

School Admission Appeals Code

CONSULTATION DOCUMENT

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INTRODUCTION

The Statutory Basis for the School Admission Appeals Code

1. This School Admission Appeals Code (the Code) has been established under Section 84 of the School Standards and Framework Act 1998 as amended by the Education and Inspections Act 2006. Section 84(3) requires the bodies listed at paragraph 7 to act in accordance with the provisions, requirements and guidelines set out in the Code. The Appeals Code has been made following a consultation under section 85(2) of the 1998 Act, as amended by the Education and Inspections Act 2006, and has been approved by Parliament. This Code and the School Admissions Code are available at www.dfes.gov.uk/sacode.
2. This Code supersedes the previous Codes and all previous non-statutory guidance. It comes in to force on xxx February 2007 and applies to those appeals that are lodged on or after the date on which it is published. It should be read alongside the School Admissions Code and other guidance and legislation that affect admissions and admission appeals in England.
3. The Code refers to other statutory requirements (i.e. imposed by primary or secondary legislation) and itself imposes mandatory requirements which those bodies listed at paragraph 7 below **must** comply with. A reference to the relevant statutory provision is provided in the text or foot note. Where mandatory requirements are imposed by this Code (or by statutory provisions) it is stated that relevant bodies **'must'** comply with the particular requirement or provision. Where this Code prohibits practices, it is stated that the relevant body or bodies **'must not'** use this practice.
4. The Code also includes guidelines which the relevant bodies **should** follow unless they can demonstrate, if challenged, that they are justified in not doing so. Where guidelines refer to good practice, the Code will state that the relevant bodies **'should'** follow the particular guidelines. Where the guidelines refer to a practice normally regarded as poor practice, but where there may be exceptional circumstances when it may be justified, the Code will state that the practice **'should not'** be used.
5. The Code aims to build on good practice already employed by many admission authorities. As local circumstances vary greatly, the Code does not seek to give guidance on every possible situation.

6. This Code is primarily for those responsible for making appeal arrangements and for panel members and the clerk to the panel. Admission authorities, who are responsible for establishing appeal hearing, are best placed to offer parents advice about local appeal arrangements.
7. The following bodies have a statutory duty to act in accordance with both this Code and the School Admissions Code:
 - a) **Admission authorities** – local authorities are the admission authorities for community and voluntary controlled schools, unless the function has been delegated to the governing body¹. Governing bodies are the admission authority for foundation schools (including Trust schools), voluntary-aided schools and Academies².
 - b) **Governing Bodies** (including those that are not admission authorities)
 - c) **Admission Forums**
 - d) **Schools Adjudicators**
 - e) **Admission Appeal Panels**
8. The Code deals with two separate categories of admission appeals:
 - a) appeals by parents³ against a decision to refuse their child admission to a school, or against a decision to the school at which education is to be provided for their child; and
 - b) appeals by governing bodies of community or voluntary controlled schools against a decision by the local authority, as their admission authority, to admit a child to their school who has previously been permanently excluded from two or more schools.
9. The fundamental objectives of all admission appeals are to:
 - a) provide an independent, impartial and informal forum for parents and the admission authority concerned to present their respective cases and to be confident that they will be given a fair hearing;
 - b) ensure that appeal panels weigh up all the evidence presented to them carefully and objectively before reaching a final decision on the appeal;
 - c) operate within education and other relevant legislation (see paragraph A12 in Appendix A). Appeal panels are carrying out a judicial function and **must** apply the principles of natural justice (see paragraph 2.26);

1 Section 88(1) of the School Standards and Framework Act 1998

2 Academies are independent, mixed ability schools, with sponsors established under section 482 of the Education Act 1996 (as substituted by section 65 of the Education Act 2002). The funding agreement between an Academy company and the Secretary of State requires the Academy's admissions policy and arrangements to be consistent with admissions law and the School Admissions Code.

3 For the purposes of this Code, "Parent" is defined in section 576(1) of the Education Act 1996 as including any person who is not the parent of a child but who has parental responsibility for him (as defined by the Children Act 1989) or who has care of him.

- d) have regard to all relevant guidance in conducting appeal arrangements, including this Code and the School Admissions Code; and
 - e) provide a system which is clear, consistent and easy to understand by everyone involved, particularly by parents.
- 10.** Details of the legal requirements under the Education Act 2002 and other legislation relevant to appeals are set out in Appendix A.

Appeal Hearings: Constitution

This chapter sets out:

- **How appeals panels are formed;**
- **The role and responsibilities of each individual involved in appeal hearings;**
- **Training requirements of panel members and the Clerk to the panel;**
- **Indemnity;**
- **Costs.**

- 1.1** The Education (Admission Appeals Arrangements) (England) Regulations 2002 set out the requirements for the constitution of appeal panels. There are separate legal provisions for appeal panels arranged by local authorities for community and voluntary controlled schools and for panels arranged by governing bodies for foundation and voluntary aided schools. In practice, the requirements are similar and local authorities and governing bodies are able to set up joint panels if they wish to do so. Although not covered by the regulations, Academies are required by their model Academy funding agreements to arrange admission appeal panels as if they were foundation or voluntary aided schools.
- 1.2** Every appeal hearing **must** have an independent Clerk and panel with appointed chair, present for the duration of the hearing.

Constitution of appeal panels

- 1.3** Appeal panels **must** be, and be seen to be, independent at all times.

Membership

- 1.4** The local authority or governing body **must** appoint either three or five members to each panel.

- 1.5** Each panel **must** consist of:
- a) at least one lay member. Lay members are people without personal experience in the management or provision of education in any school, disregarding experience in a voluntary capacity such as a school governor; and
 - b) at least one person with experience in education, who is acquainted with educational conditions in the area, or who is the parent of a registered child at a school.

Quorum

- 1.6** Appeal panels **must** have a minimum of 3 members at all times, including at least one lay member and one education member. Where a panel with five members has begun considering an appeal and any of the members is unable to continue due to unforeseen exceptional circumstances, it can still continue to sit provided that the panel has a quorum as described above. Where a panel starts with three members, it **must not** continue if one member has to withdraw.
- 1.7** Local authorities and governing bodies may appoint enough panel members to enable two or more panels to sit at the same time (see Chapter 3 on multiple appeals). Wherever possible, one panel **should** hear all the appeals for a particular school.

Members

- 1.8** The following people are disqualified from membership of an appeal panel by the School Standards and Framework Act 1998:
- a) any member of the local authority (i.e. a Councillor) or governing body of the school in question;
 - b) any employee of the local authority or governing body, other than a teacher from another school;
 - c) any person who has, or has ever had, any connection with the local authority or school in question, or with any employee of the local authority or governing body (other than a teacher), such that doubts might be reasonably raised over his or her ability to act impartially regarding the local authority or the school. Employment by a local authority as a teacher at a school is not in itself a reason for disqualifying someone from membership, unless there is another reason to call into question their ability to act impartially;
 - d) any person who was party to, or took part in any discussions regarding, the decision not to admit the child about whom the appeal is concerned.
- 1.9** Individual panel members **must** disclose whether any of the circumstances described in paragraph 1.8 apply to them.

Tenure

- 1.10** The admission authority **must** review panel membership every three years. Individual panel members **should not** consider appeals for the same school for an extended period of time as their impartiality may be doubted.
- 1.11** Neighbouring admission authorities and local authorities **should** pool resources to ensure that sufficient panel members are always available to meet the need of, and comply with, paragraphs 1.5 to 1.8.

Advertising for panel members

- 1.12** Admission authorities responsible for constituting appeal panels **must** advertise for lay members every three years⁴. The advertisement **should** be placed in at least one local newspaper and allow a minimum of 21 days for reply⁵. Admission authorities **should** also consider other ways of attracting potential members, for example by issuing flyers in local newspapers or to local companies, and advertising on the internet, making clear that training will be provided.
- 1.13** In some areas, local authorities (with agreement of other admission authorities) take responsibility for recruiting, training and appointing members to appeal panels as a cost-effective way to achieve consistency across an area.

Individuals' roles and responsibilities

- 1.14** Every person involved in an appeal hearing **must** be familiar, and act in accordance with, both the School Admissions and School Admission Appeals Codes and **must** undertake an appropriate level of training (see section below on training requirements). The specific roles and responsibilities are detailed below.

Panel members

- 1.15** Panel members are responsible for disclosing any potential conflict they may have in hearing appeals for a particular school or family (see paragraphs 1.8 and 1.9).
- 1.16** When panel members receive their papers for the appeal, they **must** notify the Clerk to the panel if they know, or have had a previous connection with, any of the appellants in a personal or business capacity so that the appropriateness of their sitting on the panel can be considered. If the panel member only realises a possible connection on the day of the hearing, the panel chair **must** ask all parties whether they are content for the appeal to continue, but if any concerns are raised, a panel with different members **must** be convened at a later date. Where the panel has five members, the panel member concerned **should** stand down for that hearing and **must not** take any part in the decision for that appeal.

4 Regulation 4(3), Education (Admission Appeals Arrangements) (England) Regulations 2002

5 Regulation 4(4)(c), Education (Admission Appeals Arrangements) (England) Regulations 2002

- 1.17** Trained panel members are expected to play an active part in the questioning of both the presenting officer and the parent. They **must not** favour either party and **should** be conscious at all times of acting, and being seen to act, independently of the local authority or the school's governing body. Panel members **must not** express personal opinions during the course of a hearing, or make the case for either party.
- 1.18** Having heard all the evidence, the panel **must** withdraw to reach a decision as to whether to uphold or reject the appeal.

Panel Chair

- 1.19** The Panel Chair plays a central part in directing the proceedings and **must** be able to control the hearing fairly and firmly. Experience as a magistrate, committee chair or senior union official, for example, is invaluable.
- 1.20** The Panel Chair **should** aim to put the parents at ease and ensure the hearing is conducted in an informal but structured manner.
- 1.21** The chair is responsible for:
- a) starting proceedings by introducing all parties, taking care to treat the parents and presenting officer equally;
 - b) explaining the role of the Clerk;
 - c) explaining at the start that the panel is independent and any decision it makes will be binding on the admission authority; and
 - d) concluding the hearing by asking parents if they have been able to raise all the issues they wanted to and if there are any additional points they would like to make.

Clerk to the panel

- 1.22** The Clerk is not a member of the panel but has an important part to play in ensuring that all relevant facts are established and that the appeal hearing is conducted in a fair way. The Clerk **must** be independent of the school and local authority.
- 1.23** The Clerk **must** have knowledge of the law on admissions and in order to ensure independence, **must not** deal with school admissions as part of their normal employment. Local authorities and governing bodies **should** look outside their own staff (in the case of local authorities, this means those employed to work on children's services) for people who have relevant experience in working as a professional committee clerk or legal adviser, or who have experience in the conduct of inquiries or disciplinary hearings.
- 1.24** The Clerk **should** have appropriate training that includes the law on disability, but if this is not possible, the panel **must** have access to legal advice. Funding allocated for admissions and appeals **should** be used to pay for the services and training of a qualified clerk where necessary.

- 1.25** Each appeal panel **should** have the same Clerk for all the hearings for a particular school, except in exceptional circumstances where this it is not possible due to unforeseen circumstances, such as illness. In this instance, steps **must** be taken to assist the panel and the new Clerk, for example, ensuring the original clerk's handwritten notes are typed up.
- 1.26** The Clerk's key tasks are to:
- a) make the necessary administrative arrangements for hearings;
 - b) explain the basic procedure to appellants and deal with any questions they may have at the start of, and during, the hearing;
 - c) be an independent source of advice on procedure both on the School Admissions and School Admission Appeals Codes, and the law on admissions, giving any advice in the presence of all parties where practicable;
 - d) ensure that both the appellant and the admission authority have the opportunity to present relevant facts at the hearing. Clerks **must not** participate in the hearing other than to assist the panel or parents with procedure;
 - e) record the proceedings, attendance, voting outcomes, panel decisions and reasons in such a form that the panel and Clerk agree is appropriate. This record does not need to be verbatim, but **must** record the points raised at the hearing, and make clear what view the panel took about important points raised by appellants; and
 - f) notify all parties of the panel's decision in writing.
- 1.27** When the panel withdraws to consider its decision, the Clerk **must** remain with the panel solely for the purpose of offering advice on procedure or law, making reference to notes of evidence and recording decisions made including the reasons for them. Where further advice has been offered, the Clerk should consider whether it is necessary for this to be repeated to the parties and for them to be given the opportunity to comment on it.

Presenting officers

- 1.28** The admission authority **should** provide a presenting officer who is responsible for presenting their decision not to admit the child, giving all relevant information as clearly as possible and without the use of jargon. The officer **must** be prepared to answer detailed questions about the case being heard and the school including its admission arrangements, and will need to be present throughout the hearing to be able to do so. The presenting officer **should** be fully trained in admission appeal procedure.
- 1.29** Only one representative of the admission authority should act as presenting officer at appeal hearings. The admission authority can, however, decide whether a representative of the school should accompany the presenting officer to assist proceedings, for example, by answering questions raised by parents about the school. Where a school representative is not present, the presenting officer **should** be sufficiently prepared to present the case and

answer any questions. The lack of a school representative **must not** be a reason to delay arranging the hearing.

Parents

1.30 The parent is appealing on behalf of their child over a matter that is very important to their child's future. Admission authorities **must** give parents appropriate guidance and information before the hearing to enable them to prepare their case for appeal (see paragraphs 2.3-2.11). Parents are entitled to question the presenting officer during proceedings. The role of the parent at the appeal hearing is a particularly difficult one and this should be taken account of at all times by the panel.

Training requirements

- 1.31** Admission authorities **must** arrange and fund training for appeal panel members, Clerks and presenting officers. An effective training option is to offer differentiated training for particular roles e.g. chairing skills, role of the Clerk, or role of the presenting officer⁶. Admission authorities **should** consider what scope there is for co-ordinating training, and local authorities and governing bodies of schools will benefit from sharing information and good practice with each other.
- 1.32** Training that covers the specific functions of their role as described in this Code **must** be undertaken by each individual panel member. This includes all new panel members and chairs who **must** receive training on chairing and conducting a panel hearing.
- 1.33** With the agreement of all parties involved, the training of panel members, particularly panel chairs, may involve attendance at a panel as an observer, which **should** include allowing the trainee to sit in on the panel's deliberations. Trainees **must not** participate in any part of the proceedings. The number of observers at any one hearing **should** be kept to a minimum as experience has shown that too many people can be daunting for parents.
- 1.34** The Council on Tribunals (the 'Council'), which operates under the Tribunals and Inquiries Act 1992, advises and supervises the procedures and working of tribunals, which includes admission appeal panels. The Council and the Judicial Studies Board have a significant interest in the training of panel members and the role of clerks. Local authorities and governing bodies responsible for arranging appeals can seek advice from both the Council on Tribunals and the Judicial Studies Board about training.

⁶ Information for School and College Governors (ISCG) offers advice on training for panel members, runs courses when practicable, and has produced and distributed training material on behalf of the DfES

⁷ Regulation 8, Education (Admission Appeals Arrangements) (England) Regulations 2002

Indemnity

- 1.35** Admission authorities **must** indemnify the members of any appeal panel against any reasonable legal costs and expenses they reasonably incur in connection with any decision or action taken in good faith whilst acting as members of the appeal panel⁷.

Costs

- 1.36** Local authorities **should** allocate reasonable funds to governing bodies of schools which are admission authorities, to meet admission and admission appeals costs, unless the school and local authority agree that the local authority will carry out the administration on the governing body's behalf. The local authority should decide whether to allocate these funds to the schools as earmarked allocations which are in addition to, and separate from, their budget shares. If the local authority decides to delegate funding for admissions functions, it **must** comply with the requirements of the Regulations governing school funding formulae made under section 47 of the School Standards and Framework Act 1998.
- 1.37** Panel members are eligible to receive travel and subsistence allowances under regulation 7 of the Appeals Arrangements Regulations and in line with sections 173 and 174 of the Local Government Act 1972⁸. They can also be compensated for any loss of earnings or any individual expenses that are necessarily incurred as a result of attending an appeal panel, including childminding costs. The payment is set by the local authority having had regard to the recommendations of its independent remuneration panel, as provided for in the Local Authorities (Members' Allowances) Regulations 2003.
- 1.38** These provisions apply where appeal panels are arranged by either the local authority or by the governing body of a school. Governing bodies **should** pay expenses at the rate set by the local authority which maintains the school, or in whose area an Academy is situated.

8 Regulation 7, Education (Admission Appeals Arrangements) (England) Regulations 2002

Appeal Hearings: Procedure

This chapter covers:

- **How and when appeal hearings should be conducted;**
- **Setting up and preparing for appeal panels;**
- **The information required and supplied prior to a hearing;**
- **The order of proceedings;**
- **Actions following an appeal hearing.**

The admission appeals timetable

- 2.1** Admission authorities are responsible for arranging their timetable for appeal hearings. Appeals following the normal admissions round **should** normally be heard within 30 working days of the specified closing date for receipt of appeals, or within 30 working days of an appeal being made following the normal admissions round and should avoid school holidays. To prevent unacceptable delays, admission authorities may wish to make joint arrangements to hear appeals relating to casual applications. Admission authorities **should** publish a timetable of events in advance, which includes the period when the appeals for the normal admissions round **should** be expected.

Notifying the Council on Tribunals of dates for appeal hearings

- 2.2** The Council on Tribunals has a supervisory role in appeals and the Council's members occasionally sit in on appeal hearings (which include a panel's post-hearing deliberations) as observers. Admission authorities **must** notify the Council of dates on which appeal hearings will take place as soon as they have been confirmed so that it can arrange for its members to be present at a sufficient number of hearings each year. In observing hearings, the Council has regard to its published Framework of Standards for Tribunals which sets out the issues with which the Council is concerned in fulfilling its supervisory role. Copies of the Framework should be distributed to panel members and clerks and copies can be obtained from the Council on 020 7855 5213.

Notifying parents

- 2.3** Any parent whose child is refused a school place (except one whose child has been permanently excluded from two schools) has a statutory right of appeal to an independent appeal panel. Parents who have had an offer of a place withdrawn also have a right of appeal⁹.
- 2.4** When a child is refused entry to a school, parents **must** receive the following information in writing¹⁰ from the admission authority:
- full details of why the application was unsuccessful in light of the published admissions criteria including, where relevant, whether the refusal was a consequence of the infant class size limit;
 - notification of their right of appeal including details of how, and to whom, to make an appeal;
 - where to obtain further information; and
 - their right to attend the appeal hearing.
- 2.5** Letters can make reference to the grounds on which the appeal can be upheld but **must not** comment on the likelihood of success. Reference can, however, be made to the percentage of appeals that have been successful nationally in previous years.

Late applications for school places

- 2.6** Parents who applied late or outside the normal admissions round and whose children are refused admission because all available places have already been allocated, **must** be informed of their right of appeal, and that appeal **should** be heard quickly.

Notification of appeal hearings

- 2.7** Parents **must** be allowed at least 10 working days from the date of notification that their application was unsuccessful, to prepare and submit their written appeal to the admission authority, the receipt of which **should** be acknowledged.
- 2.8** If a parent submits a late appeal because of difficult circumstances or a lack of understanding of what was required, admission authorities normally **should** accept it. A late appeal **should** normally be heard at the same time as other appeals for the same school. Wherever possible, the appeal panel hearing any late appeals **should** consist of the same members as the panel that heard any previous appeal for that school. Hearings **must not** take place before any specified deadline for appeals to be submitted.

Informing parents of the hearing

- 2.9** Parents **must** be given written notice of the date of their appeal at least 10 working days in advance of the hearing.

9 Section 94, School Standards and Framework Act

10 Schedule 2, paragraph 1(2) Education (Admission Appeals Arrangements) (England) Regulations 2002

- 2.10** When informing them of the date, the admission authority **must**:
- a) ask parents to provide any documents, information and evidence they wish to submit to the panel to support their case, informing them that there is no statutory time limit for submitting information about their appeal and that they may submit information after lodging their appeal, but before the hearing;
 - b) make clear whether any earlier correspondence between the parent and the school will automatically be included in the panel's papers, or only those documents which the parents have submitted specifically for the appeal hearing; and
 - c) notify them of the grounds under which the appeal is to be considered for example by outlining the limited scope under which an infant class appeal may be upheld for classes of 30. If it is not clear whether the appeal is on infant class size, or normal prejudice, grounds (see Chapter 3), parents **must** be advised to prepare for both.
- 2.11** To allow parents to prepare for the appeal hearing, the admission authority **must** also provide parents with the following information at least 3 working days before the hearing:
- a) names of the panel members and Clerk, with the caveat that these may be subject to change due to unavoidable circumstances, and in what capacity they are serving (see paragraph 1.5). This is to give parents (and other parties) the opportunity to raise any doubts as to the impartiality of particular panel members before the appeal hearing;
 - b) all the information reasonably asked of it by the parents; and
 - c) notification of whether any witnesses have been invited to give evidence at the hearing (see paragraphs 2.15-2.17).

Attendance

Representation

- 2.12** Appeal panels **must** allow parents the opportunity to appear in person, make oral representations¹¹ and clarify or supplement their written appeal. In the situation where a parent is unable to attend, but it is also impractical to offer an alternative date (for example in the case multiple appeals), it **must** be explained to the parent that the appeal will go ahead and be decided on the written information submitted.
- 2.13** Parents may be accompanied or represented by a friend, adviser, interpreter or signer¹² who may speak on behalf of the parent at the hearing. Where parents request the services of a translator or signer, the admission authority **should** make and fund the necessary arrangements. Legal representation should not be necessary for admission appeals, although parents are free to have such representation if they wish. Where parents intend to be represented or accompanied they **should** inform the Clerk in advance of the hearing. Panels **must not** treat unrepresented parents any differently from those that have representation.

11 Schedule 2 paragraph 1(4) Education (Admission Appeals Arrangements) (England) Regulations 2002

12 Schedule 2 paragraph 1(4) Education (Admission Appeals Arrangements) (England) Regulations 2002

2.14 The parent's friend or adviser **must not** be a member of the Council, a member of the admission authority concerned, or a local politician, as this may lead to a conflict of interests and place undue pressure on the panel.

Witnesses

2.15 It **should not** be necessary for witnesses to attend appeal hearings. However, where it has been agreed that a witness can be present, the panel **should** consider whether it is appropriate to allow that witness to give evidence, where relevant and not repetitive, for example to verify matters such as medical conditions or the parents' address.

2.16 Members of the local authority **must not** attend appeal hearings as witnesses. Children **should not** normally act as witnesses or attend appeal hearings.

2.17 Having given evidence, it is the panel's decision as to whether any witnesses are required to remain for the remainder of the presentation of the case.

Production of evidence from the admission authority prior to the hearing

2.18 The admission authority **must** supply the Clerk to the appeal panel with the documents listed below at least 5 working days before the hearing (unless this is not practicable where parents have waived their right to a period of 14 days' notice of their appeal):

- a) a written statement summarising how the admission arrangements for the school apply to the parent's application, accompanied by any relevant background information and documents on which they placed substantial reliance (such as the parents' application form or references from religious ministers);
- b) a written statement summarising the reasons for the decision, explaining how admission of an additional child would cause prejudice to the provision of efficient education or use of resources, making it clear whether or not the admission authority is defending its decision on the basis of infant class size legislation. The statement **should** include a map of the school and summary of the net capacity. Any statement referring to accommodation, class sizes, capacity etc, **should** be supported by factual information, as panel members cannot be required to undergo 'tours' of schools to make their own assessments, as it could call into question their independence and lead to allegations of lobbying;
- c) the relevant extract of a published co-ordinated scheme where this has been applied and, in the case of a voluntary aided or foundation school, a statement from the local authority explaining how the scheme was applied;
- d) details of how any locally agreed protocol operates on admitting hard to place children where relevant; and
- e) copies of any information or documents that will be supplied to the panel at the hearing, including any documents that have been submitted by parents.

- 2.19** The clerk **must** ensure that copies of all documents listed in paragraph 2.18, including the information supplied by parents, are delivered to panel members and parents at least three working days before the hearing. All papers sent should be clear and easy to understand. Documents may be sent electronically, but only with the agreement of all the parties concerned. The clerk **must not** sift out what they consider inappropriate material; it is for the panel to consider what material is relevant.
- 2.20** Parents and presenting officers are responsible for deciding how best to organise their presentation of evidence. If any of the parties wish to raise matters at, or produce documents for, the hearing which are not covered by the information supplied by the Clerk to the appeal panel, these **should** be submitted to the Clerk in good time before the hearing. Where the parent wishes to produce a short document which was not previously obtainable (such as a doctor's note) and where it can easily be considered at the time of the hearing, the panel **should** allow for this. However, it may be necessary to adjourn the hearing if significant information is received less than 5 working days before the hearing and where it would be unreasonable to rule it out.

Venue for the appeal

- 2.21** To ensure independence in the appeals process, a neutral venue **must** be used for the appeal hearing. Funding delegated to admission authorities for appeals **must** cover any expenses incurred in hiring a venue, although local authorities may be able to provide a suitable venue.
- 2.22** Venues for hearings **must**:
- a) be reasonably accessible to parents and well sign-posted;
 - b) be accessible by public transport;
 - c) be accessible for people with disabilities, with consideration given to the provision of spaces for car parking¹³;
 - d) have a suitable waiting room for parents to wait separately from the panel and presenting officer;
 - e) have a suitable room for the presenting officer to wait separately from the panel and parents before and between appeals.

The appeal hearing

- 2.23** Appeal hearings **must** be heard in the presence of all panel members and parties and **should** be heard in private, except in the case of grouped multiple appeals where all parents will be present for Stage 1, and individual cases will be held in private for Stage 2¹⁴ (see paragraphs 3.12 to 3.13). Where both parties are in attendance, one party **must not** be left alone with the

¹³ Guidance is available from the Council on Tribunals in their document "Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act".

¹⁴ Schedule 2 paragraph 1(2), Education (Admission Appeals Arrangements) (England) Regulations 2002

panel in the absence of the other. Where parents are unable to attend, the clerk **must** remain with the panel at all times.

- 2.24** The conduct of hearings should be based on fairness and, as far as possible, create an informal atmosphere. Informality will be difficult to achieve if, for example, the hearing is tape-recorded and this **should** be avoided except where this may help a parent with a disability.

Guiding principles for appeal panels

- 2.25** Appeal panels perform a judicial function. They **must** be, and be seen to be, both independent and impartial. Appeals panels **must** operate according to the principles of natural justice, and those most directly relevant to appeals are:
- a) No member of the panel can have a vested interest in the outcome, or any involvement in an earlier stage of, the proceedings;
 - b) Each side must be given the opportunity to state their case without unreasonable interruption; and
 - c) Written material and evidence must have been seen by all parties. If new issues arise during the proceedings, all parties should be offered an opportunity to consider and comment on it.

The order and nature of the hearing

- 2.26** The clerk **must** notify all parties of the order of proceedings in advance of the hearing. A suggested order is set out below:
- a) The case for the admission authority;
 - b) Questioning by the parents (if prejudice is not proven (see Chapter 3), the hearing **should** end at this stage and the parents **should** be told that their appeal has been successful);
 - c) The case for the parents;
 - d) Questioning by the admission authority;
 - e) Summing up by the admission authority;
 - f) Summing up by the parents.
- 2.27** At the start of the hearing, the panel chair **must**:
- a) welcome the parties and introduce the panel members, Clerk, presenting officer and parents. Where any of the parties know each other, care should be taken to avoid giving any impressions that they may be working together;
 - b) explain the procedure clearly and simply, giving details of the issues which the panel will be addressing and in what order, including the two-stage process (see paragraph 3.1). Where appropriate, the limited scope of an infant class size appeal **should** also be explained clearly to the parent; and

c) clarify that the panel is an independent body and that if it upholds the parent's appeal, the decision will be binding on the admission authority.

2.28 Panel members may ask questions at any time during the hearing to clarify what is being said or if they want to ascertain further information in order to reach a decision. To ensure that they are seen as impartial, panel members **must not** attempt to answer questions for the presenting officer or parent.

Reaching a decision

2.29 Chapter 3 sets out how to reach decisions on appeals.

2.30 Appeal panels **must** either uphold or reject an appeal and **must not** uphold an appeal subject to any specified conditions.

2.31 Decisions on appeals where there is not unanimous agreement **must** be reached by a simple majority of votes cast. Where there are equal numbers of votes (i.e. where the panel initially comprises five members but one panel member drops out – see paragraph 1.6), the panel chair has a second or casting vote¹⁵.

Notification of the decision

2.32 The panel **must** communicate the decision of every appeal, including the grounds on which it has been made, in writing to the parents and the admission authority¹⁶. The decision letter **must** be signed by the panel chair or the Clerk to the panel (not someone from the admission authority) and sent by the Clerk as soon as possible after the panel has made its decision, ideally within 5 working days, although this may not always be possible where there are multiple appeals for one school. When notifying parents of a successful appeal outside the normal admissions round, parents **should** be given a date on which their child can start at the school.

2.33 The letter **must** be expressed clearly without the use of jargon. It **should** enable parties to:

- a) see what matters were taken into consideration;
- b) understand what view the panel took on questions of fact or law which the panel had to resolve; and
- c) know broadly on what basis the appeal panel reached its decision¹⁷ and, in the case of the unsuccessful party, enable them to understand why they did not succeed¹⁸.

15 Para 1(7) Schedule 2 Education (Admission Appeals Arrangements) (England) Regulations 2002

16 Para 1(8) Schedule 2 Education (Admission Appeals Arrangements) (England) Regulations 2002

17 *R v Birmingham City Council Education Appeals Committee ex parte B* [1999] ELR 305; *R (ota L) v The Independent Appeal Panel of St Edward's College* [2001] ELR 542

18 *St Edward's College* above

2.34 The letter **must**:

- a) reflect the type of appeal that was considered:
 - i. In the case of an infant class size appeal, explaining the particular nature of the appeal and the basis upon which the panel was able to reach its decision; or
 - ii. In the case of other appeals, making reference to the two-stage process (see paragraph 3.1) unless that was not followed, for example because the panel established that the admission arrangements had not been correctly applied. Where the panel was required to decide whether the admission authority had established prejudice, it **should** set out its decision and explain its reasons;
- b) contain a summary of relevant factors that were raised by the parent and considered by the panel¹⁹ along with a summary of any legal advice the panel sought, especially if this advice was received after the panel retired to make its decision²⁰;
- c) explain how, and why, any issues of fact or law were decided by the panel during the hearing²¹, for example whether a parent lived at a particular address; and
- d) give clear and detailed reasons for the panel's decision, addressing the key questions that the panel considered.

Notes and records of proceedings

2.35 In addition to notes taken during appeals to assist the panel's decision-making process, the Clerk **must** keep brief notes of the proceedings, the attendance, the voting and the decisions (together with the reasons for these decisions) in such form as the panel and clerk may agree is appropriate. Notes of the proceedings may be typed or hand written and **should** be clear.

2.36 Notes and records of proceedings taken by the Clerk are the property of the appeal panel. Whilst these are not normally available to the parties following the hearing, they **must** be prepared and retained on the basis that they may be required to be disclosed, for example:

- a) following requests from the Local Government Ombudsman as part of his or her investigation of a complaint about the conduct of an appeal; or
- b) information is required as part of court proceedings, for example, where a panel's decision is challenged by judicial review.

2.37 Appeals panels, as tribunals under the direct supervision of the Council on Tribunals, are not subject to the Freedom of Information Act 2000. Where the notes are held for administrative purposes by an admission authority which is subject to the Freedom of Information Act (for example, where a local authority's legal department retains the notes on file, or the notes are

19 *R (ota K and S) v Admissions Appeal Panel of Cardiff County Council and Cardiff County Council* [2003] EWHC 436 (Admin)

20 *R (ota I) v Independent Appeal Panel for G Technology College* [2005] EWHC 558 (Admin)

21 *St Edward's College above and R(ota C) v the Admission Panel of Nottinghamshire County Council and Nottinghamshire County Council* [2004] EWHC 2988 (Admin)

retained in a school office) there is no obligation for the admission authority to comply with a request for copies of the notes. In this situation, either:

- a) the admission authority will be holding the notes on behalf of the panel, in which case the notes will not be held by the authority for the purposes of the Freedom of Information Act 2000; or
- b) the notes will fall within the exemption applying to court or tribunal records.

2.38 Where a request has been made under the Data Protection Act for access to personal data contained in the records of proceedings, whether that data should be disclosed will depend on a number of factors including: the identity of the person making the request; the nature and individual circumstances of the appeal; the way in which the data is held; and the interests of any third parties identified in the data. Appeal panels or clerks may therefore wish to obtain their own legal advice before responding to such a request.

Reaching Decisions on Appeals

This chapter covers the process of reaching decisions on all appeals, including how to deal with multiple and infant class size appeals.

Primary and secondary school admission appeals

Two-Stage Process

- 3.1** All appeals, other than those against decisions made on the grounds of the infant class size prejudice (see paragraphs 3.16 to 3.36), **must** follow the two-stage process as detailed below:
- a) *First Stage: establishing the facts*, at which the panel considers whether the school's published admission arrangements were correctly applied in the individual's case and decides whether "prejudice" would arise were the child to be admitted. If this is proved, the panel moves on to the second stage.
 - b) *Second Stage: balancing the arguments*, at which the panel exercises its discretion, balancing the degree of prejudice to the school against the weight of the parental factors, before arriving at a decision.

First stage: establishing the facts

- 3.2** The panel **must** consider two separate issues:
- a) Whether the oversubscription criteria for the school were correctly and impartially applied to the child concerned; and if not, whether this led to the child in question being refused admission where the proper application of the criteria would have led to their acceptance. If it is clear that the child would have been offered a place had the admission arrangements been properly implemented (for example where the admission authority made an error in calculating distance from the school) the panel **should** uphold the appeal at this stage. The appeal **should not** be upheld at this stage in the exceptional circumstance where a significant number of children are affected and the admission of all of these children would cause prejudice.

b) Whether or not there would be prejudice caused by the additional admission of the child. Where this is the case, the admission authority **must** be able to demonstrate this over and above the fact that the admission number has already been reached. The law does not limit the prejudice argument being made to the circumstances of the school at which the applicant has been refused admission. The panel must consider a number of factors in reaching a decision as to whether or not there would be prejudice. These factors may include, for example, the school's published admission number; application to a later year group; or whether any changes have been made to the school's physical accommodation or staffing level since an admission number was set for that year group during the normal year. The panel can decide what weight to give the arguments presented.

- 3.3** At this first stage, the panel **should** also consider the impact of any locally agreed protocol on the admission of hard to place children. Under such protocols, all schools and Academies, agree to take a fair share of hard to place children e.g. looked after children that need to be admitted outside the normal admission round. Panels **must not** treat the admission of children under the protocol as an indication that a further child could be admitted to the school without causing prejudice. As with children admitted on appeal, hard to place children are admitted over and above the admission number as a result of their exceptional circumstances. The panel **must**, therefore, take into account the school's need to admit such children throughout the year when deciding whether to allow any appeals.
- 3.4** In the situation where only one appeal is being heard for the school and the panel is not satisfied in the first stage that there would be prejudice if the child were admitted, the panel **must** uphold the appeal. For multiple appeals, see paragraphs 3.8 to 3.15.
- 3.5** Where the admission authority is able to satisfy the appeal panel that there would be prejudice, the appeal panel **should** go on to the second stage.

Second stage: balancing the arguments

- 3.6** At this stage the panel considers the parents' reasons for applying for their child to attend the particular school (for example, why they want that school in particular and what it can offer their child that others cannot). When deciding whether to comply with the parents' wishes, the panel **must** consider the consequences and severity of these for the admission authority and other children.
- 3.7** The admission authority concerned may submit, as part of its evidence to the panel, that the child in question has been allocated a place at an alternative school. This may be of particular relevance where the question of distance between home and school is being discussed. Equally, it is open to the parent to state any reasons why an alternative school would be less suitable. With co-ordinated admissions schemes, this may be appropriate where a parent is appealing against refusal of admissions to one preferred school, but has either been offered a place at another preferred school or, if none of their preferences could be met, has been

allocated a place at an alternative school. However, how a parent has ranked their preferences on the common application form **should not** be a factor in the panel's consideration unless this is directly relevant to the grounds for appeal.

Multiple appeals

- 3.8** Appeal panels will often have to handle appeals from a number of parents who all wish their children to be admitted to a popular school. In these circumstances, a timetable **should** be arranged so that one panel with the same members can consider all the appeals.
- 3.9** Panels **must not** make decisions on individual cases until all parents have been involved in both stages of the process described in paragraphs 3.1 to 3.7.
- 3.10** Parents may ask for their appeal to be heard later than the time arranged. If the gap is significant, it might not be reasonable to delay decisions for the majority of parents. If there are exceptional circumstances where more than one panel has to consider appeals for the same school, each panel **must** make its own decisions independently.
- 3.11** As with other appeals, multiple appeals are heard in two stages:
- a) *First Stage:*
 - i. The panel **must** assess whether admitting any additional children would cause prejudice to the school and/or other pupils; whether each child would have been offered a place had the admission arrangements been properly implemented; and any other relevant factors.
 - ii. If the panel decides that some additional children could be admitted without prejudice to the school, it **must** determine how many places will be available and then allow appeals up to that number.
 - iii. If prejudice is found, and where there are remaining parents, the panel **must** move to the second stage of the appeal to decide whether any of the individual parental cases outweigh the prejudice.
 - b) *Second Stage:*
 - i. If the panel decides that admission of additional children would result in prejudice, it **must** consider, for each individual case, whether the parent's grounds for their child to be admitted to the school outweigh such prejudice. This involves no comparison between individual cases.
 - ii. 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, the panel **must** then compare all cases and decide which of them to uphold.

Grouped multiple appeals

- 3.12** Grouped multiple appeals are where the presenting officer's case in respect of the school is heard once for the first stage of the appeal in the presence of all parents, including any representatives, who may question the case.
- 3.13** If the panel concludes that prejudice exists, it will be necessary to move to the second stage. At this stage, the appeals of all the parents **must** be heard individually without the presence of the others, and be given consideration of whether the admission arrangements were properly applied. Decisions **must not** be taken until all the appeals have been heard.

Individual multiple appeals

- 3.14** Individual multiple appeals are where the presenting officer presents the case at the first stage, followed immediately by the individual parent's case in the order of the hearing set out in paragraph 2.26. In these circumstances, the panel will hear the admission authority's case repeatedly for each parent. Where there are large numbers of appeals, it may be better to hold grouped multiple appeals.
- 3.15** During the first stage, where the presenting officer is arguing that prejudice would arise, the case will always be the same. At the start of the hearing, the clerk **must** explain that the presenting officer **must not** produce new evidence or expand on the case in subsequent appeals, as parents 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 and advise the panel on how to proceed fairly. This may entail adjourning the hearing to give all parents the opportunity to consider and challenge the new evidence.

Infant class size appeals

- 3.16** Infant classes, where the majority of children will reach the age of 5, 6 or 7 by the end of the academic year, may not contain more than 30 pupils with a single school teacher (see paragraphs 3.78-3.79 of the School Admissions Code).
- 3.17** Where a child has been refused admission to a school on "infant class size prejudice" grounds, an appeal panel **must** only offer a place to a child where it is satisfied that either²²:
- a) "Ground A" – the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case; and/or
 - b) "Ground B" – the child would have been offered a place if the admission arrangements had been properly implemented.

22 Regulation 6(2), The Education (Admission Appeal Arrangements) (England) Regulations 2002

- 3.18** Accordingly, infant class size appeals **should** follow the process set out below²³.
- 3.19** First: the admission authority **must** be able to satisfy the panel that the conditions which make the appeal an infant class size appeal apply.
- 3.20** It is not enough for an admission authority to show that the admission number has already been reached; it **must** be able to demonstrate what qualifying measures it would have to take to comply with the statutory class size limit if it admitted an additional child e.g. employ another teacher.
- 3.21** A panel **should** consider the prejudice that would be caused by the admission of an additional child – not only on the basis of the immediate situation, but also of any situation which is bound to arise in the future whilst the child is still an infant (for example, where a school arranges for the reception class number to be below thirty, but intends that the size of the class in Years 1 and 2 would be thirty, or in cases where a school has had to take temporary measures to ensure that it complies with class size legislation).
- 3.22** If the panel decides that the conditions are not met, it **should** follow the two-stage process as described in paragraphs 3.1 to 3.7. In this event, it may be necessary to adjourn the hearing(s) so that both parents and the admission authority can reconsider the presentation of their cases.
- 3.23** Second: the appeal panel **must** consider whether the child has been refused a place in error because the school's published admission arrangements (including the co-ordinated arrangements) were not correctly applied (i.e. Ground B).
- 3.24** Under these grounds, the panel **must** only uphold the appeal in cases where it is clear that the child would have been offered a place if the admission arrangements had been properly implemented.
- 3.25** In considering an appeal under Ground B, the panel **should** take account of the material that was available to the admission authority at the time when it made its decision, or material which **should** have been available to the admission authority if it had acted reasonably. However, the panel may allow fresh material to be submitted by the parents in order to establish the factual basis for their claim that the arrangements had not been properly implemented.
- 3.26** Third: (unless an appeal is upheld under ground B): the appeal panel **must** consider, under Ground A, whether the admission authority's decision was not one which a reasonable admission authority would have made in the circumstances of the case.

23 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)

- 3.27** In order for an admission authority's decision to fall within this ground, a panel will need to be satisfied that the decision to refuse to admit the particular child was "perverse in the light of the admission arrangements"²⁴, 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"²⁵. Panels have no power to analyse whether the admission arrangements themselves are unreasonable or perverse unless those arrangements are self evidently or intrinsically unlawful.
- 3.28** In reaching its decision, the panel **must** take into account all relevant circumstances, including:
- a) the reasons for the published admission arrangements;
 - b) the parent's preference; and
 - c) the circumstances of the particular child and family.
- 3.29** As with Ground B, the panel **must** review the authority's decision in the light of the material available to the admission authority at the time when it made its decision. Exceptionally, a panel may also consider material which **should** have been available to the admission authority at that time if it had not acted unreasonably, for example if a parent had provided the information with their application, but the admission authority had lost it. Evidence about matters which arose after the admission authority made its decision and which the authority could not have been aware of at that time **should not** therefore be relevant. However, this does not prevent the panel allowing a letter or statement to be 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.
- 3.30** 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 appeal. Where the panel finds that a reasonable admission authority would have admitted more children before class size prejudice would arise, but that there are potentially more successful appellants than it could admit without causing such prejudice, it **should** follow the two-stage process as described in paragraphs 3.1 to 3.7. In this event, it may be necessary to adjourn the hearing(s) so that both parents and the admission authority can reconsider the presentation of their cases.
- 3.31** Where there are multiple infant class size appeals, panels **should** deal with them in either of the following ways:
- a) Grouped appeals – where the admission authority's argument that prejudice to efficient education or the efficient use of resources would arise by reason of the measures required

24 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

25 Council of Civil Service Unions v Minister for the Civil Service [1984] 3 All ER 935

to keep to the statutory class size limit (i.e. stage 1) is heard once in the presence of all appellants. If the panel is satisfied that the infant class size conditions are met, the panel proceeds to consider the appeals of the individual parents, without the presence of the others. The panel will therefore consider in respect of each appellant whether Ground A or Ground B applies. No decisions **should** be made until all the appeals have been heard.

- b) Individual appeals – where the panel hears each individual appeal in the order set out above. In these circumstances, the panel will hear the admission authority's case that prejudice to efficient education or use of resources would arise by reason of the measures required to keep to the statutory class size limit, for each appeal in turn.

Other factors in considering infant class-size appeals

3.32 In many areas, although admission authorities consider all applications for admission of 'rising fives'* at the same time, children are admitted to reception classes at different points in the school year (e.g. September, January and April). This enables them to have due regard to infant class size legislation while not disadvantaging parents who may want to defer their child's entry to the school until later in the academic year. It also ensures that all appeals can be heard at the same time, regardless of the term in which the pupil is to enter the school. If parents decide to defer entry of their child to later in the academic year, their place **should** be regarded by a panel in the same way as if the child had already taken it up.

3.33 In limited circumstances, prescribed by Regulations, children may be admitted as exceptions to infant class size limit. These exceptions are:

- a) children with statements of special educational needs who are admitted to the school after the normal admission round;
- b) children moving into the area outside the normal admissions round for whom there is no other available school within reasonable distance (admission authorities **must** check with local authorities before determining that a child falls into this category);
- c) children admitted outside the normal admissions round because the person responsible for making the original decision recognises that an error was made in implementing the school's admission arrangements and that a place **should** have been offered;
- d) where the child is looked after and the local authority which is the corporate parent directs an admission authority to admit the child outside the normal admissions round;
- e) children admitted where the panel upholds an appeal under either of the grounds described at paragraph 3.17.

3.34 In the first four of these cases, the class may only be above 30 for that school year or the remainder of that school year. Qualifying measures **must** be taken for the following year, or the class will be unlawfully large.

* 'rising fives' can normally be taken to mean children who are not yet of compulsory school age, but become so during the school year

Appeals for selective schools and Year 12

- 3.35** Admission authorities for grammar schools are permitted to select children for admission on the basis of academic ability. Children seeking admission or transfer to Year 12 (school sixth form) may also be selected on the basis of academic ability. In either case, admission authorities may leave places unfilled if there are insufficient eligible applicants.
- 3.36** Most admission authorities for selective schools use performance in an entrance test as a basis for determining whether a child is of the required academic standard for admission. Assessment for entry to Year 12 usually includes a requirement to have attained a specified number of GCSEs and/or specified grades. These requirements **should** be set out in schools' published admission arrangements.
- 3.37** The fact that a child has been assessed as being suitable for entry to a grammar school or Year 12 does not guarantee them a place if the school is oversubscribed.
- 3.38** Admission authorities for schools with partially selective admission arrangements **must** allocate all available places, including any unfilled selective places, if they have sufficient applications of any academic standard.
- 3.39** Some authorities for grammar schools choose to operate a non-statutory review system to consider whether children who have not reached the specified standard, but have "borderline" scores, should be deemed as being of grammar school standard. This does not replace a parent's right to have their appeal heard by a statutory appeal panel.
- 3.40** In the case of applicants who have been refused admission to a particular school because there are more eligible children than places available and other oversubscription criteria have then been applied, a panel would follow the normal two-stage process described in paragraphs 3.1 to 3.7.
- 3.41** Panels may take account of a parent's arguments as to why their child did not perform their best on the day of the test, or of any evidence to support their contention that the child is suitable for admission to a grammar school or Year 12. The panel **must not** attempt to make its own assessment of a child's ability, but may need to decide whether the original decision that the child was not of the required standard was reasonable. In doing so, it may want to consider whether any review process (see paragraph 3.39) was carried out in a consistent and objective way and whether testing arrangements were fair, for example reasonable adjustments were made for children with disabilities in line with the Disability Discrimination Act 1995.

Appeals following casual applications for grammar schools and Year 12

- 3.42** Admission authorities for wholly selective schools and Year 12 are bound by the same duty as those for other maintained schools. This means that they **must** consider applications made at any time and if they refuse to admit the child, **must** offer the parent a right of appeal. See paragraph 4.1 for further appeals within the same academic year.

3.43 Many selective schools do not offer a facility for testing applicants for admission outside the normal admissions round. In this situation, if the admission authority is not willing to accept that a casual applicant is of the required academic ability for admission, it **should** make arrangements for an appropriate assessment of the child's ability to be made if their parent lodges an appeal. If this is not done, the panel **must** work on the assumption that the child is of the required academic standard, and follow the two-stage process described in paragraphs 3.1 to 3.7.

Boarding schools

3.44 Boarding schools may publish separate admission numbers for day pupils and boarders, and may leave places unfilled in either category if there are insufficient applicants within either category. Boarding schools may interview children for boarding places, but only to assess a child's suitability for boarding.

3.45 The process for hearing appeals for boarding schools is the same as that for other schools and **must** follow the two-stage process described in paragraphs 3.1 to 3.7.

Admission numbers and capacity

3.46 When deciding whether prejudice would arise if further children were admitted to a school, the panel **must** take into account the school's published admission number²⁶, which 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.

3.47 Subject to local consultation, admission authorities may set a higher or lower admission number than that indicated by the capacity assessment if, for example, the organisation of classes makes it appropriate to do so. It is not the role of the panel to reassess the capacity of the school as this should have been agreed locally based on an objective assessment of the space available. The panel **should** consider the impact on the school of admitting additional children in terms of the organisation and size of classes, the availability of teaching staff, and the effect on children already at the school.

3.48 In the case of new schools serving a new housing development, panels **should** take into consideration that whilst such schools could appear to have spare capacity, the admission authority may have initially set lower admission numbers for the first and subsequent years, and would have made that clear in the published and approved statutory proposals for the new school. This usually occurs when admission authorities plan to phase in the number of places available over a period of time. It is important that presenting officers highlight these issues when stating their case, clearly explaining the need to phase in the number of

26 Regulation 6(1)(b) Education (Admission Appeals Arrangements) (England) Regulations 2002

admissions and the effect on those plans of a large number of children admitted, for example, where the school has not been allocated sufficient funding for the extra teachers needed.

Waiting lists

- 3.49** There is no statutory requirement for admission authorities to maintain waiting lists. Where they do, panels hearing appeals **must not** take account of where the admission authority has placed a child on the waiting list, or of the fact that parents of other children on the waiting list have not appealed.
- 3.50** When making decisions on appeals for a school that maintains a waiting list, panels **must not** determine where a child should be placed on that list.

Children with statements of Special Educational Needs

- 3.51** 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, the appeal **must** be made to the Special Educational Needs and Disability Tribunal, not to the admission appeal panel²⁷.

Children with challenging behaviour

- 3.52** The School Admissions Code refers (see paragraphs 3.67-3.69) to circumstances where it might be appropriate to refuse admission of a child with challenging behaviour, even when places are available in a school.
- 3.53** Panels **must** take account of these circumstances when hearing appeals for children who fall within this category, in addition to considering the arguments put forward by the parents for their child to be admitted to the school. It is important in these cases that the panel carefully considers whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children.

Children with disabilities

- 3.54** Panels **must** have regard to the Disability Rights Commission's guidance in their Code of Practice for Schools when hearing appeals against an alleged refusal to admit a child based on their disability.
- 3.55** Panels **must** consider, along with their usual deliberations, whether the school's admission criteria have been correctly and impartially applied, or whether the child has been discriminated against for a reason that relates to the disability. The Special Educational Needs and Disability Tribunal will hear most other claims of disability discrimination against schools²⁸.

²⁷ Section 326, Education Act 1996

²⁸ Part 1V, Disability Discrimination Act 1995

Further Appeals and Objections

This chapter provides details on:

- Conducting further appeals;
- Complaints to the Local Government Ombudsman;
- Complaints to the Secretary of State.

Further Appeals

- 4.1** Parents who have appealed unsuccessfully can reapply for a place at the same school in respect of a later academic year and have a further right of appeal if unsuccessful. Parents do not have a right to a second appeal in respect of the same school and the same academic year, except in the following circumstances:
- a) the admission authority agrees to arrange a second appeal because there were faults in the first appeal which may have significantly affected the outcome (this may be on the recommendation of the Local Government Ombudsman or because the admission authority decides to do so on its own initiative); or
 - b) the admission authority accepted a further application because of a significant and material change in the circumstances of the parent, child or school, but considered that the new application should also be turned down. Common examples where the admission authority may wish to consider a fresh application due to changes in circumstances since the original application was made include medical reasons, or that the family has moved house.
- 4.2** To ensure that parents receive a fair hearing, the panel that hears their second appeal **must** consist of different panel members²⁹, and if possible, a different Clerk.

²⁹ Section 25, Local Government Act 1974

Complaints to the Local Government Ombudsman

- 4.3** The Local Government Ombudsman can investigate written complaints about maladministration on the part of a panel. This is not a right of appeal. Maladministration covers issues such as a failure to follow correct procedures or a failure to act independently and fairly, rather than complaints where a person simply feels that the decision taken is wrong.
- 4.4** The Ombudsman is not able to overturn an appeal panel's decision but he may make recommendations for a suitable remedy. Where the Local Government Ombudsman considers a complaint and finds that there was "maladministration" that caused injustice, he often proposes that a fresh appeal be conducted before a new panel, and where possible, with a new Clerk. In those circumstances, the Ombudsman would recommend that the new panel have the same powers as the original panel. Although there is no further right of appeal in law, admission authorities have the discretion to arrange a new panel following an Ombudsman's recommendation and undertake to re-consider the appeal.
- 4.5** There are three Local Government Ombudsmen in England and each deals with complaints from different parts of the country. Information on this is available in a leaflet obtainable from the Commission for Local Administration in England, 10th Floor, Millbank Tower, Millbank, London SW1P 4QP or by telephoning the advice line on 0845 6021983.

Complaints to the Secretary of State

- 4.6** The Secretary of State cannot review or overturn decisions of individual appeal panels, but can consider, under section 496 and 497 of the Education Act 1996, whether:
- a) the panel and others have acted in accordance with this Code;
 - b) the panel was correctly constituted by the admission authority. If the Secretary of State is satisfied that the local authority or governing body has failed to constitute a panel properly, it can be directed to appoint a properly constituted panel; and
 - c) the admission authority or governing body has acted reasonably in exercising functions in respect of the appeal process.

Appeals by governing bodies against twice excluded children

This chapter:

- Outlines procedure for appeals against a local authority's decision to admit 'twice excluded' children.

Notice of appeal

- 5.1** When a local authority takes a decision that a twice excluded child (see paragraph A.21 to A.22) is to be admitted to a school, it **must** give the governing body of the school notice in writing of that decision³⁰ and of the governing body's right to appeal³¹. An appeal by the governing body against such a decision **must** be made in writing not later than the fifteenth school day after the day it is given notice and **must** give the grounds on which the appeal is being made³².
- 5.2** The appeal panel **must** meet on a date determined by the local authority, not later than the fifteenth school day after the day on which the appeal was lodged³³.

Appeal panels

- 5.3** A person **must not** be a member of a panel if he or she has been involved in any way in previous consideration of whether the child should be reinstated at any school from which he or she has been permanently excluded³⁴.
- 5.4** A person is also disqualified if he or she was involved in a previous appeal hearing under section 95(2) of the School Standards and Framework Act 1998 Act in respect of the same child³⁵.

30 Section 95(2), School Standards and Framework Act

31 Schedule 2, paragraph 2(2), Education (Admission Appeals Arrangements) (England) Regulations 2002

32 Schedule 2, paragraphs 2(3)(4), Education (Admission Appeals Arrangements) (England) Regulations 2002

33 Schedule 2, paragraph 2(5) Education (Admission Appeals Arrangements) (England) Regulations 2002

34 Schedule 1, paragraph 5(2) Education (Admission Appeals Arrangements) (England) Regulations 2002

35 Schedule 1, paragraph 5(2) Education (Admission Appeals Arrangements) (England) Regulations 2002

The appeals procedure

- 5.5** The appeal panel **must** allow³⁶:
- a) the local authority and the governing body to make written representations;
 - b) a representative of the local authority and a governor nominated by the governing body, to appear and make oral representations.
- 5.6** In considering the appeal, the panel **must** consider:
- a) the reasons for the local authority's decision that the child should be admitted; and
 - b) any reasons put forward by the governing body as to why the child's admission would be inappropriate.
- 5.7** Appeals normally **should** be heard in private, except when the local authority directs otherwise. The panel has the discretion to direct that a member of the local authority may attend an appeal as an observer; and a member of the Council on Tribunals may also attend any appeal³⁷.
- 5.8** Two or more appeals may be considered and dealt with at the same hearing, if the appeal panel considers the issues raised by the appeals are the same or connected³⁸.
- 5.9** If the members of the panel disagree, the appeal **must** be decided by a simple majority vote. If the votes are equally divided, the panel chair has a second or casting vote³⁹. The decision reached is binding and the school and local authority **must** comply with it⁴⁰.
- 5.10** The decision of an appeal panel and the grounds on which it is made **must** be communicated by the Clerk in writing to the local authority, governing body and parents concerned by the end of the second school day after the conclusion of the appeal hearing⁴¹. The decision **should** also be confirmed to the parents by telephone by at least the day after the hearing.

36 Schedule 2, paragraph 2(6) Education (Admission Appeals Arrangements) (England) Regulations 2002

37 Schedule 2 paragraph 2(7) Education (Admission Appeals Arrangements) (England) Regulations 2002

38 Schedule 2 paragraph 2(8) Education (Admission Appeals Arrangements) (England) Regulations 2002

39 Schedule 2 paragraph 2(9) Education (Admission Appeals Arrangements) (England) Regulations 2002

40 Section 95 (4) School Standard and Framework Act 1998

41 Schedule 2 paragraph 2(10) Education (Admission Appeals Arrangements) (England) Regulations 2002

Further detail on the law relating to school admission appeals

Introduction

- A.1** Admission authorities and Academies (through their funding agreements) are responsible for arranging appeals and **must** comply with the legislation including interpretations of the law laid down by the courts, act in accordance with this Code together with the School Admissions Code, and have regard to other relevant guidance. The following paragraphs signpost the relevant legal provisions but they do not aim to provide definitive guidance on interpretation of law: that is a matter for the courts. Admission appeal panels fall under the supervision of the Council on Tribunals and not the Secretary of State. The Council on Tribunals (which operates under the Tribunals and Inquiries Act 1992) advises on and supervises the procedures and workings of tribunals, which include appeal panels.
- A.2** Admission authorities are defined in section 88(1) of the 1998 Act. For a community or voluntary controlled school, the admission authority is usually the local authority, but it may be the governing body if the local authority has delegated responsibility for determining admission arrangements. However, even where community schools have been given delegated responsibility for admissions, the local authority is still responsible for arranging appeals brought against a decision made by the governing body. The admission authority for a foundation or voluntary aided school is the governing body. For an Academy, it is the governing board.

The right of appeal under the School Standards & Framework Act 1998 (as amended by the Education Act 2002)

- A.3** Under section 94(1)(b) and (2) of the 1998 Act, parents have the right to appeal against an admission authority's decision refusing their child admission to a school. However, where a child has been permanently excluded from two or more schools and at least one of those exclusions took place after 1 September 1997, the parents' right of appeal against a decision not to offer their child a school place is effectively suspended for two years after the second or any subsequent exclusion (see sections 87(2) and 95(1) of the 1998 Act).
- A.4** Local authorities **must** make arrangements for enabling a parent of a child to appeal against:

- a) any decision made by or on behalf of the local authority as to the school at which education is to be provided for the child (see section 94(1)(a)); and
- b) in the case of a community or voluntary controlled school maintained by the authority, any decision made by or on behalf of the governing body refusing the child admission to the school (see section 94(1)(b)).

- A.5** 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 1998 Act, which empowers local authority in prescribed circumstances to direct a foundation or voluntary aided school to admit a particular child.
- A.6** The governing body of a foundation or voluntary aided school **must** make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school (see section 94(2) of the 1998 Act).
- A.7** Joint arrangements may be made by the governing bodies of two or more foundation or voluntary aided schools which are maintained by the same local authority. A local authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the local authority may also make joint arrangements for appeals. These arrangements could include placing joint advertisements for lay members (see paragraph 2.13) and sharing the services of a Clerk. Academies can choose to work with other schools or the local authority.
- A.8** Under co-ordinated admission arrangements, parents have the right to appeal for a place at any of their preferred schools for which they were not successful and against any decision by or on behalf of the local authority as to the school at which education is to be provided for the child. One panel **should** hear all the appeals for a school (see paragraph 1.7). If a single local authority is the admission authority as regards all the parents' preferences, one appeal panel may consider appeals for any of these schools in the same hearing, if this is practical. Where parents have appealed against decisions made by more than one admission authority, including where the local authority has communicated the decision on behalf of another admission authority, separate hearings before different appeal panels may be arranged. In such a case, the first panel to sit, when making its decision, **should** disregard the fact that the parents may have further appeals pending. However if the panel upholds the appeal it **should** notify any other panels accordingly so that those panels may take that into account in their own deliberations on any subsequent appeal hearings. A joint arrangement between admission authorities would help the smooth running of this process.
- A.9** Section 95(2) of the 1998 Act requires local authorities to make arrangements for panels to hear appeals from governing bodies against a decision by the local authority, where it is the admission authority, to admit to their school any child who has been twice permanently excluded.

A.10 Where a pupil already attending a school is refused permission to transfer to Year 12 (the sixth form) at that school, their parents have the same right of appeal under section 94(1A) and (2A) of the 1998 Act (as amended by the Education Act 2002) as the parents of an external pupil who is refused admission to that year group. The appeal arrangements are made by the admission authority for the school.

The Education (Admission Appeals Arrangements) (England) Regulations 2002

A.11 These Regulations prescribe the requirements for the appeals procedure and for issues such as the duty to advertise for lay members, the payment of allowances, indemnity of panel members and the constitution of panels hearing appeals from either parents or governing bodies of community and voluntary controlled schools. Admission authorities were required to advertise for lay members by 1 April 2003 and to continue to do so every three years (see paragraph 1.12).

Other relevant legislation

A.12 Panels must comply with all relevant legislation including the Human Rights Act, the Sex Discrimination Act 1975, the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) and the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001). Appeal panels are also required to have regard to guidance in the Disability Rights Commission's Schools Code of Practice when determining an appeal.

The powers of appeal panels

A.13 Panels cannot hear complaints or objections on wider aspects of local admission policies and practice. This is the role of the School Adjudicator or, in limited cases, the Secretary of State. Nor do panels have a role in consultations through local Admissions Forums. Appeal panels can consider concerns about an individual admission authority's admission arrangements raised by a parent in the context of their appeal in so far as they may have a bearing on their child's admission. Panels ought not to get drawn into or allow general discussion about admission policies and practices at appeal hearings. They **should**, instead, focus on the case put forward by the admission authority for refusing to admit the child and the parents' case for admission.

A.14 Under section 94(6) of the 1998 Act, a panel's decision that a child **should** be admitted to a school is binding on:

- a) the local authority or the governing body by whom or on whose behalf the decision under appeal was made; and
- b) the governing body of a community or voluntary controlled school at which the panel determines that a place **should** be offered to the child in question.

This does not mean, however, that the local authority may not name a school where an appeal has been unsuccessful in any subsequent direction under section 96 of the 1998 Act.

- A.15** The Secretary of State has no power to consider complaints about the decisions of panels, or the way they conduct their business, nor has the Council on Tribunals. However, the Secretary of State has limited powers under sections 496 and 497 of the Education Act 1996 to consider whether a local authority or a governing body have acted unreasonably in carrying out their functions in respect of the appeals process or have failed to discharge any legal duty in relation to that process.
- A.16** If parents believe that the panel which heard their appeal acted improperly or unreasonably in handling their case, or other cases which may have affected theirs, they can make a complaint to the Commissioner for Local Administration (the Local Government Ombudsman) (see paragraphs 4.3 to 4.5).
- A.17** An appeal panel's decision can only be overturned by the courts where the parents or admission authority are successful in applying for Judicial Review of that decision.

Statutory matters to be taken into account by the appeal panel

- A.18** Admission authorities **must** comply with parental preference except in certain limited circumstances, namely:
- a) where to admit the child would prejudice the provision of efficient education or the efficient use of resources. Local authorities and governing bodies may not refuse to admit children to any year group in which pupils are normally admitted to the school on these grounds unless the number of applications for places in that relevant year group exceeds the school's admission number. Prejudice may arise by reason of measures that would be required to be taken to comply with the limit on infant class sizes;
 - b) where the school is wholly selective by high ability or by aptitude, and the admission of the pupil would be incompatible with such selection under the admission arrangements. However, partially selective schools, and those which operate banding, **must** admit up to their published admission numbers. Schools which are partially selective – sometimes referred to as 'bilateral schools' or as having 'grammar school streams' – may not keep selective places empty. Only schools that are wholly selective by high academic ability or by aptitude, and those admitting to Year 12 (the sixth form) by reference to academic ability, can keep places empty if they do not have sufficient applicants of the required standard;
 - c) where state maintained boarding schools have set separate admission numbers for day pupils and boarding pupils and have more applicants for one or other category than places available, even though places may be available in the other category;
 - d) where another place has been offered under co-ordinated arrangements;

- e) where the child has been permanently excluded from two or more schools and at least one of the exclusions took place after 1 September 1997. The requirement to comply with parental preference is disapplied for two years after the second exclusion. However, a child is not to be taken as having been permanently excluded if:
 - i) the exclusion took place before the child reached compulsory school age;
 - ii) the pupil was reinstated following exclusion; or
 - iii) a governing body reviewing the decision to permanently exclude a pupil, or an exclusion appeal panel hearing an appeal, decided that it would have been appropriate for them to direct that the pupil be reinstated had they considered it practical for them to do so in the circumstances.

A.19 All appeal panels **must** take into account parental preference and the reasons for particular preferences; the admission arrangements published by the admission authority; and, if the application was made in the normal admission round, how the local co-ordination scheme says the decision to offer a place will be made if an applicant meets the criteria for admission to more than one school.

A.20 Parents have a right to appeal against a decision to refuse them a place at any school they have stated as a preference. The panel may take into consideration the fact that a higher preference school has been allocated, in accordance with the local co-ordinated admissions scheme, but **should** also take into account the parents' reasons for wanting the lower preference school.

Appeals by governing bodies against admission of a twice excluded pupil

A.21 Section 87(2) the School Standards and Framework Act 1998 provides that if a child has been permanently excluded from two or more schools, and at least one of the exclusions has taken place since 1 September 1997, the parents' normal right of appeal against a decision not to admit their child to a particular school is suspended for two years from the second or any subsequent exclusion. Section 95(2) of the Act requires the local authority that is the admission authority for a community or voluntary controlled school, to make arrangements for the governing body of the school to appeal against any decision, made by or on behalf of the authority, to admit to the school a child to whom, at the time the decision was made, section 87(2) of the Act applied. A permanent exclusion will not count for these purposes if an exclusion appeal panel has subsequently decided to reinstate the child, or would have done so had it been practical for it to do so; or, if at the time the child was excluded he had not attained compulsory school age.

A.22 Schedule 1 to the Education (Appeals Admission Arrangements) (England) Regulations 2002 sets out how appeal panels in these cases **should** be constituted, and Schedule 2 sets out what procedures **should** be adopted and followed by those appeal panels.

Guidelines on cultural differences

B.1 In hearing appeals, panels **should** bear in mind the following six key points⁴²:

- a) language which may cause offence should never be used when speaking about people from different ethnic backgrounds;
- b) panel members should never make sweeping or potentially offensive statements about people from a particular community;
- c) panel members should show that they have an understanding of names of people of different cultures;
- d) panel members should show that they understand something of the background of social and family customs of the principal ethnic communities in their area;
- e) members should remember that there may often be communication difficulties even when the parent's main language appears to be English. Special care should be taken in hearings involving interpreters;
- f) when trying to assess the strength of a parent's case, members should be alert to the possibility that their body language may be different if they come from a different background e.g. in certain cultures, it is thought impertinent to look figures of authority in the eye. This should not be taken to mean that the appellant is avoiding the question.

B.2 Above all, appeal panels **must** have regard to the Race Relations Act 1976 (as amended) and ensure that their decision does not racially discriminate against an appellant.

Names and naming systems

B.3 It is important that panels address parents orally and in writing in such a way so as not to cause confusion or offence. The Judicial Studies Board has produced a paper on this issue "Names and Naming Systems", published by the Judicial Studies Board⁴³. From this, the following simple guide to names and naming systems has been abridged.

42 Abridged from an article written by Mr Justice Henry Brooke and published in "The Magistrate", December 1992

43 www.jsboard.co.uk

South Asian naming systems

B.4 *Hindu:* personal name + middle name + family name

e.g. Vijay Lal Sharma and Jyoti Devi Chopra **should** be addressed as Mr Sharma and Mrs Chopra.

B.5 *Sikh:*

a) male: personal name + Singh (+ family name)

b) female: personal name + Kaur (+ family name)

eg. Karamjit Singh (Gill) and Jaswinder Kaur (Grewal) **should** be addressed as Mr Gill and Mrs Grewal; or Mr Karamjit Singh and Mrs Jaswinder Kaur

B.6 *Muslim:*

a) male: religious name + personal name (+ hereditary name); or personal name + religious name (+ hereditary name)

b) female: personal name + titular name; or personal name + second personal name

e.g. Mohammed Rahman (Khan) and Amina Bibi **should** be addressed as Mr Mohammed Rahman and Mrs Amina Bibi.

Religious holidays and religious observance

B.7 Appeals **should not** be held at times when parents may be unable to attend due to a religious holiday or religious observance. These times **should** be respected, unless arranging the appeal for another day would be impractical and cause delays in the appeal arrangements.

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