



Guidance

## Organisation & Management

Administration & Management

# School Admission Appeals Code of Practice

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department for

**education and skills**

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## A message from the Secretary of State



When we first set out a new framework for school admissions in the School Standards and Framework Act 1998, we said that we wanted to recognise and incorporate existing good practice in school admission appeals. Now, as we expand and evolve that framework through the new legislation contained in the Education Act 2002, we continue to pursue that principle, building on good practice and the foundation we established. As well as providing guidance on the new legislation contained in the Act, this Code, which accompanies a revised School Admissions Code of Practice, reflects some of the useful comments we have received from our partners in education since the 1998 Act came into force and in the research conducted for us by Sheffield Hallam University.

The new Code gives clearer guidance on some of the issues most frequently raised, and has new sections on appeals for different types of school, reflecting the importance of ensuring the independence of appeal panels for voluntary aided and foundation schools. It takes account of recent court judgements, Local Government Ombudsman investigations, and the variety of useful and encouraging feedback and good practice across the country which my Department continues to gather. The new Code also places greater emphasis on training for appeal panel members, and on working in partnerships.

Legislation relating to appeals is now contained in regulations, which are explained in this edition of the Code, and which should be considered alongside it. There has been no significant change to the content of the legislation and the main aim is to consolidate existing policy. However, admission authorities are reminded that there is a duty to advertise for lay members of appeal panels every 3 years.

It is incredibly important that we do all we can to ensure the appeals process itself provides a level playing field for all concerned. To that end, the Education Act 2002 gives a new right of appeal to existing pupils transferring to sixth forms to bring them into line with external candidates, and also further clarifies the appeal rights of governors against the admission of an excluded child by the LEA.

While it is extremely encouraging that the vast majority of parents continue to be offered a school place which they consider suitable for their child, and we believe the new legislation will improve things even further, there will always be parents who are dissatisfied with the offer they are made and who will wish to appeal for a preferred school. Parents often find the appeals process an intimidating prospect, and it is right that we should do all we can to make it less so. We know of a great deal of useful and encouraging work that is being done to provide information and assistance to parents, and we hope that the new Code will encourage better information for parents across the board.

It is right that we continue to provide access to a transparent, impartial and independent system, and it is just as important that all those involved in the appeals process are well trained and work together to ensure that the system continues to have the confidence of those who wish to use it. This Code provides useful guidance to all those involved in school admission appeals, and will be crucial in helping us achieve that aim.

A handwritten signature in blue ink, appearing to read 'Charles Clarke'.

**Charles Clarke** MP,  
Secretary of State for Education and Skills.

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# Chapter 1

## Introduction

1.1 This Code is established under Section 84 of the School Standards and Framework Act 1998 (referred to in this Code as the 1998 Act). This section of the Act requires the Secretary of State to issue a Code of Practice containing practical guidance on the way local education authorities (LEAs), the governing bodies of maintained schools, admission appeal panels and the Adjudicator discharge their functions. Each of the bodies mentioned must have regard to the Code of Practice.

1.2 This revised School Admission Appeals Code of Practice comes into force on 31 January 2003. It replaces the previous Code, and should be read alongside the School Admissions Code of Practice and other guidance and legislation that affect admissions and admission appeals. A separate Code of Practice, issued by the Welsh Office Education Department, covers appeal arrangements in Wales. **This Code supersedes the previous Code and all previous non-statutory guidance.**

1.3 The Code deals with two separate categories of admission appeals:

- appeals by parents<sup>1</sup> against a decision as to the school at which education is to be provided for their child; and
- appeals by governing bodies of community or voluntary controlled schools against a decision by the LEA, as their admission authority, to admit to the school a child who has previously been permanently excluded from two or more schools.

1.4 As local circumstances vary greatly, the Code does not seek to give guidance on every possible situation. Nor does it prescribe exactly how those responsible for making appeal arrangements, or appeal panel members, should operate beyond the statutory requirements which are explained in the Code. The Secretary of State is keen to encourage good practices which add flexibility and sensitivity to the appeals process providing that these stay within the legal framework. The Code aims to build on good practice already employed by many admission authorities.

### **Aims and objectives of the appeals process**

1.5 School admission appeal arrangements should be as simple and clear as possible for the benefit of everybody who is involved in the process. It is particularly important that parents find appeal arrangements easy to understand.

1.6 This Code is primarily for those responsible for making appeal arrangements and for panel members and clerks to the panels. Admission authorities, who are responsible for establishing appeal arrangements, are best placed to offer parents advice about local appeal arrangements. More details on this are in paragraph 4.8.

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<sup>1</sup> "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.

1.7 The fundamental objectives of admission appeals should be to:

- provide an independent, impartial and informal forum for parents and the admission authority concerned to present their respective cases, and to be confident that they will be given a fair hearing;
- ensure that appeal panels weigh up all the evidence presented to them carefully and objectively before reaching a final decision on the appeal;
- operate within education legislation, and also have regard to the implications of other legislation such as the Sex Discrimination Act 1975; the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000); the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001); and the Human Rights Act 1998. Appeal panels are carrying out a judicial function and must apply the principles of natural justice (see paragraph 4.42);
- have regard to all relevant guidelines in conducting appeal arrangements, including this Code and the Code of Practice on School Admissions;
- to provide a system which is clear and consistent and as easy to understand as possible by everyone involved.

1.8 In appeals by governing bodies against decisions to admit “twice-excluded” pupils to their schools, the basic principles described above also apply.

1.9 Details of the legal requirements for appeals under the Education Act 2002, as well as of other legislation relevant to appeals, are set out in this Code.

## **Chapter 2**

### **Admission appeals: the law**

#### **Introduction**

2.1 This Chapter describes the legislation that applies to admission appeals. Admission authorities who will be responsible for arranging appeals must comply with the legislation and have regard to the Code of Practice and other relevant guidance. The following paragraphs signpost the relevant legal provisions but they do not aim to provide definitive guidance on interpretation of law: that is a matter for the courts. Admission appeal panels fall under the supervision of the Council on Tribunals and not the Secretary of State. The Council on Tribunals (which operates under the Tribunals and Inquiries Act 1992) advises on and supervises the procedures and workings of tribunals, which include appeal panels.

2.2 Admission authorities are defined in section 88(1) of the 1998 Act. For a community or voluntary controlled school, the admission authority is usually the LEA, but it may be the governing body if the LEA has delegated responsibility for determining admission arrangements to it. However, even where community schools have been given delegated responsibility for admissions, the LEA is still responsible for arranging appeals brought against a decision made by the governing body. The admission authority for a foundation or voluntary aided school is always the governing body.

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

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

2.4 LEAs must make arrangements for enabling a parent of a child to appeal against:

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

LEAs are not, however, required to make such arrangements where their decisions are in the form of directions made under section 96 of the 1998 Act, which empowers LEAs in prescribed circumstances to direct a school, for which it is not the admission authority, to admit a particular child.

2.5 The governing body of a foundation or voluntary aided school must make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school (see section 94(2) of the 1998 Act).

2.6 Joint arrangements may be made by the governing bodies of two or more foundation or voluntary aided schools which are maintained by the same LEA. A LEA and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the LEA may also make joint arrangements for appeals. These arrangements could include placing joint advertisements for lay members (see paragraph 3.11), and sharing the services of a clerk.

2.7 Under co-ordinated admission arrangements, parents have the right to appeal for a place at any of their preferred schools for which they were not successful under those arrangements, and against any decision by or on behalf of the LEA as to the school at which education is to be provided for the child. One panel should hear all the appeals for a particular school (see paragraph 4.9), and where a single LEA is the admission authority as regards all the parents' preferences, one appeal panel may consider appeals for any of these schools in the same hearing, if this is practical. In cases where parents have appealed against decisions made by more than one admission authority, but communicated to them by their LEA, this may result in separate hearings being arranged before different appeal panels. In such a case, the first appeal panel to sit, when making its decision, should disregard the fact that the parents may have further appeals pending. However, where an appeal is upheld and the resulting place offered is accepted, the panel should notify any other panels accordingly so that those panels may take that into account in their own deliberations on any subsequent appeal hearings.

2.8 Under section 95(2) of the 1998 Act, LEAs must make arrangements for appeal panels to hear appeals from governing bodies against a decision by the LEA, where it is the admission authority, to admit to their school any child who has been twice permanently excluded.

2.9 Where a pupil already attending a school is refused permission to transfer to Year 12 (i.e. the 6th form) at that school, their parents now have the same right of appeal under section 94(1A) and (2A) of the 1998 Act (as amended by the Education Act 2002) as the parents of an external pupil who is refused admission to that year group. The appeal arrangements are made by whichever of the LEA or the governing body is the admission authority for the school.

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

2.10 These Regulations bring together and update previous legislation on appeals procedure, and on issues such as the duty to advertise for lay members, the payment of allowances, indemnity of panel members and the constitution of panels hearing appeals from either parents or governing bodies of community and controlled schools. Particular attention is drawn to the need to advertise for lay members every three years (see paragraph 3.11).

### **Sex Discrimination Act**

2.11 The Sex Discrimination Act 1975 makes it unlawful for admission policies to discriminate against children on the grounds of sex, except where the school is a single sex school. Admission arrangements for a co-educational school may not be used to achieve a fixed proportion of boys or girls at the school, as this may be in breach of the Sex Discrimination Act.

### **Race Relation Acts**

2.12 The Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) makes it unlawful for admission authorities to discriminate against children on the basis of race, colour, nationality or national or ethnic origin. The Act also imposes on public bodies, including LEAs and schools, a duty to promote racial equality. LEAs and schools must, therefore, have regard to the need to eliminate unlawful racial discrimination; promote equality of opportunity; and promote good relations between people of different racial groups. Governing bodies should have a written statement of their policy for promoting race equality. LEAs must also publish a race equality scheme, which includes similar duties to assess and monitor the effects of their policies, including monitoring admissions to schools.

### **Disability Discrimination Act**

2.13 Since September 2002, Part IV of the Disability Discrimination Act 1995 (inserted by the Special Educational Needs and Disability Act 2001) has applied with regard to access to education. Schools and LEAs must not treat disabled children less favourably than other pupils for a reason relating to their disability, and must make reasonable adjustments to ensure that disabled pupils are not placed at a substantial disadvantage compared with non-disabled children. Schools and admission authorities must not discriminate against a disabled child in the arrangements they make for determining admission to the school; in the terms on which they offer admission; and by refusing or deliberately omitting to accept an application for admission.

2.14 All schools are also required to publish information on admission arrangements for disabled pupils, their access arrangements for such pupils, the steps being taken to treat disabled pupils as fairly as other pupils and their plans

for increasing the accessibility of the school to disabled pupils. In many cases, pupils with disabilities will also have special educational needs. The Disability Rights Commission has produced a Code of Practice, which explains and illustrates the new duties owed to disabled pupils.

2.15 Where a parent is appealing against non-admission, the appeal panel should consider (and *must* consider, where cases are expressly brought on the basis of disability discrimination) whether the pupil is disabled and whether there has been discrimination within the meaning of the Disability Discrimination Act. Appeal panels are required to have regard to guidance in the Disability Rights Commission's Schools Code of Practice when determining an appeal.

2.16 Non-educational services for people other than pupils (for example parents) which are provided at or by the school are covered by the rights of access provisions in Part III of the Disability Discrimination Act. "Service providers" must not unjustifiably refuse to provide a service, provide a worse service, or offer a service on less favourable terms to a disabled person, and must take reasonable steps to change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to use their service; to provide an auxiliary aid or service which would enable disabled people to use a service; and to overcome physical barriers which make it impossible or unreasonably difficult for disabled people to use a service by providing it by a reasonable alternative method. For example, it might be necessary for the LEA or governing body to make information about the appeal process available to parents in an accessible format or to provide a sign language interpreter for a deaf parent. From 2004, service providers will have to take reasonable steps to remove, alter or provide reasonable means of avoiding physical features which make it unreasonably difficult for disabled people to use a service. For example an LEA or governing body may have to consider holding the appeal at a venue that is physically accessible to parents using wheelchairs.

## **Human Rights Act**

2.17 Under the Human Rights Act 1998, bodies that carry out a public function, which includes appeal panels, must carry out their functions and duties in accordance with the European Convention on Human Rights. The HRA confers a right to education, although this right does not extend to securing a place at a particular school. Admission authorities and appeal panels, when respectively considering applications for admission and appeals against refusals to admit, should take into account – so far as compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure – the right of parents to ensure that their child's education conforms with their own religious or philosophical convictions, as expressed in any stated reasons for preferring a particular school. Parents are entitled to a fair hearing by an independent and impartial tribunal.

## **The powers of appeal panels**

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

2.19 Under section 94(6) of the 1998 Act, an appeal panel's decision that a child should be admitted to a school is binding on:

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

2.20 The Secretary of State has no power to consider complaints against the decisions of appeal panels, or the way they conduct their business, nor has the Council on Tribunals. However, under sections 496 and 497 of the Education Act 1996 the Secretary of State has limited powers to consider whether an LEA or a governing body have either acted unreasonably in exercising their functions in respect of the appeals process or have failed to discharge any duty imposed on them in relation to that process.

2.21 Parents who believe that the panel which heard their appeal acted improperly or unreasonably in handling their case, or other cases which may have affected theirs, can make a complaint to the Commissioner for Local Administration (the Local Government Ombudsman), but the Ombudsman cannot overturn the panel's decision.

2.22 An appeal panel's decision can only be overturned by the courts, where the parents or admission authority are successful in applying for Judicial Review of that decision.

## Chapter 3

# Appeals by parents: constitution of appeal panels and related issues

### Introduction

3.1 This Chapter describes the legal requirements for constituting appeal panels. The paragraphs on constituting appeal panels should be read with “Interests of panel members” in paragraphs 4.15 to 4.19. Other general guidance on the appeals process, within the framework of the law, and based on established principles of good practice, is also contained in Chapter 4.

### Constitution of appeal panels arranged by LEAs for appeals relating to community and voluntary controlled schools (including arrangements made jointly between LEAs and governing bodies of foundation and voluntary aided schools)

3.2 Regulation 3(a) and (d) and Schedule 1 to the Education (Admissions Appeal Arrangements) (England) Regulations 2002 (“the Appeals Arrangements Regulations”) provide that where an appeal panel is established by a LEA under section 94(1) of the 1998 Act, or by a LEA jointly with one or more school governing bodies, under section 94(4) of the Act, that panel must consist of three or five members appointed by the LEA from the following categories:

- people who are eligible to be lay members. This means people without personal experience in the management of any school or the provision of education in any school (disregarding experience as a school governor or in another voluntary capacity). **There must be at least one lay member of the panel;**
- people who have experience in education, who are acquainted with educational conditions in the LEA’s area, or who are parents of registered pupils at a school. There must be at **least one panel member from this category.**

3.3 The following people are *disqualified* from membership of an appeal panel arranged by LEAs (or arranged jointly with one or more school governing bodies):

- any member of the LEA (i.e. a Councillor), or of the governing body of the school in question;
- anyone, other than a teacher, employed by the LEA or the governing body;
- any person who has, or has ever had, any connection with the LEA or the school in question, or with any employee of the LEA or governing body (other than a teacher), such that doubts might be reasonably raised over his or her ability to act impartially regarding the LEA or the school. Employment by the

LEA as a teacher is not in *itself* a reason for disqualifying someone from membership – unless there is another reason to call into question their ability to act impartially (but see also paragraph 3.4);

- no one may be member of an appeal panel if he or she was party to the decision not to admit the child about whom the appeal is concerned or took part in any discussions about how that decision was reached.

3.4 It is important to note that, although teachers may not necessarily be disqualified from membership under the categories described above, paragraph 1(7) of Schedule 1 to the Appeals Arrangements Regulations specifies that they may not be a member of the panel if they are a teacher at the school which is the subject of the appeal or appeals in question.

3.5 Where a LEA and one or more school governing bodies make joint arrangements for appeals, references in paragraphs 3.2 and 3.3 to the governing body or school apply respectively to any governing body or any school to which the arrangements relate.

### **Constitution of appeal panels arranged by governing bodies of foundation and voluntary aided schools (including arrangements made jointly between governing bodies of two or more schools)**

3.6 Regulation 3(b) and (c) and Schedule 1 of the Appeals Arrangements Regulations provide that an appeal panel established by the governing body of a foundation or voluntary aided school must also consist of three or five members appointed by the governing body or bodies from the following categories:

- people who are eligible to be lay members. This means people without personal experience in the management of any school or the provision of education in any school (disregarding experience as a school governor or in any other voluntary capacity). **There must be at least one lay member of the panel;**
- people who have experience in education, who are acquainted with educational conditions in the area, or who are parents of registered pupils at a school. There must be **at least one panel member from this category.**

3.7 The following people are *disqualified* from membership of an appeal panel arranged by a governing body (or jointly with other governing bodies):

- any member of the school's maintaining LEA (i.e. Councillors) or the governing body or bodies in question;
- anyone, other than a teacher, employed by the LEA or the governing body or bodies;
- any person who has, or has ever had, any connection with the school's maintaining LEA or the school itself, or with any employee of the LEA or the

governing body (other than a teacher), such that doubts might be reasonably raised over his or her ability to act impartially regarding the LEA or the school. Employment by the LEA as a teacher is not in *itself* a reason for disqualifying someone from membership – unless there is another reason to call into question their ability to act impartially – but a person who is a teacher at the school which is the subject of the appeal cannot be a panel member (as stated in paragraph 3.4);

- no one may be member of an appeal panel if he or she was party to the decision not to admit the child about whom the appeal is concerned, or took part in any discussions about how that decision was reached.

3.8 Where two or more school governing bodies make joint arrangements for appeals, references to a governing body or school in paragraphs 3.6 and 3.7 apply to any of the governing bodies or schools involved.

### **Other considerations for appointing panel members**

3.9 LEAs and governing bodies may appoint enough panel members to enable two or more panels to sit at the same time (but see also Chapter 4 on multiple appeals).

### **Ensuring that there is a quorum of panel members**

3.10 Where a panel with five members has begun considering an appeal and any of the members die or have to withdraw for any reason, the panel may continue to sit, provided that:

- there are three remaining members; and
- they comprise at least one member from each of the categories stated at paragraphs 3.2 and 3.6.

If these requirements are not met a new panel will have to be convened to hear the appeal. In the event of a disagreement between the members of an appeal panel, the appeal under consideration shall be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel shall have a second or casting vote.

Where a panel starts with three members, it may not continue if one member dies or has to withdraw.

### **Duty to advertise for lay members**

3.11 The Appeals Arrangements Regulations require bodies responsible for constituting appeal panels to advertise for lay members to serve on those panels. The relevant bodies are required, under regulation 4, to place such an advertisement before the end of the 3 year period following the date upon which an advertisement

was last published. The advertisement should be placed in at least one local newspaper, and allow a minimum of 21 days for replies. It is also good practice to consider other ways of attracting potential members e.g. flyers in local newspapers or approaches to local companies. It can also be helpful at this stage to make it clear that training will be provided. In some areas, LEAs (with agreement of their admission authorities) take responsibility for recruitment, training and appointment of members to specific appeal panels. This is a cost-effective way to achieve consistency across an area.

### **Training of panel members**

3.12 Admission authorities should ensure that all new panel members receive appropriate training before hearing appeals, and that experienced panel members are kept abreast of relevant court rulings and guidance or are given the opportunity of undertaking refresher training (further information on training is given in Chapter 6).

### **Length of time members can serve on a panel**

3.13 There is no time restriction in law for panel members to serve on appeal panels, but the admission authority should regularly review panel membership. It is good practice for panel members hearing appeals for a particular school to be changed every few years, to prevent the appearance of bias towards the admission authority. Pooling resources with neighbouring admission authorities can help ensure that the same members do not continue to sit on panels for a particular school for such a length of time that doubt could be raised as to their impartiality.

### **Allowances for appeal panel members**

3.14 Under regulation 7 of the Appeals Arrangements Regulations, appeal panel members are eligible to receive travel and subsistence allowances in certain circumstances, in line with sections 173 and 174 of the Local Government Act 1972. They can also be compensated for financial loss, with a payment (not exceeding the prescribed amount in the Local Authorities (Members Allowances) Regulations 1991) for any loss of earnings that arise as a result of attending an appeal panel. These provisions will apply where appeal panels are arranged by either the local education authority or by the governing body of a school.

## **Indemnity**

3.15 Admission authorities are required to indemnify the members of any appeal panel against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith whilst acting as members of the appeal panel (see regulation 8 of the Admission Appeals Arrangements Regulations).

## **Responsibility for appeal panel costs**

3.16 LEAs must allocate reasonable funds to governing bodies of schools which are admission authorities, to meet admission and admission appeals costs, unless the school and LEA agree that the LEA should itself carry out the administration on the governing body's behalf, free of charge to the school. It is for the LEA to decide whether these funds should be allocated to the schools as earmarked allocations which are additional to, and separate from, their budget shares. If an LEA decides to delegate funding for admissions functions, it must comply with the requirements of the Regulations governing school funding formulae which are made by the Secretary of State under section 47 of the School Standards and Framework Act 1998.

## Chapter 4

# Appeals by parents: Guidelines

### Introduction

4.1 Part I of this Chapter deals with preparatory action which should be taken before the appeal hearing; Part II goes on to discuss matters which should be taken account of during the appeal itself, including statutory issues for consideration; and Part III deals with action to be taken after the appeal has been heard.

### Part I Action before the appeal

#### *Right of appeal*

4.2 Any parent (except one whose child has been permanently excluded from two schools, where at least one of the exclusions took place since 1 September 1997) whose child is refused any school place(s) for which they applied, has a statutory right of appeal to an independent appeal panel. Parents who have had an offer of a place withdrawn also have a right of appeal. Where other appeals for the schools in question are not to be considered in a separate hearing, it may sometimes be the case that a panel will need to consider simultaneously a parent's appeals against refusal of admission to a school and the same parent's appeal against allocation of a place at another school.

4.3 Parents applying late or outside the normal admission round (e.g. families moving into an area during the year), should have their applications considered in the normal way and not be added to waiting lists without consideration of an application. If they are then refused admission for their child (e.g. because all available places have already been allocated), they must be informed of their right of appeal.

4.4 Where a child has been refused entry to a school, parents should receive, in writing, full reasons why the application was unsuccessful, in light of the published admissions criteria for the school. The letter to parents must inform them of their right of appeal, including details of how to make an appeal (a pre-printed form can be used) and the person to whom they should send their notice of appeal. Although it can be helpful, in particular for infant class appeals, to outline the limited circumstances under which the panel may uphold an appeal (see paragraph 4.54), letters should not comment on the likelihood of success.

4.5 Either at that time, or once parents have confirmed that they do intend to appeal, the admission authority should advise parents that documents which they wish to form part of the appeal and to be given to the panel should be sent in advance of the appeal. It is also helpful if the admission authority makes clear whether any earlier correspondence between the parent and the school will automatically be included in the panel's papers, or only those documents which the parents have submitted specifically for the appeal hearing.

### ***Notice given by parents that they intend to appeal***

4.6 Parents should lodge their appeal within the period specified by the admission authority but this should not be less than 14 days (10 working days) from the date of notification to parents that their application for a place at the school was unsuccessful. Sometimes parents submit a late appeal because of difficult circumstances or because they did not understand what was required. Admission authorities should not unreasonably refuse to accept a late appeal. A late appeal should be heard at the same time as, or as soon as possible after, any other appeals for a particular school. Wherever possible, the appeal panel hearing any late appeals should consist of the same members. No hearings should take place before any specified deadline for appeals to be submitted.

### ***Notice given to parents of the date for the appeal hearing***

4.7 Parents should receive written notice at least 14 days (10 working days) before the date their appeal will be heard, unless they have agreed to a shorter period. If they do agree to a shorter period, parents should confirm this with the clerk to the panel in writing. Appeal hearings should be held within a reasonable time – normally within 30 school days of an appeal being made or, for appeals made during the normal admissions round, within 30 school days of the specified closing date for receipt of appeals. To prevent unacceptable delays, admission authorities may wish to make joint arrangements to hear appeals relating to casual applications.

### ***Information for parents about appeals***

4.8 The Secretary of State thinks it important that admission authorities prepare guidance for parents on appeals, based on their knowledge of their own local circumstances. LEAs and governors who are responsible for arranging appeals may consider producing combined guidance for parents in their area. Some of the information in this Code should be a basis for such guidance. It would also be helpful to name people who can answer enquiries from parents about any aspect of the appeals process. It is particularly important that LEAs and governors inform parents that they have a right to attend their appeal hearing, even where their application for admission has been turned down because of ‘class size prejudice’, and the grounds on which their appeal can be upheld are therefore more narrowly defined (see paragraph 4.55). Where it is not clear whether the appeal will be considered under ‘normal prejudice’ or ‘class size prejudice’ grounds – perhaps because the admission number of the school is below the 30 limit and the number of appeals could take it over the limit – parents should be advised to consider both circumstances in preparing their appeal.

### ***The admission/appeals timetable***

4.9 It is important that one appeal panel should hear all the appeals for a particular school, unless there are exceptional reasons why that cannot be done (see also paragraphs 4.68 to 4.72 on “Multiple appeals”). Admission authorities

should arrange their appeals timetable so that appeals, following the normal admissions round, can be heard well before the end of the term preceding entry.

4.10 Planning well in advance is clearly helpful for ensuring that one panel hears all the appeals for a particular school. It is good practice to canvass appeal panel members and to arrange provisional dates and venues for hearings well before the date for allocation of school places. When the precise number of appeals is known, the dates can be confirmed with panel members. As it is always possible that illness or other reasons mean a panel member may have to drop out at short notice, the advance arrangements should line up some potential substitutes.

### ***Notifying the Council on Tribunals of dates for appeal hearings***

4.11 The Council on Tribunals has a supervisory role in appeals and the Council's members sit in on appeal hearings (which include a panel's post-hearing deliberations) from time to time as observers. This is an important part of the Council's work and enables it to have an overview on appeals. Admission authorities should notify the Council of dates on which appeal hearings will take place so that it can arrange for its members to be present at a number of hearings each year. The address for the Council on Tribunals is at Annex B (the visits officer can be contacted on 020 7855 5213).

### ***The venue for the appeal***

4.12 Given the emphasis on independence in the appeals process, it is best to avoid the hearing taking place at the school which is the subject of the appeal and to hold the appeal at a more 'neutral' location. Funding delegated to admission authorities for appeals should cover expenses such as this. The appeal hearing should also be held in a place that is reasonably accessible to the parents. Other factors to be taken into account for deciding the location of the appeal hearing:

- whether the locations have adequate sign-posting;
- whether they have parking arrangements (especially for people with disabilities), and are accessible by public transport;
- whether the building itself is accessible for people with disabilities (and see paragraph 2.16).

### ***Accommodation arrangements for the appeal***

4.13 Points to consider when setting up the accommodation arrangements for the appeal are:

- that there should be room to allow parties and their representative or adviser to have private discussions;

- there should be arrangements (such as a notice on the door) to ensure that the hearing is not interrupted;
- the location of the room should not be such that there is likely to be disturbance from noise going on outside;
- it is particularly important that those waiting outside should not be able to hear what is going on inside;
- the room layout for the appeal hearing should ensure structure, comfort and informality;
- drinking water or other refreshments should be available;
- toilets should be conveniently located;
- there should be name plates for the panel and the clerk;
- adequate time should be allowed for the hearing, especially if an interpreter is present to act on behalf of the parents.

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

#### *Interests of panel members*

4.15 Paragraphs 3.2 to 3.8 of this Code specify people who are disqualified by the 1998 Act from being an appeal panel member. However, there may be cases where it would not be appropriate for somebody to become a member, even if not disqualified from doing so by the regulations.

4.16 Discretion and common sense should be used when making such judgements. Examples of this could be where somebody has an interest in the outcome of the appeal – such as the governor of a school where children of the unsuccessful appellants might attend in that event, or a panel member who is also an unsuccessful applicant for the school in question. Another example could be a parent with a child at the school, who although not disqualified from being a panel member, might be objected to by an appellant because of their connection with the school.

4.17 Care should be taken to avoid bias, or the appearance of bias, in choosing members for a particular panel. Any person married to, closely related to or involved with an appellant (parent or child) should be excluded from membership of the panel that will hear their case. This would also apply to people who are employers/employees of the appellant. Also, a person married to, or closely related to, or otherwise involved with a person excluded from panel membership should not normally be a panel member and partners in a personal relationship should not normally serve on the same panel. In general, any appeal panel member who is known to have particular views about the appellant – good or bad – could be regarded as not being impartial. If there is likely to be any doubt raised by an

appellant about the impartiality of a particular person, then they should not sit as a panel member at that hearing.

4.18 When panel members receive their set of papers for the appeal, they should notify the clerk to the panel if they know any of the appellants so that the appropriateness of their being on the panel can be considered. It is possible that a panel member may only realise on the day that he or she knows the appellant. In those circumstances, the panel member should disclose the fact. The appellant should be asked whether he/she is content that the appeal should continue but if concerns are raised, a panel with different members should be arranged for a later date. If there are five members, the panel member concerned and one other should stand down for that hearing.

4.19 It is good practice to inform parents in advance of the names of panel members, where possible, and the category they come under (i.e. lay member or person with experience in education), so that they can raise any doubts as to the impartiality of particular panel members before the hearing itself.

#### ***'Lobbying' of panel members***

4.20 Out of fairness to the other appellants, members must not be drawn into any discussions with appellants before their hearing is due to take place. They should remind appellants that any additional information that they wish to add to their appeal should be presented in writing before the hearing to the clerk; and that they will have the opportunity to have their say when the hearing takes place. Likewise, panel members must not be drawn into discussions with members or representatives of the admission authority before the hearing and they should not take refreshment breaks during the course of the day with admission authority representatives. The same considerations would apply to clerks, except where the appellant or admission authority representative wishes to ask a procedural question. If a panel member feels that they have been subject to lobbying or pressure from a parent or admission authority, they may ask to be withdrawn from the panel.

#### ***Clerk to the panel***

4.21 Each panel must have the services of a clerk. The clerk is not a member of the panel but has an important part to play in ensuring that relevant facts are established and that the appeal hearing is fair. Clerks should have knowledge of the law on admissions, but should not deal with admissions as part of their normal employment. LEAs and governors should look outside their own staff for people who have relevant experience in working as a professional committee clerk or legal adviser or have experience in the conduct of inquires or disciplinary hearings. It would be helpful for admission authorities to share clerks. It is important for clerks to have a good understanding of this Code and any other relevant information, and to have received appropriate training for their role as a clerk. Funding allocated for admissions and appeals should be used to pay for the services and training of a clerk where necessary.

4.22 The clerk's key tasks are to:

- explain the basic procedures to appellants and deal with any questions they may have;
- ensure that the relevant facts, as provided by both the appellant and the admission authority, are presented and recorded e.g. where there is an inexperienced chairperson, the clerk might tactfully intervene to assist the panel or parents with procedure;
- order the business;
- be an independent source of advice on procedure, the Codes of Practice and the law on admissions (usually giving any advice in the presence of the parties to the appeal);
- record the proceedings, decisions and reasons; and
- notify all parties of the panel's decision.

4.23 If the panel withdraws or invites the parties to do so when it wishes to consider its decision, the clerk should remain with the panel but only for the purpose of offering advice on procedure or law. He or she can assist by reference to notes of evidence, and by recording decisions and the reasons for them.

### *The chairperson*

4.24 The chairperson plays a central part in directing the proceedings, and ability to control the hearing fairly and firmly is essential. Therefore, experience as a magistrate, committee chair, senior union official or the like is invaluable. The chairperson should aim to put the parents at ease and ensure the hearing is conducted in an informal but structured manner. He or she should also introduce all the people at the hearing and explain the role of the clerk. The chairperson should explain at the start that the panel is independent and that if it upholds the parents' appeal, the decision will be binding on the admission authority concerned. The chairperson should conclude the hearing by asking parents if they have been able to raise all the issues they wanted to, and if there are any additional points they would like to make.

### *The panel members*

4.25 All members of the panel should have received appropriate training. At hearings, they need to be aware of the order of the proceedings and play an active part in the questioning both of the presenting officer and the parent. They must not favour either party and should be conscious at all times of acting and being seen to act independently of the LEA or the school's governing body. It is good practice for panel members to be changed every few years (particularly where they have been hearing appeals for only one particular school), to prevent the appearance of bias towards the admission authority (see paragraph 3.13).

### *The parent appealing*

4.26 The role of the parent appealing (the appellant) against a decision is a particularly difficult one and this should be taken account of at all times by the panel. The parent is appealing on behalf of his or her child over a matter that is very important to the child's future. A hearing, no matter how informal, can seem intimidating to a parent. Parents should prepare their case beforehand and should have been given appropriate guidance. The appeal panel should be sensitive and courteous in its treatment of parents but, at the same time, parents should expect to be questioned about their case by the panel. Parents are entitled to question the presenting officer for the admission authority (see 4.27).

### *The presenting officer*

4.27 The admission authority arranging the appeal should provide a presenting officer who must present their decision not to admit the child as clearly as possible and giving all the relevant information. The officer should be prepared to answer detailed questions about the case being heard and questions about the school and its admission arrangements, and will need to be present throughout the hearing to be able to do so. It is good practice for the presenting officer to have been trained in admission appeal procedures.

### *Preparation and production of evidence*

4.28 At least 7 days (5 working days) before the hearing (unless parents have waived their right under this guidance to a period of 14 days' notice of their appeal – see paragraph 4.7), the admission authority should supply the clerk of the appeal panel with the following documents which should be circulated to the panel members and sent to the parents:

- a written statement summarising how the admission arrangements for the school(s) apply to the parent's application, with any relevant background information. Where the parent's appeal relates to the LEA's administration of co-ordinated arrangements (e.g. because an error has allegedly been made, or because application of those arrangements has led to the child being offered a place at one of two or more preferred schools they could have been offered), details of co-ordinated arrangements or a statement from the LEA should be provided;
- a written statement summarising the reasons for the decision, for instance, full supporting information that prejudice to the provision of efficient education or use of resources would arise from the admission of the child (or children) concerned. A statement referring to accommodation, class sizes, capacity, etc should be supported by factual information, as panel members cannot be led on 'tours' of schools to make their own assessments – this would call into question their independence, and could lead to allegations of lobbying (if considered necessary, evidence can be produced in the form of photographs or a video, as well as layout plans of a building);

- where another place has been offered, as identified under co-ordinated arrangements, either the relevant extract of the published scheme or a statement from the LEA, should be provided;
- copies of any information or documents which are to be put to the panel at the hearing, including anything which has been submitted by the parents.

4.29 Admission authorities should make clear the grounds under which the appeal is to be considered to enable parents to prepare their appeal e.g. outlining the limited scope under which an infant class appeal may be upheld. For admissions to infant classes, if it is not clear, parents should be advised to prepare both on class size “prejudice” grounds and normal “prejudice” grounds.

4.30 Parents should also be informed that there is no statutory time limit for submitting information about their appeal, and that they may be able to submit information after lodging their appeal, but before the hearing. The admission authority must provide all the information reasonably asked of it by the parents so that they are in a position to question the admission authority’s case.

4.31 The admission authority and the parents should be notified in advance of the order of proceedings.

4.32 All papers sent to parents should be as clear and as easy to understand as possible.

If any of the parties wish to raise matters or produce documents at the hearing which are not covered by the statement of decision or the notice of the appeal, these should be submitted to the clerk to the appeal panel in good time before the hearing. If substantial new issues are raised for the first time at the hearing by either the admission authority or the parent, an adjournment may be necessary to allow any party taken by surprise to consider the issues. However, there should be no grounds for the admission authority to produce substantial new information at the appeal, although this should not be true of parents who may only have received the detailed information on which to base their appeal 7 days before the hearing. If an admission authority has either refused or been unable to provide information requested by an appellant, the panel should decide whether the information is necessary for the hearing to proceed. An admission authority’s failure to provide reasonable information should not be allowed to prejudice the child’s case, and the panel may choose either to continue or, if they consider it necessary, to adjourn until the information has been provided.

4.33 Documents about appeals should be sent to the parties involved through the post, ensuring that they will arrive in good time, or should be delivered to a parent or to a governing body at the address given to the clerk in the notice of the appeal; or otherwise at the address of the parent in the admission authority’s records, and at the address of the clerk to the admission authority.

## ***Representation***

4.34 Appeal panels must allow parents who are appealing against their child's non-admission to a school, including cases where the provisions described in regulation 6(2) of the Appeals Arrangements Regulations on infant class sizes apply (see paragraph 4.54), the opportunity to appear in person and make oral representations i.e. to clarify or supplement their written appeal. Parents should be encouraged to attend the hearing and it is important to arrange a time and a place that enables them to do so. Nevertheless, in some cases, particularly with multiple appeals, it may not be possible to offer parents alternative times for their hearing unless there are exceptional reasons why they cannot attend the appeal at the original time which has been offered (see also paragraph A.5 on religious holidays or religious observance). If it is not practical to offer an alternative date, the appeal will have to be decided on whatever information is available.

4.35 The panel should allow the parent to be accompanied by a friend or to be represented. Bearing in mind the importance of maintaining an informal atmosphere, legal representation will not usually be necessary, although parents are free to have such representation if they wish. If the parents intend to be represented, or accompanied by a friend or adviser, or to bring an interpreter, one of them should let the clerk to the panel know in advance. In addition to the interpreter, the parent's representative, friend, or adviser may also speak on behalf of the parent. It is not good practice for the parent's 'friend' to be a member of the Council or a local politician, as this may lead to a conflict of interests for them.

## ***Evidence and witnesses***

4.36 Parents are entitled to decide how to organise their presentation to the appeal panel but it is unlikely to be necessary for witnesses to attend. The panel may consider it appropriate to allow witnesses who do attend to give evidence, provided that it is relevant and not repetitive. Panels may (with advance warning to the parents) ask for corroboration from them on matters such as medical conditions or the parents' address etc.

4.37 It is for the panel to decide whether any witness, having given evidence, should remain for the remainder of the presentation of the case. This may assist the informality of the proceedings but it may not always be desirable. It is unlikely to be appropriate for local politicians to attend as witnesses because of potential conflicts of interest.

## Part II The appeal hearing

### *Nature of the hearing*

4.38 Appeal panels must operate according to the principles of natural justice, and the conduct of hearings should be based on fairness and, as far as possible, create an informal atmosphere. Informality will be difficult to achieve if, for example, the hearing is tape-recorded and this should be avoided. There is more detailed guidance on the nature of appeal hearings, including the principles of natural justice, in paragraph 4.42.

4.39 At the start of the hearing, the chairperson should welcome the parties, and introduce the panel members and the clerk, then the presenting officer for the admission authority and the parents or representative of the child. Even if the presenting officer is known to the panel through their attendance at a number of hearings, care should be taken to avoid giving any impression that the panel and presenting officer are working together. The procedure should be explained clearly and simply by the panel chair, giving details of the issues which the panel will be addressing and in what order. The two-stage process or limited scope of an infant class-size appeal should also be explained clearly to the appellant, as appropriate. The chairperson should explain that the panel is an independent body and that if it upholds the parents' appeal, the decision will be binding on the admission authority concerned.

4.40 As specified in Schedule 2 of the Appeal Arrangements Regulations, appeals should normally be heard in private, unless the circumstances described in paragraphs 4.68 to 4.72 apply.

4.41 It is essential that no part of the proceedings takes place other than in the presence of all the panel members. One party should never be alone with the panel in the absence of the other party where both parties are attending the hearing.

### *Guiding principles for appeal panels*

4.42 Appeal panels perform a judicial function. They must be, and be seen to be, both **independent and impartial**. They must operate in accordance with the rules of natural justice, which means being fair to all parties at all times. The principles of natural justice most directly relevant to appeals are:

- no member of the panel should have a vested interest in the outcome of the proceedings or any involvement in an earlier stage of the proceedings;
- each side should be given the opportunity to state their case without unreasonable interruption;
- written material must have been seen by all parties. If a new issue arises during the proceedings, parties should be offered an opportunity to consider and comment on it.

## *Principles in practice*

4.43 The key principles which should guide any appeal panel hearing are:

- Independence** The overriding responsibility of an appeal panel is to act **independently**. The panel must do everything possible to ensure that both parties appearing before the panel regard it as truly independent.
- Discipline** What is meant, in this context, is that appeal panels must follow interpretations of law laid down by the courts, as they are part of the legal system.
- Informality** Although admission appeal panels are part of the legal system, appeal hearings should be informal. Their procedures and conduct should ensure that both parties have a chance to say what they have to say, to ask questions they wish to ask and to make appropriate submissions. Informality should not lead to lack of structure, and an even-handed approach must be maintained.
- Evidence** Appeal panels have to decide the facts of a case and then apply the law to that case. It may not always be possible to establish all the facts in full: for example, where evidence given is “hearsay” concerning a person who is not present at the hearing. Above all, the evidence should be relevant and helpful to the hearing. Some evidence may be clearly unreliable and should be treated with caution. Where possible, appeal panels should try to check the evidence presented. Where there is a conflict of evidence which cannot be resolved, panels will have to rely on their assessment of the reliability and credibility of the person giving evidence. The panel may consider it appropriate to allow witnesses who do attend to give evidence, provided that it is relevant and not repetitive. Panels may seek independent corroboration (with advance warning to the parents) of matters such as medical conditions or the parents’ address.
- Representation** The individual making the appeal will not usually need legal representation but does have the right to bring a legal advisor or a friend along for support.
- Questioning** The appeal panel may ask questions of both parties to make sure it has a complete picture. This should be done in an impartial way.

### *The effective hearing*

4.44 Appeal panel members should read all the papers carefully before the hearing takes place. The functions which appeal panel members have to perform at a hearing are:

- hearing and carefully noting the evidence;
- establishing the material facts in the light of the evidence presented;
- ascertaining the relevant law and applying this to the facts;
- coming to a decision;
- recording that decision in writing and giving reasons why that decision has been reached.

4.45 At the conclusion, all parties should:

- have understood the nature of the proceedings;
- have been given proper opportunities to speak, put evidence forward and to ask questions;
- feel that they have said everything they wish;
- feel that they have been treated courteously and made to feel at ease;
- feel the panel has been listening to and has understood all the points made;
- be clear as to when they are to be informed of the panel's decision.

4.46 When the decision is made known, all parties should:

- have understood the reasons for the decision, which should be expressed clearly and concisely (in writing);
- be satisfied that, whether or not they have been successful, the hearing has been a fair one.

4.47 It is important that appeal panels bear in mind cultural differences when hearing appeals (see Annex A).

### *The order of the hearing*

4.48 It is preferable that the order of the hearing is notified in advance to all parties. A suggested order is set out below:

- the case for the admission authority;
- questioning by the parents (if prejudice is not proven, the hearing would end at this stage);

- the case for the parents;
- questioning by the admission authority;
- summing up by the admission authority;
- summing up by the parents.

4.49 The panel members may ask questions at any time if they require clarification of what is being said or if they need information in order to reach a decision. At no point should panel members attempt to answer questions for the admission authority – this could give the impression that they are working together.

4.50 The procedure may have to be adapted in multiple appeals (see paragraphs 4.68 – 4.72).

### ***Statutory matters to be taken into account by the appeal panel***

4.51 Admission authorities are under a duty, under section 86(2) of the 1998 Act (as amended by the Education Act 2002), to comply with parental preference except in certain limited circumstances, namely:

- where to admit the child would prejudice the provision of efficient education or the efficient use of resources. LEAs and governing bodies may not refuse to admit children to any year group in which pupils are normally admitted to the school on these grounds unless the number of preferences or applications for places in that relevant year group exceeds the school's admission number. Prejudice may arise by reason of measures that would be required to be taken to comply with the limit on infant class sizes (referred to in this guidance as 'class size prejudice' – see paragraphs 4.53 – 4.60);
- where the school is wholly selective by high ability or by aptitude, and the admission of the pupil would be incompatible with such selection under the admission arrangements (partially selective schools, and those which operate banding, must admit up to their published admission numbers). Schools which are partially selective – sometimes referred to as 'bilateral schools' or as having 'grammar school streams' – may not keep selective places empty. Only schools that are wholly selective by high academic ability or by aptitude, and those admitting to their 6th form by reference to academic ability, can keep places empty if they do not have sufficient applicants of the required standard;
- where the child has been permanently excluded from two or more schools and at least one of the exclusions took place after 1 September 1997. The requirement to comply with parental preference is disapplied for two years after the second exclusion. However, a child is not to be taken as having been permanently excluded for these purposes where: the exclusion took place before the child reached compulsory school age; the pupil was reinstated following exclusion; or a governing body reviewing the decision

to permanently exclude a pupil, or an appeal panel hearing an appeal, decided that it would have been appropriate for them to direct that the pupil be reinstated had they considered it practical for them to do so in the circumstances. A permanent exclusion is regarded as taking effect from the first school day the headteacher has told the pupil not to attend the school;

- where state maintained boarding schools have set separate admission numbers for day pupils and boarding pupils and have more applicants for one or other category than places available, even though places may be available in the other category;
- where another place has been offered, as identified under co-ordinated arrangements.

4.52 All appeal panels are required to take into account parental preference and the reasons for particular preferences (see regulation 6(1) of the Appeals Arrangements Regulations), the admission arrangements published by the admission authority and, if appropriate, how the local co-ordination scheme says the decision on what place to offer will be made if an applicant meets the criteria for admission to more than one school.

### *Infant class appeals*

4.53 In many areas, children are admitted to Reception classes at the start of each of the three terms in the school year. Most admission authorities now consider all applications for admission of 'rising fives' at the same time. This enables them to have due regard to class-size legislation while not disadvantaging parents who may want to defer their child's entry to the school until later in the academic year. It also ensures that all appeals can be heard at the same time, regardless of the term in which the pupil is to enter the school. If parents decide to defer entry of their child to later in the academic year, their place should be regarded by a panel in the same way as if the child had already taken it up.

4.54 Admission to an infant class in the normal year of entry may not be refused on prejudice grounds unless the number of applications for places at the school exceeds the admission number. Statutory limits on class sizes provide that, subject to certain limited exceptions, infant classes of 5, 6 and 7 year olds may not contain more than 30 pupils with a single qualified teacher. These exceptions are:

- children with statements of special educational needs who are admitted to the school after the normal admission round;
- children moving into the area outside the normal admission round for whom there is no other available school within reasonable distance;
- children admitted outside the normal admission round because the person responsible for making the original decision recognises that an error was

made in implementing the school's admission arrangements, and that a place should have been offered;

- where the appeal panel upholds an appeal under either of the grounds described at paragraph 4.55.

In these cases, the child will be an excepted pupil for the remainder of the academic year unless they could readily be accommodated within another suitable infant class in the particular school (i.e. without the need to take measures to ensure that the class size limit is complied with which would cause prejudice to the provision of efficient education or the efficient use of resources).

4.55 Where a child has been refused admission to a school on the grounds that prejudice to efficient education or the efficient use of resources would arise by reason of the measures required to keep to the statutory class size limit ('class size prejudice'), an appeal panel must offer a place to a child only where it is satisfied either:

- that the decision to refuse admission was not one which a reasonable admission authority would make in the circumstances of the case ("**Ground A**"); or
- that the child would have been offered a place if the admission arrangements had been properly implemented ("**Ground B**").

Accordingly, infant class size appeals should follow the process set out in paragraphs 4.56 to 4.60 below.

4.56 **First:** the appeal panel should consider the school's published admission arrangements (including any co-ordinated arrangements) for the admission of pupils, and decide whether they were correctly applied in the individual child's case. For example, the admission authority may have over-looked the fact that the child had a sibling already at the school, or miscalculated the distance from the child's home to the school, where criteria such as sibling links or proximity would have given the child greater priority under the school's published admission arrangements.

4.57 In considering an appeal under Ground B, the panel should only consider the material available to the admission authority when it made its decision, together with material that the authority would have been aware of if it had acted reasonably, although the panel may allow fresh material such as a letter or a statement to be submitted by the parents in order to assist in identifying the original error. The panel should 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. For example, even if the admission arrangements had been properly applied, the child may still not have been offered a place if the places available had already been allocated.

**Secondly**, unless an appeal is upheld under ground B, the appeal panel should consider under Ground A whether the admission authority's decision was not one which a reasonable admission authority would make in the circumstances of the case. Under this ground, a panel **can** have regard to fresh information which was not available to the admission authority when it made its original decision, since the panel is envisaging the decision which the admission authority **would make** if considering the matter at the time of the appeal hearing. However, in *London Borough of Richmond, ex parte JC*, the Court of Appeal held that the original decision should stand unless such additional material is persuasive and, taken with the rest of the information available, and any other relevant circumstances, renders the original decision irrational. Relevant circumstances would include, for example, the fact that such material could have been made available to the admission authority at the time it made the original decision, or the fact that all the available places have already been allocated.

4.58 It is not enough for the admission authority to show that the admission number has already been reached: it should also demonstrate what measures it would have to take to comply with class size limits if an additional child were to be admitted (e.g. hire another teacher). The parent may question the case presented by the admission authority and raise points of their own in support of a contention that admission of an additional child would not cause such prejudice. If the panel finds that a reasonable admission authority considering the case **would** decide that the child could be admitted without breaching the class size limit, then it should uphold the appeal. Where the panel finds that a reasonable admission authority could admit more children before class size prejudice would arise, but that there are potentially more successful appellants than it could admit without such prejudice arising, it should follow the two-stage process as described in paragraph 4.71. In this event, it may be necessary to adjourn the hearings so that both parents and the admission authority can reconsider the presentation of their cases.

4.59 In considering the reasonableness of the admission authority's decision, the panel must determine whether it would be perverse to refuse to admit the particular child. It should take into consideration: the reasons for the published admission arrangements and the parent's preference; the circumstances of the particular child and family; and the practical consequences for both the school and other children competing for places in the relevant infant class or classes if the child were to be admitted. However, the appeal panel has no power to analyse whether the admission arrangements themselves are reasonable or perverse.

4.60 In cases where a school has had to take temporary measures to ensure that it complies with class size legislation, the panel should also consider any future prejudice which would be caused by admission of an additional child.

## *Other primary school and secondary school admission appeals*

4.61 Appeals other than those against decisions made on the grounds of class size prejudice must follow a two-stage process.

**First: a factual stage:** at which the panel considers whether the school's published admission arrangements were correctly applied in the individual's case, and decides whether "prejudice" would arise were the child to be admitted.

If it is clear that the child would have been offered a place if the admission arrangements had been properly implemented, then the panel must uphold the appeal e.g. if a child met the relevant criteria, but was refused admission on the basis of a disability (see paragraphs 2.13 – 2.15).

It is not enough for the admission authority to show that the admission number has been reached; it should also demonstrate what prejudice would be caused by the additional admission. In order to establish whether or not there is prejudice, the panel will wish to consider a number of factors, such as the school's published admission number and, for applications made for admission to a later year group, whether any changes have been made to the school's physical accommodation or staffing level since an admission number was set for that year group when it was the normal year for admission to the school. The appeal panel should be satisfied that the school's published admissions number is a justified limit. The parent may question the case presented by the admission authority and raise points of their own in support of a contention that admission of an additional child would not cause prejudice.

If the appeal panel is not satisfied in the first stage that there would be prejudice if the child were admitted to the school, where there is only a single appeal for the school, the panel should allow the appeal (but for multiple appeals for the same school see paragraph 4.71).

The panel will also need to consider whether the oversubscription criteria for the school were correctly and impartially applied to the pupil concerned, and if not, whether this led to the child in question being refused admission, whereas proper application of the criteria would have led to their acceptance. In that case, the panel should uphold the appeal and not go on to the second stage.

**Second: a balancing stage:** at which the panel exercises its discretion, balancing between the degree of prejudice and the weight of the parental factors, before arriving at a decision.

Where the admission authority is able to satisfy the appeal panel that there would be prejudice, then the appeal panel should go on to the second stage and consider the parents' reasons for applying for their child to attend the particular school (for example, why they want that school in particular, and

what it can offer their child that others cannot). The panel will need to consider the consequences for the admission authority and other children of complying with the parents' wishes and how serious those consequences would be.

The admission authority concerned may submit, as part of its evidence to the panel, that the child in question has been allocated a place at an alternative school. This may be of particular relevance where the question of distance between home and school is being discussed. Equally, it is open to the parent to state any reasons why an alternative school would be unsuitable or less suitable. With co-ordinated admission schemes, this may be appropriate where a parent 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.

### *Appeals for selective schools and 6th forms*

4.62 Admission authorities for grammar schools are permitted to select pupils for admission on the basis of academic ability, and pupils seeking admission (or, in the case of pupils already at a school, transfer to the 6th form) may also be selected on the basis of academic ability. In either case, admission authorities may leave places unfilled if there are insufficient eligible applicants, whereas admission authorities for schools with partially selective admission arrangements must allocate all available places if they have sufficient applications of any academic standard. Most admission authorities for selective schools use performance in an entrance test as a basis for determining whether a child is of the required academic standard for admission, whereas for entry to 6th forms there is usually a requirement to have attained a specified number of GCSEs and/or specified grade. These requirements should be set out in the schools' published admission arrangements. Some authorities for grammar schools also choose to operate a non-statutory review system to consider whether children who have not reached the specified standard, but have "borderline" scores, should be deemed as being of grammar school standard. This does not replace a parent's right to have their appeal heard by a statutory appeal panel.

4.63 The fact that a child has been assessed as being suitable for entry to a grammar school or to a school's 6th form does not necessarily guarantee them a place in one if the school is oversubscribed.

4.64 In the case of applicants who have been refused admission to a particular school because there are more eligible children than places available, where other oversubscription criteria have then been applied, an appeal panel would follow the normal two-stage process described in paragraph 4.61.

4.65 Panels may take account of parents' arguments as to why their child did not perform their best on the day of the test, or of any evidence to support their

contention that the child is suitable for admission to a grammar school or to a 6th form. However, the panel's role, as for appeals to other schools, is to consider an appeal against the decision to refuse admission and to determine whether the child should be admitted to the school. The panel should not attempt to make its own assessment of a child's ability, but may need to decide whether the original decision that the child was not of the required standard was reasonable. In doing so, it may want to consider whether any review process (see paragraph 4.62) was carried out in a consistent and objective way, and whether testing arrangements were fair e.g. reasonable adjustments made for children with disabilities (see paragraph 2.13).

### ***Casual applications for grammar schools and 6th forms***

4.66 Admission authorities for wholly selective schools and 6th forms are bound by the same duty as those for other maintained schools. In effect, this means that they must consider applications made at any time (but see paragraph 4.83 for repeat applications within the same academic year) and, if they refuse admission, must offer a right of appeal. Many selective schools do not offer a facility for testing applicants for admission outside the normal admission round. In that situation, if the admission authority is not willing to accept that such a casual applicant is of the required academic ability for admission, it must make arrangements for an appropriate assessment of the child's ability to be made if their parent lodges an appeal. If this is not done, the panel must work on the assumption that the child is of the required academic standard, and should follow the two-stage process described in paragraph 4.61.

### ***Boarding schools***

4.67 Boarding schools may publish separate admission numbers for day pupils and boarders, and leave places unfilled in one category or another if there are insufficient applicants for that type of place. Additionally, oversubscribed boarding schools may also interview applicants to assess a child's suitability for boarding. The appeal process, however, is the same as that described for other categories of school.

### ***Multiple appeals***

4.68 Appeal panels will often have to handle appeals from a number of parents who all wish their children to be admitted to a popular school. In these circumstances, it is advisable to arrange appeal timetables so that one appeal panel comprising all the same members considers all the appeals.

4.69 Where multiple appeals for the same school are being heard, decisions should not be made on individual cases until all parents have been involved in both stages of the process, or an injustice could result. Note-taking by the clerk to the panel will be important in these circumstances. However, appeal panels will need to take account of circumstances where a parent asks to be heard later than the time

arranged. If the gap is significant, it might not be reasonable to hold up decisions for the majority.

4.70 If there are exceptional circumstances, and more than one panel has to consider appeals for the same school, each panel must make its own decisions absolutely independently, since decisions can only be taken by members who hear the appeals and only on the basis of the evidence put forward in the appeal hearing in the presence of both parties.

### *Procedures for dealing with multiple appeals*

4.71 The following approach to multiple appeals may be used:

**First**, the panel should assess whether admitting all the pupils would cause prejudice to efficient education or the efficient use of resources ('prejudice'), and whether the child would have been offered a place if the admission arrangements had been properly implemented. If the panel finds that admission of the appellants would not cause such prejudice, then their appeals should be upheld.

**Second**, if the panel decides that admission of additional children would result in prejudice, it should consider, for each individual case, whether the parent's grounds for their child to be admitted to the school outweigh such prejudice. This involves no comparison between appellants' cases.

However, if there are several cases which outweigh the prejudice to the school and merit admission, but the panel determine that the school could not cope with that number of successful appeals, the panel should then compare cases and decide which of them to uphold.

4.72 Appeal panels should deal with multiple appeals in one of two ways:

**Grouped appeals:** where the admission authority's case in respect of a school is heard once for the first stage of the appeal.

In this scenario, the admission authority presents its general case (the factual stage) in the presence of all or groups of parents (and any representatives) who may question the case. If the panel concludes that prejudice exists, it will be necessary to move to the second stage. At this stage, the appeals of the individual parents should be heard without the presence of the others, including consideration of whether the admission arrangements were properly applied. No decisions should be taken until all the appeals have been heard.

**Individual appeals:** where the admission authority presents its case, followed by the individual parents' cases, as in the order of the hearing set out in paragraph 4.48. In these circumstances, the panel will hear the admission authority's case repeatedly. If there are large numbers of appeals, it may be better to hold grouped appeals.

During the first stage, where the admission authority is arguing that prejudice would arise, its case will always be the same. The admission authority must not produce new evidence, or expand upon its case as the appeals proceed, because parents earlier in the process will not have had an opportunity to consider that evidence and respond accordingly. The clerk should explain at the start of the hearing that the admission authority may not do this. If, however, material new evidence comes out in the questioning of the admission authority's evidence, the clerk should ensure that the appeal panel considers what bearing the evidence may have on all the appeals and should decide how best to advise so that the panel deals with the matter fairly. This may entail adjourning the appeals to give parents the opportunity to consider and challenge the new evidence.

When hearing multiple appeals, if the panel decides that further children could be admitted without prejudice to the school, it must then determine how many could be admitted and allow appeals up to that number. In considering which appeals to allow, the panel may have some regard to the admission criteria, but also to other factors in the individual parents' cases so that any compelling reasons for admission which the parent presents can be taken into account.

If prejudice is found, and where there are remaining appellants, the panel must move to the second stage of the appeal; deciding whether, and which of, the individual parental preferences outweigh the prejudice.

### ***Record of proceedings***

4.73 In addition to notes taken during appeals to assist the panel's decision-making process the clerk of an appeal panel should keep brief notes of the proceedings, the attendance, the voting and the decisions (together with the reasons for these decisions) in such form as the admission authority may agree is appropriate. Such documents are the property of the appeal panel and should not normally be available to the parties. Notes of the proceedings may be typed or hand written and should be clear.

### ***Applications outside the normal time of entry***

4.74 Even if there are no places available in the appropriate year group, admission authorities must formally consider 'casual applications' and, if refusing admission, should inform parents in writing why their application was unsuccessful, advising them of their right of appeal.

4.75 When considering applications to years other than the normal year of entry, admission authorities will rarely be able to prove prejudice as a ground for refusing an additional pupil while numbers remain below the published admission number which was in operation when that year group was the normal year group for admission. And they should expect to go above that number where the school's accommodation and/or resources have increased since then. Admission authorities

may refuse a child entry to a year group outside the normal year of entry if the circumstances described in paragraph 4.78 apply. Casual applications for places in an infant class should normally be refused if admission of a child would result in the class size limit being exceeded (unless the child would be treated as an 'excepted pupil' as described at paragraph 4.54).

### ***Waiting lists***

4.76 There is no statutory requirement for admission authorities to maintain waiting lists, and appeal panels have no power to determine where a child should be placed on the waiting list for a school. Panels should take no account of where the admission authority has placed a child on the waiting list, or of the fact that the parents of other children on the waiting list may not be appealing.

### ***Pupils with special educational needs; pupils with challenging behaviour; pupils with disabilities***

#### ***Pupils with statements of special educational needs***

4.77 If the parent of a child with a statement of Special Educational Needs wishes to appeal against the school named in the statement, or the fact that no school has been named, the appeal should be made to the Special Educational Needs and Disability Tribunal, not to the admission appeal panel. Where a school is named in the statement, the governing body has a duty to admit the child to the school. Guidance on the admission to schools of children with statements of special educational needs is given in the Special Educational Needs Code of Practice.

#### ***Pupils with challenging behaviour***

4.78 The School Admissions Code of Practice refers (at paragraph 7.5) to instances where it might be appropriate to refuse admission of a challenging child, even when places are available in a school. Appeal panels will need to take account of these considerations when hearing appeals for pupils who fall within this category, as well, of course, as considering the arguments put forward by the parents for their child to be admitted to the school in question. It is important in these cases that the panel carefully considers whether the admission authority has clearly proven that admission of the child would be prejudicial.

#### ***Pupils with disabilities***

4.79 Panels will hear appeals against non-admission where discrimination for a reason related to the pupil's disability is alleged to have taken place (see paragraphs 2.13 to 2.15). In considering such appeals, the panel must take into account the Disability Rights Commission's guidance in their Code of Practice for Schools. They must, along with their usual deliberations, consider whether the admission criteria have been correctly and impartially applied, or if the pupil 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 schools.

## **PART III After the appeal**

### ***Decisions taken by the appeal panel***

4.80 The decisions of admission appeal panels are binding on admission authorities and can only be overturned by the courts. Appeal panels should aim to arrive at unanimous decisions. If this is not possible, appeals must be decided by a simple majority of the votes cast. In the case of an equality of votes, the chair to the panel will have a second or casting vote.

### ***Notification of the decision to parents***

4.81 The panel must communicate the decision, and the grounds on which it is made, in writing to parents and the admission authority. The decision letter should make reference to the two-stage process – unless that was not followed, for example because the appeal involved a class size issue – and indicate the establishment of prejudice by the admission authority. The letter should also explain in full why the panel decided that the individual circumstances of the parents' case were considered sufficient or insufficient to outweigh the prejudice arguments of the admission authority, making reference to any other issues raised by the parent which were considered by the panel.

4.82 The written decision should be sent by the clerk and it should be expressed clearly, using straightforward language that can be readily understood by a lay person. The letter should be sent as soon as possible after the appeal panel has made its decision and ideally within seven days, although this may not always be possible where there are multiple appeals for one school.

### ***Further appeals***

4.83 Although parents who have appealed unsuccessfully can reapply for a place at the same school in a later academic year, and have a right of appeal if unsuccessful, some parents may also seek to reapply in the same academic year. Unless there are significant and material changes in the circumstances of the parent, child or school relevant to a further application, the admission authority may decide not to reach a fresh decision (or 'determination') in relation to such applications. Common examples of changes in circumstances since the time the original application was made would be medical reasons, or that the family has moved house. Where the admission authority has refused to consider another application for the same year group, no fresh appeal can be made. However, if its policy is not to consider repeat applications in the same academic year, unless there has been a change of circumstances relevant to the application, this policy must be clearly stated in the published admission arrangements.

4.84 Where there have been material changes in circumstances and the admission authority decides again not to admit the child, the parents will have the right to a fresh appeal. To ensure that the parents receive a fair hearing, it is advisable that

the panel which hears their second appeal consists of different members and if possible has a different clerk.

### ***Complaints to the Local Government Ombudsman***

4.85 The Local Government Ombudsman can investigate written complaints about maladministration on the part of an admission appeal panel. This is not a right of appeal and has to relate to issues such as a failure to follow correct procedures or a failure to act independently and fairly, rather than just that the person making the complaint thinks that the decision is wrong.

4.86 Where the Local Government Ombudsman, having considered a complaint about the actions of an appeal panel, finds that there was “maladministration” that caused injustice, one of the remedies sometimes proposed is that there should be a fresh appeal conducted before a differently constituted appeal panel. There should also be a different clerk to the panel where possible. In those circumstances, the Ombudsman would recommend that the new appeal panel should have the same powers as the original appeal panel. Furthermore, admission authorities may for their own reasons decide to have a further appeal in response to a complaint.

4.87 Although there is no further right of appeal, admission authorities do have the discretion to arrange a new panel following an Ombudsman’s recommendation and undertake to accept the decision.

4.88 There are three Local Government Ombudsmen in England. Each of them deals with complaints from different parts of the country:

London boroughs north of the river Thames (including Richmond but not including Harrow), Essex, Kent, Surrey, Suffolk, East and West Sussex, Berkshire, Buckinghamshire, Hertfordshire and the City of Coventry:

Local Government Ombudsman  
21 Queen Anne’s Gate  
London SW1H 9BU  
Tel: 020 7915 3210  
Fax: 020 7233 0396

City of Birmingham, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire and the north of England (except the Cities of York and Lancaster):

Local Government Ombudsman  
Beverley House  
17 Shipton Road  
York YO30 5FZ  
Tel: 01904 663200  
Fax: 01904 663269

London boroughs south of the river Thames (except Richmond) and Harrow; the Cities of York and Lancaster; and the rest of England, not included in the other two offices' areas:

Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry CV4 8JB  
Tel: 024 7669 5999  
Fax: 024 7669 5902  
Website: [www.lgo.org.uk](http://www.lgo.org.uk)

### ***Complaints to the Secretary of State***

4.89 The Secretary of State cannot review or overturn decisions of individual appeal panels but can consider:

- whether the appeal panel was correctly constituted by the relevant LEA responsible; and
- whether the admission authority or governing body has acted reasonably in exercising functions in respect of the appeal process.

4.90 If, for example, the Secretary of State is satisfied that the LEA or governing body has failed to constitute an appeal panel properly, it can be directed to appoint a properly constituted appeal panel.

## **Chapter 5**

# **Appeals by governing bodies against LEA decisions to admit 'twice excluded' pupils**

### **Introduction**

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

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

### **Notice of appeal**

5.3 When a decision has been taken that a child to whom section 87(2) applies should be admitted to a school, the authority must give the governing body of the school notice in writing of that decision and of the governing body's right to appeal. An appeal by the governing body against such a decision must be made in writing not later than the 15th school day after the day on which it is given notice and must give the grounds on which the appeal is being made.

5.4 The appeal panel will then meet on a date determined by the local education authority to consider the appeal. However, that date must not be later than the 15th school day after the day on which the appeal is lodged.

### **Appeal panels**

5.5 A person may not be a member of an appeal panel constituted to consider section 95(2) appeals if he or she has been involved in any way in previous consideration of whether the child in question should be reinstated at any school from which he or she has at any time been permanently excluded. A person would also be disqualified if he or she had been involved in a previous appeal hearing relating to the child under section 95(2).

## The appeals procedure

5.6 The appeal panel must allow:

- the LEA and the governing body to make written representations;
- a representative of the LEA, nominated by the authority, and a governor nominated by the governing body, to appear and make oral representations; and
- the governing body to be represented.

5.7 In considering the appeal, the appeal panel must have regard to:

- the reasons for the LEA's decision that the child in question should be admitted; and
- any reasons put forward by the governing body as to why the child's admission would be inappropriate.

5.8 Appeals should be heard in private, except when the LEA directs otherwise. The panel has the discretion to direct that a member of the LEA may attend any appeal as an observer; and one member of the Council on Tribunals may also attend any appeal in this capacity.

5.9 Two or more appeals may be considered and dealt with at the same hearing, if the appeal panel considers that it is expedient to do so because the issues raised by the appeals are the same or connected.

5.10 If the members of the panel disagree, the appeal shall be decided by a simple majority of the votes cast. If the votes are equally divided, the chairperson of the panel shall have a second or casting vote. The decision is binding and the school and LEA must comply with it.

5.11 The decision of an appeal panel and the grounds on which it is made should be communicated by the panel in writing to the LEA and governing body concerned by the end of the second school day after the conclusion of the appeal hearing. It may also be helpful if the decision is conveyed to all parties, including the parents concerned, by telephone the day after the hearing, before it is confirmed in writing.

## **Chapter 6**

# **Training of appeal panel members and other practitioners**

### **General considerations**

6.1 The Secretary of State considers that it is very important for appeal panel members and chairpersons to receive training, both before being appointed to a panel and afterwards, to continue to update their skills and knowledge during membership. It would not be appropriate for untrained members to sit on a panel. Admission authorities should also consider the training needs of panel clerks and presenting officers who have a crucial role to play in ensuring that the appeal process operates fairly and effectively. One effective option is to offer differentiated training for particular roles e.g. chairing skills, role of the clerk etc.

6.2 LEAs and governors of foundation and voluntary-aided schools are responsible for arranging training for the appeal panels which they are required to establish, and funds are allocated to them to meet appeals-related costs. It is also important that a person (or more than one person) is identified within each admission authority to have responsibility for overseeing that arrangements are made for appeal panel members and other practitioners. Admission authorities should consider what scope there is for co-operating on training, and LEAs and governing bodies of schools will benefit from sharing information and good practice with each other.

6.3 Information for School and College Governors (ISCG) offer advice on training for panel members, and have produced and distribute training material on behalf of the Department. They also run courses when practicable. Their address is at Annex B.

6.4 The Council on Tribunals (which operates under the Tribunals and Enquiries Act 1992) advises and supervises the procedures and working of tribunals, which includes admission appeal panels. The Council, and the Judicial Studies Board, has a significant interest in the training of panel members and the role of clerks. LEAs and schools which are responsible for arranging appeals can seek advice from both the Council on Tribunals and the Judicial Studies Board about training.

6.5 With the agreement of all parties involved, the training of panel members, particularly chairpersons, could involve attendance at an appeal as an observer. However, experience has shown that too many people at the hearing can be daunting to parents and pupils and care should be taken in this regard. It would be best to avoid allowing an additional observer when other observers, such as a member of the Council on Tribunals, may also be present.

## **Annex A**

### **Cultural differences**

A.1 In hearing appeals, panels should bear in mind the following six key points:

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

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

A.2 Above all, appeal panels must ensure that their decision does not racially discriminate against an appellant and they should have regard to the Race Relations Act 1976 (as amended) (see also paragraph 2.12 of this Code).

#### **Names and naming systems**

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

## South Asian naming systems

**Hindu** personal name + middle name + family name e.g. Vijay Lal Sharma and Jyoti Devi Chopra should be addressed as Mr Sharma and Mrs Chopra

**Sikh** male: personal name + Singh (+ family name)  
female: personal name + Kaur (+ family name)

eg. Karamjit Singh (Gill) and Jaswinder Kaur (Grewal)

Should be addressed as Mr Gill and Mrs Grewal or Mr Karamjit Singh and Mrs Jaswinder Kaur

**Muslim** male: religious name + personal name (+ hereditary name)  
or  
personal name + religious name (+ hereditary name)

female: personal name + titular name  
or  
personal name + second personal name

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

A.4 Further guidance on this is available in “Names and Naming Systems”, published by the Judicial Studies Board (see Annex D).

## Religious holidays and religious observance

A.5 Where possible, appeals should not be held at times when parents may be unable to attend due to a religious holiday or religious observance. These times should be respected, unless arranging the appeal for another day would be impractical and cause delays in the appeal arrangements.

## Annex B

### Sources of reference (information correct at time of publication)

- **Her Majesty's Stationery Office** have published the text of all Acts of Parliament from 1988, and all Statutory Instruments (regulations) from 1987, on their website at:

[www.legislation.hmsso.gov.uk/](http://www.legislation.hmsso.gov.uk/)

HMSO does not sell publications, but printed versions of an Act, Statutory Instrument or any other official publication, can be obtained from:

The Stationery Office Ltd  
PO Box 29  
Norwich NR3 1GN  
Telephone: 0870 600 5522  
Fax: 0870 600 5533

- **The School Admissions Code of Practice** can be obtained from:

DfES Publications  
PO Box 5050  
Annesley  
Nottingham  
NG15 ODJ  
Telephone: 0845 602 2260  
Email: [dfes.prolog.uk.com](mailto:dfes.prolog.uk.com)

(Please quote ref: DfES/0031/2003)

The Code is also available on the Department's website at [www.dfes.gov.uk](http://www.dfes.gov.uk)

- **Information for School and College Governors** offers advice on training for appeal panel members and training material:

Information for School and College Governors (ISCG) at Avondale School  
Sirdar Road  
London  
W11 4EE  
Telephone: 020 7229 0200  
Website: [www.governors.fsnet.co.uk](http://www.governors.fsnet.co.uk)

- **The Council on Tribunals** publishes the “Framework Standards for Tribunals”, which sets out the key issues the Council is concerned with in keeping under review the constitution and working of the tribunals under its supervision. It also publishes ‘Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act’. These are available from:

The Council on Tribunals  
81 Chancery Lane  
London WC2A 1BQ  
Telephone: 020 7855 5200  
Fax: 020 7855 5201  
Website: [www.council-on-tribunals.gov.uk](http://www.council-on-tribunals.gov.uk)

- **The Judicial Studies Board** has an advisory role in the training of chairpersons and members of panels:

Judicial Studies Board  
9th Floor  
Millbank Tower  
Millbank  
London  
SD1P 4QU  
Telephone: 020 7217 4763  
Website: [www.cix.co.uk/~jsb](http://www.cix.co.uk/~jsb)

- **The Disability Rights Commission (DRC)** has published a Code of Practice for Schools, giving advice on the Disability Discrimination Act:

DRC Helpline  
FREEPOST  
MID 02164  
Stratford upon Avon  
CV37 9BR  
Telephone: 08457 622 633  
Textphone: 08457 622 644  
Fax: 08457 778 878  
Website: [www.drc-gb.org](http://www.drc-gb.org)

- **The Commission for Racial Equality (CRE)** provides information and advice to people who think they have suffered racial discrimination or harassment.

CRE  
St Dunstan's House  
201–211 Borough Street  
London SE1 1GZ  
Telephone: 020 7939 0000  
Fax: 020 7939 0001  
Website: [www.cre.gov.uk/](http://www.cre.gov.uk/)

- **The Equal Opportunities Commission (EOC)** can give advice on the Sex Discrimination Act.

Arndale House,  
Arndale Centre  
Manchester  
M4 3EQ  
Telephone: 0845 601 5901  
Fax: 0161 838 1733  
Website: [www.eoc.org.uk/](http://www.eoc.org.uk/)

### **Advice for parents**

- **Advisory Centre for Education (ACE)** operates an advice line, and also provides on-line leaflets for parents on admissions, appeals and exclusions.

Advisory Centre for Education (ACE) Ltd,  
1c Aberdeen Studios, 22 Highbury Grove,  
London N5 2DQ

Advice line is open from 2-5pm Monday-Friday on 0808 800 5793

Website: [www.ace-ed.org.uk/](http://www.ace-ed.org.uk/)

- **The Department for Education & Skills' Parents Centre** website offers advice to parents on a wide range of school-related issues, and has links to both the Admissions and the Appeals Codes of Practice.

Website: [www.dfes.gov.uk/parents](http://www.dfes.gov.uk/parents)





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