



School Admission Appeals Code



Statutory Code

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School Admission Appeals Code

Audience	Local Education Authorities; Governing Bodies of Foundation and Voluntary Aided Schools; Church Diocesan Authorities; community and voluntary controlled schools in Wales; Estyn; Council on Tribunals; Secretaries of Professional Organisations in Wales.
Overview	This Code imposes requirements and offers guidance in respect of the discharge by local authorities, the governing bodies of maintained schools, admission forums and admission appeal panels of their school admission appeals functions. These bodies must "act in accordance with" the Code.
Action required	Full compliance with the Code by the school year 2010/11.
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Additional copies	Further copies may be obtained at the above address. This document can also be accessed from the Welsh Assembly Government website at: www.wales.gov.uk
Related documents	Please see Annex F.



Foreword by the Minister for Children, Education, Lifelong Learning and Skills



The Welsh Assembly Government believes that choosing the right school for their child is one of the most important decisions a parent faces. In order to help parents through the process, we need to ensure that local arrangements to admit children are clear, lawful and above all fair.

The Code's predecessor was published in 1999 and provided a level of guidance on school admission appeals which was appropriate at that time. That Code has been strengthened and updated to meet the needs of the twenty first century. There is recognition that the school admission appeals system can be complex and is sometimes misunderstood not just by parents but by those responsible for administering it. The aim of this new Code is to provide clearer guidance for all those involved in school admission appeals so that the system is managed efficiently and effectively. At the same time the Code also seeks to safeguard the interests of parents, children and young people by ensuring that the school admissions appeals process is fair, robust, impartial and independent.

Throughout Wales, parents can and do exercise their statutory right of appeal where they feel it is necessary. We want parents to continue to feel confident that the school admissions appeals system works effectively as part of the system to place every child in school. In order to ensure overall efficiency in schools, and fairness overall, it is important to strike a balance between the right of the parents to a full and fair hearing and the need for schools to be protected against admitting so many children that it has a detrimental effect.

I am sure that this Code will be well received by everyone with an interest in the school admissions appeals process and will help to ensure that the appeals system works for the benefit of both pupils and schools.

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive, flowing style.

Jane Hutt

Minister for Children, Education, Lifelong Learning and Skills

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Summary

The Code on School Admission Appeals contains practical guidance and imposes requirements in respect of the discharge by local authorities, the governing bodies of maintained schools, admission appeals panels and admission forums of their admission appeals functions under the School Standards and Framework Act 1998. The Code includes guidelines setting out the aims, objectives and other matters relating to the discharge of appeal functions and each of the bodies or persons included must “act in accordance with” the Code. The Code replaces the National Assembly for Wales Code of Practice on School Admission Appeals which was published in September 1999.

The new Code will assist everyone with an interest in school admission appeals and help ensure that the appeals system works for the benefit of both schools and pupils. The main changes introduced by the Code are that:

- admission authorities must ensure that new panel members receive appropriate training before hearing appeals;
- appeals made during the timetabled admissions process must be heard within 30 school days of the deadline for their receipt;
- appeals made outside of the timetabled admissions process must be heard within 30 school days of their date of receipt;
- children should be permitted to give evidence at appeal hearings where they wish to do so.

Chapter 1 - Introduction

1.1 This Code is made under section 84 of the School Standards and Framework Act 1998 (referred to in this Code as the 1998 Act) as amended by the Education and Inspections Act 2006 (referred to in this Code as the 2006 Act), which requires the Welsh Ministers to issue a Code in respect of the discharge of admissions functions by local education authorities referred to in this Code as local authorities (LAs), the governing bodies of foundation and voluntary aided schools, admission forums and admission appeal panels. Each of the bodies mentioned has a statutory duty to “act in accordance with” this Code and the School Admissions Code.

1.2 This Code supersedes the previous Code of Practice on School Admission Appeals and applies to admission appeals for primary and secondary school intakes (including sixth forms/ Year 12). It comes into force on 15 July 2009 and applies to those appeals that are lodged on or after that date, except appeals by young people for admission to post 16 provision. The Code applies to young people for admissions to post 16 provision for the 2010/2011 year. It should be read alongside the School Admissions Code and other guidance and legislation that affect admissions and admissions appeals in Wales.

1.3 The Code refers to statutory requirements (i.e. imposed by primary or secondary legislation) and imposes mandatory requirements which those bodies listed at paragraph 1.5 below **must** comply with. A reference to the relevant statutory provision is provided in the text or footnote. Where mandatory requirements are imposed by this Code (or by statutory provisions) it is stated that the relevant bodies **must** comply with the particular requirement or provision. Where this Code prohibits practices, it is stated that the relevant body or bodies **must not** use this practice.

1.4 This Code also includes guidelines which the relevant bodies should follow unless they can demonstrate, if challenged, that they are justified in not doing so. Where guidelines refer to good practice, the Code will state that the relevant bodies **should** follow the particular guidelines. Where the guidelines refer to a practice normally regarded as poor practice, the Code will state that the practice **should not** be used although there may be exceptional circumstances when its use may be justified.

1.5 The following bodies have a statutory duty to act in accordance with both this Code and the School Admissions Code:

- a. **Admission authorities** - LAs are the admission authorities for community and voluntary controlled schools, unless under section 88(1)(a)(ii) of the 1998 Act, the function has been delegated to the governing body. Governing bodies are the admission authorities for foundation schools and voluntary aided schools.
- b. **Governing bodies** (including those that are not admission authorities).
- c. **LAs** (when not acting as an admission authority).
- d. **Admissions forums.**
- e. **Admission appeal panels.**

1.6 Failure by any of these bodies to comply with the mandatory requirements is a breach of that body's statutory duty to act in accordance with the provisions of this Code. Failure to comply with the mandatory provisions in the Code may result in a complaint being made to the Welsh Ministers in relation to the bodies listed above.

1.7 This Code deals with two separate categories of admission appeals:

- Appeals by parents¹ or young persons in the case of sixth form admissions against a decision by a school admission authority to refuse to offer a place at the school in question; and
- Appeals by governing bodies of community or voluntary controlled schools against a decision by a LA as their admission authority to admit to their school a child who has previously been permanently excluded from two or more schools.

1.8 These two types of appeal are dealt with separately in this Code in Chapters 2 to 6, and Chapter 7 respectively.

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

1.9 As local circumstances vary greatly, this Code does not seek to give guidance on every possible situation. Nor does it prescribe exactly how those responsible for making arrangements, or appeal panel members, **should** operate beyond the statutory requirements which are set out and explained in the Code. There needs to be flexibility and sensitivity to individual circumstances when dealing with appeals, providing that these stay within the legal framework.

1.10 The Code is primarily for those responsible for making appeal arrangements and for panel members and clerks to the panels. The Welsh Assembly Government will issue simplified guidance for parents and young persons on the appeals system but admission authorities, who are responsible for establishing appeal arrangements, are also well placed to offer parents or young persons advice about local appeal arrangements (see paragraph 4.6).

The objectives of the appeals process

1.11 The fundamental objectives of admission appeals should be to:

- Provide an independent, impartial but informal forum for parents (and young persons in the case of sixth form admission appeals) and the admission authority concerned (or governing body and LA in the case of decisions to admit twice excluded pupils) 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 the requirements of legislation such as the Sex Discrimination Act 1975; the Race Relations Act 1976; the Disability Discrimination Act 1995; the Human Rights Act 1998; and the Equality Act 2006. Appeal panels are carrying out a judicial function and **must** apply the principles of natural justice. (Annex B paragraph B3);

- Have regard to all relevant guidelines in conducting appeal arrangements, such as this Code; the Code for School Admissions; the Code of Practice for Children with Special Educational Needs (SEN); and
- Provide a system which is clear, consistent and as easy to understand as possible for everyone involved.

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

1.13 Details of the legal requirements for appeals under the 1998 Act as well as other legislation relevant to appeals, are set out in Annex A of this Code.

Chapter 2 - Appeals by parents/young persons: Constitution of appeal panels and statutory procedures for appeals

Introduction

2.1 The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 ('the 2005 Regulations') set out the requirements for the constitution of appeals panels. There are separate legal provisions for appeals panels arranged by LAs for community and voluntary controlled schools and for panels arranged by governing bodies for foundation and voluntary aided schools. In practice the requirements are similar and it is good practice for LAs and governing bodies to set up joint panels if they choose to do so.

Membership of appeal panels

2.2 Under Regulation 3 and Schedule 1 to the 2005 Regulations, the LA or governing body **must** appoint either 3 or 5 members to each panel. Each panel **must** consist of:

- At least one lay member. This means people without personal experience in the management of any school or the provision of education in any school, disregarding experience in a voluntary capacity, such as school governor; and
- At least one person with experience in education, who is acquainted with educational conditions in the area of the authority, or who is the parent of a pupil registered at another school.

2.3 The following people are disqualified from membership of an appeal panel:

- Any member of the LA (e.g. councillors), or of the governing body of the school in question;
- Anyone, other than a teacher from another school, employed by the LA or by the governing body;
- Any person who has, or who has ever had, any connection with the LA or the school (e.g. former members of the governing body), or with any member or employee of the LA or governing body such that doubts might reasonably be raised over his or her ability to act impartially regarding the LA or the school. Employment by the LA 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 in an impartial manner; and

- Any person who was party to, or took part in, any discussions regarding the decision not to admit the child or young person about whom the appeal is concerned.

2.4 Individual panel members **must** disclose whether any of the circumstances described in paragraph 2.3 apply to them.

2.5 Where a LA and/or school governing bodies make joint arrangements for appeals, references in paragraphs 2.2 to 2.3 to the governing body and school apply to any governing body or any school involved in the arrangements.

2.6 LAs and governing bodies may appoint sufficient panel members to enable two or more panels to sit at the same time (but see also paragraphs 5.21 to 5.25 on multiple appeals). Wherever possible, one panel **should** hear all the appeals for a particular school.

Duty to advertise for lay members

2.7 Under the 2005 Regulations, bodies responsible for constituting appeal panels **must** advertise for lay members every three years. The advertisement **must** be placed in at least one local newspaper and allow a minimum of 21 days for replies. Admission authorities **should** also 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, LAs (with agreement of other admission authorities) take responsibility for recruitment, training and appointment of members to appeal panels. This is a cost-effective way to achieve consistency across an area.

Training of panel members

2.8 Admission authorities **must** 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 and are given the opportunity of undertaking refresher training. Local Authorities **should** invite voluntary aided and foundation schools appeal panel members to any training

they may provide for their own panels. Panel chairs **should** have specific training on chairing a panel, so that they conduct the hearing properly and make correct and effective use of the clerk. Regular refresher training **should** also be provided.

Length of time members can serve on a panel

2.9 The law does not restrict the length of time panel members may serve, but the admission authority **must** regularly review panel membership. It is good practice for panel members hearing appeals for a particular school to be changed regularly (e.g. every 3 years, to tie in with the duty to advertise for lay members) to prevent the appearance of bias towards the admission authority. Pooling resources with neighbouring admission authorities and LAs can help ensure that the same members do not sit on panels for a school on a repeated basis.

Indemnity

2.10 Admission authorities **must** indemnify the members of any appeal panel against any reasonable legal costs and expenses they reasonably incur in connection with any decision or action taken by them in good faith whilst acting as members of the appeal panel².

Responsibility for appeal panel costs

2.11 LAs **must** allocate reasonable funds to governing bodies of schools which are admission authorities, to meet admission and admission appeals costs, unless the school and LA agree that the LA itself should carry out the administration on the governing body's behalf. It is for the LA 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 the LA decides to delegate funding for admissions functions, it **must** comply with the requirements of the Regulations governing school funding formulae made under section 47 of the 1998 Act.

² Regulation 8 of the 2005 Regulations.

Allowances for appeal panel members

2.12 Under Regulation 7 of the 2005 Regulations, panel members are eligible to receive travel and subsistence allowances, in line with sections 173 and 174 of the Local Government Act 1972. They can also be compensated for any loss of earnings that arises as a result of attending an appeal panel. This payment is set by the LA having regard to the recommendations of its independent remuneration panel, as provided for in the Local Authorities (Allowances for Members) (Wales) Regulations 2007.

2.13 These provisions apply where appeals panels are arranged either by the LA or by the governing body of the school. The governing body may pay expenses at the rate set by the LA which maintains the school.

Interests of appeal panel members

2.14 Paragraph 2.3 specifies people disqualified from being a panel member by the 1998 Act. 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 2005 Regulations. 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 an appeal - for example the governor of any school children of unsuccessful appellants might attend, or a panel member who is also an unsuccessful applicant for the school in question. Another example might 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.

2.15 Care should be taken to avoid bias, or the appearance of bias, in choosing members of a particular panel. Any person married to, closely related to or involved with an appellant (parent or child) **must** be excluded from membership of the panel that will hear their case. This would also apply to people who are employers or employees of the appellant. Also, a person married to, 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.

2.16 When panel members receive their papers for the appeal, they **must** notify the clerk to the panel if they know any of the appellants so that the appropriateness of their presence on the panel can be considered. It is possible that a panel member may only realise on the day of the hearing that he or she knows the appellant. In those circumstances, the panel member **must** disclose the fact. The appellant **must** be asked whether he or she is content that the appeal should continue but if concerns are raised the panel member concerned **must** stand down and take no part in the decision for that appeal.

2.17 Where possible it is good practice to inform appellants in advance of the names of panel members and whether they are serving as a lay member or a person with experience in education, so that they can raise any doubts as to the impartiality of particular panel members before the hearing itself. However, it **should** also be pointed out that panel membership may be subject to a late change if this is unavoidable e.g. because of sickness.

Ensuring that there is a quorum of panel members

2.18 Where a panel with five members has begun considering an appeal and any of the members is unable to continue or has to withdraw, the panel may continue to sit, provided that there are not fewer than three remaining members and they still have at least one lay member and one education member. If not, a new panel **must** be convened to hear the appeal. Where a panel starts with three members, it **must not** continue if one member has to

Chapter 3 - Roles and responsibility

withdraw, in which case a new panel must be constituted to hear all cases afresh.

3.1 Every person involved in an admission hearing **must** be familiar, and “act in accordance with” both the School Admissions and School Admission Appeals Codes and **must** have an appropriate level of training. The specific roles and responsibilities are detailed below.

The clerk to the panel

3.2 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.

3.3 The clerk **must not** have played a part, nor had an interest in, the decision which is subject to appeal. Clerks **must not** deal with admissions as part of their normal employment. However clerks **must** have a good understanding of this Code and the law on admissions and **should** have received appropriate training that includes the law on disability. If this is not possible the panel **must** have access to legal advice. LAs and governors **should** normally look outside their own staff for people who have relevant experience working as a professional committee clerk or legal advisor or who have experience in the conduct of enquires or disciplinary hearings. Admission authorities may share clerks.

3.4 The clerk’s key tasks are to:

- make the necessary administrative arrangements for hearings;
- explain the basic procedures to appellants and deal with any questions they may have at the start of the hearing;
- ensure that the relevant facts, as provided by both the appellant and the admission authority, are presented and recorded at the hearing;
- be an independent source of advice on procedure, the Codes and the law on admissions (usually giving advice in the presence of all parties to the appeal), and tactfully intervene to assist the panel with procedure, if necessary;

- record the proceedings, attendance, decisions, voting outcomes and reasons. This record does not need to be verbatim, but **must** be a clear and comprehensive record of all the points raised at the appeal, making it clear what view the panel took about important points raised by the appellants; and
- notify all parties of the panel's decision in writing.

3.5 If the panel withdraws or invites the parties to do so while it considers its decisions, the clerk **must** 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. Where further advice has been offered the clerk **should** consider whether it is necessary for this to be repeated to the other parties and for them to be given the opportunity to comment on it.

The chair

3.6 The chair plays a central part in directing the proceedings and **must** be able to control the hearing fairly and firmly. Experience as a magistrate, committee chair, senior union official or the like would be valuable. The chair **should** aim to put the appellants at ease and ensure the hearing is conducted in an informal but structured manner. He or she **should** start proceedings by introducing all the people at the hearing and explaining the role of the clerk. The chair **should** explain at the start that the panel is independent and that if it upholds the appeal, the decision will be binding on the admission authority. The chair **should** conclude the hearing by asking the appellant if they have been able to raise all the issues they wished to and if there are any additional points they would like to make.

The panel members

3.7 All members of the panel need to be aware of the order of the proceedings and play an active part in the questioning of both the presenting officer and the appellant. They **must not** favour either party and **should** be conscious at all times of acting, and being seen to act, independently of the LA or the school's governing body. Panel members **must not** express personal opinions during the course of a hearing or make the case for either party.

The appellant

3.8 The appellant is appealing over a matter that is very important to his/her (in the case of a young person appealing a sixth form admissions decision) or the child's future. It is recommended that where an appellant or his representative are unfamiliar with admission appeal hearing procedures, the Chair of the panel adopts an "enabling" role in these instances to assist parents and young people to put their case. Admission authorities **must** give appellants appropriate guidance and information before the hearing to enable them to prepare their case for appeal. Appellants are entitled to question the presenting officer during the proceedings. The role of the appellant at the appeal hearing is a particularly difficult one and this **should** be taken into account at all times by the panel.

The presenting officer

3.9 The admission authority **must** provide a presenting officer who is responsible for presenting their decision not to admit the child/young person as clearly as possible, giving all the relevant information. The officer **must** be prepared to answer detailed questions about the case being heard and the questions about the school and its admission arrangements, and will need to be present throughout the hearing to be able to do so. The presenting officer **must** be fully trained in admission appeal procedures.

3.10 The presenting officer **should** be sufficiently prepared to present the case to make it unnecessary for a representative of the school to attend the hearing. However, a headteacher or other representative of school may attend occasionally where necessary to answer questions put to them about the school. The absence of a representative should not be a reason to delay arranging the hearing.

Administrative Justice and Tribunals Council (AJTC)

3.11 The AJTC has an automatic right to attend a panel as an observer. They may also direct that any person may attend a hearing of an appeal for training or appraisal of the performance of the Clerk or appeal panel members.

Chapter 4 - Action before the appeal hearing

Right of appeal

4.1 Any parent (except one whose child has been permanently excluded from two schools) whose child is refused any school place, or young person (in relation to the 2010/11 school year onwards) who is refused a place in a school sixth form, has a statutory right of appeal to an independent appeal panel (this right of appeal does not extend to applications for nursery education). Parents or young people who have had an offer of a place withdrawn also have a right of appeal.

4.2 If a child/young person is refused entry to a school/sixth form, parents (and young persons in the case of sixth form admissions for September 2010 and thereafter) **must** receive, in writing, full reasons why the application was unsuccessful, with reference to the published admissions arrangements for the school, including whether the refusal is because of the infant class size limit. The letter **must** inform them of their right to 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. Details of where to obtain further information and the right to attend the appeal hearing **must** also be given. Any deadlines for the submission or receipt of information **must be specified**. Although it can be useful, in particular for infant class size appeals, to outline the limited circumstances under which the panel may uphold an appeal (see Annex C) letters **must not** comment on the likelihood of success.

Notice given by parents/young persons that they intend to appeal

4.3 Parents/young persons **must** be allowed at least 14 days (10 working days) from the date of notification that their application was unsuccessful to prepare and submit their written appeals. To avoid any doubt that an appeal request has been received, admission authorities **should** consider issuing acknowledgments. If parents/young people submit a late appeal because of difficult circumstances or because they did not understand what was required, admission authorities **must 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. Hearings **must not** take place before any specified deadline for appeals to be submitted.

Notice given to appellants of the date for the appeal hearing

4.4 Appellants **must** be given at least 14 days (10 working days) written notice of the date of their appeal hearing, unless they have agreed to a shorter period (if appellants agree to a shorter period of notice, they should confirm this with the clerk to the panel in writing, including e-mail). Where, in the case of sixth form admissions, both the young person and his/her parents appeal against a decision, those appeals **must** be heard together.

Information for appellants about appeals

4.5 It is useful for admission authorities to prepare guidance for appellants on appeals, based on their knowledge of their own local circumstances. LAs and governing bodies who are responsible for arranging appeals may consider producing a joint set of guidance for appellants in their area. Some of the information contained in this Code **should** serve as a basis for such guidance. It would also be helpful to include a contact point for enquiries about the appeals process. It is particularly important that LAs and governors inform appellants that they have a right to attend their appeal hearing.

4.6 When informing them of the date of the appeal hearing, the admission authority **must**:

- Ask appellants to provide as soon as possible any documents, information and evidence they wish to submit to the panel to support their case, but informing them that they may submit information at any time before the hearing;

- Make clear whether any earlier correspondence between the appellant and the school will automatically be included in the panel's papers, or only those documents which the appellants have submitted specifically for the appeal hearing; and
- Notify them of the grounds under which the appeal is to be considered, for example, by outlining the limited scope under which an infant class appeal may be upheld for classes of 30. If it is not clear whether the appeal is on infant class size grounds, or normal prejudice, appellants must be advised to prepare for both.

4.7 To allow appellants to prepare for the appeal hearing, the admission authority **must** also provide them with the following information at least 3 working days before the hearing:

- Names of the panel members and clerk, with the caveat that these may be subject to change due to unavoidable circumstances, and in what capacity they are serving (see paragraph 2.2). This is to give appellants (and other parties) the opportunity to raise any doubts as to the impartiality of particular panel members before the appeal hearing.
- All the information reasonably asked of it by the appellants. Notification of whether any witnesses have been invited to give evidence at the hearing (see paragraphs 4.16 and 4.17).

The admission appeals timetable

4.8 Admission authorities **must** arrange their appeals timetable so that appeals made during the timetabled admissions process are heard within 30 school days of the specified closing date for the receipt of appeals. Appeal hearings for appeals made outside the timetabled admissions process **must** be held within 30 school days of the appeal being received in writing. During the summer holidays admission authorities **must** arrange their appeals within 30 working days of the appeal being received in writing.

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

4.10 Planning well in advance is helpful in ensuring that one panel hears all the appeals for a particular school unless there are exceptional reasons why this cannot be done. It is good practice to canvass appeal panel members and to arrange provisional dates and venues for hearings well before the offer date. When the precise number of appeals is known, the dates can be confirmed with panel members. It is always possible that illness or other reasons mean a panel member may have to drop out at short notice and admission authorities **should** include some potential substitutes in their forward planning. A good practice is to plan on the basis of having more appeals than in previous years, as it is easier to cancel arrangements than it is to arrange additional hearings.

4.11 Parents are not statutorily obliged to send their children to school until the start of the term after their fifth birthday and the Code on School Admissions requires admission authorities to agree applications for deferred entry to reception classes. Appeal panels **must** ensure that all appeals made within the timetabled admissions process are heard at the same time, regardless of the term in which the child is expected to enter the school.

Notifying the AJTC of dates for appeal hearings

4.12 The AJTC has an overseeing role in respect of admission appeals and its members sit in on appeal hearings (including the panel's post-hearing deliberations) from time to time as observers. This is an important part of the AJTC's work which enables it to take an overview of appeals. Admission authorities **must** notify the AJTC of dates on which appeal hearings will take place so that it can arrange, if necessary, for one of its members to be present. The AJTC's address is at Annex E.

Representation

4.13 Appeal panels **must** allow appellants the opportunity to appear in person, to make oral representations³ and to clarify or supplement their written appeal. It is important to try and arrange a time and a place for the hearing which will enable them to do so. If it is not possible to offer an alternative date, as may be the

³ Paragraph 1(4) of schedule 2 to the 2005 Regulations.

case in multiple appeals, the appeal will have to be decided on whatever written information is available and this must be explained to the appellant.

4.14 The appellant may be accompanied or represented by a friend, adviser, interpreter or signer⁴ who may speak on the appellant's behalf. An independent advocacy service could be used if necessary. Legal representation **should not** be necessary for admission appeals, although appellants are free to have such representation if they wish. Panels **must** however be careful to ensure that unrepresented appellants are not treated differently from those that have representation. If appellants intend to be represented, or accompanied by a friend or adviser, or to bring an interpreter or signer, they **should** let the clerk know in advance. Admission authorities should provide interpretation or signing facilities if requested.

4.15 Appellant's must be notified that they **must not** be accompanied by a member of the Council, an LA officer or a local politician, as this may lead to a conflict of interest and place undue pressure on the panel.

Evidence and witnesses

4.16 Appellants and presenting officers are entitled to decide how to organise their presentation but it is unlikely to be necessary for witnesses to attend. The panel may consider it appropriate to allow witnesses who do not attend to give evidence, provided that it is relevant and not repetitive. Panels may (with advance warning to the appellants) ask for corroboration from them on matters such as medical conditions or their address. It **should not** be necessary for a head teacher or governor to act as a witness, as it is for the presenting officer to provide information about the school.

4.17 If the child wishes to appear at the hearing to give evidence, provision **should** be made for him/her to do so and the conduct of the panel should reflect that a child is present. It may also be necessary for training to be provided in appropriate chairing skills for managing hearings where children are present.

⁴ Paragraph 1(4) of schedule 2 to the 2005 Regulations.

4.18 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.

The venue for the appeal

4.19 Given the emphasis on independence in the appeals process, a neutral venue **must** be used for the appeal hearing. Funding delegated to admission authorities for appeals **must** cover expenses such as this, although LAs may be able to provide a suitable venue, if schools prefer. Venues for hearings **must**:

- be accessible to the appellants;
- have adequate sign-posting;
- be accessible by public transport;
- be accessible for people with disabilities⁵ (with consideration given to the provision of spaces for car parking);
- have a suitable waiting area for appellants, which separates them from the panel and presenting officer; and
- have a suitable room for the presenting officer to wait away from the panel before and between appeals.

4.20 Other points to consider are that:

- there **should** be room to allow parties and their representative or advisor to have private discussions;
- the hearing **should not** be interrupted by noise outside or people entering the room;
- those waiting outside **should not** be able to hear what is going on inside;
- the room layout **should** ensure structure, comfort and informality;
- drinking water or other refreshments **should** be available;
- toilets **should** be conveniently located, including disabled toilets;
- there **should** be name plates for the panel and the clerk; and
- adequate time **should** be allowed for the hearing, especially if an interpreter is present to act on behalf of the appellants.

⁵ Guidance is available from the Administrative Justice and Tribunals Council in their document 'Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act'.

“Lobbying” of panel members

4.21 Out of fairness to the other appellants, members **must not** be drawn into any discussions with appellants before their hearing. They **should** remind appellants that any additional information that they wish to add to their appeal **should** be presented in writing before the hearing and they will have the opportunity to have their say when the hearing takes place. In addition, panel members **must not** be drawn into discussions with members of the admission authority before the hearing and they **should not** take refreshment breaks during the course of the day with the admission authority representatives. The same considerations apply to clerks, except where the appellant or admission authority representative wishes to ask a procedural question.

Preparation and production of evidence by the admission authority prior to the hearing

4.22 At least 7 days (5 working days) before the hearing (unless appellants have waived their right to a period of 14 days notice of their appeal) - see paragraph 4.4 - the admissions authority **must** supply the clerk of the appeal panel and the appellants with the following documents (documents may be sent electronically but only with the agreement of all the parties concerned):

- A written statement summarising how the admissions arrangements for the school apply to the appellant’s application, with any relevant background information together with any documents on which they placed substantial reliance (such as the appellant’s application form or references from religious ministers).
- A written statement summarising the reasons for the decision, explaining how admission of an additional child/young person would cause prejudice to the efficient education or use of resources whether or not the admission authority is defending its decision on the basis of infant class size legislation.

Any statement referring to accommodation, class sizes, capacity, etc **should** be supported by factual written information, as panel members cannot be led on ‘tours’ of schools to make their own assessments, which could call into question their independence and lead to allegations of lobbying.

- Copies of any information or documents which are to be put to the panel at the hearing, including anything which at that point has been submitted by the appellants.

4.23 There **should** be no grounds for the admission authority to produce substantial new information at the appeal.

4.24 The admission authority **must** provide all the information reasonably asked of it by the appellants, including an up to date capacity calculation proforma, so that they are in a position to question the admission authority's case. Appellants may produce any additional information or evidence that they feel supports their case. The clerk's role does not include sifting out what they might consider inappropriate material; it is for the panel to decide whether or not to take account of what is submitted.

4.25 The clerk **must** ensure that all documents listed in paragraph 4.22 are sent to panel members by post or delivery by hand, at least 3 days before the hearing.

4.26 The clerk **must** notify the appellants and presenting officer of the order of business in advance of the hearing (see paragraph 5.3 for suggested order).

Chapter 5 - The appeal hearing

Nature of the hearing

5.1 Appeal panels **must** operate according to the principles of natural justice, and the conduct of hearings **must** be based on fairness and, as far as possible, create an informal atmosphere. Informality will be difficult to achieve if, for example, the hearing is tape-recorded and this **should** be avoided except where this may help an appellant with a disability.

5.2 Appeals **should** normally be heard in private, unless being heard as a multiple appeal (see paragraphs 5.21 to 5.25)⁶. All parts of the proceedings **must** take place in the presence of all the panel members and parties, unless the appellants are unable to attend. One party **must not** be left alone with the panel in the absence of the other party where both parties are attending the hearing. More detailed guidance on the nature of appeal hearings, including the principles of natural justice, is given in Annex B to this Code.

The order of the hearing

5.3 A suggested order is set out below:

- the case for the admission authority
- questioning by the appellants

(If prejudice is not proven, the hearing **should** end at this stage and the appellant **should** be told their appeal has been successful)

- the case for the appellant
- questioning by the admission authority
- summing up by the admission authority
- summing up by the appellant

5.4 At the start of the hearing, the panel chair **must** welcome the parties and introduce the panel members and the clerk. The chair **must** also introduce the presenting officer and the appellants, treating each equally. 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**

⁶ Paragraph 1(5) of Schedule 2 to the 2005 Regulations.

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 (see paragraph 5.14) or limited scope of an infant class size appeal **should** also be explained clearly to the appellant, as appropriate. The chair **should** explain that the panel is an independent body and that if it upholds the appellant's appeal, the decision will be binding on the admission authority.

5.5 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 presenting officer, as this could give the impression that they are working together.

5.6 If substantial new issues are raised for the first time at the hearing, an adjournment may be necessary to allow any party taken by surprise to consider the issues. Parents should be informed that if they present information at the appeal which needs checking, the appeal may have to be reconvened following an investigation of the issues raised.

5.7 The procedure may have to be adapted in multiple appeals (see paragraphs 5.21 to 5.25).

Statutory matters to be taken into account by the appeal panel

Parental preference

5.8 Appeal panels must take into account the general duty of an admission authority to comply with parental preference (or in the case of a sixth form admissions the preference of a young person) subject to the exception set out in paragraph 5.9. They should also consider whether a place was refused in error, or as a result of admissions arrangements contrary to mandatory provisions in the School Admissions Code and legislation.

5.9 Admission authorities **must** comply with applications for admission except in the following circumstances:

- Where to admit the child would prejudice the provision of efficient education or the efficient use of resources. (Admission authorities may not refuse to admit children or young persons to any year group in which pupils are normally admitted to the school on these grounds unless the number of applications for places in that relevant year group exceeds the school's admission number.) Prejudice may arise by reason of measures required to be taken to comply with the limit on infant class sizes (this is known as class size prejudice - see paragraphs 5.10 to 5.12 and Annex C).
- Where a sixth form is wholly selective by high ability or by aptitude and the admission of the pupil would be incompatible with such selection under admission arrangements.
- Where a state maintained boarding school has set separate admission numbers for day pupils and boarding pupils and has more applicants for one or other category than places available, even though places may be available in the other category.
- Where the child has been excluded from two or more schools and the latest exclusion took place within the last two years. This does not apply to children below compulsory school age, pupils who have been reinstated after exclusion, or those who would have been reinstated had the reviewing governing body or exclusions appeal panel considered it practical 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.

Infant class sizes

5.10 Statutory limits on class sizes provide that, subject to certain limited exceptions, infant classes (reception, Year 1 and Year 2) may not contain more than 30 pupils. The limited exceptions are described in detail in paragraph 3.41 of the School Admissions Code.

5.11 An admission authority can refuse to admit a child to a school where to do so would cause class size prejudice, that is to say, prejudice to efficient education or efficient use of resources as a

result of the measures that would be needed to comply with the duty to limit the size of infant classes. However, in relation to the reception year such prejudice can not be said to arise unless the schools admission number would be exceeded. In relation to years 1 and 2 admission authorities should not normally refuse admission on the grounds of class size prejudice unless the schools admission number would be exceeded.

5.12 The scope of an admission appeal panel to uphold an appeal against non-admission is limited where the admission authority has refused admission on class size prejudice grounds. An appeal panel will be able to uphold an admission appeal only if the decision was not one which a reasonable admission authority would make in the circumstances of the case or the child would have been offered a place if the admission arrangements had been properly implemented. Annex C provides further detail about this.

Process

5.13 A two stage process **must** be applied in the case of all 'prejudice' appeals except where class size prejudice is an issue.

5.14 The courts have held that the two distinct stages **should** be:

- i. **a factual stage** for the panel to: a) consider whether the published admission arrangements were correctly and impartially applied and b) decide as a matter of fact whether 'prejudice' would arise were the child or young person to be admitted.
- ii. **a balancing stage** for the panel to exercise its discretion, balancing the degree of prejudice and the weight of the appellants case, before arriving at a decision.

5.15 If the panel does not consider that the admissions criteria for the school were correctly and impartially applied to the pupil concerned it must decide whether proper application of the criteria would have led to his/her acceptance. If that is so, the panel **must** uphold the appeal and not go on to the second stage.

5.16 Similarly if the appeal panel is not satisfied at the first stage that there would be prejudice if the child or young person were admitted to the school, where there is only a single appeal for the school, the panel **must** allow the appeal (but for multiple appeals for the same school see paragraphs 5.21 to 5.25).

5.17 In order to establish whether or not there is prejudice the panel will wish to consider a number of factors, including the school's indicated admissions number derived from the capacity of the school, calculated using the Welsh Assembly Government capacity assessment formula. The method is set out in the guidance document 'Measuring the Capacity of Schools in Wales', which is available on the Welsh Assembly Government's website at www.wales.gov.uk. The capacity assessment takes account of the wide variety of teaching styles and room layouts that are found in schools across the country. In limited circumstances, subject to local consultation, admission authorities are allowed to set a lower number than that indicated by the capacity assessment if, for example, the school is a split site school and it is appropriate to do so. It is not the role of the panel to reassess the capacity of the school as this should have been agreed locally, based on an objective assessment of the space available. The panel **should** consider instead the impact on the school of admitting additional pupils in terms of the organisation and size of classes, the availability of teaching staff and the effect on the pupils already at the school.

5.18 In the case of new schools serving a new housing development, the panel should take into consideration that whilst such schools could appear to have spare capacity, the admission authority may have initially set lower admission numbers for the first and subsequent years, and would have made that clear in the published and approved statutory proposals for the new school. This usually occurs when admission authorities plan to phase in the numbers of places available over a period of time. It is important that presenting officers highlight these issues when stating their case, clearly explaining the need to phase in the number of admissions and the effect of those plans on a large number of children admitted, for example, where the school has not been allocated sufficient funding for the extra teachers needed.

5.19 Where the admission authority is able to satisfy the appeal panel that there would be prejudice, the appeal panel **should** go on to the second stage and consider the appellant's reasons for preferring the particular school. The panel will need to consider the

consequences for the admission authority in complying with the appellant's wishes and how serious those consequences would be for both the authority and the other children/young persons.

5.20 It is open to the admission authority concerned to present as part of its evidence to the panel the fact that the child or young person in question has been offered a place at an alternative school. This may be of particular relevance where the question of distance between home and school is being discussed. Equally, it is open to the appellant to state any reasons why an alternative school would be unsuitable or less suitable.

Multiple appeals

5.21 Appeal panels will sometimes be required to handle appeals from a number of appellants in relation to the same school. In these circumstances one appeal panel comprised of all the same members **should** consider all the appeals. Appeal timetables **should** be arranged so as to ensure that this is possible (see also paragraphs 4.9 to 4.11) in relation to applications received during the timetabled admissions process.

5.22 Where multiple appeals are being heard, decisions **must not** be made on individual cases until all appellants have been involved in stage 1 and stage 2 of the process or an injustice could result. Careful note-taking by the clerk to the panel is important in these circumstances. However, appeal panels need to take account of circumstances where an appellant asks to be heard later than the time arranged. If the gap is significant, it may not be reasonable to hold up decisions for the majority.

5.23 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.

5.24 As with other appeals, multiple appeals are heard in two stages:

First: the panel **must** assess a) whether admitting all the appellants would cause prejudice to efficient education or the efficient use of resources and b) whether each child or young person 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 prejudice or that they would have been offered a place if admission arrangements had been properly applied, their appeals **must** be upheld.

If the panel decides that some further children or young people 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 **must** first admit those who should have been admitted if the admission arrangements had been properly applied, and then consider the other factors in the individual appellant's case so that any compelling reasons for admission which the appellant 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 any of the individual appellant cases outweigh the prejudice.

Second: if the panel decides that admission of additional children or young persons would result in prejudice, it **must** consider, for each individual case, whether the appellant's grounds for admission to the school outweigh such prejudice. This involves no comparison between appellants' cases.

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

5.25 Appeal panels may wish to deal with multiple appeals in one of two ways:

Grouped appeals: where the presenting officer's case in respect of a school is heard once for the first stage of the appeal. In this scenario the presenting officer presents a general case (the factual stage) in the presence of all appellants (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 appellants **must** be heard individually without the presence of the others and decisions **must not** be taken until all the appeals have been heard.

Individual appeals: where the presenting officer presents the case, followed by the individual appellants' cases, as in the order of the hearing set out in paragraph 5.3. In these circumstances, it will be necessary for the panel to hear the admission authority's case repeatedly. In the first stage, where the admission authority is arguing that prejudice would arise, the case will always be the same. The admission authority **must not** produce new evidence, or expand upon its case as the appeals proceed, because appellants 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 **must** ensure that the appeal panel considers what bearing the evidence may have on all the appeals and **should** decide how to advise the panel so that it deals with all the appeals fairly. This may entail adjourning the appeals to give appellants the opportunity to consider and challenge the new evidence.

Notes or records of proceedings

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

5.27 Such documents are the property of the appeal panel and **should not** normally be available to the other parties. However, there may be occasions where the notes **should** be disclosed and they **must** therefore be prepared and retained on the basis that they may be released. These may include situations where:

- a. request has been received from the Public Services Ombudsman for disclosure as part of his or her investigation of a complaint about the conduct of an appeal; or
- b. disclosure is required as part of court proceedings, for example, where a panel's decision is challenged by judicial review.

5.28 As tribunals under the direct supervision of the AJTC, appeal panels are not subject to the Freedom of Information Act 2000 (FoIA). Where the notes are, for administrative purposes, held by an admission authority which is subject to the FoIA, for example, where a LA's legal department retains the notes on file or the notes are retained in a school office - there is no obligation for the admission authority to comply with a request for copies of the notes under the FoIA. In this situation the admission authority will either (a) be holding the notes on behalf of the panel, in which case the notes will not be held by the authority for the purposes of the FoIA or (b) they will fall within the exemption applying to court or tribunal records.

5.29 If a request is made for access to personal data contained in the notes under the Data Protection Act 1998, whether that data should be disclosed will depend on a number of factors including: the identity of the person making the request; the nature and individual circumstances of the appeal; the way in which the data is held and the interests of any third parties identified in the data. Panels or clerks may therefore wish to obtain their own advice before responding to such a request.

Applications outside the normal year of entry

5.30 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 the number of pupils in the year group to which entry is sought remains below the current admission number for the school.

5.31 As in other cases of refusal, where parents or young persons are unsuccessful in applying for a school place for these years, they **must** be informed why their application was not successful as well as of their right to appeal against this decision.

Partially selective schools

5.32 A partially selective school **must** admit up to its admission number and **must not** keep selective places empty.

Waiting lists

5.33 Panels **should** take no account of where the admission authority has placed a child on the waiting list, or that the parents of other children on the waiting list may not be appealing.

Children with statements of special educational needs

5.34 Admission to schools of children with statements of SEN is covered in paragraphs 3.43 to 3.44 of the School Admissions Code and schedules 26 and 27 to the 1996 Act. Where a school is named in a statement, the governing body has a duty to admit the child to the school.

5.35 If the parent of a child with a statement of SEN wishes to appeal against the school named in the statement or the fact that no school has been named, the appeal **must** be made to the SEN Tribunal in Wales, not an appeal panel.

Children with special educational needs but without statements

5.36 Pupils with SEN but without statements **must** be treated no less favourably by admission authorities of mainstream schools than other pupils. Admission authorities **must not** refuse to admit

a pupil because they consider themselves unable to cater for his or her SEN. In addition, they cannot refuse to admit a pupil on the grounds that he or she does not have a statement of SEN or is currently being assessed for one.

5.37 If a child is going through an assessment process for a statement, the parents may wish to apply for a school place under the normal admissions procedures in case the LA concludes that the child's needs do not require a statement of SEN. If the LA decides that the child **should** have a statement of SEN then decisions about an appropriate school placement will be addressed as part of the statementing process.

Children with disabilities

5.38 Panels will hear appeals against non-admission where discrimination for a reason related to a pupil's disability is alleged to have taken place. In considering such appeals, the panel **must** take into account the Equality and Human 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 SEN and Disability Tribunal will hear most other claims of disability discrimination against schools.

Reaching a decision

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

5.40 Decisions on appeals where there is not unanimous agreement **must** be reached by simple majority of votes cast. Where there are equal numbers of votes (i.e. where the panel initially comprises five members but one panel member drops out) the panel chair has a second or casting vote⁷.

⁷ Paragraph 1(7) of Schedule 2 to the 2005 Regulations.

Chapter 6 - After the appeal hearing

Notification of the decision to appellants

6.1 The panel **must** communicate each appeal decision, and the grounds on which it is made, in writing to the appellants and the admission authority⁸. The decision letter **must** be signed by the clerk (not someone from the admission authority) and sent by the clerk. It **should** be sent as soon as possible after the panel has made its decision and ideally within five working days, although this may not always be possible where there are multiple appeals for one school. When notifying appellants of a successful appeal outside the timetabled admissions process, appellants **should** where possible be given a date on which they or their child can start at the school.

6.2 The decision letter **must** be expressed clearly, without the use of jargon so that can be readily understood by a lay person. It **must** enable the parties to:

- see what matters have been taken into consideration;
- understand what view the panel has taken on questions of fact or law which the panel had to resolve; and
- know broadly why the panel has reached its decision⁹ and, in particular, should enable an unsuccessful appellant to understand why their appeal has not succeeded¹⁰.

6.3 The letter **must** reflect the type of appeal being considered. In the case of an infant class size appeal, it **must** explain the particular nature of the appeal and the basis upon which the panel was able to reach its decision. In the case of the other appeals, it **must** make reference to the two stage process, unless that was not followed, for example because the panel established that the admission arrangements had not been correctly applied. Where the panel was required to decide whether the admission authority had established prejudice, it **must** set out its decision and explain its reasons.

⁸ Paragraph 1(10) of Schedule 2 to the 2005 Regulations.

⁹ R v Birmingham City Council Education Appeals Committee ex parte B [1999] ELR305; R (ota l) v The Independent Appeal Panel of St Edward's College [2001] ELR 542.

¹⁰ St Edward's College above.

6.4 Where an appellant has raised specific, relevant factors which have been considered by the panel, these **must** be recorded in summary form in the letter¹¹. Where it has been necessary to obtain legal advice, this **must** be summarised in the letter, especially if this advice was received after the panel retired to make its decision¹².

6.5 If there were any issues or facts of law to be decided by the panel, for example, whether an appellant lived at a particular address, the letter **must** explain how these issues were resolved and briefly why¹³.

6.6 The letter **must** explain, in sufficient detail to enable the parties to understand, the reasons for the panel's decision, addressing the key questions that the panel **must** consider. For example, in the case of a non-infant class size appeal, why the panel decided that the individual circumstances of the appellant's case were considered sufficient or insufficient to outweigh the prejudice arguments of the admission authority or, in an infant class size appeal, why the panel decided that the decision of the admission authority was one that no reasonable authority would have reached or why the admission arrangements had not been properly implemented, and, if they had been, whether and why the child would or would not have been admitted.

6.7 Whilst recognising that a degree of standardisation may be necessary, especially when dealing with a large volume of cases, every decision letter needs to reflect the individual circumstances of the particular appellant and the reasons why that appellant's appeal was either successful or not.

6.8 Where the appeal has been successful, the decision letter **should** where possible include a starting date. The clerk **must** also include a return proforma asking appellants if they will/will not be taking up the place offered and set a deadline for its return.

¹¹ R (ota K and S) v Admission Appeals Panel of Cardiff County Council and Cardiff County Council [2003] EWHC 436 (Admin).

¹² R (ota I) v Independent Appeals Panel for G Technical College [2005] EWHC 558 (Admin).

¹³ St Edward's College and R (ota C) v the Appeals Panel of Nottinghamshire County Council and Nottinghamshire County Council [2004] EWHC 2988 (Admin).

Fresh applications and appeals

6.9 Appellants who have appealed unsuccessfully can reapply for a place at the same school in respect of a later academic year and have a fresh right of appeal if unsuccessful. Appellants generally do not have a right to a second appeal in respect of the same school and the same academic year, but may have a fresh appeal if:

- The admission authority agrees to arrange a second appeal because there were faults in the first appeal and there is a significant possibility that the outcome might have been affected by the faults (this may be on the recommendation of the Public Services Ombudsman or because the admission authority decides to do so on its own initiative); or
- The admission authority accepted a fresh application because there has been a significant and material change in the circumstances of the parent or young person or school, but considered that the fresh application should also be turned down. Common examples are where the admission authority may wish to consider a fresh application because of changes in circumstances since the time the original application was made would be medical reasons, or that the family has moved house.

6.10 To ensure that appellants receive a fair hearing, the panel that hears their second appeal **must** consist of different panel members¹⁴, and if possible, a different clerk.

Complaints to the Public Services Ombudsman

6.11 The Public Services Ombudsman can investigate written complaints about maladministration on the part of an admission appeal panel. Maladministration covers issues such as a failure to act independently and fairly, rather than complaints where a person simply feels that the decision taken is wrong.

¹⁴ Section 25 of the Local Government Act 1974.

6.12 Where the Ombudsman, having considered a complaint about the actions of appeal panel finds out 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 with a different clerk. In those circumstances, the Ombudsman will recommend that the new appeal panel **should** have the same powers as the original appeal panel. The Ombudsman cannot comment on or overturn the panel's original decision.

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

The address of the Public Services Ombudsman for Wales is:

1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ
Telephone no.: (01656) 641150

Complaints to the Welsh Ministers

6.14 The Welsh Ministers cannot review or overturn decisions of individual independent appeal panels but can consider under sections 496, 497 and 497A of the 1996 Act whether:

- the panel was correctly constituted by the admission authority; and
- the admission authority has acted reasonably in exercising functions in respect of the appeal process or has failed to discharge any legal duty in relation to that process e.g. in constituting the panel or acting in breach of the mandatory provision of this Code.

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

Chapter 7 - Appeals by governing bodies against local authority decisions to admit 'Twice excluded' pupils (except looked after children)

Notice of appeal

7.1 When a LA takes a decision that a pupil (other than a looked after child) permanently excluded from two or more schools should be admitted to a school, the LA **must** give the governing body of the school notice in writing of that decision¹⁵ and of the governing body's right of appeal. An appeal by the governing body against a decision **must** be made in writing not later than the fifteenth school day after the day it is given notice and **must** give the grounds on which the appeal is being made¹⁶.

7.2 The appeal panel will then meet on a date determined by the LA, not later than the fifteenth school day after the day on which the appeal was lodged.

7.3 There is no right of appeal against a decision to admit a twice excluded child looked after by a Welsh LA. However, if an admission authority wishes to challenge the decision to admit such a child on the grounds of serious prejudice to the provision of an efficient education or the efficient use of resources it must refer the matter to the Welsh Ministers within 7 days of the application form being received¹⁷.

Appeal panel

7.4 A person **must not** be a member of a panel if he or she has been involved in any way in previous consideration of whether the child should be reinstated at any school from which he or she has been permanently 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) of the 1998 Act.

The appeals procedure

7.5 The appeal panel **must** allow:

- the LA and the governing body to make written representations; and

¹⁵ Section 95(20) of the 1998 Act.

¹⁶ Paragraph 2 of schedule 2 along with paragraph 5 of Schedule 1 to the 2005 Regulations set out the legislative requirements, relating to such appeals.

¹⁷ See regulation 7 of the Education (Admission of Looked After Children) (Wales) Regulations 2009.

- a representative of the LA and a governor nominated by the governing body, to appear and make oral representations.

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

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

7.7 Appeals **should** be heard in private, except where the LA directs otherwise. The panel has the discretion to direct that a member of the LA may attend an appeal as an observer; and a member of the Administrative Justice and Tribunals Council may also attend any appeal.

7.8 Two or more appeals may be considered and dealt with at the same hearing, if the appeal panel considers that the issues raised by the appeals are the same or connected.

7.9 If the members of the panel disagree, the appeal **must** be decided by a simple majority vote. If the votes are equally divided, the panel chair has a second or casting vote. The decision is binding and the school and LA **must** comply with it¹⁸.

7.10 The decision of an appeal panel and the grounds on which it is made **must** be communicated by the clerk in writing to the LA, governing body and appellants concerned by the end of the second school day after the conclusion of the appeal hearing. The decision **should** also be conveyed to the appellants by telephone by the day after the hearing at the latest.

¹⁸ Section 95(40) of the 1998 Act.

Chapter 8 - Training of appeal panel members and other practitioners

General considerations

8.1 Admission authorities **must** arrange and fund training for appeal panel members, panel clerks, and presenting officers, both before being appointed to a panel and afterwards, to ensure that necessary skills and knowledge are updated from time to time. One effective option is to offer differentiated training for particular roles e.g. chairing skills, role of clerk or role of the presenting officer.

8.2 An individual (or more than one) **should** be identified within each admission authority as having responsibility for overseeing that training is arranged for appeal panel members and other practitioners. Admission authorities **should** consider what scope there is for co-ordinating training and LAs and governing bodies of schools will benefit from sharing information and good practice with each other. To facilitate the effective use of resources LAs **should** invite members of **all** appeal panels within their area to participate in shared training.

8.3 The Administrative Justice and Tribunals Council (which operates under the Tribunals, Courts and Enforcement Act 2007) oversees and advises on the procedures and working of tribunals, which includes admission appeals panels. The Council, along with the Judicial Studies Board, has a significant interest in the training of panel members and the role of clerks. LAs and governing bodies which are responsible for arranging appeals can seek advice from both the Administrative Justice and Tribunals Council and Judicial Studies Board about training.

8.4 With the agreement of all parties involved, the training of panel members, particularly chairpersons, could involve attendance at an appeal as an observer. Trainees **must not** participate in any part of the proceedings but are permitted to sit in on the panel's deliberations. However, experience has shown that too many people at the hearing can be daunting to appellants and the number of

observers **should** be kept to a minimum. It would be best to avoid allowing an additional observer when other observers, such as a member of the Administrative Justice and Tribunals Council, may also be present.

8.5 Details of material which panel members, chairpersons, clerks and presenting officers may find helpful are set out in Annex E to this Code.

Annex A - Admission appeals: The law

Introduction

A.1 Admission authorities are responsible for arranging appeals and **must** comply with the legislation including interpretations of the law laid down by the courts, and act in accordance with this Code together with the School Admissions Code. 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 Administrative Justice and Tribunals Council and not the Welsh Assembly Government. The Administrative Justice and Tribunals Council (which operates under the Tribunals and Enquiries Act 1992) advises on and supervises the procedures and workings of tribunals which include appeal panels.

A.2 Admission authorities are defined in section 88 of the 1998 Act. For a community or voluntary controlled school, the admission authority is the LA; or the governing body if the LA has given it delegated responsibility for admission arrangements. However, even where community or voluntary controlled schools have been given delegated responsibility for admissions, the LA is still responsible for arranging appeals brought against a decision made by the governing body. In the case of a foundation or voluntary aided school, the admission authority is the governing body.

The right of appeal under the 1998 Act (as amended)

A.3 Under section 94(1) and (2) of the 1998 Act, parents, and in the case of sixth form admissions, young persons, have the right to appeal against an admission authority's decision refusing 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 right of appeal against a decision not to offer a school place is effectively suspended for two years after the second or any subsequent exclusion (see sections 87(2) and 95(1) of the 1998 Act).

A.4 LAs **must** make arrangements for enabling an applicant to appeal against:

- In a case where the LA are the admissions authority, any decision made by or on behalf of the authority refusing the child admission to the school;
- Any other decision on or behalf of the LA as to the school at which education is to be provided for a 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 a child admission to the school (see section 94(1)(b)).

A.5 LAs are not, however, required to make these arrangements where their decisions are in the form of directions made under section 96 of the 1998 Act, which empowers LAs in prescribed circumstances to direct a foundation or voluntary aided school to admit a particular child.

A.6 The governing body of a foundation or voluntary aided school **must** make arrangements for enabling an appeal against any decision made by or on behalf of the governing body refusing a child or young person admission to the school (section 94(2) of the 1998 Act).

A.7 Joint arrangements may be made by the governing bodies of two or more foundation or voluntary aided schools maintained by the same LA. An LA and the governing bodies of one or more foundation or voluntary aided schools maintained by it may also make joint arrangements for appeals. These arrangements could include placing joint advertisements for lay members (see paragraph 2.7) and sharing the services of a clerk.

A.8 Parents and young people are entitled to make admission applications for more than one school. If unsuccessful they also have the right of appeal for a place at each of their preferred schools.

A.9 LAs are required, under section 95 of the 1998 Act, to establish appeal panels to hear appeals from governing bodies against a decision by the LA, where that is the admission authority, to admit to their school any child who falls within the category described in Chapter 7.

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

Education (Admissions Appeals Arrangements) (Wales) Regulations 2005

A.11 These Regulations prescribe the requirements for the appeals procedures and for issues such as the duty to advertise for lay members, the payment of allowances, indemnity of panel members and the constitution of panels hearing appeals from either parents or governing bodies of community and voluntary controlled schools. Admission authorities are required to advertise for lay members every three years. In the case of sixth form admissions, where both a young person and his/her parents appeal against a decision, these Regulations require that those appeals are heard together.

Other relevant legislation

A.12 Panels **must** comply with all relevant legislation including the Human Rights Act 1998, the Sex Discrimination Act 1975, the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) and the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001). Appeal panels are also required to have regard to guidance in the Disability Rights Commission's Schools Code of Practice when determining an appeal.

The powers of appeal panels

A.13 Appeal panels cannot hear complaints or objections on wider aspects of local admissions policies and practice, such as admission arrangements determined by LAs or governing bodies. Nor do they have a role in consultations through local admissions forums. Appeal panels can consider concerns about an individual admission authority's admission arrangements raised by an appellant in the context of their appeal in so far as these may have a bearing on the child's or their admission. Panels **should not** get drawn into or allow general discussion about admission policies and practices at appeal hearings. They **should** focus on the case put forward by the admission authority for refusing to admit the child or young person and the appellants' case for admission.

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

- the LA 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 or young person in question.

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

A.15 The Welsh Ministers have no power to consider complaints against the decisions of appeals panels or the way they conduct their business, nor has the Administrative Justice and Council on Tribunals. If appellants believe that the panel which heard their appeal acted improperly or unreasonably in handling their case, or other cases which have affected theirs, they can make a complaint to the Public Services Ombudsman for Wales (see paragraph 6.11).

A.16 An appeal panel's decision can only be overturned by the courts, where the appellants or admission authority are successful in applying for Judicial Review of that decision.

A.17 This Code requires that chairpersons and other members **must** undertake training before becoming a member of a panel; and that they **should** continue to update their skills and knowledge for the duration of their membership. More details on training are set out in Chapter 8 of this Code.

Annex B - General guiding principles for appeal panels

B.1 The following paragraphs cover the general guiding principles which **must** be applied to all admission appeals.

B.2 Appeal panels perform a judicial function. This means that they **must** operate according to the principles of natural justice and established interpretations of what this means in practice. This has implications for the way proceedings are conducted and for the behaviour of appeal panel members.

B.3 Appeal panels **must** be, and **must** 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:

- Members of the panel **should not** 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 its case without unreasonable interruption; and
- 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

B.4 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 them as truly independent.

Discipline - Appeal panels **must** follow interpretations of law laid down by the courts as they are part of the legal system.

Informality - Although, as stated above, admission appeal panels are part of the legal system, appeal hearings are informal. Their procedures and conduct **must**, however, ensure that both

parties have a chance to say what they have to say, to ask questions which they wish to ask and to make appropriate submissions. Informality **should not** lead to a 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 conflict of evidence which cannot be resolved, panels have to rely on their assessment of the reliability and credibility of the person giving the evidence. The panel may consider it appropriate to allow witnesses who attend to give evidence, provided that it is relevant and not repetitive. Panels may seek independent corroboration (with advance warning to the appellant) of matters like medical conditions or their address.

Representation - The individual making the appeal will not usually need legal representation but does have the right to bring a legal adviser 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 **must** be done in an impartial way.

The effective hearing

B.5 Appeal panel members **should** read all the papers carefully before the hearing takes place and the functions which appeal panel members have to perform are:

- hearing and noting the evidence;
- establishing the material facts in the light of the evidence presented;
- analysing the relevant law and applying this to the facts;
- coming to a decision; and

- recording that decision in writing and giving reasons why that decision has been reached.

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 and take 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; and
- be clear as to when they are to be informed of the panel's decision.

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); and
- be satisfied that, whether or not they have been successful, the hearing has been a fair one.

Annex C - Statutory limits on infant class size and implications for appeals

Introduction

C.1 Subject to certain limited exceptions, no infant class with a single school teacher present may contain more than 30 pupils. Infant classes are classes in which the majority of pupils will reach the age of 5, 6 or 7 during the school year.

C.2 Section 86 of the 1998 Act sets out the circumstances in which an admission authority is not obliged to comply with an expressed preference. These include where 'compliance with the preference would prejudice the provision of efficient education or the efficient use of resources.' Section 86(4) of the 1998 Act states that prejudice 'may arise by reason of measures required to be taken in order to ensure compliance with the duty' on a LA and governing body to comply with the limit on infant class sizes.

C.3 Consequently an admission authority could refuse to admit a child to a school if it considered that in order to do so and to meet statutory limits on infant class sizes, it would be necessary to take 'qualifying measures' for instance employing an additional teacher or building an extra classroom in either the admission year or in a subsequent year. However, in the case of a reception year group such a refusal could only be made if the school's admission number for that year group had been reached.

Restrictions on scope of admissions appeals as a result of statutory infant class size limits

C.4 Regulation 6(2) of the 2005 Regulations limits the circumstances in which an appeal panel can uphold an appeal for the admission of a child to a school where the admission authority has refused on the grounds that admission would cause prejudice as a result of the need for qualifying measures to comply with the duty to limit infant class sizes. This category of appeal can only be upheld if an appeal panel is satisfied that either¹⁹:

- Ground A - that the decision was not one which a reasonable admission authority would have made in the circumstances of the case; and/or

¹⁹ Regulation 6(2) of the 2005 Regulations.

- Ground B - that the child would have been offered a place if the admission arrangements had been properly implemented.

C.5 Accordingly, infant class size appeals **should** follow the process set out below²⁰.

C.6 First: the admission authority **must** be able to satisfy the panel that the conditions which make the appeal an infant class size appeal apply.

C.7 It is not enough for an admission authority to show that the admission number has already been reached; it **must** be able to demonstrate what qualifying measures it would have to take to comply with the statutory class size limit if it admitted an additional child e.g. employ another teacher and that these measures would be prejudicial.

C.8 A panel **should** consider the prejudice that would be caused by the admission of an additional child - not only on the basis of the immediate situation, but also of any situation which is bound to arise in the future whilst the child is still an infant.

C.9 If the panel decides that the conditions are not met, it **should** follow the two-stage process as described in paragraph 5.14. In this event, it may be necessary to adjourn the hearing(s) so that both the admission authority and the appellant can reconsider the presentation of their cases.

C.10 Second: the appeal panel **must** consider whether the child has been refused a place in error because the school's published admission arrangements (including the co-ordinated arrangements) were not correctly applied (i.e. Ground B).

C.11 On these grounds, the panel **must** only uphold the appeal in cases where admission arrangements had not been properly implemented.

²⁰ The procedure for determining infant class size appeals has been considered by the Court of Appeal and High Court in a number of cases: R v London Borough of Richmond ex parte JC [2001] ELR21, CA; The School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow [2002] EWCA Civ 900; R (on the application of South Gloucestershire Local Education Authority) v South Gloucestershire Schools Appeal Panel [2001] EWHC Admin 732; and R (ota K and S) v Admissions Appeal Panel of Cardiff County Council and Cardiff County Council [2003] EWHC 436 (Admin).

C.12 In considering an appeal under Ground B, the panel **should** take account of the material that was available to the admission authority at the time when it made its decision, or material which **should** have been available to the admission authority if it had acted reasonably. However, the panel may allow fresh material to be submitted by the appellant in order to establish the factual basis for their claim that the arrangements had not been properly implemented.

C.13 Third: (unless an appeal is upheld under Ground B): the appeal panel **must** consider, under Ground A, whether the admission authority's decision was not one which a reasonable admission authority would have made in the circumstances of the case.

C.14 In order for an admission authority's decision to fall within this ground, a panel will need to be satisfied that the decision to refuse to admit the particular child was "perverse in the light of the admission arrangements"²¹, i.e. it was "beyond the range of responses open to a reasonable decision maker" or "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it"²². Panels have no power to analyse whether the admission arrangements themselves are unreasonable or perverse unless those arrangements are self evidently or intrinsically unlawful.

C.15 In reaching its decision, the panel **must** take into account all relevant circumstances, including:

- the reasons for the published admission arrangements;
- the appellant's preference; and
- the circumstances of the particular child and family.

C.16 As with Ground B, the panel **must** review the authority's decision in the light of the material available to the admission authority at the time when it made its decision. Exceptionally, a panel may also consider material which **should** have been available to the admission authority at that time if it

²¹ The School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow [2002] EWCA Civ 900.
²² Council of Civil Service unions v Minister for the Civil Service [1984] 3 All ER 935.

had not acted unreasonably, for example if a parent had provided the information with their application, but the admission authority had lost it. Evidence about matters which arose after the admission authority made its decision and which the authority could not have been aware of at that time **should not** therefore be relevant. However, this does not prevent the panel allowing a letter or statement to be submitted by the appellants to show what their circumstances were at the time the decision was made in order to support their claim that no reasonable admission authority would have made that decision.

C.17 If the panel finds that the admission authority's decision was not one which a reasonable admission authority would have made in the circumstances of the case, then it **should** uphold the appeal. Where the panel finds that a reasonable admission authority would have admitted more children before class size prejudice would arise, but that there are potentially more successful appellants than it could admit without causing such prejudice, it **should** follow the two-stage process as described in paragraph 5.14. In this event, it may be necessary to adjourn the hearing(s) so that both appellants and the admission authority can reconsider the presentation of their cases.

C.18 Where there are multiple infant class size appeals, panels **should** deal with them in either of the following ways:

- a. Grouped appeals - where the admission authority's argument that prejudice to efficient education or the efficient use of resources would arise by reason of the measures required to keep to the statutory class size limit (i.e. stage 1) is heard once in the presence of all appellants. If the panel is satisfied that the infant class size conditions are met, the panel proceeds to consider the appeals of the individual appellants, without the presence of the others. The panel will therefore consider in respect of each appellant whether Ground A or Ground B applies. Decisions **should not** be made until all the appeals have been heard.

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

Other factors in considering infant class size appeals

C.19 In some areas, although admission authorities consider all applications for admission of 'rising fives' at the same time, children are admitted to reception classes at different points in the school year (e.g. September, January and April). This enables them to have due regard to infant class size legislation while not disadvantaging parents who may want to defer their child's entry to the school until later in the academic year. It also ensures that all appeals can be heard at the same time, regardless of the term in which the pupil is to enter the school. If parents decide to defer entry of their child to later in the academic year, their place **should** be regarded by a panel in the same way as if the child had already taken it up.

C.20 In limited circumstances, prescribed by Regulations, children may be admitted as exceptions to infant class size limit. These exceptions are:

- i. Children whose statements of SEN specify that they **should** be educated at the school concerned, and who are admitted to the school outside a normal admission round;
- ii. Looked after children admitted outside the normal admissions round;
- iii. Children initially refused admission to a school, but subsequently offered a place outside a normal admission round by direction of an admission appeal panel, or because the person responsible for making the original decision recognises that an error was made in implementing the school's admission arrangements;
- iv. Children who cannot gain a place at any other suitable school within a reasonable distance of their home because they move into the area outside a normal admission round;

- v. Children for whom education at a school which is Welsh speaking is desired where the school concerned is the only such school within a reasonable distance of their home;
- vi. Children for whom education at a school with a designated religious character is desired where the school concerned is the only such school within a reasonable distance of their home;
- vii. Pupils admitted to the school within an age group in which children are normally admitted and;
 - a. admitted after the first day of the relevant school year; and
 - b. where the school has not yet reached its admission number but has already organised its classes; and
 - c. where admission of the child would mean that the school would have to take a relevant measure;
- viii. Children who are registered pupils at special schools, but who receive part of their education at a mainstream school; and
- ix. Children with SEN who are normally educated in a special unit in a mainstream school, but who receive some of their lessons in a mainstream class.

C.21 In the first seven of these cases, the class may only be above 30 for that school year or the remainder of that school year. Qualifying measures **must** be taken for the following year, or the class will be unlawfully large.

Annex D - Cultural differences

D.1 Appeal panels **should** bear in mind cultural differences when hearing appeals. Six key points are:

- 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 (see D.3 below).
- Panel members **should** show that they understand something of the background of social and family customs of the principal ethnic communities in their area.
- Members **should** remember that there may often be communication difficulties even when the appellant's main language appears to be English or Welsh. Special care **should** be taken in hearings involving interpreters.
- When trying to assess the strength of an appellant'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).

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

Names and naming systems

D.3 It is important that appeal panels address appellants orally and in writing in such a way so as not to cause confusion or offence. The Equal Treatment Bench Book published in September 2005 by the Judicial Studies Board provides some basic explanations of certain minority ethnic community naming systems, for example:

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)
e.g. 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.

Religious holidays and religious observance

D.4 Where possible, appeals **should not** be held at times when appellants 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 E - Further material (Information correct at time of publication)

- The text of all Acts of Parliament from 1988, Measures of the National Assembly for Wales and all Statutory Instruments (Regulations) from 1987 are available on the Office for Public Sector Information website at: www.opsi.gov.uk

The Office for Public Sector information does not sell publications but printed versions of an Act, Statutory Instrument or any other official publication can be obtained via the Stationary Office's website at: www.tso.co.uk

- The School Admissions Code can be obtained from:
Schools Management and Effectiveness Division
Department for Children, Education, Lifelong Learning and Skills
Welsh Assembly Government
3rd Floor, Cathays Park
Cardiff, CF10 3NQ
Telephone no.: 029 2082 6067
Fax no.: 029 2028 6109
Email address: SchoolsManagementDivision3@wales.gsi.gov.uk

- The Administrative Justice and Tribunals Council 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:

Administrative Justice and Tribunals Council
81 Chancery Lane
London, WC2A 1BQ
Telephone no.: 020 7855 5200
Website: www.ajtc.gov.uk

- The Judicial Studies Board has an advisory role in the training of chairpersons and members of panels. It has also published a useful guide on fairness in Courts and Tribunals which can be found on its website.

Judicial Studies Board
9th Floor, Millbank Tower
Millbank
London, SD1P 4QU
Telephone no.: 020 7217 4763
Website: www.jsboard.co.uk

- The Equality and Human Rights Commission is able to give advice on the Disability Discrimination Act and the Sex Discrimination Act and provides information and advice to people who think they have suffered racial discrimination or harassment:

Equality and Human Rights Commission Helpline Wales

FREEPOST RRLR-UEYB-UYZL

1st Floor

3 Callaghan Square

Cardiff CF10 5BT

Telephone no.: 0845 604 8810

Textphone no.: 0845 604 8820

Website: www.equalityhumanrights.com

Annex F - Related documents

- Children Act 1989
- Code of Practice for Children with Special Educational Needs
- Council of Civil Service unions v Minister for the Civil Service [1984] 3 All ER 935
- Data Protection Act 1998
- Disability Discrimination Act 1995
- Disability Rights Commission's Code of Practice for Schools
- Education Act 1996
- Education Act 2002
- Education and Inspections Act 2006
- Education (Admission Appeals Arrangements) (Wales) Regulations 2005
- Education (Looked After Children) (Wales) Regulations 2009
- Equal Treatment Benchbook
- Framework Standards for Tribunals
- Human Rights Act 1998
- Local Authorities (Allowances for Members) (Wales) Regulations 2007
- Local Government Act 1972
- Local Government Act 1974
- Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act
- Measuring the Capacity of Schools in Wales - National Assembly for Wales Circular No. 09/2006
- R (on the application of South Gloucestershire Local Education Authority) v South Gloucestershire Schools Appeal Panel [2001] EWHC Admin 732
- R (ota I) v Independent Appeals Panel for G Technical College [2005] EWHC 558 (Admin)
- R (ota I) v The Independent Appeal Panel of St Edward's College [2001] ELR 542
- R (ota K and S) v Admission Appeals Panel of Cardiff County Council and Cardiff County Council [2003] EWHC 436 (Admin)

- R v Birmingham City Council Education Appeals Committee ex parte B [1999] ELR305
- R v London Borough of Richmond ex parte JC [2001] ELR21, CA
- Race Relations (Amendment) Act 2000
- Race Relations Act 1976
- School Admission Appeals National Assembly for Wales Code of Practice
- School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow [2002] EWCA Civ 900
- School Admissions Code
- School Admissions Welsh Office Code of Practice
- School Standards and Framework Act 1998
- Sex Discrimination Act 1975
- Special Educational Needs and Disability Act 2001
- St Edward's College and R (ota C) v the Appeals Panel of Nottinghamshire County Council and Nottinghamshire County Council [2004] EWHC 2988 (Admin)
- The Freedom of Information Act 2000
- The Magistrate, December 1992
- Tribunals and Enquiries Act 1992
- Tribunals, Courts and Enforcement 2007

Glossary

Admission authority

The body responsible for setting and applying a school's admission arrangements. For community or voluntary controlled schools, the LA is the admission authority, unless the function has been delegated to the governing body; and for foundation or voluntary aided schools, the governing body of the school is the admission authority.

Appeal panel

The people responsible for considering appeals against decisions not to admit a child or young person to a school. They are totally independent of the LA. Any decision taken by an appeal panel is final and binding on the relevant admission authority.

Appellant

The young person or parent who is appealing against non-admission to a school.

Complaints

The Welsh Ministers can consider complaints about the actions of a governing body or LA in Wales. Under sections 496, 497 and 497A of the Education Act 1996, they are able to issue a direction to a governing body or LA if they are failing in their statutory duties under the Education Acts, behaving unreasonably in relation to the exercise of those powers and duties, or in the case of section 497A, where an LA is failing to perform its functions to an adequate standard.

Infant class size limit

The 1998 Act requires children aged 5, 6, and 7 to be taught in classes of no more than 30 per school teacher.

Normal year of entry

The point at which pupils are normally admitted to school for example, reception or year 7.

Oversubscription criteria

The list of criteria an admission authority **must** adopt for its school(s) which are used only when the school is oversubscribed to assess which children will be offered a place. Once determined, admissions criteria, including the admission number, must be published by the school and in the LA composite prospectus at least 6 weeks before parents or young people express their preferences.

Parent

Any person who has parental responsibility or care for the child or young person.

Relevant age group

The age group to which children are normally admitted. Each relevant age group must have admission arrangements, including an admission number attached. Some schools (for example schools with a sixth form which admit children into the sixth form) have more than one relevant age group.

Twice excluded

A child who has been permanently excluded from two or more schools.

Young person

A child who is seeking admission to a sixth form or a transfer from year 11 to year 12 at their current school.