

School Admission Appeals Code

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Foreword by the Secretary of State

Choosing the right school for their child is one of the most important things a parent can do. Our vision for 21st Century schools is that every school sits at the heart of its local community, providing a range of services accessible by all local children. A diverse school system should mean that parents have access to schools where their child can be happy, safe and reach their full potential in order to get the best start in life, and enjoy and remain engaged in education or training until at least the age of 18.

In order to accomplish this, we need to ensure that local arrangements to admit children are clear, lawful and above all fair. Local authorities have a vital role in monitoring compliance with the law – including this Code and the School Admissions Code – and must report each year to the Schools Adjudicator on the fairness and legality of admission policies for all schools in their area.

In 2006/07, just 3.7% of school admission applications went to appeal – unchanged from the previous year. I am therefore reassured that parents can and do exercise their statutory right of appeal where they feel necessary. We want parents to feel confident that the system works effectively to place every child in school, balancing available provision with children's needs as expressed by their parents.

This Appeals Code builds on the Code issued in February 2008, which itself strengthened the legal underpinnings of the appeals process to ensure it is fair, robust and independent – especially for parents and children. The key changes include:

- reflecting the new additional right of certain children to appeal decisions in relation to admissions from the 2010/11 school year (paragraphs 1.31, 2.3 to 2.5, 2.35);
- clarifying that only employees of the local education authority (not the local authority as a whole) are disqualified from serving on appeal panels (paragraph 1.5(c));
- allowing locally elected politicians to attend appeal hearings to support the appellant (paragraph 2.14); and
- clarifying the extent to which panels can consider the legality of admission arrangements (paragraph 3.2(a)).

The revised Appeals Code also asks local authorities to advise parents of the statutory limits to infant class sizes which may affect their appeal, and allows independent or religious bodies to more effectively manage appeals on behalf of groups of schools.

The revised Appeals Code should also be read alongside the Education (Admissions Appeals Arrangements) (England) Regulations 2002, which are amended by the Education (Admissions Appeals Arrangements) (England)(Amendment) Regulations 2008. The amendments to the Regulations set out how appeals by children should be managed and heard, including where their parents also appeal in respect of school places, and are made as a result of changes to the law made by the Education and Skills Act 2008. They also clarify the extent to which appeal panels can consider the legality of admission arrangements.

As ever, we aim in this framework around admissions appeals to strike a balance between the right of parents to have a fair hearing and the right of schools to be protected against admitting so many children that it has a detrimental effect. In doing so, much of the revised Appeals Code reiterates both its predecessor and the School Admissions Code in making paramount the need for impartiality and efficiency. I urge everyone to whom this Appeals Code applies to work towards the collaborative approach it advocates – so that parents, children and schools can continue to focus on their ultimate aim of learning, achievement and enjoyment.

Introduction

The Statutory Basis for the School Admission Appeals Code

1. The School Admission Appeals Code (the Code) has been issued under section 84 of the School Standards and Framework Act 1998 ('SSFA 1998')¹. Section 84(2) of the SSFA 1998 allows the Code to impose requirements and include guidelines setting out aims and objectives in relation to the discharge of functions. Section 84(3) of the SSFA 1998 requires the bodies listed at paragraph 7 to act in accordance with any relevant provisions of the Code. The Code has been made following a consultation under section 85(2) of the SSFA 1998 and after being laid before Parliament for forty days. This Code and the School Admissions Code are available at www.dcsf.gov.uk/sacode.
2. This Code comes into force on 10 February 2009 and applies to all appeals heard after that date. It should be read alongside the School Admissions Code and other guidance and law that affect admissions and admission appeals in England.
3. The Code imposes mandatory requirements and refers to statutory requirements (i.e. those imposed by primary or secondary legislation) with which those bodies listed at paragraph 7 **must** comply. 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 or the law 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.

¹ Where statutory provisions have been amended, any references to them are references to them as amended.

6. This Code is primarily aimed at those responsible for making appeal arrangements and for panel members and the clerk to the panel. Admission authorities, who are responsible for establishing appeal hearings, are best placed to offer parents² and young people advice about local appeal arrangements.
7. The following bodies have a statutory duty to act in accordance with this Code:
 - a) **Admission authorities** as defined in section 88(1) of the SSFA 1998. 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 has delegated responsibility to it for determining admission arrangements. Governing bodies are the admission authorities for foundation schools (including Trust schools) and voluntary aided schools³.
 - b) **Governing bodies and local authorities (when not admission authorities)**
 - c) **Admission Forums**
 - d) **Schools Adjudicators**
 - e) **Admission Appeal Panel Members.**

Where admission authorities arrange for another person to organise and administer appeals on their behalf, or where the law requires another person to do so⁴, this Code will apply to that person and they will be required to act in accordance with it in the same way as the admission authority. In instances where the Code refers to the 'admission authority', it should be taken as meaning the person organising appeals on its behalf where this is appropriate.

8. The Code deals with two separate categories of admission appeals:
 - a) appeals by parents and, in certain circumstances by children (see paragraph 12), against a decision as to the school at which education is to be provided for the 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 to their school a child who has 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 but structured forum for appellants 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;

² "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. This definition will be used throughout the Code.

³ Academies are all-ability state-funded schools managed by independent sponsors, established under section 482 of the Education Act 1996. The funding agreement between an Academy company and the Secretary of State requires the Academy's admission arrangements and arrangements for appeals to be in accordance, or consistent with admissions law and the School Admissions Code and School Admission Appeals Code.

⁴ Section 94(1)(b) of the SSFA 1998 requires the LEA to make appeal arrangements where the governing body of a community or voluntary controlled school is the admission authority for the school.

- c) operate within education and other relevant legislation, including the Human Rights Act 1998, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001) and the Equality Act 2006. Appeal panels are also required to have regard to guidance in the Equality and Human Rights Commission’s Code of Practice for Schools⁵ when determining an appeal. Appeal panels are carrying out a judicial function and **must** apply the principles of natural justice (see paragraph 2.27);
 - d) operate in accordance with the mandatory provisions of this Code, having 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 and children.
10. This Code differs from the previous School Admission Appeals Code (issued in January 2008) in four respects:
- a) it clarifies that only employees of the local education authority (not the local authority as a whole) are disqualified from serving on Appeal Panels (see paragraph 1.5(c));
 - b) it allows locally elected politicians to attend appeal hearings to support the appellant (see paragraph 2.14);
 - c) it clarifies the extent to which Appeal Panels can consider the lawfulness of admission arrangements (see paragraph 3.2(a)); and
 - d) it reflects the new right of children⁶ to appeal against decisions in relation to admissions from academic year 2010/11 (see paragraphs 1.31, 2.3, 2.5, 2.35).
11. The changes referred to in a), b) and c) above apply to all appeals heard after the coming into force of this Code.

School Sixth-form Appeals

12. The Education and Skills Act 2008 (‘ESA 2008’), which received Royal Assent on 26 November 2008, has made changes to the law relating to admissions and appeals. In particular, it inserts section 86A into the SSFA 1998⁷, which places a new duty on local authorities to make arrangements:
- a) for children to express a preference as to the school at which they wish to receive sixth form education (i.e. secondary education suitable to the requirements of pupils who are over compulsory school age)⁸; and
 - b) for children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school, to express a preference as to the school at which they wish to receive education other than school sixth-form education.

⁵ The Code of Practice was issued by the Disability Rights Commission, before it became part of the Equality and Human Rights Commission on 1 October 2007, and can be found at www.equalityhumanrights.com .

⁶ ‘Child’ means any person who has not attained the age of 19 (section 84(6) SSFA 1998)

⁷ by section 150 of the ESA 2008

⁸ defined in section 98A of the SSFA 1998, inserted by section 153 of the ESA 2008

13. These new children's rights are in addition to the rights of the children's parents to express a preference as to the school at which they wish them to receive education.
14. This change in the law came into force on 26 January 2009 and applies to applications for school places made for admission for the academic year 2010/11 and subsequent years. Section 94 of the SSFA 1998 has also been amended⁹ to give a corresponding right of appeal to a child who expresses a preference for a school place under the new regime. That right of appeal comes into force in relation to applications for admission for the academic year 2010/11 and subsequent years.
15. To distinguish them, this Code refers to these appeals as 'school sixth-form appeals', and the term 'appellant' is used to describe a person making an appeal, whether parent or child.

⁹ by section 152 of the ESA 2008

Chapter 1

Appeal Hearings: Constitution

This chapter sets out:

- How appeal 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 and costs

1.1 Admission authorities are responsible for arranging appeals and **must** comply with the law, including interpretations of the law laid down by the courts, and act in accordance with this Code and the School Admissions Code. Admission appeal panels fall under the supervision of the Administrative Justice and Tribunals Council (AJTC), not the Secretary of State. The Council advises on and oversees the procedures and workings of tribunals, which include appeal panels constituted under the SSFA 1998.

Constitution of appeal panels

1.2 The Education (Admissions Appeals Arrangements) (England) Regulations 2002¹⁰ ('the Appeals Regulations'), made under sections 94 and 95 of the SSFA 1998, set out the requirements for the constitution of appeal panels. Academies are required by their funding agreements to arrange admission appeal panels in the same way as foundation and voluntary aided schools. Every appeal hearing **must** have a panel with an appointed chair and a clerk, both of whom **must** be independent and present for the duration of the hearing.

Membership

1.3 The clerk, acting on behalf of the admission authority **must** appoint either three or five members to each panel. In any area, it is important to try to ensure a diverse mix of panel members (race, gender, faith if appropriate, etc), but particularly in areas with mixed communities where, as far as is practicable, membership of the panel **should** be representative of the ethnic profile of the area. This **should** be taken into account when advertising for new panel members (see paragraph 1.12).

¹⁰ SI 2002/2899, as amended by the Education (Admissions Appeals Arrangements) (England)(Amendment) Regulations 2007 (SI 2007/3206) and the Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2008 (SI 2008/3092).

- 1.4 Admission authorities **must** ensure that every appeal hearing consists of:
- a) at least one lay member. Lay members are people without personal experience in the management or provision of education in any school (though it is permissible to use people who have experience as governors of other schools, or who have been involved in education in any other voluntary capacity); 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 pupil at a school.
- 1.5 The following people are disqualified from membership of an appeal panel and admission authorities therefore **must not** allow them to sit on panels¹¹:
- a) any member of the local authority which is making the arrangements or which maintains the school in question;
 - b) any member or former member of the governing body of the school in question;
 - c) any person employed by the local authority in a capacity connected with education, or the governing body of the school in question, other than a person employed as a teacher or as a teaching assistant;
 - d) any person who has, or at any time has had, any connection with the authority or the school, or with any person within sub-paragraph c), of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the authority or the school;
 - e) any person who does not satisfy the training requirements as set out in the Appeals Regulations¹².

Admission authorities **must not** allow a teacher or teaching assistant to sit on appeal panels considering appeals against decisions about admissions to their school. Admission authorities **must not** allow a person to sit on an appeal panel considering an appeal against a decision if they were among those who made the decision, or provided information which contributed to the decision.

- 1.6 While it is the responsibility of individual panel members to disclose whether any of the circumstances described in paragraph 1.5 apply to them, and whether there may be any potential for their independence and objectivity to be challenged in relation to a particular school or family, the body appointing panel members **should** also think about this. For example, Admission Forum members representing a particular school or interest group connected to the local authority or school involved in the appeal, diocesan representatives who may have contact with the school etc. would not be perceived to be impartial. Employment by a local authority or other body in a capacity unconnected to education or to the school itself, or as a teacher or teaching assistant at another school, are not in themselves reasons for disqualifying someone from membership, unless there is another reason why their ability to act impartially might be doubted.

¹¹ Schedule 1, paragraph 6 of the Appeals Regulations

¹² Regulation 8A of the Appeals Regulations

- 1.7 If a panel member is lobbied by the appellant or admission authority, they **must** ask to be replaced on the panel.

Quorum

- 1.8 Admission authorities **must** ensure that appeal panels have a minimum of three members at all times, including at least one lay member and one non-lay 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, and one has to temporarily withdraw (e.g. because of illness), the panel **must** postpone the remaining hearings until a later date. However, all appeals would have to be reheard if the absent panel member could not return to complete the hearings. Appeals administrators **should** consider what contingency arrangements can be made to ensure that three member panels can go ahead if, for example, a member pulls out at short notice before hearings commence.
- 1.9 Local authorities and governing bodies may appoint enough panel members to enable two or more panels to sit at the same time. Wherever possible, one panel **should** hear all the appeals for a particular school.

Tenure

- 1.10 The admission authority **must** review panel membership every three years, considering whether it has sufficient numbers of trained members to meet its future needs. It is not good practice for individual panel members to consider appeals for the same school for an extended period of time (usually no more than three years) as their impartiality may be doubted, though this could be extended if appeals are infrequent.
- 1.11 Neighbouring admission authorities and local authorities may pool resources to ensure that sufficient numbers of trained panel members are always available to meet the needs of, and comply with, paragraphs 1.4 to 1.9.

Advertising for panel members

- 1.12 Admission authorities (or a body acting on their behalf e.g. if the local authority manages the area's appeals process) **must** advertise for lay members every three years¹³. Admission authorities **must** place an advertisement in at least one local newspaper and allow a minimum of twenty-one days for reply¹⁴. Admission authorities may also use other ways of attracting potential members, for example by issuing flyers in local newspapers or to local companies and community centres, and advertising on the internet, making clear that training will be provided.

¹³ Regulation 4(3) of the Appeals Regulations

¹⁴ Regulation 4(4) of the Appeals Regulations

- 1.13 In some areas, local authorities (with agreement of individual admission authorities) take responsibility for recruiting, training and appointing members to appeal panels as a cost-effective way to achieve consistency across an area. Alternatively, local religious bodies or independent bodies might administer appeals on behalf of groups of schools. Such arrangements are encouraged because they improve transparency and separation of roles in the appeals process. It is for school governing bodies to make the decision as to which body is most appropriate to administer their admission appeals. Discussion on this and other ways admission authorities can work together to improve the consistency and independence of the local appeals process may best be facilitated by the local Admissions Forum.

Individuals' roles and responsibilities

- 1.14 Every person involved in an appeal hearing will need to be familiar with both the School Admissions Code and this Code, and panel members **must** undertake an appropriate level of training (see paragraphs 1.32 and 1.33 on training requirements). The specific roles and responsibilities are detailed below.

Panel members

- 1.15 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 parties to the appeal in a personal or business capacity, so that the appropriateness of their sitting on the panel can be considered. If the panel member only identifies 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. If any concerns are raised, where the panel has three members, the panel **must** convene a panel with different members (see paragraph 1.8). Where the panel has five members, the panel member concerned **must** stand down for that hearing and **must not** take any part in the decision for that appeal. The panel member who has stood down can, however, hear and participate in decisions on other appeals during the same session.
- 1.16 Panel members are expected to play an active part in the questioning of both the presenting officer and the appellants, showing favour to neither party, avoiding expressing personal opinions during the course of a hearing or making the case for either party, and being conscious at all times of acting, and being seen to act, independently of the admission authority.
- 1.17 Having heard all the evidence, the panel **must** withdraw to reach a decision as to whether to uphold or reject the appeal.

Panel chair

- 1.18 The panel chair plays a central part in directing the proceedings, having responsibility for conduct of the hearing and for controlling the hearing fairly and firmly. Part of the chair's role is to put the appellants at ease and ensure that the hearing is conducted in an informal but structured manner.

1.19 The panel chair is responsible for:

- a) starting proceedings by introducing all parties, taking care to treat the appellant, whether a parent or a child, 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;
- d) explaining how the hearing will be conducted;
- e) the overall conduct of the hearing, including effective time management (e.g. ensuring that everyone has the opportunity to state their case and to ask questions, but then to draw matters to a conclusion if arguments become repetitive. The chair may need to give each party a specific period of time to make any final points or comments they would want the panel to consider); and ensure that representatives of the admission authority/school and witnesses do not participate beyond the scope allowed to them by the Code (as in paragraph 1.29); and
- f) where appropriate, concluding the hearing by asking appellants 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

1.20 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 admission authority **must** appoint a Clerk who is independent of the school and the education or children's services department of the local authority.

1.21 It is important that the clerk maintains their independence. For example, where the local authority is the admission authority and the clerk is from another part of the same authority, unconnected to education or children's services, it is important that they treat the admission authority and appellants equally in terms of providing and responding to requests for information and that they provide an impartial, independent service.

1.22 In receiving requests for information from appellants, it is the role of the clerk to determine who is responsible for providing a response and handle it accordingly e.g. an appellant's query about appeals procedure can be handled by the clerk, but a request for information about how places were allocated at a school would have to be responded to by the admission authority. Similarly, it would make sense for the admission authority and appeals administrator to seek any necessary legal advice from separate sources (though both could be within the local authority's legal department). The principles set out above apply equally for appeals relating to foundation and voluntary aided schools, and Academies.

- 1.23 The admission authority in appointing the clerk **must** ensure that they have knowledge of all relevant equality and admissions legislation. If this is not possible, the panel **must** ensure that they have access to legal advice.
- 1.24 In order to ensure independence, admission authorities **must** look outside their own staff (in the case of local authorities, this means that they **must not** use those employed to work in 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. Funding allocated for admissions and appeals could 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 each set of hearings for admission to the same year group to a particular school, except where this is not possible due to exceptional unforeseen circumstances, such as illness. In this instance, admission authorities **must** take steps to assist the panel and the new clerk, for example, by ensuring the original clerk's handwritten notes are typed up.
- 1.26 The clerk's role is to:
- a) make the necessary administrative arrangements for hearings, including appointing panel members (unless this has been done by a separate independent appeals administrator);
 - b) explain the basic procedure to appellants and deal with any questions they may have before the hearing (the chair or clerk, as appropriate, may deal with questions raised during the hearing);
 - c) be an independent source of advice (or to seek appropriate advice) on procedure, on both the School Admissions and School Admission Appeals Codes, and on the law on admissions, giving any advice in the presence of all parties where practicable;
 - d) ensure that both the appellants and the admission authority have the opportunity to present relevant facts at the hearing. The clerk's role is to assist the panel, admission authority, or the appellants with procedure and obtaining advice where directed by the chair to do so, but not to otherwise participate in the hearing;
 - e) record the proceedings, attendance, voting outcomes, panel decisions and reasons in a form that the panel and clerk agree is appropriate. The panel **must** ensure a complete and accurate record is taken of the points raised at the hearing which makes clear what view the panel took in coming to its decision 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 and panel **must** remain together 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 panel **must** repeat this to the parties (via the clerk) and give them the opportunity to comment on it.

Presenting officers

- 1.28 The admission authority **must** 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 presenting officer will need to be prepared to answer detailed questions about the case being heard, the school (including its admission arrangements) and local coordinated admission arrangements, and will need to be present throughout the hearings to be able to do so.
- 1.29 The panel chair **must** ensure that only one representative acts as presenting officer at appeal hearings. Where the admission authority is the local authority, one additional representative of the school (e.g. a head teacher or governor) may accompany the presenting officer to assist proceedings, for example, by answering questions raised by appellants about the school. However, that additional person's role at the hearing is solely to answer questions put to them about the school; the panel chair **must not** allow them to comment on the child, the appellant or their case. If unaccompanied by a school representative, the hearing should go ahead but the presenting officer will need to be prepared to answer any questions put to them about the school.
- 1.30 If the presenting officer is unable to attend all the programmed hearings (e.g. because of illness), then a replacement presenting officer can take their place but they need to be able to answer questions about the school; and the panel chair **must not** allow them to introduce new evidence which has not been considered or has arisen as a result of earlier appeals, unless this arises through questioning, in which case it may be taken into account by the panel for all of the appeals. If no presenting officer is available, the panel **should** still attempt to resolve the case by undertaking the first stage of the process (see paragraph 3.2). If the case cannot be resolved at this stage, the admission authority **must** reschedule the hearing.

Appellants

- 1.31 An appellant may be a parent or, in certain circumstances, a child (see paragraphs 12 to 15 of the Introduction). In circumstances where a child has a right of appeal, that right is in addition to their parent's right of appeal, and the child and their parent may appeal separately, or they may do so jointly. Appellants are appealing over a matter that is very important to them. Admission authorities **must** give appellants appropriate guidance and information before the hearing to enable them to prepare their case for appeal (see paragraphs 2.3 to 2.11) and, having regard to the Data Protection Act 1998 and Freedom of Information Act 2000, **must** respond to any reasonable requests for information about the school or the admissions process that the appellant may think they need to help them with this preparation. Appellants are entitled to question the presenting officer during proceedings. The role of the appellant at the appeal hearing is a particularly difficult one and this needs to be taken account of at all times by the panel.

Training requirements

- 1.32 Admission authorities **must** arrange and fund training for appeal panel members covering the specific functions of their role as described in this Code and in accordance with the requirements in the Appeals Regulations (see paragraph 1.33). Panel members **must not** take part in hearings until they have received appropriate training. Admission authorities **must** ensure that clerks appointed to panels have received appropriate training.
- 1.33 The training requirements prescribed in the Appeals Regulations for panel members are as follows¹⁵:
- a) that within the year from 1 March 2007 to 29 February 2008, they have served as a clerk to or member of an appeal panel (this ceases to have effect on 1 March 2010); or
 - b) they have within the last two years been given training on the following:
 - i. the requirements of the Appeals Regulations,
 - ii. the contents of any Code made under section 84 of the SSFA 1998,
 - iii. the role of the chair of an appeal panel,
 - iv. the role of the clerk to an appeal panel,
 - v. the role of panel members,
 - vi. the duties of an appeal panel under the Human Rights Act 1998, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Equality Act 2006, and
 - vii. the need for the appeal panel to observe procedural fairness and the rules of natural justice.
- 1.34 An effective training option is to offer differentiated training for particular roles e.g. chairing skills¹⁶. Admission authorities ought to consider what scope there is for participating in training organised by local authorities and dioceses, as all parties will benefit from sharing information and good practice with each other, and this is likely to lead to a fairer, more robust and consistent process. Experienced and long-serving panel members need to keep up to date with changes to admissions law and the Codes, and admission authorities **must**, at least, ensure they are given an annual update – some do this through short briefing sessions or newsletters.
- 1.35 With the agreement of all parties involved, the training, evaluation and appraisal of panel members and chairs may involve individuals attending hearings as observers, which may include allowing them to sit in on the panel's deliberations. However, the chair of the panel **must not** allow such observers to 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 appellants.

¹⁵ Regulation 8A of the Appeals Regulations

¹⁶ 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 DCSF. Further information can be found at www.governors.uk.com or by emailing iscg@governors.uk.com

1.36 The AJTC, formerly the Council on Tribunals, operates under the Tribunals, Courts and Enforcement Act 2007 and advises and oversees the procedures and working of tribunals including admission appeal panels. The AJTC 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 **should** seek advice from both the AJTC and the Judicial Studies Board about training.

Indemnity

1.37 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 panel¹⁷.

Costs

1.38 Local authorities **must** 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 may 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 regulations¹⁸ governing school funding made under section 47 of the SSFA 1998.

1.39 Panel members are eligible to receive travel and subsistence allowances under regulation 7 of the Appeals Regulations and in line with sections 173 and 174 of the Local Government Act 1972. They can also be compensated for any loss of earnings or any individual expenses, including child minding costs that are necessarily incurred as a result of attending an appeal panel or associated training. The payment is set by the local authority which **must** have regard to the recommendations of its independent remuneration panel, as provided for in the Local Authorities (Members' Allowances) Regulations 2003¹⁹.

1.40 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.

¹⁷ Regulation 8 of the Appeals Regulations

¹⁸ The School Finance (England) Regulations 2006 (SI 2006/468)

¹⁹ SI 2003/1021

Chapter 2

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; and
- Actions following an appeal hearing.

The admission appeals timetable

2.1 Admission authorities are responsible for arranging their timetable for appeal hearings.

Admission authorities **must** ensure appeals are heard within the following timescales:

- Secondary admissions round – appeals for on-time applications (i.e. those relating to decisions sent on national offer day) **must** be heard by 6 July or the next working day, if 6 July falls on a weekend.
- Primary admissions round – appeals **must** be heard within forty school days of the appeal being lodged, or before the end of the summer term, whichever is sooner.
- Appeals for late applications – such appeals **should** be included with those being heard for the same admissions round. However, if this is not feasible, appeals for late applications **must** be heard within thirty school days of the appeal being lodged.
- School sixth-form admissions – appeals **must** be heard within forty school days of the appeal being lodged.
- In-year admissions – (i.e. those made outside the timetabled admissions process) hearings **must** be held within thirty school days of the appeal being lodged.

To prevent unacceptable delays, admission authorities may wish to make joint arrangements to hear appeals relating to in-year applications made outside the normal, timetabled, admissions round. Admission authorities **should** publish a timetable of events in advance, including the period when the appeals for the normal admissions round are expected.

Notifying the Administrative Justice and Tribunals Council (AJTC) of dates for appeal hearings

2.2 The AJTC has an overseeing role in appeals and its members occasionally sit in on appeal hearings (which include a panel's post-hearing deliberations) as observers. Admission authorities **must** notify the AJTC 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 AJTC has regard to its published Framework of Standards for Tribunals, which sets out the issues with which the AJTC is concerned in fulfilling its supervisory role. It is good practice to distribute copies of the Framework to panel members and clerks, and copies can be obtained from the AJTC on 020 7855 5200 or from its website at www.ajtc.gov.uk.

Notifying appellants

2.3 Admission authorities **must** notify in writing both children and their parents of all decisions made in respect of applications for sixth-form education; or, in the case of a child who is above compulsory school age, in respect of application to a school other than the school sixth-form. In each case, notification from authorities **must** include information about rights of appeal, as set out in paragraphs 2.4 to 2.7 below.

2.4 An appellant may be a parent or a child. Under sections 94(1) and (2) of the SSFA 1998, parents have the right to appeal against an admission authority's decision refusing their child admission to a school. Children and their parents also have the right to appeal against an admission authority's decision to refuse:

a) a child admission to a school sixth-form;

b) a child who is above compulsory school age admission to a school other than the school sixth-form.

In respect of (a) and (b) above, where the child and the parent appeal separately in respect of the same school, the admission authorities must ensure that appeals are heard together, and **should** treat joint appeals for the same school as a single appeal with a single decision that is binding on all parties.

2.5 When a child is refused admission to a school, the admission authority **must** ensure the person who applied for the school place (whether the parent or the child) receives the following information in writing²⁰:

a) details of why the application was unsuccessful in light of the published admission arrangements including, where relevant, whether the refusal was a consequence of the infant class size limit;

b) notification of their right of appeal, including details of how, and to whom, to make an appeal;

c) where to obtain further information; and

²⁰ Schedule 2, paragraph 1(2) of the Appeals Regulations

- d) their right to attend the appeal hearing.
- e) that where separate appeals are lodged by a parent and a child in respect of the same decision, admission authorities **must** ensure the appeals are heard together, and notification of the appellants' right to both attend the appeal hearing.

Admission authorities **must** notify in writing both children and their parents of items (a) to (e) above in respect of all decisions made in respect of applications for school sixth-form education; or, in the case of a child who is above compulsory school age, in respect of application to a school other than the school sixth-form.

- 2.6 Admission authorities **must not** allow letters and information for parents, and where appropriate, children, to limit the grounds on which they can make their appeal (they can put forward whatever case they choose) but, in the case of infant class size prejudice appeals, **should** ensure the letters makes reference to the statutory limit on infant class sizes and the grounds on which the appeal can be upheld. Admission authorities **must not** allow the letters to comment on the likelihood of success, although reference can be made to the percentage of appeals that have been successful nationally or in the local authority area and the relevant school in previous years.
- 2.7 If the admission authority discovers that an error was made in applying the school's admission arrangements and that the child should have been offered a place, it **must** offer the place without requiring the appellant to go through the appeal process, except where a significant number of children are affected and admitting them all would cause serious prejudice(see paragraph 3.2(a)).

Notification of appeal hearings

- 2.8 Admission authorities **must** allow appellants at least ten school days from the date of notification that their application was unsuccessful, to prepare and submit their written appeal to the admission authority.
- 2.9 If an appellant submits a late appeal, admission authorities **should** arrange for it to be heard at the same time as other appeals for the same school if this is feasible. Otherwise the appeal will have to be heard later, as there is no statutory time limit on submission of an appeal. 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. Admission authorities **must not** allow hearings to take place before any specified deadline for appeals to be submitted. Appeals **should not** be held at times when appellants may be unable to attend due to a religious holiday or religious observance, unless arranging the appeal for another day would be impractical and cause delays in the appeal arrangements.

Informing appellants of the hearing

- 2.10 Admission authorities **must** send written notice of the date of the appeal to the appellants at least ten school days in advance of the hearing, unless the appellants have waived this right. Where an appellant fails or is unable to attend, but it is also impractical to offer an alternative date (for example in the case of multiple appeals), admission authorities **must** explain to the appellant that the appeal will go ahead and be decided on the written information submitted.
- 2.11 When informing them of the date of the hearing, the admission authority **must**:
- a) ask appellants to provide any documents, information and evidence they wish to submit to the panel to support their case, and explain that they may submit additional information any time up to the hearing but that, if they provide anything new too close to the hearing date which the panel thinks may be significant, the panel may need to adjourn to allow all parties the opportunity to consider it (see paragraph 2.21); and
 - b) if it is an infant class size appeal hearing, advise parents of the limited basis on which an infant class appeal may be upheld for classes of more than 30. If it is not clear whether the appeal is on infant class size, or normal prejudice grounds (see Chapter 3), admission authorities **must** advise parents to prepare for both. For appeals with regard to 'infant class size prejudice', admission authorities **should** ensure that information is available to parents on the limited grounds for such appeals to be upheld. In all cases, parents retain their statutory right of appeal.
- 2.12 To allow appellants to prepare for the appeal hearing, the admission authority **must** also provide appellants with the following information at least three 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 1.4). This is to give appellants (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 appellants; and
 - c) notification of whether any witnesses have been invited to give evidence at the hearing (see paragraphs 2.17 to 2.19).

Attendance

Representation

- 2.13 Appeal panels **must** make every effort to allow appellants the opportunity to appear in person, make oral representations²¹ and clarify or supplement their written appeal. Appellants may be accompanied or represented by a friend, adviser, interpreter or signer who may speak on their behalf at the hearing. For appeals refusing a child admission as set out in paragraph 2.4, the parent and child may both attend the hearing, or they may make a decision on whether one is best placed to attend. Where appellants request the services of a translator or signer, who may support the appellant in addition to their adviser, the admission authority **must** make and fund the necessary arrangements.
- 2.14 Admission authorities **must** advise appellants that the friend or adviser referred to in paragraph 2.13 can be a Choice Adviser, a locally elected politician, or an employee of the local education authority such as an educational social worker, SEN adviser or learning mentor, provided that this will not lead to a conflict of interest. Admission authorities **must not** allow an employee of the school in question or a member of the admission authority concerned to attend in this capacity.
- 2.15 Appellants are free to have legal representation at admission appeal hearings if they wish, but this ought not to be necessary. It is important to bear in mind that the hearing is not intended to be a platform for a debate on the law. The appellant, their representative or the presenting officer may wish to raise legal points which they consider to be relevant to the appeal, and the panel **must** allow the other party an opportunity to respond. But, during the hearing, the panel need only take note of the points raised rather than respond to them, and can take its own legal advice later before making its decision on the appeal. Admission authorities **should** ask appellants to give the clerk advance notice of their intention to be represented or accompanied at the hearing. Panels **must not** treat appeals from unrepresented appellants any differently from appeals from those that have representation.
- 2.16 Panels **must not** allow representatives of schools to support individual appeals for places at their school at the hearing itself or by providing letters of support for appellants, because of possible conflicts of interest and the possibility of unfairness to other appellants.

Witnesses

- 2.17 It is not normally necessary for witnesses (other than a representative of the school) to attend appeal hearings. However, it is for the panel to decide whether it is appropriate to allow witnesses who attend to give evidence, provided that it is relevant and not repetitive e.g. to verify matters such as medical conditions or the appellant's address.
- 2.18 Appeal panels **must not** invite members of the local authority to attend appeal hearings as witnesses. It is for parents to decide whether their child should attend the hearing, unless the child is an appellant.

²¹ Schedule 2, paragraph 1(4) of the Appeals Regulations

- 2.19 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 though this will not normally be necessary.

Production of evidence from the admission authority prior to the hearing

- 2.20 The admission authority **must** supply the clerk to the appeal panel with the documents listed below at least ten school days before the hearing (unless this is not practicable because the appellants have waived their right to a period of ten school days notice of their appeal as in paragraph 2.10):
- a) a written statement summarising how places at the school were allocated (without disclosing personal details of applicants which would enable identification of individuals) and how the admission arrangements for the school apply to the appellants' application, accompanied by any relevant background information and documents on which they placed substantial reliance (such as the appellants' application form or references from religious ministers). Where distance criteria have been used to allocate places, admission authorities **must** demonstrate how this was applied to the appellants' application compared to those offered a place;
 - b) a written statement summarising the reasons for the decision (and attaching a copy of the decision letter), 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 admission authority **must** include a summary of the school's net capacity and could also include a map/plan of the school if this would be helpful. Admission authorities' statements referring to accommodation, class sizes, capacity etc, **must** be supported by factual information, as panel members cannot 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 the area's coordinated admissions scheme where this is relevant to the appeal (e.g. a parent or child appealing for a place at a school they ranked lower on their common application form than the one offered under the scheme) and, in the case of a voluntary aided or foundation school or an Academy, a statement from the local authority explaining how the scheme was applied;
 - d) details of how the locally agreed Fair Access Protocol operates²², where relevant (see paragraph 3.3); 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 appellants.
- 2.21 It is the Clerk's role to send out appeal papers to appellants, the presenting officer and panel members at least seven working days before the hearing (not including the date of the hearing or of sending out the papers). Documents may be sent electronically, but only with

²² Paragraphs 3.43 to 3.47 of the School Admissions Code

the agreement of all the parties concerned. The appeal panel **must** ensure that the papers that have been issued to the parties are complete and comprehensive; it is for the panel only to consider what material may be relevant and what weight to give it.

- 2.22 Appellants 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 before the hearing. Where the appellant 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 **must** allow for this. However, it may be necessary to adjourn the hearing if significant information is received less than three working days before the hearing, which the panel considers may need further investigation or which the admission authority may need time to respond to e.g. information clearly indicating that the admission arrangements were applied incorrectly and requiring verification by the admission authority.

Venue for the appeal

- 2.23 To ensure independence in the appeals process, a neutral venue other than the school concerned **should** be used for the appeal hearing wherever possible. Funding delegated to admission authorities for appeals can be used to cover any expenses incurred in hiring a venue, although local authorities may be able to provide a suitable venue.

- 2.24 Admission authorities **must** ensure the venue can:

- a) be reasonably accessible to appellants 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 parking²³; and
- d) have a suitable waiting area for appellants and presenting officers to wait separately from the panel before and between appeals.

The appeal hearing

- 2.25 Admission authorities **must** ensure that appeal hearings are conducted in the presence of all panel members and parties and, except in the case of grouped multiple appeals where all appellants will be present for the first stage of the appeal (see Chapter 3), **must** be heard in private. Where both parties are in attendance, one party **must not** be left alone with the panel in the absence of the other. Where appellants are unable to attend, the clerk **must** remain with the panel at all times.

- 2.26 It is important that the conduct of hearings is based on fairness and creates an informal atmosphere. Informality will be difficult to achieve if, for example, the hearing is tape-recorded and this ought to be avoided except where it may help an appellant with a disability.

²³ Guidance is available from the Administrative Justice and Tribunals Council in their document "Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act"

Guiding principles for appeal panels

- 2.27 Appeal panels perform a judicial function and need to be transparent, independent and impartial. Appeal panels **must** operate according to the principles of natural justice, and those most directly relevant to appeals are:
- a) members of the panel **must not** have a vested interest in the outcome of, 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 **must** be offered an opportunity to consider and comment on them.

Guidelines on cultural differences

- 2.28 In hearing appeals, panels need to bear in mind the following six key points²⁴:
- a) language which may cause offence may never be used when speaking about people from different ethnic backgrounds;
 - b) panel members may never make sweeping or potentially offensive statements about people from a particular community;
 - c) panel members need to show that they have an understanding of names of people of different cultures;
 - d) panel members need to show that they understand something of the background of social and family customs of the principal ethnic communities in their area;
 - e) panel members ought to remember that there may often be communication difficulties even when the appellants' main language appears to be English. Special care should be taken in hearings involving interpreters; and
 - f) when trying to assess the strength of an appellant's case, panel members need to 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 ought not to be taken to mean that the appellant is avoiding the question.
- 2.29 Above all, appeal panels **must** have regard to the Race Relations Act 1976 (as amended) and ensure that their decision does not discriminate against an appellant.

²⁴ Abridged from an article written by Mr Justice Henry Brooke and published in "The Magistrate", December 1992

The order and nature of the hearing

- 2.30 The clerk will 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 appellants and panel (if prejudice is not proven (see Chapter 3), the hearing **must** end at this stage and the appellants told that their appeal has been successful);
 - c) the case for the appellants;
 - d) questioning by the admission authority and panel;
 - e) summing up by the admission authority; and
 - f) summing up by the appellants.
- 2.31 At the start of the hearing, the panel chair **must**:
- a) welcome the parties and introduce the panel members, clerk, presenting officer and appellants. Where any of the parties have previously met each other (but do not have connections or a relationship which would rule out their involvement in the hearing), care needs to 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 panel **must** also explain clearly to the appellants the limited scope of an infant class size appeal; and
 - c) clarify that the panel is an independent body and that if it upholds the appellant's appeal, the decision will be binding on the admission authority, unless overturned by a court²⁵.
- 2.32 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. However, they **must not** attempt to answer questions for the presenting officer or appellants.

Reaching a decision

- 2.33 Chapter 3 sets out how to reach decisions on appeals. Appeal panels **must** either uphold or reject an appeal and **must not** uphold an appeal subject to any specified conditions. Under section 94(6) of the SSFA 1998, a panel's decision that a child shall be admitted to a school is binding on:
- 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 shall be offered to the child in question.

²⁵ Section 94(6) of the SSFA 1998

The fact that an appeal for a particular school has been unsuccessful does not prevent the local authority from later naming that child and school in any subsequent direction under section 96 of the SSFA 1998.

- 2.34 Panels **must** ensure that decisions on appeals where there is not unanimous agreement are reached by a simple majority of votes cast. Where there are equal numbers of votes (i.e. where the panel initially comprises five members but one panel member drops out – see paragraph 1.8), the panel chair has a second or casting vote²⁶.

Notification of the decision

- 2.35 The panel **must** communicate the decision of every appeal, including the reasons for that decision, in writing to the appellant and the admission authority²⁷. For joint appeals about school sixth-form, or appeals about a school place for a child above compulsory school age other than school sixth-form, the panel **must** also communicate the decision in writing to the appellant in the joined appeal.
- 2.36 The panel chair or the clerk to the panel (not someone from the admission authority) **must** sign the decision letter, to be sent by the clerk as soon as possible after the panel has made its decision, ideally within five working days, although this may not always be possible where there are multiple appeals for one school. When notifying appellants of a successful appeal outside the normal admissions round, the letter **should** also include a date on which the child can start at the school.
- 2.37 The panel **must** ensure that the letter is expressed clearly without the use of jargon, to 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 decision²⁸ and, in the case of the unsuccessful party, enable them to understand why they did not succeed²⁹.
- 2.38 The panel chair **must** ensure that the letter:
- a) reflects 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) where applicable;

²⁶ Schedule 2, paragraph 1(9) of the Appeals Regulations

²⁷ Schedule 2, paragraph 1(10) of the Appeals Regulations

²⁸ *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

²⁹ *St Edward's College* above

- b) contains a summary of relevant factors that were raised by the appellant and considered by the panel³⁰ along with a summary of any legal advice the panel sought, especially if this advice was received after the panel retired to make its decision³¹;
- c) explains how, and why, any issues of fact or law were decided by the panel during the hearing³², for example whether an appellant lived at a particular address; and
- d) gives clear and detailed reasons for the panel's decision, addressing the key questions that the panel considered.

Notes and records of proceedings

2.39 In addition to notes taken during appeals to assist the panel's decision-making process, the clerk **must** keep brief notes of the proceedings, attendance, voting and 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 ought to be clear.

2.40 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, panels **must** ensure they are 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) where information is required as part of court proceedings, for example, where a panel's decision is challenged by judicial review.

Personal notes made by individual panel members during hearings to aid them during the decision-making part of the process do not form part of the official record of the hearing and do not need to be retained.

2.41 The notes of the proceedings of appeal panels 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 2000 (for example, where a local authority's legal department retains the notes on file, or the notes are 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 hold 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; or
- b) the notes will fall within the exemption applying to court or tribunal records.

³⁰ *R (ota K and S) v Admissions Appeal Panel of Cardiff County Council and Cardiff County Council* [2003] EWHC 436 (Admin)

³¹ *R (ota I) v Independent Appeal Panel for G Technology College* [2005] EWHC 558 (Admin)

³² *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)

2.42 Where a request has been made under the Data Protection Act 1998 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 are 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.

Chapter 3

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 Panels **must** follow the two-stage process as set out below for all appeals, other than those against decisions made on the grounds of the infant class size prejudice (see paragraphs 3.17 to 3.31):

- a) **First Stage: establishing the facts**, at which the panel considers whether the school's published admission arrangements:
 - (i) comply with the mandatory requirements of the School Admissions Code and Part 3 of the SSFA 1998.
 - (ii) 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 appellant's case for the child being admitted to the preferred school, before arriving at a decision.

First stage: establishing the facts

3.2 The panel **must** consider the following issues.

- a) Whether the relevant oversubscription criteria for the school and coordinated admission arrangements were correctly and impartially applied to the child concerned. If not, whether the child would have been offered a place had the arrangements been properly applied or did not contravene mandatory provisions in the School Admissions Code or the SSFA 1998. The latter scenario may clearly be the case – for example, where the admission authority refused admission on the basis of poor reports from primary school, and the child would have been offered a place had the offending criterion not been applied; or made an error in calculating distance from the school. If so, the panel **must** uphold the appeal at this stage, except where a significant number of children are affected and admitting them all would cause serious prejudice. If not, the panel then considers prejudice as instructed by paragraph (b) below. In all cases, the panel **must** refer immediately to the Schools Adjudicator any unlawful admission arrangements they identify in the natural course of their deliberations on a specific appeal.
- 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 published admission number has already been reached. The panel **must** consider a number of factors in reaching a decision as to whether or not there would be prejudice. This may include considering, in light of current school organisation and structure, what effect an additional admission would have on later year groups (i.e. 'future prejudice') or, if the application was for a year group other than the normal year of entry, whether any changes have been made to the school's physical accommodation or organisation since an admission number was originally set for that year group. The panel can decide what weight to give the arguments presented.

3.3 At this first stage where relevant, the panel **must** also consider the impact of the locally agreed Fair Access Protocol (see paragraph 3.54). Under such locally agreed but mandatory Fair Access Protocols, all maintained schools and Academies are occasionally obliged to admit additional children outside the normal admission round even though they may already have admitted up to their published admission number. Panels **must not** treat the admission of children under the Fair Access Protocol as an indication that a further child could be admitted to the school without causing prejudice. As with children admitted on appeal, children admitted through a Fair Access Protocol 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 obligation to admit such children throughout the year when deciding whether to allow any appeals.

- 3.4 Panels **must not** take the view that, just because a school has had to provide additional resource or reorganise to admit additional pupils (through a Fair Access Protocol or successful appeals) that it can then admit a number of others, ‘topping’ numbers up to a form of entry, for example, without causing any prejudice to the efficient provision of education or efficient use of resources. Panels **must** consider the admission authority’s arguments about the effect an additional admission would have on the school in the current and following academic years.
- 3.5 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. Where the admission authority is able to satisfy the appeal panel that there would be prejudice, the appeal panel **must** go on to the second stage.

Second stage: balancing the arguments

- 3.6 At this stage the panel **must** consider whether the appellant’s grounds for the child to be admitted outweigh any prejudice to the school. The panel **must** take into account the appellant’s reasons for expressing a preference for the particular school (e.g. why they want that school in particular and what it can offer the child that others cannot).
- 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 appellant to state any reasons why an alternative school would be less suitable. With coordinated admissions schemes, this may be appropriate where an appellant is appealing against refusal of admission 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 an appellant has ranked their preferences on the common application form (e.g. if they are appealing for a lower ranked preference school than the one they have been offered) need 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 appellants that have had their application refused for a child 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 appellants have been given a reasonable opportunity to be involved in the process described in paragraphs 3.1 to 3.7.

3.10 Appellants 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 appellants. 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 - the panel **must** assess whether admitting any additional children would cause prejudice to the school; whether each child would have been offered a place had the admission arrangements and coordinated admission arrangements (where relevant) been properly implemented; and any other factors relevant to the specific appeal, such as whether such arrangements contravened provisions in the School Admissions Code or SSFA 1998.

The panel **must** then consider two separate issues:

- i. If the panel decides that all the children who are the subject of the appeals could be admitted without prejudice to the school, it **must** uphold the appeals.
- ii. Where the admission authority is able to satisfy the appeal panel that there would be prejudice, the panel **must** move to the second stage of the appeal to decide whether any of the individual appellant cases outweigh the prejudice.

b) Second Stage:

- i. If the panel decides that admission of additional children could result in prejudice, it **must** consider, for each individual case, whether the appellant's grounds for admission 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 appellants, 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 panel **must** hear all appeals individually without the presence of the others, and consideration given to whether the admission arrangements were properly applied. Panels **must not** take decisions 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 appellant's case in the order of the hearing set out in paragraph 2.30. In these circumstances, the panel will hear the admission authority's case repeatedly for each appellant. Where there are large numbers of appeals, it **should** 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 panel **must** explain that the presenting officer **should not** produce new evidence or expand on the case in subsequent appeals, as appellants whose cases were heard earlier in the process will not have had an opportunity to consider and respond to that new evidence. However, if material new evidence comes to light during the questioning of the presenting officer, the clerk **must** ensure that the panel considers what bearing that evidence may have on all previous and subsequent appeals and advise the panel on how to proceed fairly. This may entail adjourning the hearing to give all appellants the opportunity to consider and challenge the new evidence.

Joint appeals by parents and children

- 3.16 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 which the panel will need to consider on merit.

Infant class size appeals

- 3.17 Section 1 of the School Standards and Framework Act 1998 limits the size of an infant class (i.e. a class in which the majority of children will reach the age of 5, 6 or 7 during the school year) to 30 pupils with a single school teacher (see paragraphs 2.63 to 2.65 of the School Admissions Code). Panels can only uphold appeals if either of the two criteria in paragraph 3.19 are met. For appeals with regard to 'infant class size prejudice', admission authorities **should** ensure that information is available to parents on the limited chances of success of such appeals. In all cases, parents retain their statutory right of appeal.
- 3.18 In limited circumstances, prescribed by regulations³³, 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 outside the normal admissions 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);

³³ The Education (Infant Class Sizes) (England) Regulations 1998 (SI 1998/1973) as amended by SI 2006/3409 and SI 2008/3089.

- c) children admitted, after initial allocation of places on the local offer date, 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 ought to have been offered;
- d) children in care admitted outside the normal admissions round;
- e) children admitted where an independent appeal panel upholds an appeal under either of the grounds described at paragraph 3.19;
- f) children who are registered pupils at special schools and who, by arrangement with another school which is not a special school, receive part of their education at that other school; and
- g) children with special educational needs who are registered pupils at a school which is not a special school and are normally educated in a special educational needs unit attached to that attend an infant class in the mainstream school, where this has been deemed as beneficial to the child.

In the case of f) and g) above, the child will remain an exception for **any** time they spend in an infant class at the mainstream school or outside the special unit. In **all** other circumstances the child will only remain an exception for the remainder of the year in which they were admitted. Admission authorities **must** take measures for the following year to ensure that the class falls within the infant class size limit.

- 3.19 Where a child has been refused admission to a school on infant class size prejudice grounds, an appeal panel can only offer a place to a child where it is satisfied that either³⁴:
- a) the child would have been offered a place if the admission arrangements had been properly implemented,
 - b) the child would have been offered a place if the arrangements had not been contrary to mandatory provisions in the School Admissions Code and the SSFA 1998; and/or
 - b) the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.
- 3.20 In reaching its decision, the panel **must** take into account all relevant circumstances, including:
- a) the published admission arrangements, including the coordinated admissions scheme where applied;
 - b) the parents' preference;
 - c) the circumstances of the particular child and family; and
 - d) the practical consequences for the school and the children in relevant infant classes if any or all of the appeals being heard were to be successful.

³⁴ Regulation 6(5) of the Appeals Regulations

Accordingly, panels **should** follow the process below in considering appeals presented as being under infant class size prejudice grounds³⁵:

- 3.21 Consider whether a place was refused in error, or as a result of admission arrangements which were contrary to mandatory provisions in the School Admissions Code and the SSFA 1998.

The panel **must** consider whether the child would have been offered a place if the admission arrangements (including the area's coordinated admission arrangements) had been properly implemented. The panel **must** also refer immediately to the Schools Adjudicator any unlawful admission arrangements they identify in the natural course of their deliberations on a specific appeal.

- 3.22 Under these grounds, the panel can 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 or were not contrary to mandatory provisions in the School Admissions Code and the SSFA 1998.

- 3.23 In considering an appeal, 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 would have been available to the admission authority if it had acted reasonably. However, the panel **should** 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.

- 3.24 Consider whether the decision to refuse admission was 'unreasonable'.

Unless an appeal has already been upheld, the appeal panel **must** go on to consider whether the admission authority's decision was one which a reasonable admission authority would have made in the circumstances of the case.

- 3.25 In order for a panel to determine that an admission authority's decision to refuse admission was unreasonable, it will need to be satisfied that the decision to refuse to admit the particular child was "perverse in the light of the admission arrangements"³⁶, 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"³⁷.

³⁵ 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)

³⁶ *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

³⁷ *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 All ER 935

- 3.26 As in paragraph 3.23, the panel **should** review the admission authority's decision in the light of the material available at the time when it made its decision. Exceptionally, a panel may also consider material which would have been available to the admission authority if it had acted reasonably e.g. if a parent had provided the information with their application, but the admission authority had lost it. The panel **should** also consider evidence submitted by the parents to show what their circumstances were at the time the decision was made in order to support their claim that no reasonable admission authority would have made that decision.
- 3.27 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 can uphold the appeal.

Considering infant class size prejudice

- 3.28 It is not enough for an admission authority to show that the published admission number has already been reached. The panel **must** consider whether the case that infant class size prejudice would be caused is justified e.g. admission may have been refused because places had been allocated up to the published admission number, but this does not necessarily mean that admitting another child would breach the infant class size limit. The admission authority will need to explain what it would have to do to comply with the infant class size limit if it admitted an additional child e.g. employ another teacher, move to mixed-age teaching, with detrimental consequences to the efficient provision of education or efficient use of resources.
- 3.29 The panel **must** also consider whether admission of an additional child would cause future infant class size prejudice e.g. a school publishes an admission number of 60, admitting 20 children to three reception classes, which become two classes of 30 children in Years 1 and 2. Admission of a 61st child to reception would lead to one of the Year 1 classes exceeding the infant class size limit unless the school takes remedial measures, such as recruiting an additional teacher. Therefore there would be infant class size prejudice.

Multiple infant class size appeals

- 3.30 Where there are multiple infant class size appeals, panels may deal with them in either of the following ways:
- a) Grouped appeals – where the admission authority's argument is that admitting additional pupils would cause infant class size prejudice, its case could be 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 (as in paragraphs 3.20 to 3.27), without the presence of the others. If infant class size prejudice is not proven, the panel **must** decide which children should be admitted before infant class size prejudice arises, and then consider all remaining appeals as infant class size prejudice cases. Panels **must not** make decisions until all the appeals have been heard.

- b) Individual appeals – where the panel hears each individual appeal in the order set out in paragraphs 3.20 to 3.27, with no decisions being made until all appeals have been heard.

Other factors in considering infant class size appeals

- 3.31 Admission authorities consider and make decisions on all applications for admission to reception classes of children who will be aged five by the end of the academic year in which they will be admitted ('rising fives') at the same time. However, there may be local arrangements for children to join reception classes at different points in the school year e.g. September, January and April. In this situation, all appeals can be heard at the same time regardless of the term in which the pupil is to enter the school, and panels **must** treat a place accepted for admission later in the academic year as if the child had already taken it up.

Appeals for grammar schools

- 3.32 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. But admission authorities for designated grammar schools³⁸ are permitted to select children for admission on the basis of academic ability and may leave places unfilled if there are insufficient eligible applicants³⁹.
- 3.33 Most admission authorities for grammar schools use performance in an entrance test as a basis for determining whether a child is of the required academic standard for admission. But while some offer places to those who score highest, others set a pass mark then apply oversubscription criteria to all applicants who reach that standard. Therefore, the fact that a child has been assessed as being suitable for entry to a grammar school does not guarantee them a place if the school is oversubscribed. Admission authorities **must** set out in schools' published admission arrangements details of how places are allocated.
- 3.34 Some admission authorities for grammar schools choose to operate a non-statutory or "local review" system, before the allocation of places is decided, to determine whether children who have not reached the specified standard ought to be deemed as being of grammar school standard. This does not replace parents' or, where appropriate children's, rights to have their appeal against refusal of a place at a preferred school heard by a statutory appeal panel.
- 3.35 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 **should** follow the two-stage process described in paragraphs 3.1 to 3.7.
- 3.36 In addition to considering the issues set out in paragraphs 3.1 to 3.7, 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 and, as a consequence, did not reach the required academic standard.

³⁸ Defined by section 104 of the SSFA 1998 as being a school which makes "provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils with high ability".

³⁹ Section 86(3)(c) of the SSFA 1998

- 3.37 Where there is no local review process (as described in paragraph 3.34) or no local review process has been applied, the panel **should** consider any factors which appellants contend may have affected the child's performance (e.g. illness, bereavement); whether the family made the admission authority aware of these before they sat the test; and whether it offered alternative testing arrangements or made reasonable adjustments (e.g. in the case of children with disabilities). The panel may then need to consider any clear evidence presented by the appellants to support their claim that the child is of the required academic standard e.g. 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. The panel **must not** devise its own methods to assess suitability for a grammar school place unrelated to the evidence provided for the hearing. In determining to uphold an appeal, the panel **must** be satisfied that there is evidence to demonstrate that the child is of grammar school ability and, where applicable, that the appellant's arguments outweigh the admission authority's case that admission of additional children would cause prejudice.
- 3.38 Where a local review process has been followed, the panel **must not** make its own assessment of the child's ability, but **must** consider whether each child's review was carried out in a fair, consistent and objective way e.g. whether the same type of evidence was used in all cases. If there is no evidence that this has been done, the panel **must** follow the process in paragraph 3.37.

Appeals following casual applications for grammar schools

- 3.39 Admission authorities for grammar schools 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** explain to parents their right of appeal. See paragraph 4.1 regarding further appeals within the same academic year.
- 3.40 Some grammar 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 an appeal is lodged e.g. by obtaining information from the current or previous school. Otherwise, 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.

Appeals for admission to Year 12

- 3.41 Paragraph 1.42 of the School Admissions Code explains that, unlike external candidates, children already attending a school do not need to apply formally for a Year 12 (school sixth-form) place there. But children seeking admission or transfer to Year 12 may be selected on the basis of academic ability and schools may leave places unfilled if there are insufficient eligible applicants⁴⁰. Assessment for entry to Year 12 often includes a requirement to have attained a specified number of GCSEs and/or specified grades. However, the fact that a child has been assessed as being suitable for entry to Year 12 does not guarantee them a place if the school is oversubscribed. Therefore, admission authorities **must** apply entry requirements and oversubscription criteria as set out in schools' published admission arrangements in relation to external candidates for Year 12.
- 3.42 Where a child already attending a school is refused permission to transfer to Year 12 at that school, they and their parents have the same right of appeal under section 94(1A) and 94(2A) of the SSFA 1998 as exists for an external candidate or their parents; where they appeal separately panels **must** hear the appeals together. The appeal arrangements are made by the admission authority for the school. For in-year applications made by both children and their parents, panels **should** hear appeals together where possible unless they are for different admission authorities. If appeals for two different schools are successful, this is a matter for families to resolve privately.
- 3.43 Where applicants 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 **should** follow the normal two-stage process described in paragraphs 3.1 to 3.7.
- 3.44 In the case of an appeal where the child did not reach the specified entry requirements, the panel **must not** attempt to make its own assessment of a child's ability, but may need to decide whether the original decision that the child was not of the required standard was reasonable in light of the information before the decision-maker. In doing so, it may want to consider whether any process in place to consider such cases (e.g. where a pupil had not been studying in the UK and did not have GCSEs) was carried out in a consistent and objective way.

Appeals following casual applications for Year 12

- 3.45 Admission authorities for schools with a 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 and the child an appeal. See paragraph 4.1 for further appeals within the same academic year.

⁴⁰ Section 86B(4) of the SSFA 1998

Boarding schools

- 3.46 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 that category⁴¹. Boarding schools may interview children for boarding places, but only to assess a child's suitability for boarding⁴². 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 e.g. if the resultant effect on class size means that the number of boarding places available overall would have to be reduced. It is up to the admission authority to provide evidence that this would be the case.
- 3.47 The process for hearing appeals for boarding schools is the same as that for other schools and panels **must** follow the two-stage process described in paragraphs 3.1 to 3.7.

Admission numbers and capacity

- 3.48 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 number, 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.
- 3.49 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.

⁴¹ Section 86(5B) of the SSFA 1998

⁴² Section 88A(2) of the SSFA 1998

3.50 In the case of new schools, panels **must** take into consideration that whilst they 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 as residents move into a new housing development, for example. It is important that presenting officers highlight these issues when stating their case, clearly explaining the need to phase in the number of admissions and the effect that admitting a large number of children would have. Although priority may be given to children living nearest to the school, it is unlawful for the admission authority to reserve places solely for local children. Admission authorities **must** consider all applicants properly against the oversubscription criteria until the admission number is reached.

Waiting lists

- 3.51 The School Admission Code at paragraph 3.19 requires admission authorities to maintain waiting lists for oversubscribed schools. When hearing appeals, 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.
- 3.52 When making decisions on appeals, panels **must not** determine where a child should be placed on that list.

Children with statements of Special Educational Needs

- 3.53 If the parent of a child with a statement of Special Educational Needs wishes to appeal against the school named in the statement, or the fact that no school has been named, such appeals are considered by a Special Educational Needs and Disability Tribunal, not an admission appeal panel⁴³.

Children with challenging behaviour

- 3.54 The School Admissions Code refers (see paragraphs 3.31 to 3.33) to circumstances where it might be appropriate to refuse admission of a child with challenging behaviour, even when places are available in a school. 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 appellants for their application being refused. It is important 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.

Expressing a preference and Fair Access Protocols

- 3.55 The purpose of Fair Access Protocols is to ensure that the amount of time children spend out of education is kept to a minimum. They are also intended to ensure that all maintained schools and Academies in an area take a fair share of children with challenging

⁴³ Section 326 of the Education Act 1996

behaviour (see paragraphs 3.43 to 3.47 of the School Admissions Code). However, while a Fair Access Protocol may lead to a child being allocated a place at a particular school, this does not override any preference expressed. They may still express a preference for any school and, if refused a place, they have a right of appeal. If the application has been refused, despite there being places available, the admission authority **must** present their case for refusal, demonstrating how admission of the child would cause prejudice to the school – for example, for reasons set out in paragraphs 3.31 and 3.32 of the School Admissions Code. These paragraphs also refer to panels' consideration of prejudice arguments where a school may have admitted over its published admission number in order to comply with a Fair Access Protocol.

Children with disabilities

- 3.56 Panels **must** have regard to the Equality and Human 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.
- 3.57 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 schools⁴⁴.

⁴⁴ Part IV, Disability Discrimination Act 1995

Chapter 4

Further Appeals and Complaints

This chapter provides details on:

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

Further Appeals

- 4.1 Appellants who have appealed unsuccessfully can apply for a place at the same school in respect of a later academic year and have a further right of appeal if that application is unsuccessful. Appellants do not have a right to a second appeal in respect of the same school for 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 e.g. the appeals process was not properly conducted or significant evidence which had been submitted was not forwarded to the panel (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 has determined 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, that the family has moved house, or any other factor which would affect the level of priority given to the application.
- 4.2 To ensure that appellants receive a fair hearing, the panel that hears their second appeal **must** consist of different panel members and, if possible, a different clerk.

Complaints about maladministration in appeals

- 4.3 The Local Government Ombudsman can investigate written complaints about maladministration on the part of a panel hearing appeals for a maintained school (but not an Academy, therefore such complaints about appeal panels for Academies need to be referred to the Secretary of State). 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 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 (only the courts can overturn an appeal panel's decision), 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. Further information can also be found at www.lgo.org.uk.

Complaints to the Secretary of State

- 4.6 The Secretary of State cannot review or overturn decisions of appeal panels, but can consider - under sections 496, 497 and 497A of the Education Act 1996 for maintained schools and under the terms of an academy's funding agreement for an academy - whether:
- a) the panel was correctly constituted by the academy or admission authority; and
 - b) the admission authority, academy or governing body has acted reasonably in exercising functions in respect of the appeal process or has failed to discharge any legal or funding agreement duty in relation to that process e.g. in constituting the panel or by acting in breach of the mandatory provisions of this Code.
- 4.7 An appeal panel's decision can only be overturned by the courts where the appellant or admission authority are successful in applying for Judicial Review of that decision.

Chapter 5

Appeals by governing bodies against local authority decisions to admit 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 is to be admitted to a community or voluntary controlled school, it **must** give the governing body of the school notice in writing of that decision and of their right to appeal⁴⁵. 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 reached compulsory school age.
- 5.2 The governing body **must** make any appeal against such a decision 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 made. Local authorities are not, however, required to make these arrangements where their decisions are in the form of directions made under section 96 of the SSFA 1998, which empowers the local authority, in prescribed circumstances, to direct a foundation or voluntary aided school to admit a particular child.
- 5.3 Governing body objections to local authority directions to admit children in care who have been twice permanently excluded do not come under the remit of such appeal panels, but can be referred to the Schools Adjudicator (see paragraphs 4.1 to 4.4 of the School Admissions Code).

⁴⁵ The requirements for appeals of this type are set out in Schedule 2, paragraph 2 of the Appeals Regulations.

Appeal panels

- 5.4 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, and **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 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.
- 5.5 A person is also disqualified if he or she was involved in a previous exclusion appeal hearing under section 95(2) of the SSFA 1998 in respect of the same child.

The appeals procedure

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

Arrangements for Academies

- 5.11 Academies' funding agreements require them to participate in local fair access protocols. However, where a local authority wishes an Academy to admit a particular child, either under the terms of the protocol or otherwise, if an Academy refuses to do so the case should be referred to the Secretary of State to decide. Only the Secretary of State may direct an Academy to admit a named pupil.