Department for Education

School Admission Appeals Code

Statutory guidance for school leaders, governing bodies and local authorities

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Statutory basis for the School Admission Appeals Code

1. The School Admission Appeals Code ('this Code') has been issued under Section 84 of the School Standards and Framework Act 1998. It has been made following a consultation under Section 85(2) of that Act and after being laid before Parliament for forty days.

2. This Code comes into force on **1 February 2012** and applies to all appeals lodged on or after that date. It applies to admission appeals for all maintained schools in England. It should be read alongside the School Admissions (Appeal Arrangements) (England) Regulations 2012, the School Admissions Code and other guidance and law that affect admissions and admission appeals in England.

3. Appeals lodged before 1 February 2012 **must** be heard in accordance with the 2009 Admission Appeals Code and the Education (Admission Appeals Arrangements) (England) Regulations 2002 as amended.

4. This Code imposes mandatory requirements and includes guidelines setting out aims, objectives and other matters in relation to the discharge of functions by the bodies listed below:

a) **admission authorities of maintained schools** as defined in Section 88(1)(a) and (b) of the School Standards and Framework Act 1998;
b) **governing bodies and local authorities** (when not admission authorities);
c) **admission appeal panels**.

These bodies have a statutory duty to act in accordance with the relevant provisions of the Code.

Application of the Code to Academies

5. Academies, by which we mean Academy Schools[1] (including those that are Free Schools), University Technical Colleges and Studio Schools, are state-funded, non fee-paying independent schools set up under a funding agreement between the Secretary of State and the proprietor of an Academy (most commonly, and hereafter, referred to as an Academy Trust). Academies are required by their funding agreements to comply with the Code and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.

The table overleaf sets out the admission authority for each type of school in England[2].

[1] Section 53 of the Education Act 2011 will insert Section 1A, which defines an Academy School, into the Academies Act 2010 when it comes into force in 2012. At the time of laying the Code, Academies are defined in Section 1 of the Academies Act.
[2] For community and voluntary controlled schools the admission authority is usually the local authority, but it may be the governing body if the local authority with the governing body's agreement has delegated responsibility to it for determining admission arrangements.

Type of school	Who is the admission authority?	Who is responsible for arranging an admission appeal?
Academies	Academy Trust	Academy Trust
Community schools	Local Authority	Local Authority
Foundation schools	Governing body	Governing body
Voluntary aided schools	Governing body	Governing body
Voluntary controlled schools	Local Authority	Local Authority

6. The admission authorities of foundation and voluntary aided schools and Academies may ask another body, e.g. the local authority, to carry out some or all of their admissions functions on their behalf. However, the admission authority remains responsible for ensuring those functions are carried out properly.

7. This Code deals with two separate categories of admission appeals:

a) appeals by parents, and in certain circumstances children (see paragraph 8 below), against an admission authority's decision to refuse admission; 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 to their school a child who has been permanently excluded from two or more schools.

8. Children have the right to appeal against an admission authority's decision to refuse them admission:

a) to a school sixth-form; or

b) to a school at which they wish to receive education other than sixth form education once they have ceased to be of compulsory school age.

Introduction

Purpose of this Code

The purpose of this Code is to ensure the independence of admission appeal panels and to ensure that all admission appeals for maintained schools and Academies are conducted in a fair and transparent way.

This Code has the force of law. Where it imposes mandatory requirements, or refers to requirements in legislation, the words '**must**' or '**must not**' are used.

This Code is designed to give admission authorities the freedom they need to run the appeals process efficiently, whilst maintaining minimum requirements which will ensure fairness and transparency. In drawing up this simpler, shorter Code, we have been guided by the principle that admission authorities are best placed to decide how to meet those requirements.

Section 1: Constitution of Appeal Panels

1.1. Under Section 94 of the School Standards and Framework Act 1998, responsibility for making arrangements for appeals against the refusal of a school place rests with the admission authority of the school. The admission authority and appeal panel **must** act in accordance with this Code, the School Admissions (Appeal Arrangements) (England) Regulations 2012, the School Admissions Code, other law relating to admissions[3], and relevant human rights and equalities legislation, for example, the Equality Act 2010.

1.2. Appeal panels perform a judicial function and **must** be transparent, accessible, independent and impartial, and operate according to principles of natural justice.

1.3. Two or more admission authorities in the same local authority area may make joint arrangements for hearing appeals.

Membership

1.4. Admission authorities **must** appoint a clerk to the appeal panel who is independent of the school and the education functions of the local authority. The clerk **must** have knowledge of this Code, the School Admissions Code, other law relating to admissions and other relevant law, and be able to offer advice to enable the panel to undertake its judicial function.

1.5. The admission authority, or the clerk acting on behalf of the admission authority, **must** appoint an independent appeal panel that is comprised of a chair and at least two other panel members. A panel **must** consist of the following persons with at least one from each category:

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

1.6. Admission authorities **must** ensure that panel members are independent and retain their independence for the duration of their service.

1.7. The School Admissions (Appeal Arrangements) (England) Regulations 2012 disqualify certain people from membership of an appeal panel. The clerk to the panel **must not** allow a disqualified person to be a member of a panel. A person is disqualified if they are:

a) a member of the local authority which is the admission authority or in whose area the school in question is located;
b) a member or former member of the governing body of the school in question;
c) employed by the local authority or governing body of the school in question, other than as a teacher or teaching assistant[4];
d) any person who has, or at any time has had, any connection with the authority,

[3] The main provisions relating to admissions are in chapter 1 of Part 3 of the School Standards and Framework Act 1998.
[4] A teaching assistant is a person who carries out work under paragraph 10 of Schedule 2 to the Education (Specified Work and Registration) (England) Regulations 2003.

school or any person in sub-paragraph c) above which might reasonably be taken to raise doubts about that person's ability to act impartially;

e) any person who has not attended training required by the admission authority arranging the appeal panel.

1.8 A person employed as a teacher or a teaching assistant by the local authority or the governing body of another school maintained by the authority may not be taken, by reason only of that employment, to have such a connection with the authority as mentioned in paragraph 1.7(d) above. A person who is a teacher or teaching assistant at a school may not be a member of an appeal panel for the consideration of an appeal for that school. A person may not be a member of an appeal panel for the consideration of a decision not to offer a child a place where they were involved in making that decision or provided information which contributed to the decision.

1.9 Where a panel starts with three members, and one has to temporarily withdraw (for example because of illness), the panel **must** postpone the remaining hearings until the third panel member returns. If the panel member is unable to return, a replacement **must** be appointed and all appeals **must** be reheard. Any appeals which have been part heard before the withdrawal of the panel member **must** be reheard.

Training

1.10 Panel members and clerks **must not** take part in hearings until they have received appropriate training. Admission authorities **must** arrange and fund up-to-date training for appeal panel members on any aspect felt to be relevant to the functioning of the panel. As a minimum, this **must** include the law relating to admissions; their duties under the Human Rights Act 1998 and Equality Act 2010; procedural fairness and natural justice; and the roles of particular panel members (for example, chairing skills). It is the responsibility of the clerk to ensure that all panel members have received any training necessary to enable them to fulfil their role.

Roles and responsibilities

The clerk

1.11 The clerk **must** provide an independent and impartial service. Wherever possible, an appeal panel should have the same clerk for all appeals for a particular year group at a particular school. The clerk's role (in addition to that set out in paragraph 1.10 above) is to make the necessary administrative arrangements for hearings (unless a separate appeals administrator is appointed for this purpose); to notify the parties of the order of proceedings in advance of the hearing; to respond to queries from appellants in advance of the hearing, or to identify the appropriate person to provide a response; to be an independent source of advice (or to seek appropriate advice) on procedure and on admissions law; to keep an accurate record of proceedings; and to provide the parties with written notification of the panel's decision.

The chair

1.12 The chair is responsible for the conduct of the hearing including introducing the parties and explaining the roles of the clerk and the panel, explaining how the hearing will be conducted, and ensuring that the parties have sufficient opportunity to state their case and

ask questions.

Indemnity

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

Costs

1.14 Local authorities **must** allocate reasonable funds to governing bodies of maintained schools which are admission authorities to meet admission appeals costs, including training for panel members, unless the school and local authority agree that the local authority will carry out the administration on the governing body's behalf. Academies receive funding in accordance with their funding agreements.

1.15 Panel members are eligible to receive travel and subsistence allowances and can also be compensated for any loss of earnings or any expenses, including child minding costs, which are necessarily incurred as a result of attending an appeal hearing or associated training[5]. The rate of payment for community and voluntary controlled schools is set by the local authority which **must** have regard to the recommendations of its independent remuneration panel[6]. The rate of payment for voluntary aided and foundation schools and Academies should be set by the respective governing body or Academy Trust with regard to the rate set by the local authority.

[5] In accordance with the application of Sections 173 and 174 of the Local Government Act 1972 as provided for by the School Admission (Appeals Arrangements) (England) Regulations 2012.
[6] As provided for in the Local Authorities (Members Allowances) Regulations 2003 (SI 2003/1021).

Section 2: Appeal Hearings

Timetable

2.1 Admission authorities **must** set a timetable for organising and hearing appeals that:

a) includes a deadline for lodging appeals which allows appellants at least 20 school days from the date of notification that their application was unsuccessful to prepare and lodge their written appeal;
b) ensures that appellants receive at least 10 school days' notice of their appeal hearing;
c) includes reasonable deadlines for appellants to submit additional evidence, for admission authorities to submit their evidence, and for the clerk to send appeal papers to the panel and parties;
d) ensures that decision letters are sent within five school days of the hearing wherever possible.

2.2 Admission authorities **must** publish their appeals timetable on their website by **28 February** each year.

2.3 Admission authorities **must** ensure that appeals lodged by the appropriate deadlines are heard within the following timescales:

a) for applications made in the normal admissions round[7], appeals **must** be heard within 40 school days of the deadline for lodging appeals;
b) for late applications[8], appeals should be heard within 40 school days from the deadline for lodging appeals where possible, or within 30 school days of the appeal being lodged;
c) for applications to sixth forms:
    i) where the offer of a place would have been conditional upon exam results, appeals **must** be heard within 30 school days of confirmation of those results;
    ii) where the offer of a place would not have been conditional upon exam results, appeals **must** be heard within 40 school days of the deadline for lodging appeals;
d) for applications for in-year admissions[9], appeals **must** be heard within 30 school days of the appeal being lodged.

2.4 Any appeals submitted after the appropriate deadline **must** still be heard, in accordance with whatever timescale is set out in the timetable published by the admission

[7] Under the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 an application is made in the 'normal admissions round' if it is not a 'late application' or an 'in-year application': see footnotes 8 and 9.
[8] An application is a 'late' application if it is for the admission of a child to a relevant age group; it is submitted before the first day of the school term of the admission year; and a determination relating to the application is not made by an authority on or before the offer date. The 'relevant age group' is the age group at which pupils are or will normally be admitted to the school e.g. reception or year 7 (Section 142 of the School Standards and Framework Act 1998).
[9] An application is an 'in-year' application if it is for the admission of a child to a relevant age group and it is submitted on or after the first day of the first school term of the admission year, or it is for the admission of a child to an age group other than a relevant age group.

authority.

Notifying appellants of the right to appeal and the appeal hearing

2.5 When a local authority or an admission authority informs a parent of a decision to refuse their child a place at a school for which they have applied, it **must** include the reason why admission was refused; information about the right to appeal; the deadline for lodging an appeal and the contact details for making an appeal. Parents **must** be informed that, if they wish to appeal, they have to set out their grounds for appeal in writing. Admission authorities **must not** limit the grounds on which an appeal can be made.

2.6 Where a child is refused admission to a sixth form, they and their parents have the same right of appeal and where they appeal separately admission authorities **must** arrange the appeals so that they are heard together.

2.7 No later than 10 school days before the hearing, the admission authority **must** provide appellants with written notification of the date of and arrangements for the hearing. The notification **must** include a deadline for the submission of any further evidence that was not sent with the initial appeal. Admission authorities **must** inform appellants that any information or evidence not submitted by the deadline might not be considered at the appeal (see paragraph 2.10 below). Admission authorities **must** ask appellants whether they intend to call any witnesses or be represented at the hearing. Parents may waive their right to 10 school days' notice of the hearing.

2.8 Admission authorities **must** comply with reasonable requests from parents for information which they need to help them prepare their case for appeal.

Production of evidence from the admission authority prior to the hearing

2.9 The admission authority **must** supply the clerk to the appeal panel with all relevant documents needed to conduct the hearing in a fair and transparent manner and in accordance with the specified timetable. This **must** include details of how the admission arrangements and the co-ordinated admissions scheme apply to the appellant's application, the reasons for the decision to refuse admission and an explanation as to how admission of an additional child would cause prejudice to the provision of efficient education or efficient use of resources.

2.10 The clerk **must** send all the papers required for the hearing, including the names of the panel members, to both the parties and the members of the panel a reasonable time before the date of the hearing. This will allow opportunity for any objections regarding impartiality of panel members to be notified to the clerk. An appeal panel **must** decide whether any material not submitted by the specified deadline is to be considered, taking into account its significance and the effect of a possible need to adjourn the hearing.

Attendance and representation

2.11 The admission authority **must** provide a presenting officer to present the decision not to admit the child and to answer detailed questions about the case being heard and about the school. If no presenting officer attends on the day of the appeal, the panel can decide to resolve the case by using the evidence submitted by the admission authority if it is satisfied that to do so will not disadvantage the appellant.

2.12 Appeal panels **must** allow appellants the opportunity to appear in person and make oral representations. Appellants may be represented, or accompanied by a friend. Where an appellant fails, or is unable, to attend and it is impractical to offer an alternative date the appeal may go ahead and be decided on the written information submitted. Appeal panels **must** comply with their duties under the Equality Act 2010 when considering an appellant's attendance and representation at the appeal.

2.13 Panels **must not** allow representatives of schools to support individual appeals for places at their school at the hearing itself, or by providing letters of support for appellants. Such support could create conflicts of interest and unfairness to other appellants.

The appeal hearing

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

2.15 Admission authorities **must** ensure that appeal hearings are held in private[10], and are conducted in the presence of all panel members and parties. One party **must not** be left alone with the panel in the absence of the other. Where one party is unable to or has failed to attend the clerk **must** remain with the panel and remaining party at all times.

The order of the hearing

2.16 The clerk **must** notify the parties of the order of the proceedings in advance of the hearing. A suggested order is set out below:

a) case for the admission authority;
b) questioning by appellant(s) and panel;
c) case for the appellant(s);
d) questioning by the admission authority and panel;
e) summing up by the admission authority;
f) summing up by the appellant(s).

2.17 The order may need to be varied slightly for grouped multiple appeals (see paragraph 2.20 below). When a parent's and a child's appeals are heard jointly the panel **must** give both the parent and the child the opportunity to present their case. Each may present a different argument. The panel **must** hear all the evidence on an issue before deciding that issue. The panel may decide issues as they occur during a hearing or at the end, but **must** retire to reach such decisions.

Multiple appeals

2.18 Multiple appeals are when a number of appeals have been received in relation to the same school. Admission authorities **must** take all reasonable steps to ensure that multiple appeals for a school are heard by one panel with the same members. Where more than one panel has to consider appeals for the same school, each panel **must** make its own decision independently. A panel hearing multiple appeals **must not** make decisions on any of those

[10] Except in the first stage of grouped multiple appeals (see paragraph 2.20).

appeals until all the appeals have been heard.

2.19 Multiple appeals may be heard either individually or in groups. Hearing multiple appeals individually means holding a series of consecutive appeal hearings. The panel **must** ensure that the presenting officer does not produce new evidence in later appeals that was not presented in earlier appeals as this would mean that appellants whose cases were heard earlier in the process would not have the opportunity to consider and respond to the new evidence. 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 appeals.

2.20 When multiple appeals are grouped, the presenting officer's case is usually heard in the presence of all the appellants at the beginning of the hearing (or sometimes at the start of each day when a hearing runs over a number of days). The appellants' cases are then heard individually without the presence of other appellants. Where there are a large number of appeals, holding grouped multiple appeals offers efficiencies.

Guiding principles for appeal panels

2.21 Appeal panels **must** operate according to the principles of natural justice. Those most directly relevant to appeals are:

a) members of the panel **must not** 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 the parties.

Reaching a decision

2.22 Appeal panels **must** either uphold or dismiss an appeal and **must not** uphold an appeal subject to any specified conditions. Under Section 94(6) of the School Standards and Framework Act 1998, a panel's decision that a child shall be admitted to a school is binding on the admission authority concerned.

2.23 Panels **must** ensure that appeals are decided by a simple majority of votes cast. Where the votes are equally divided the panel chair has a second or casting vote. Sections 3 and 4 of this Code provide detail on the decision making process.

Notification of the decision

2.24 The panel **must** communicate the decision of each appeal, including the reasons for that decision, in writing to the appellant, the admission authority and the local authority. The clerk or chair **must** sign the decision letter and send it to the parties as soon as possible after the hearing but not later than five school days, unless there is good reason. In the case of applications outside the normal admissions round, the child **must** be admitted without unnecessary delay.

2.25 The panel **must** ensure that the decision is easily comprehensible so that the parties can understand the basis on which the decision was made. The decision letter **must** contain a summary of relevant factors that were raised by the parties and considered by the panel. It

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

Notes and records of proceedings

2.26 The clerk **must** ensure an accurate record is taken of the points raised at the hearing, including the proceedings, attendance, voting and reasons for decisions.

2.27 These notes and records of proceedings **must** be kept securely by the admission authority for a minimum of two years. Such notes and records will, in most cases, be exempt from disclosure under the Freedom of Information Act 2000 and the Data Protection Act 1998, but admission authorities receiving requests under those Acts for information or data contained in such notes or records should obtain legal advice.

Section 3: Reaching Decisions on Appeals

Two stage process

3.1 Panels **must** follow the two stage decision making process below for all appeals except for infant class size appeals which are dealt with in section 4.

First stage – examining the decision to refuse admission

3.2 The panel **must** consider the following matters in relation to each child that is the subject of an appeal:

a) whether the admission arrangements (including the area's co-ordinated admission arrangements) complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998; and
b) whether the admission arrangements were correctly and impartially applied in the case in question.

3.3 The panel **must** then decide whether the admission of additional children[11] would prejudice the provision of efficient education or the efficient use of resources.

3.4 In all cases, the panel **must** refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements that do not comply with admissions law.

3.5 The panel **must** uphold the appeal at the first stage where:

a) it finds that the admission arrangements did not comply with admissions law or had not been correctly and impartially applied, and the child would have been offered a place if the arrangements had complied or had been correctly and impartially applied; or
b) it finds that the admission of additional children would not prejudice the provision of efficient education or efficient use of resources.

3.6 However, in multiple appeals where a number of children would have been offered a place, and to admit that number would seriously prejudice the provision of efficient education or efficient use of resources, the panel **must** proceed to the second stage.

3.7 The panel **must** proceed to the second stage where:

a) it finds that the admission arrangements did comply with admissions law and that they were correctly and impartially applied to the child; or
b) it finds that the admission arrangements did not comply with admissions law or were not correctly and impartially applied but that, if they had complied and had been correctly and impartially applied, the child would not have been offered a place;

[11] At this stage the characteristics and circumstances of the particular child in question will not, except in extreme cases, be relevant to the question of whether the admission will cause prejudice (*R (on the application of M) v Haringey Independent Appeal Panel* [2010] EWCA Civ 1103).

and it finds that the admission of additional children would prejudice the provision of efficient education or efficient use of resources.

Second stage – balancing the arguments

3.8 The panel **must** balance the prejudice to the school against the appellant's case for the child to be admitted to the school. It **must** take into account the appellant's reasons for expressing a preference for the school, including what that school can offer the child that the allocated or other schools cannot. If the panel considers that the appellant's case outweighs the prejudice to the school it **must** uphold the appeal.

3.9 In multiple appeals, the panel **must not** compare the individual cases when deciding whether an appellant's case outweighs the prejudice to the school. However, where the panel finds there are more cases which outweigh prejudice than the school can admit, it **must** then compare the cases and uphold those with the strongest case for admission. Where a certain number of children could be admitted without causing prejudice, the panel **must** uphold the appeals of at least that number of children.

Consideration of prejudice

3.10 Whilst the panel **must** take into account the school's published admission number, the admission authority **must** be able to demonstrate prejudice over and above the fact that the published admission number has already been reached[12]. The panel **must not** reassess the capacity of the school, but **must** consider the impact on the school of admitting additional children. In reaching a decision as to whether or not there would be prejudice the panel may consider the following factors:

a) what effect an additional admission would have on the school in the current and following academic years as the year group moves through the school;
b) whether any changes have been made to the school's physical accommodation or organisation since an admission number was originally set for the relevant year group;
c) the impact of the locally agreed Fair Access Protocol[13];
d) the impact on the organisation and size of classes, the availability of teaching staff, and the effect on children already at the school.

Appeals for grammar schools

3.11 Designated grammar schools are permitted to select children for admission on the basis of academic ability and may leave places unfilled if there are insufficient eligible applicants[14]. Some admission authorities for grammar schools offer places to those who score highest, others set a pass mark and then apply oversubscription criteria to those applicants that reach the required standard.

3.12 Some admission authorities for grammar schools operate a 'local review' process to determine whether children who have, for example, failed the entrance test ought to be

[12] See paragraphs 1.2 to 1.5 of the School Admissions Code for further information about published admission numbers.
[13] See paragraphs 3.9 to 3.15 of the School Admissions Code for further information about Fair Access Protocols.
[14] Section 86(3)(c) of the School Standards and Framework Act 1998.

deemed as being of grammar school standard. Such review will be completed before the allocation of places so that children who are consequently deemed to be of grammar school standard can be considered at the same time as others. The local review process does not replace a parent's right of appeal against the refusal of a place at a school for which they have applied.

3.13 An appeal panel may be asked to consider an appeal where the appellant believes that the child did not perform at their best on the day of the entrance test. In such cases:

a) where a local review process has not been applied, the panel **must** only uphold the appeal if it is satisfied:

   i) that there is evidence to demonstrate that the child is of the required academic standards, for example, school reports giving Year 5/Year 6 SAT results or a letter of support from their current or previous school clearly indicating why the child is considered to be of grammar school ability; and
   ii) where applicable, that the appellant's arguments outweigh the admission authority's case that admission of additional children would cause prejudice.

b) where a local review process has been followed, the panel **must** only consider whether each child's review was carried out in a fair, consistent and objective way and if there is no evidence that this has been done, the panel **must** follow the process in paragraph 3.13(a) above.

3.14 In either case the panel **must not** devise its own methods to assess suitability for a grammar school place unrelated to the evidence provided for the hearing.

3.15 If a panel has to consider an appeal for an in-year applicant where no assessment has taken place, it **must** follow the process in paragraph 3.13(a) above.

Appeals for admission to sixth forms

3.16 Where applicants have been refused admission to a particular school because there are more eligible children than places available and oversubscription criteria have been applied, appeal panels **must** follow the two stage process at paragraphs 3.2 to 3.9 above.

3.17 In the case of an appeal where the child did not reach the specified entry requirements, the panel **must not** make its own assessment of a child's ability, but **must** decide whether the admission authority's decision that the child was not of the required standard was reasonable in light of the information available to it. In doing so, it **must** consider whether any process in place to consider such cases (for example, where a pupil had not been studying in England and therefore did not have GCSEs) was carried out in a consistent and objective way.

Boarding schools

3.18 In considering whether prejudice would arise if further children were admitted to a boarding school, the panel **must** consider the effect of admitting additional day pupils on the number of boarding places which are available, for example, if the resultant effect on class

size means that the number of boarding places available would have to be reduced. It is up to the admission authority to provide evidence that this would be the case.

3.19 When considering a decision by the admission authority that a child is unsuitable to board[15], the panel **must not** attempt to make its own assessment of the child's suitability, but **must** decide whether the admission authority's decision was reasonable in light of the information available to it.

Children with disabilities

3.20 In considering whether a child was refused admission because of their disability, panels **must** have regard to the Equality and Human Rights Commission's Code of Practice for Schools when it comes into effect (as of 1 December 2011, the draft Code of Practice is expected to be laid before Parliament in Spring 2012. For the latest information: http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-timeline/). In the interim, non-statutory guidance is available on the Equality and Human Rights Commission's website.

Children with statements of special educational needs

3.21 Appeals by the parent of a child with a statement of Special Educational Needs against the choice of school named in the statement, or the fact that no school has been named, are considered by the First-tier Tribunal (Special Educational Needs and Disability), not a school admission appeal panel.

Waiting lists

3.22 Paragraph 2.14 of the School Admissions Code requires admission authorities to maintain waiting lists for oversubscribed schools. Appeal panels **must not** take account of where the admission authority has placed a child on the waiting list, or of the fact that appeals have not been made in respect of other children on the waiting list. Appeal panels **must not** make any decision relating to the placement of a child on a waiting list.

Expressing a preference and Fair Access Protocols

3.23 Paragraph 3.9 of the School Admissions Code requires each local authority to have a Fair Access Protocol to ensure that, outside the normal admissions round, a place at a suitable school is secured quickly for unplaced children, especially the most vulnerable. It also requires local authorities to ensure that no school is required to take a disproportionate number of children with challenging behaviour. In circumstances set out in its local authority's Fair Access Protocol, an admission authority may refuse to admit a child outside the normal admissions round even though places are available (see paragraph 3.12 of the School Admissions Code).

3.24 The allocation of a place in accordance with a Fair Access Protocol does not override a parent's right to appeal against refusal of a place at any school for which they have applied. If an application has been refused despite there being places available, the governing body **must** present their case for refusal, demonstrating how admission of the child would

[15] See paragraphs 1.40 and 1.41 of the Admissions Code for more information about admissions to boarding schools and suitability to board.

prejudice the provision of efficient education or efficient use of resources. When considering such an appeal, in addition to considering the appellant's arguments for their child to be admitted, the panel **must** take account of the requirements set out in the local authority's Fair Access Protocol. The panel **must** carefully consider whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children.

Section 4: Infant Class Size Appeals

Two stage process

4.1 Regulations[16] made under Section 1 of the School Standards and Framework Act 1998 limit the size of an infant class (a class in which the majority of children will reach the age of 5, 6 or 7 during the school year) to 30 pupils per school teacher[17]. Only in very limited circumstances can admission over the limit be permitted[18].

4.2 This section deals only with appeals where an admission authority refuses to admit a child on the grounds that the admission of an additional child would breach the infant class size limit and there are no measures it could take to avoid this without prejudicing the provision of efficient education or efficient use of resources. Decisions on appeals for infant classes where the refusal was for any other reason should be made in accordance with the two stage process in section 3.

4.3 Panels **must** follow the two stage decision making process below when considering infant class size appeals[19]. Paragraphs 3.20 (children with disabilities), 3.22 (waiting lists) and 3.23 – 3.24 (Fair Access Protocols) of this Code also apply in relation to this process.

First stage – examining the decision to refuse admission

4.4 The panel **must** consider all the following matters:

a) whether the admission of an additional child/additional children would breach the infant class size limit;
b) whether the admission arrangements (including the area's co-ordinated admission arrangements) complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998;
c) whether the admission arrangements were correctly and impartially applied in the case(s) in question; and
d) whether the decision to refuse admission was one which a reasonable admission authority would have made in the circumstances of the case.

4.5 The panel **must** immediately refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements it identifies as unlawful.

4.6 The panel **may** only uphold the appeal at the first stage where:

a) it finds that the admission of additional children would not breach the infant

[16] The School Admissions (Infant Class Sizes) (England) Regulations 2012.
[17] As defined in Section 4 of the School Standards and Framework Act 1998.
[18] See paragraph 2.15 of the School Admissions Code.
[19] 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).

class size limit; or

b) it finds that the admission arrangements did not comply with admissions law or were not correctly and impartially applied and the child would have been offered a place if the arrangements had complied or had been correctly and impartially applied; or

c) it decides that the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.

4.7 In multiple appeals where a number of children would have been offered a place under paragraph 4.6 above, and to admit that number would seriously prejudice the provision of efficient education or efficient use of resources, the panel **must** proceed to the second stage.

4.8 The panel **must** dismiss the appeal at the first stage where:

a) it finds that the admission arrangements did comply with admissions law and were correctly and impartially applied; or

b) it finds that the admission arrangements did not comply with admissions law or were not correctly and impartially applied but that, if they had complied and had been correctly and impartially applied, the child would not have been offered a place;

and it finds that the decision to refuse admission was one which a reasonable admission authority could have made.

Second stage – comparing cases

4.9 The panel **must** compare each appellant's case for their child to be admitted and decide which of them, if any, to uphold. Where the school could admit a certain number of children without breaching the infant class size limit (or without needing to take measures to avoid breaching it that would prejudice the provision of efficient education or efficient use of resources) the panel **must** uphold the appeals of at least that number of children.

Consideration of 'reasonableness '

4.10 The threshold for finding that an admission authority's decision to refuse admission was not one that a reasonable authority would have made is high. The panel will need to be satisfied that the decision to refuse to admit the child was 'perverse in the light of the admission arrangements'[20] 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'[21].

Deferred entry to primary schools

4.11 Primary schools are required to provide for the admission of all children in the September following their following their fourth birthday[22]. However, parents may defer their child's entry until later in the academic year. In such circumstances the school is required to

[20] *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.
[21] *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 All ER 935.
[22] See paragraph 2.16 of the School Admissions Code.

hold place for that child. Panels **must** treat such a place as if it has already been taken up.

The provision of information to parents on infant class size appeals

4.12 Admission authorities **must** provide parents with information on the limited circumstances in which an infant class size appeal can be upheld in order that they can make an informed decision about whether to submit an appeal.

Section 5: Further appeals and complaints about appeals

Further appeals

5.1 Appellants do not have the right to a second appeal in respect of the same school for the same academic year unless, in exceptional circumstances, the admission authority has accepted a second application from the appellant because of a significant and material change in the circumstances of the parent, child or school but still refused admission.

5.2 A second appeal panel **must** be made up of different members from the first.

5.3 Appellants may apply for a place in the same school in respect of a later academic year and have a further right of appeal if that application is unsuccessful.

Complaints about appeals

5.4 Appellants may complain about maladministration on the part of an appeal panel to the Local Government Ombudsmen in respect of maintained schools. They may complain to the Secretary of State in respect of appeal panels for Academies. Admission authorities **must** inform parents about the arrangements for making a complaint.

5.5 The Secretary of State cannot review or overturn an appeal decision relating to a maintained school[23]. An appeal panel's decision can only be overturned by the courts where the appellant or admission authority is successful in applying for a judicial review of that decision.

5.6 However, under Sections 496, 497 and 497A of the Education Act 1996, and under an Academy's funding agreement, the Secretary of State may consider whether:

a) the panel was correctly constituted by the admission authority; and
b) the admission authority has acted reasonably in exercising functions in respect of the appeals process or failed to discharge a duty in relation to that process.

[23] In relation to an Academy, the Secretary of State may be able to intervene under the terms of the funding agreement. See paragraph 5.4

Section 6: Appeals by governing bodies against local authority decisions to admit twice excluded children

Notice of appeal

6.1 When a local authority takes a decision that a twice excluded child is to be admitted to a community or voluntary controlled school, it **must** give the governing body of the school notice in writing of that decision and of its right to appeal. The local authority **must** comply with the principles of this Code when organising such appeals.

6.2 The governing body **must** make any appeal against such a decision in writing within 15 school days after the day it is given notice, and **must** give the grounds on which the appeal is being made. Local authorities are not, however, required to make these arrangements where their decisions are in the form of directions made under Section 96 of the School Standards and Framework Act 1998, which empowers the local authority, in prescribed circumstances, to direct a foundation or voluntary aided school to admit a particular child.

Appeal panels

6.3 The appeal panel **must** be constituted in the same way as one hearing an appeal by a parent or a child against an admission authority's decision not to admit. The hearing **must** be on a date determined by the local authority, within 15 school days from the appeal being lodged. A panel **must not** include a member who has been involved in any way in previous considerations of whether the child should be reinstated at any school from which he or she has been permanently excluded or in any previous appeal relating to the child under Section 95(2) of the School Standards and Framework Act 1998.

The appeals procedure

6.4 The appeal panel **must** ensure that appeals are heard in private and allow:

a) the local authority and the governing body to make written representations; and

b) a representative of the local authority and a governor nominated by the governing body to appear and make oral representations.

6.5 In considering the appeal, the panel **must** consider:

a) the reasons for the local authority's decision to admit the child; and

b) any reasons put forward by the governing body as to why it does not want to admit the child.

6.6 Panels **must** ensure that appeals are decided by a simple majority of votes cast. Where the votes are equally divided the panel chair has a second or casting vote. The decision reached is binding and the school and local authority **must** comply with it.

6.7 The clerk **must** communicate in writing the decision of an appeal panel, and the reasons for it, to the local authority, governing body and parents concerned, by the end of the second school day after the conclusion of the appeal hearing. The decision may also be confirmed to the parents by telephone before then.

6.8 Where a child has been permanently excluded from two or more schools (and the

most recent exclusion occurred within the past two years), Section 95 of the School Standards and Framework Act 1998 provides that arrangements do not have to be made for the parent (or, in the case of sixth form education, the child) to appeal against a decision to refuse admission.

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

Appendix 1: Relevant Legislation

1. This appendix signposts the law relevant to admission appeals. It does not provide guidance on interpreting the law - that is for the courts.

Equality Act 2010

2. This Act consolidates the law prohibiting discrimination, harassment and victimisation and expands the list of protected characteristics. All schools **must** have due regard to their obligations under the Act. Their policies and practices, including admissions arrangements and decisions, **must** meet the requirements of the Act, and failure to do so may be relevant to the matters an appeal panel has to decide.

3. An admission authority or appeal panel **must** not discriminate on the grounds of disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation against a person in the arrangements it makes for an appeal.

4. An admission authority or appeal panel **must** not harass an appellant, or a child who is the subject of an appeal, in relation to their disability, race or sex.

5. An admission authority or appeal panel **must** not victimise a person in relation to a protected act done or believed to have been done by that person (e.g. bringing proceedings under the Equality Act 2010) in the arrangements it makes for an appeal.

6. Schools designated by the Secretary of State as having a religious character (faith schools) are exempt from some aspects of the prohibition of discrimination on the grounds of religion or belief. This means they can make a decision about whether or not to admit a child as a pupil on the basis of religion or belief. Single sex schools are lawfully permitted to discriminate on the grounds of sex in their admission arrangements.

7. Admission authorities and appeal panels **must** have regard to the Equality and Human Rights Commission's Code of Practice for Schools when it comes into effect. In the interim, non-statutory guidance is available on the Equality and Human Rights Commission's website.

8. Admission authorities are also subject to the Public Sector Equality Duty. Therefore they **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9. Further guidance on the Public Sector Equality Duty is available on the website of the Government Equalities Office and from the Equality and Human Rights Commission.

Human Rights Act 1998

10. The Human Rights Act 1998 confers a right of access to education. This right does not extend to securing a place at a particular school. However, admission authorities and appeal panels need to consider parents' reasons for expressing a preference when they make admission

decisions and when making decisions on appeals. These reasons might include, for example, the parents' rights to ensure that their child's education conforms to their own religious or philosophical convictions (as far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure).

School Standards and Framework Act 1998

11. Chapter 1 of Part 3 of the School Standards and Framework Act 1998 contains the key provisions regarding schools admissions and admission appeals.

12. Section 86 of the SSFA 1998 provides that the admission authority for a maintained school (with the exception of those that select wholly by ability) **must** comply with any preference expressed by a parent except where to do so would prejudice the provision of efficient education or the efficient use of resources.

13. Section 94 requires admission authorities to make arrangements for parents (and in some circumstances children) to appeal against a decision to refuse admission to the school. Two or more admission authorities in the same local authority area may make joint arrangements.

14. Where a child has been permanently excluded from two or more schools (and the most recent exclusion occurred within the past two years), Section 95 provides that arrangements do not have to be made for the parent (or, in the case of sixth for education, the child) to appeal against a decision to refuse admission.

15. Under Section 95 local authorities **must** make arrangements for a community or voluntary controlled school in their area to appeal against a decision by the authority to admit a twice excluded child (as above) to the school.

16. The School Admissions (Appeal Arrangements) (England) Regulations 2012 contain requirements relating to the constitution of appeal panels and the payment of allowances to appeal panel members. These requirements are also included within section 1 of this Code.

Appendix 2: Further information about the Local Government Ombudsman

1. The Local Government Ombudsman can investigate complaints about maladministration on the part of an appeal panel for a maintained school. A complaint to an Ombudsman is not a further appeal. It must relate to the administration of an appeal rather than the appeal decision. Maladministration covers issues such as failure to follow correct procedures or failure to act independently and fairly. It does not cover the merits of decisions that only the panel has the authority to make. Therefore, generally, the Ombudsman cannot consider whether the appeal panel was correct to uphold or dismiss the appeal.

2. The Ombudsman is not able to overturn the appeal panel's decision but, where they find that there has been maladministration, they may make recommendations for a suitable remedy. For example, they may recommend that an appeal is reheard by a different panel and with a different clerk.

3. Appellants considering making a complaint can contact the Local Government Ombudsman's **Advice Line** on **0300 061 0614**, visit the website at www.lgo.org.uk, email advice@lgo.org.uk or write to:

The Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH.

Complaints about appeal panels for Academies

4. Complaints about maladministration on the part of an appeal panel for an Academy, or that an Academy Trust has failed to comply with the Appeals Code in setting up a panel, are investigated by the agency appointed to investigate complaints about Academies on behalf of the Secretary of State. At the date of publication this is the Young People's Learning Agency.

5. Appellants considering making a complaint can email the Young People's Learning Agency at academyquestions@ypla.gov.uk or write to:

Young People's Learning Agency
Cheylesmore House
Quinton Road
Coventry
CV1 2WT.

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