** also include a date on which the child can start at the school.
- 2.19 The panel **must** ensure that the decision is easily comprehensible so that the parties can understand the basis on which the decision was made and why they did or did not succeed. The decision letter **must** contain a summary of relevant factors that were raised by the parties and considered by the panel along with a summary of any legal

¹⁰ except in the first stage of grouped multiple appeals (see paragraph 3.9).

advise the panel sought. It **must** also give clear and detailed reasons for the panel's decision, including how, and why, any issues of fact or law were decided by the panel during the hearing.

Notes and records of proceedings

- 2.20 The clerk **must** ensure a complete and accurate record is taken of the points raised at the hearing, including the proceedings, attendance, voting and reasons for decisions.
- 2.21 These notes and records of proceedings are the property of the appeal panel and **must** be kept securely by the admission authority for a minimum of two years. Such notes and records of the proceedings are not subject to the Freedom of Information Act 2000. Admission authorities may wish to obtain legal advice where a request has been made under the Data Protection Act 1998 for access to personal data contained in the records of proceedings.

Section 3: Reaching Decisions on Appeals

Three stage process

- 3.1 Panels **must** follow different processes depending on the type of school that is the subject of the appeal, for example, primary, secondary, grammar or sixth form, and whether it is an individual or multiple appeal. These are set out below (infant class appeals are in section 4).

Individual appeals

First stage

- 3.2 The panel **must** consider:
- i. whether the admission authority's admission arrangements (including the area's co-ordinated admission arrangements) comply with the mandatory requirements of the School Admissions Code and Part 3 of the SSFA 1998; and
 - ii. whether the admission arrangements were correctly and impartially applied in the individual's case. The panel **must not** make its own decision on the matter but consider whether or not there was an error in the way in which the original decision was reached.
- 3.3 If the panel considers that the admission arrangements are in compliance, and that they were correctly and impartially applied to the decision in question, it **must** proceed to the second stage. If the panel finds that the arrangements contravene admissions law or had not been correctly and impartially applied to the child concerned, it **must** go on to consider whether the child would have been offered a place if the arrangements had not been in contravention, or had been correctly and impartially applied. If the panel find that a child would have been offered a place it **must** uphold the appeal at this stage.
- 3.4 If the panel find that the child would not have been offered a place the panel **must** go on the second stage. In all cases, the panel **must** refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements that they identify as unlawful.

Second stage

- 3.5 The panel **must** decide whether the admission of the child in question would prejudice the provision of efficient education or the efficient use of resources at the school. Whilst the panel **must** take into account the school's published admission number, the admission authority **must** be able to demonstrate prejudice over and above the fact that the published admission number has already been reached¹¹. The panel **must not** reassess the capacity of the school, but **must** consider the impact on the school of admitting additional children. In reaching a decision as to whether or not there would be prejudice the panel may consider the following factors:
- what effect an additional admission would have on later year groups;

¹¹ The published admission number is set with regard to the indicated admission number derived from the net capacity assessment for the school. The net capacity is designed to encompass the wide variety of teaching styles and room layouts that are found in schools across the country, but allows admission authorities and local authorities some flexibility to set an admission number that suits the needs of the school.

- whether any changes have been made to the school's physical accommodation or organisation since an admission number was originally set for the relevant year group;
 - the impact of the locally agreed Fair Access Protocol¹²;
 - the impact on the organisation and size of classes, the availability of teaching staff, and the effect on children already at the school.
- 3.6 If the panel is satisfied at this stage that there would be prejudice, it **must** go on to the third stage. If no prejudice is found, the panel **must** allow the appeal.

Third stage

- 3.7 The panel **must** exercise its judgement, balancing the degree of prejudice to the school against the appellant's case for the child being admitted to the school, before arriving at a decision. If the panel considers that the appellant's grounds for the child to be admitted outweigh the prejudice to the school identified at the second stage, it **must** uphold that appeal. The panel **must** take into account the appellant's reasons for expressing a preference for the particular school, including what that school can offer the child that the allocated or other schools cannot.

Multiple appeals

- 3.8 Multiple appeals are when a number of appeals have been received in relation to the same school. Admission authorities **must** take all reasonable steps to ensure that multiple appeals for a school are heard by one panel with the same members. Where more than one panel has to consider appeals for the same school, each panel **must** make its own decision independently.
- 3.9 Admission authorities may hear multiple appeals as either individual or grouped appeals. Grouped multiple appeals are more efficient, especially where there are a large number of appellants. Grouped multiple appeals are where the presenting officer's case is heard in the presence of all the appellants, including any representatives who may put questions to the presenting officer, at the first stage of the appeal. The second stage is heard individually without the presence of other appellants. In all, there are three stages which are set out below.

First stage

- 3.10 Firstly, the panel **must** consider whether the admission authority's admission arrangements (including the area's co-ordinated admission arrangements) comply with the mandatory requirements of the School Admissions Code and Part 3 of the SSFA 1998. As with individual appeals, the panel **must** refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements that it identifies as unlawful.
- 3.11 Secondly, the panel **must** decide how many children could be admitted, if any, without prejudice to the school. If the panel decides that all the children who are the subject of the appeals could be admitted to the school without prejudice, it **must** uphold all appeals. If the admission authority is able to satisfy the appeal panel that there would

¹² See Paragraphs 3.8 to 3.14 of the School Admissions Code for requirements in relation to Fair Access Protocols.

be prejudice if all or some of the appeals are upheld, the panel **must** move to the second stage, where it **must** hear the appeals individually without the presence of other appellants.

Second stage

- 3.12 The panel **must** consider whether the admission arrangements of the school were correctly and impartially applied to the child concerned. Where the panel finds either that arrangements were not correctly and impartially applied or were unlawful, it **must** consider whether each child would have been offered a place if the admission arrangements had been either correctly and impartially applied or were lawful. The panel **must** hear each individual appellant's grounds for admission including reasons as to why admission of their child should outweigh any prejudice to the school in question. With the exception of a decision to uphold all appeals under 3.11 above, panels **must not** decide to uphold an appeal on individual cases until all appellants' cases have been heard.

Third stage

- 3.13 The panel **must** withdraw to come to a decision. If the number of children who would have been admitted to the school if either the admission arrangements had been lawful or correctly and impartially applied is the same or fewer than the number the panel decided could be admitted to the school without prejudice, the panel **must** uphold the appeals concerning those children. For the remaining appellants, the panel **must** consider whether their grounds for admission to the school outweigh the prejudice to the school.
- 3.14 If there are several cases which outweigh the prejudice to the school and merit admission, but the panel determines that the school could not cope with that number of successful appeals, it **must** compare all the remaining cases and decide which of them to uphold, if any.
- 3.15 Where the number of children who would have been admitted to the school if the admission arrangements had been either lawful or correctly and impartially applied is greater than the number the panel decided could be admitted to the school without prejudice, the panel **must** consider whether the grounds for admission to the school outweigh prejudice to the school for all the appellants.
- 3.16 Where there are several cases which outweigh the prejudice to the school and merit admission, but the panel determines that the school could not cope with that number of successful appeals, it **must** compare all the remaining cases and decide which of them to uphold, if any. In doing so, the panel may have regard to whether a child would have been admitted if the arrangements had been either lawful or correctly and impartially applied.
- 3.17 Individual multiple appeals are where the presenting officer presents the case at the first stage, followed immediately by the individual appellant's case. Such arrangements involve repetition of the first stage and are therefore only suitable where there are small numbers of appeals. In such appeals the panel **must** ensure that the presenting officer does not produce new evidence or expand on the case in subsequent appeals, as appellants whose cases were heard earlier in the process will not have had an

opportunity to consider and respond to that new evidence. However, if material new evidence comes to light during the questioning of the presenting officer, the clerk **must** ensure that the panel considers what bearing that evidence may have on all previous and subsequent appeals.

Appeals for grammar schools

- 3.18 Designated grammar schools are permitted to select children for admission on the basis of academic ability and may leave places unfilled if there are insufficient eligible applicants¹³. Some admission authorities for grammar schools offer places to those who score highest, others set a pass mark and then apply oversubscription criteria to those applicants that reach the required standard. In the case of applicants who have been refused admission to a particular grammar school because there are more eligible children than places available and the oversubscription criteria has been applied a panel **must** follow the process outlined at paragraphs 3.2 to 3.7 for individual appeals and 3.8 to 3.17 for multiple appeals.
- 3.19 An appeal panel may be asked to consider an appeal where the appellant believes that the child did not perform at their best on the day of the entrance test. In such cases:
- a) Where a local review process has not been applied, the panel **must** only uphold the appeal if it is satisfied:
- that there is evidence to demonstrate that the child is of the required academic standards, for example, school reports giving Year 5/Year 6 SAT results or a letter of support from their current or previous school clearly indicating why the child is considered to be of grammar school ability; and
 - where applicable, that the appellant's arguments outweigh the admission authority's case that admission of additional children would cause prejudice.
- b) Where a local review process has been followed, the panel **must** only consider whether each child's review was carried out in a fair, consistent and objective way and if there is no evidence that this has been done, the panel **must** follow the process in paragraph 3.19 a).
- 3.20 In either case the panel **must not** devise its own methods to assess suitability for a grammar school place unrelated to the evidence provided for the hearing.
- 3.21 If a panel has to consider an appeal for an in-year applicant where no assessment has taken place, it **must** follow the process in paragraph 3.19 a).

Appeals for admission to sixth forms

- 3.22 Where applicants have been refused admission to a particular school because there are more eligible children than places available and over-subscription criteria have been applied, appeal panels **must** follow the three stage process at paragraphs 3.2 to 3.7 for individual appeals and 3.8 to 3.17 for multiple appeals.
- 3.23 In the case of an appeal where the child did not reach the specified entry requirements, the panel **must not** attempt to make its own assessment of a child's

¹³ Section 86(3)(c) of the SSFA 1998.

ability, but may need to decide whether the original decision that the child was not of the required standard was reasonable in light of the information before the decision-maker. In doing so, it may want to consider whether any process in place to consider such cases (for example, where a pupil had not been studying in England and did not have GCSEs) was carried out in a consistent and objective way.

- 3.24 Where a child is refused admission to a sixth form, they and their parents have the same right of appeal and where they appeal separately admission authorities **must** arrange the appeals so that they are heard together. For in-year applications made by both children and their parents, panels **must** hear appeals together where possible unless they are for different admission authorities.

Boarding schools

- 3.25 Panels **must** follow the three stage process at paragraphs 3.2 to 3.7 for individual appeals and 3.8 to 3.17 for multiple appeals against decisions for places at boarding schools. In considering whether prejudice would arise if further children were admitted to a boarding school, the panel **must** consider the effect of admitting additional day pupils on the number of boarding places which are available, for example, if the resultant effect on class size means that the number of boarding places available overall would have to be reduced. It is up to the admission authority to provide evidence that this would be the case.

Waiting lists

- 3.26 The School Admissions Code requires admission authorities to maintain waiting lists for oversubscribed schools. Appeal panels **must not** take account of where the admission authority has placed a child on the waiting list, or of the fact that appeals have not been made in respect of other children on the waiting list. Appeal panels **must not** determine where a child should be placed on that list.

Expressing a preference and Fair Access Protocols

- 3.27 The School Admissions Code requires local authorities to have a Fair Access Protocol which sets out how, outside the normal admissions round, schools in the area will admit their fair share of children with challenging behaviour, children excluded from other schools and children who arrive outside the admissions round who may have difficulty securing a school place. The allocation of a place under such a protocol does not override a parent's right to appeal. If an application has been refused, despite there being places available, the governing body **must** present their case for refusal, demonstrating how admission of the child would cause prejudice to the school – this may be the case for a school with a high proportion of children with challenging behaviour which refuses an in-year admission to a child with challenging behaviour.

Children with statements of Special Educational Needs

- 3.28 If the parent of a child with a statement of Special Educational Needs wishes to appeal against the school named in the statement, or the fact that no school has been named, such appeals are considered by a Special Educational Needs and Disability Tribunal,

not a school admission appeal panel¹⁴.

DRAFT

¹⁴ Section 326 of the Education Act 1996.

Section 4: Infant Class Size Appeals

- 4.1 Regulations made under Section 1 of the School Standards and Framework Act 1998 limit the size of an infant class (for example, a class in which the majority of children will reach the age of 5, 6 or 7 during the school year) to 30 pupils with a single school teacher. Only in very limited circumstances can admission over the limit be permitted¹⁵.
- 4.2 Where a child has been refused admission to a school on the grounds of infant class size prejudice (see paragraph 4.4), an appeal panel may determine that a place is to be offered to the child by the admission authority only where it is satisfied that:
- the child would have been offered a place if the admission arrangements had been properly implemented;
 - the child would have been offered a place if the arrangements had not been contrary to mandatory provisions in the School Admissions Code and the SSFA 1998; or
 - the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.
- 4.3 In reaching its decision, the panel **must** take into account all relevant circumstances including:
- the published admission arrangements, including the area's co-ordinated admissions scheme where applied;
 - the parent's preference;
 - the circumstances of the particular child and family; and
 - the practical consequences for the school and the children in relevant infant classes if any or all of the appeals being heard were to be successful.
- 4.4 Accordingly, panels **must** follow the process below in considering appeals under infant class size prejudice grounds¹⁶.
- i. The panel **must** consider the lawfulness of the admission arrangements (including the area's co-ordinated admission arrangements) and whether they have been correctly and impartially applied. The panel **must** immediately refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements it identifies as unlawful.
 - ii. Under these grounds, the panel can only uphold the review in cases where it is clear that the child would have been offered a place if the admission arrangements had been properly applied or were not contrary to mandatory provisions in the School Admissions Code and the SSFA 1998. The panel should allow fresh material to be submitted by the parents in order to

¹⁵ See paragraph 2.15 of the School Admissions Code.

¹⁶ The procedure for determining infant class size appeals has been considered by the Court of Appeal and High Court in a number of cases: *R v London Borough of Richmond ex parte JC* [2001] ELR 21, CA; *The School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow* [2002] EWCA Civ 900; *R (on the application of South Gloucestershire Local Education Authority) v South Gloucestershire Schools Appeal Panel* [2001] EWHC Admin 732; and *R (K and S) v Admissions Appeal Panel of Cardiff County Council and Cardiff County Council* [2003] EWHC 436 (Admin).

establish the factual basis for their claim that the arrangements had not been properly implemented or had been contrary to mandatory provisions in the School Admissions Code and the SSFA 1998.

- iii. Unless the appeal has already been upheld, the appeal panel **must** go on to consider whether the admission authority's decision was one which a reasonable admission authority would have made in the circumstances of the case.
- iv. The panel should review the admission authority's decision in the light of the material available at the time when it made its decision. Exceptionally, a panel may also consider material which would have been available to the admission authority if it had acted properly. The panel may also consider evidence submitted by the parents to show what their circumstances were at the time the decision was made in order to support their claim that no reasonable admission authority would have made that decision.
- v. If the panel finds that the admission authority's decision was not one which a reasonable admission authority would have made in the circumstances of the case, then it should uphold the review.

Considering infant class size prejudice

- 4.5 Applications for admission may have been refused because places had been allocated up to the published admission number, but this does not necessarily mean that admitting another child would breach the infant class size limit. The panel **must** consider whether infant class size prejudice would be caused by the evidence provided that further admission would be detrimental to the efficient provision of education or efficient use of resources.
- 4.6 The panel **must** also consider whether admission of an additional child would cause future infant class size prejudice. Schools are responsible for organising their classes and can choose to split or merge classes to ensure appropriate teaching and learning. In such cases, panels **must** ensure that future infant class prejudice will not be caused for schools that have admitted children up to their published admission number in reception but plan to merge infant classes in Year 1 or 2. For example, a school publishes an admission number of 60, admitting 20 children to three reception classes, which become two classes of 30 children in Years 1 and 2. Admission of a 61st child to reception would lead to one of the Year 1 classes exceeding the infant class size limit unless the school takes remedial measures, such as recruiting an additional teacher.

Multiple infant class size appeals

- 4.7 Appeal panels may hear multiple infant class reviews for the same school in groups, where the presenting officer's case is heard in the presence of the appellants, including any representatives, who may question the case. If the panel is satisfied that there is infant class size prejudice, it **must** proceed to consider the appeals of the individual appellants (as in paragraphs 4.3 and 4.4) without the presence of the others. If infant class size prejudice is not proven, the panel **must** decide which children should be admitted before infant class size prejudice arises, and then consider all remaining appeals as infant class size prejudice cases. Panels **must not** make decisions until all the appeals have been heard.

Section 5: Other appeals and complaints

Further Appeals

- 5.1 Appellants do not generally have the right to a second appeal in respect of the same school for the same academic year. However a second appeal may be held where:
- i. it is requested by the Local Government Ombudsman for a maintained school, by the Secretary of State for an Academy, or when the admission authority accepted there were faults in the first appeal which may have significantly altered the outcome; or
 - ii. the admission authority has accepted a further application because of a significant and material change in the circumstances of the parent, child or school but still refused admission.
- 5.2 A second appeal panel **must** be made up of different members to the first.

Complaints about appeals

- 5.3 Admission authorities **must** inform parents about the arrangements for making a complaint about maladministration on the part of the panel hearing appeals. For a maintained school such a complaint should be made to the Local Government Ombudsman¹⁷.

Appeals by governing bodies against local authority decisions to admit twice excluded children

Notice of appeal

- 5.4 When a local authority takes a decision that a twice excluded child is to be admitted to a community or voluntary controlled school, it **must** give the governing body of the school notice in writing of that decision and of their right to appeal¹⁸. The local authority **must** comply with the principles of this Code when organising such appeals.
- 5.5 The governing body **must** make any appeal against such a decision in writing within 15 working days after the day it is given notice, and **must** give the grounds on which the appeal is being made. Local authorities are not, however, required to make these arrangements where their decisions are in the form of directions made under section 96 of the SSFA 1998, which empowers the local authority, in prescribed circumstances, to direct a foundation or voluntary aided school to admit a particular child.

Appeal panels

- 5.6 The appeal panel **must** be constituted in the same way as one hearing an appeal by a parent or a child against an admission authority's decision not to admit. The hearing

¹⁷ For Academies this would be the Secretary of State.

¹⁸ The requirements for appeals of this type are set out in Schedule 2, paragraph 2 of the Appeals Regulations 2002/2899.

must be on a date determined by the local authority, within 15 working days from the appeal being lodged. A panel **must not** include a member who has been involved in any way in previous considerations of whether the child should be reinstated at any school from which he or she has been permanently excluded or in any previous appeal relating to the child under section 85(2) of the SSFA 1998.

The appeals procedure

- 5.7 The appeal panel **must** ensure that appeals are heard in private and allow:
- the local authority and the governing body to make written representations;
 - a representative of the local authority and a governor nominated by the governing body, to appear and make oral representations.
- 5.8 In considering the appeal, the panel **must** consider:
- the reasons for the local authority's decision to admit the child; and
 - any reasons put forward by the governing body as to why it does not want to admit the child.
- 5.9 If the members of the panel disagree, the panel **must** decide the appeal by a simple majority vote. If the votes are equally divided, the panel chair has a second or casting vote. The decision reached is binding and the school and local authority **must** comply with it.
- 5.10 The clerk **must** communicate in writing the decision of an appeal panel, and the reasons for it, to the local authority, governing body and parents concerned, by the end of the second school day after the conclusion of the appeal hearing. The decision may also be confirmed to the parents by telephone by at least the next school day after the hearing.¹⁹

¹⁹ Where a local authority wishes an Academy to admit a particular child against the wishes of the Academy the case should be referred to the Secretary of State, who has the power to direct admission.