

SCHOOL ADMISSIONS CODE – CONSULTATION DOCUMENT

The School Admissions Code comes into force in February 2007.

Where mandatory requirements are imposed by this Code it is stated that all relevant bodies “**must**” comply with the particular requirements or provision. Where the Code prohibits practices or criteria it is stated that the relevant body or bodies “**must not**” use the practice or criteria.

The Code also includes guidelines which the relevant bodies should follow unless they can demonstrate, if challenged, that they are justified in not doing so. Where guidelines refer to good practice the Code will state that the relevant bodies “**should**” follow the particular guidelines and where the guidelines refer to a practice or criteria normally regarded as poor practice, but where there may be exceptional circumstances when it may be justified the Code will state that the practice or criteria “**should not**” be used.

The Code applies to the following bodies:

- a) Admission Authorities
- b) Governing Bodies (when not admission authorities)
- c) Local Authorities (when not acting as admission authorities)
- d) Admission Forums
- e) Schools Adjudicators
- f) Admission Appeal Panels

Key Statutory provisions:

Admission Authorities **must** also comply with other legislation relevant to school admissions such as the Race Relations Amendment Act, the Sex Discrimination Act and Equality Act.

Every admission authority **must** before the beginning of each school year determine the admission arrangements which are to apply for that year. Admission authorities **must** then follow the determined, published admission arrangements.

The governing body of a voluntary aided or foundation school **must** implement a decision of the local authority, made under the relevant co-ordinated admission arrangements, whether a child should be granted or refused admission to the school. Schools **must not** ask parents to sign agreements before they have been offered a place at the school.

Ensuring equity and fair access

In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide on the allocation of school places:

- a. are clear in the sense of being free from doubt and easily understood. Arrangements that are vague only lead to uncertainty and this may reduce the ability of parents to make an informed choice for their children. They are also likely to increase the chances of an objection;
- b. are objective and based on known facts. Admission authorities and governing bodies **must not** make subjective decisions or use subjective criteria;

Admission authorities **must** consult each other and co-ordinate their arrangements, including over the rapid re-integration, in accordance with local protocols of children who are hard to place, including those who have been excluded from other schools.

Ensuring fairness – implications of wider policies

Admission authorities and governing bodies **must** ensure that their admission arrangements and other school policies are fair and do not disadvantage, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs. Local authorities and schools have duties under Part IV of the Disability Discrimination Act 1995 not to discriminate against disabled pupils and this is an important principle that should underpin all schools' policies, not only for admissions. Admission authorities and governing bodies should develop and implement admission arrangements, practices and oversubscription criteria that actively promote equity, and thus go further than simply ensuring that unfair practices and criteria are excluded.

All governing bodies **must** ensure that their other policies and practices do not disadvantage certain social groups or discourage some groups of parents from seeking a place at the school for their child. Local authorities should work with governing bodies (where the governing body is not also the admission authority) to ensure that admission arrangements which appear fair are not then undermined by other school policies, such as a requirement for expensive school uniform, sportswear or expensive school trips or other activities, unless arrangements are put in place to ensure that parents on low incomes can afford them. Governing bodies of schools which are their own admission authority need to address this too. Guidelines on some of these issues are included below. Local authorities are also under a duty to ensure fair access to educational opportunity, which extends to wider policies such as school transport. Admission authorities and governing bodies **should** also guard against any conflicts of interest for those who make decisions about applications that could leave them open to challenge, for example declaring personal knowledge of a particular child or friendship with their family.

Practices and policies that may undermine fair admission arrangements

Information about parents, children and families

The use of interviews in school admission arrangements is unlawful. Staff and governors are encouraged to meet parents at open evenings and on other occasions, but information gained in this way **must not** play a part in the admission decision-making process. Attendance at an open evening or other meeting at the school **must not** be a condition for the allocation of a place.

Applications and application forms

Prohibition of supplementary forms

Admission authorities **must not** use supplementary application or information forms that ask:

- a) for personal details about parents, such as criminal convictions or marital, occupational or financial status;
- b) for details about parents' achievement, educational background or whether their first language is English;
- c) for details about parents' or children's disabilities, special educational needs or medical conditions unless this is in support of positive action;
- d) about parents' or children's interests, hobbies or membership of societies.

Admission authorities **must not** discriminate against children whose parents fall into certain social groups. No personal information about parents is relevant in considering an application for a place at a school and criteria which focus on parents cannot legitimately be included in oversubscription criteria. Collecting such information may suggest that it can be taken into account and therefore be misleading to parents.

Given the potential for discrimination, admission authorities may only use supplementary application/information forms that request additional information when it has a direct bearing on decisions about acceptable oversubscription criteria; for example, asking for a reference from a priest or other religious minister for a faith school.

Faith schools

At schools designated as having a religious character, the prohibitions above do not prevent the use of a supplementary form that asks parents or children about their membership of or relationship with the church or religious denomination.

School transport

The cost and availability of safe, reliable home to school transport is a concern for many parents. Home to school travel arrangements can have a disproportionate impact on low-income families, particularly those with several children. Admission authorities **must** explain clearly whether or not school transport will be available, and if so to which schools and at what cost (if any). Local authorities are required to make information about school travel and transport options available to parents at least six weeks before parents apply for a school place. The Education and Inspections Act 2006 extended rights to free home to school transport for low income families to one of their three nearest schools, where they are between 2 and 6 miles away, to remove the lack of affordable transport as a barrier to choice for these families. Admission authorities should bring this information to the attention of parents. The position is different for primary and secondary schools:

- a) for primary age pupils transport will only be provided to the nearest suitable school, but
for those in low income families aged 8–11 free transport **must** be provided if they live more than two miles from school (previous distance three miles).
- b) secondary age pupils from low income families **must** have transport to any one of the
three nearest suitable schools, where the distance travelled is between two and six miles.

Prohibition of unfair oversubscription criteria

In setting oversubscription criteria admission authorities **must not**:

- a. stipulate conditions that change the priority given to an application;
- b. give priority to children according to the order of other schools named as preferences by their parents, including “first preference first” arrangements;
- c. give higher priority to children whose parents are more able or willing to support the ethos of the school or to support the school financially or in some other way;
- d. give higher priority to children according to the occupational or financial status of parents;
- e. give higher priority to children according to the educational or social group or background of their parents;
- f. take account of reports from primary or nursery schools about past behaviour, attitude or achievement;

- g. discriminate against or disadvantage children with special educational needs or disabilities;
- h. allocate places at a school on the basis that a sibling or other relative is a former pupil;
- i. take account of the behaviour of other members of a child's family, whether good or bad, including a good or bad attendance record;
- j. take account of parents' marital status;
- k. give priority to children whose parents are current or former staff or governors or who have another connection to the school;
- l. give priority to children who (or whose parents) have particular interests, specialist knowledge or hobbies;
- m. give priority to children based on the order in which applications were received;
- n. in the case of grammar schools, give priority to siblings of current pupils;
- o. expressly exclude applicants from a particular social or religious group or state that only applicants from a particular social or religious group will be considered for admission.

Guidelines on setting fair oversubscription criteria

Faith-based oversubscription criteria

Schools designated by the Department as having a religious character may give preference in their admission arrangements to members of a particular faith or denomination, providing this does not conflict with other legislation, such as equalities legislation or the mandatory provisions of this Code. As with all other maintained schools faith schools **must not** keep open places if they have insufficient applicants of their own faith and other families have applied for a place at the school.

As with all oversubscription criteria those that are faith-based must be clear, objective and fair. Parents and families must easily be able to understand how the criteria will be satisfied. Where preference is to be given to members of a particular faith, published admission arrangements **must** make clear how religious affiliation or commitment is to be demonstrated – for example by a simple statement of affiliation, or through a reference signed by the family's priest, minister, or other representative(s) of the church. It should be sufficient to provide evidence that the child and/or the family are practising members of the faith, and this is a position supported by most of the groups representing different faiths. Whatever method is used it **must** be clearly objective and transparent and therefore any reference requested **should** be in writing.

Guidance provided by church or religious authorities

Church or religious authorities may provide guidance for the admission authorities of schools of their faith that sets out what process and criteria may be used to establish membership of the faith. Such guidance should clearly define the terms used and how membership is to be determined, and **must be** consistent with the provisions and guidelines of this Code.

Where such guidance is produced, the admissions authorities for schools of the faith **should** follow it.

Admission authorities for faith schools **should** consider how their particular admission arrangements impact on the local community. Faith schools can contribute to community cohesion by having admission arrangements that are inclusive of other faiths and of all elements of the population of their local area. Some faith schools already achieve inclusiveness by designating a proportion of places for which children of their own faith or denomination will be given priority, and the remainder as community or open places for which local children will be given priority.

In their admission arrangements faith schools **must**, as a minimum requirement, give first priority to looked after children of their faith but **should** go further and give first priority to all looked after children.

The governing bodies of Church of England schools that are their own admission authorities **must** consult their local Diocesan Board about the admission arrangements they are proposing for their schools before they go out to statutory consultation with other admission authorities, and they **should** follow the Board's advice. Section 89 of the School Standards and Framework Act 1998 requires all admission authorities for maintained schools to consult: the local authority (if the governing body is not the admission authority); the admission authorities of all other maintained schools in the area; and the Admission Forum about their proposed admission arrangements. In addition, faith schools **must** also consult the body representing their religion or religious denomination.

Catchment areas

The 1997 Rotherham Judgment confirmed that there is nothing unlawful in the principle of admission authorities operating catchment areas as part of their oversubscription criteria and thereby giving priority to local children whose parents have expressed a preference for the school. However, admission authorities **must not** guarantee places to parents in a local catchment area, in case the pattern of preferences expressed does not allow this guarantee to be met. In drawing up catchment areas admissions authorities should ensure that they reflect the diversity of the community served by the school. A catchment area does not prevent parents expressing a preference for the school if they do not live in the area.

Local authorities **must not** suggest that parents should express a preference for the school in whose catchment area they live, or that they have been allocated a place at that school before they have expressed a preference. Although they should explain the possible consequences of not doing so, local authorities **must** be clear that parents are allowed to express a preference for any school they choose. Some schools have adopted inner and outer catchment areas and these work well for some specialist schools in particular by extending choice to more parents.

For children of UK Service personnel and other Crown servants admission authorities **must** treat a family returning to their area as meeting the residency criteria for that catchment area even if no house is currently owned in that area once proof of the posting has been provided. Where catchment areas are used, admission authorities **should** provide a map of the areas, and indicate how far parents within those areas have succeeded in getting places in the past, and whether that is likely to be a guide for the future. Catchment areas **must not** be set after applications have been made.

Duties to increase opportunities for parental choice and respond to parental representations

Local authorities have a statutory duty under section 14(3A) of the Education Act 1996 (as amended by the Education and Inspections Act 2006) to secure diversity and increase opportunities for parental choice – and are under a further duty to provide advice and assistance to parents in expressing a preference for a school for their child (section 86(1) of the 1998 Act, as amended by the Education and Inspections Act 2006). The duty to provide advice and assistance applies to parents of children of all ages. In order to support local authorities in discharging this duty in the case of transition from primary to secondary school, funding has been made available to enable them to establish a Choice Advice service. This service will target practical support and advice at those parents who are most likely to need extra help in navigating the admissions system. Choice Advice can be delivered flexibly using a range of models to best meet local circumstances but local authorities should be creative about using a range of media to reach these parents, for example, through targeted communications, admissions fairs, and group or one-to-one sessions as appropriate.

Local authorities **must** consider parental representations about the provision of schools in their areas and respond setting out any action which the authority proposes to take, or where the authority believes no action is necessary, their reasons behind that opinion. Local authorities **must** determine how to carry out these new duties in the light of their local circumstances and in accordance with guidance issued by the Secretary of State under section 14A of the Education Act 1996.

Where parents are unsuccessful in applying for a school place for their child, they **must** be given reasons and informed in writing of their right to an independent appeal against the decision.

Children with challenging behaviour

Admission authorities **should not** refuse to admit a child on the basis of their behaviour elsewhere. Schools also **should not** refuse to admit a child thought to be potentially disruptive, or to exhibit challenging behaviour, on the grounds that the child ought first to be assessed for special educational needs. The law disappplies the normal principle that parents' preferences should be complied with, only in the 'twice excluded' situation. If, following admission, a child is found to be seriously and persistently disruptive, then the school may consider disciplinary action, including temporary and, ultimately, permanent exclusion procedures. A child with challenging behaviour may also be disabled as defined in the Disability Discrimination Act 1995 and require reasonable adjustments to be made for them in the school or require particular support for any special educational needs.

Some undersubscribed schools may find that they have been required to admit an undue proportion of children with a recent history of challenging behaviour, which may have led to a permanent exclusion from another school. Admission Forums **should** discuss how local admission arrangements might allow all schools to admit a more even share of such children, including children excluded from other schools, and to agree protocols for the admission of

hard to place children. Admission authorities **must** have regard to their Admission Forum's advice.

Exceptionally, outside the normal year of entry, admission authorities for certain schools, or Academies, may decide to refuse to admit a child with challenging behaviour where there are places available, on the grounds that admission would prejudice the provision of efficient education or the efficient use of resources. This will normally only be appropriate where a school has a particularly high concentration of children with challenging behaviour or previously excluded children, or the child is particularly challenging, and one or more of the following exceptional circumstances exist namely that the school:

- a) required special measures or has recently come out of them (within the last two years);
- b) is subject to a formal warning notice;
- c) is a Fresh Start school or Academy open for less than two years; or
- d) is a secondary school, less than 25% of whose pupils are achieving 5 or more GCSEs at grades A*–C.

Hard to Place Children

All admission authorities and Admission Forums **should** have protocols in place for admitting children they consider hard to place. All need to play their part in ensuring that these children, especially the most vulnerable, are admitted to a suitable school as quickly as possible. This includes admitting children to schools that are already full.

There is a balance to be struck between finding a place quickly, in an undersubscribed school or one facing challenging circumstances, and finding a school place that is appropriate for the child. The protocol **should** therefore ensure that no school, including those with places available, is asked to take an excessive or unreasonable number of children who have been excluded from other schools. All schools, local authorities and Admission Forums **should** follow the guidance on protocols issued in November 2004, which can be found at www.dfes.gov.uk/sacode.

Protocols may include all children who arrive outside the normal admissions round who may have difficulty securing a place. Children with special educational needs but without statements should be treated in the same way as all applicants, but protocols should include arrangements for ensuring that, where there is prior knowledge of a need for particular SEN support, such children are placed quickly. Children with statements of SEN that name a school and who arrive outside the normal admission round **must** be admitted to the school even if the school is full. Similarly, where a local authority as corporate parent directs an admission authority to admit a looked after child the child **must** be admitted to the school at any time during the year, even if the school is full, unless the Adjudicator upholds an appeal from the admission authority.

Once these protocols have been agreed Admission Forums are required to monitor how well they are working³⁷, how quickly the children are found places, and the contribution every school in the area is making.

If schools do not comply with a locally agreed protocol, the local authority may direct a foundation or voluntary aided school under section 96 of the 1998 Act or refer the matter to the Secretary of State under section 496 of the Education Act 1996.

Protocols for sharing hard to place children are also key to the development of effective school partnerships to improve behaviour and tackle persistent truancy. All secondary schools **should** be in such partnerships by September 2007 and, along with devolved funding and responsibility for alternative provision, an agreed protocol encourages schools to work together to cope with challenging behaviour and develop preventative strategies which reduce the need for exclusions.

Waiting lists

Admission authorities are not required to maintain waiting lists for oversubscribed schools but where they intend to do so, it **must** be included in the school's published admission arrangements, making clear that children will be ranked in the same order as the published oversubscription criteria. Waiting lists **must** be clear, fair and objective and **must not** give priority to children based on the date the application was added to a list. For example, if a child moves to an area outside the normal admissions round and has higher priority under the oversubscription criteria, they must be ranked above those with lower priority already on the list. Admission authorities **should** notify parents of where their child has been placed on a waiting list but **must not** give any indication of the likelihood of being offered a place.

Where school places become vacant before admission appeals are heard, admission authorities **must** fill these vacancies from any waiting list. Placing a child's name on a waiting list does not affect the parent's right of appeal against an unsuccessful application.

Admission Authorities

All school admission authorities **must** ensure that in determining their admission arrangements they promote social equity, comply with admissions law and that they act in accordance with the provisions of this Code. Governing bodies that are their own admission authorities are encouraged to ensure that they are represented on the Admission Forum for their area, which will give them the opportunity to contribute to ensuring a fair admissions system. Admission authorities **should** use their power to refer an objection to the Schools Adjudicator if the admission arrangements at other schools appear to them to contravene admissions law or do not comply with the mandatory provisions of this Code or where those arrangements fail to follow its guidelines without justification.

Local Authorities

Local authorities have a duty under section 13A of the Education Act 1996 (as amended by the Education and Inspections Act 2006) to ensure fair access to educational opportunity and have a key role in ensuring that school admission arrangements are lawful and comply with the mandatory provisions of this Code. They **should** ensure that admission arrangements for schools in their area that are their own admission authority are clear, objective and fair, and promote social equity.

In order that parents may exercise their right to object, local authorities **must** publish a notice in a newspaper circulating in the local area the fact that admission arrangements have been determined for schools in the authority's area and that the arrangements are available for

inspection at the local authority's offices and such other places as the local authority may decide⁴⁴.

Where a local authority considers that the admission arrangements proposed by other admission authorities are unfair, unclear or subjective or may encourage social segregation, they should use their powers to refer an objection to the Schools Adjudicator. If admission arrangements appear to them to be unlawful or contravene the mandatory provisions of this Code they **must** refer the matter to the Schools Adjudicator.

Local authorities **should** also consider carefully any representations they receive from parents about the admission arrangements for schools for which they are not the admission authority and whether they should use their power to make a referral to the Adjudicator. Local authorities may be held to account by the Local Government Ombudsman if, being aware of unfair admission arrangements, they do not object to admission arrangements that may be unfair or do not comply with the provisions of this Code.

Admission Forums

Section 85A of the School Standards and Framework Act 1998 requires all local authorities to establish an Admission Forum⁴⁵. Admission Forums provide a vehicle for admission authorities and other key interested parties to discuss the effectiveness of local admission arrangements, consider how to deal with difficult admission issues and advise admission authorities on ways in which their arrangements can be improved. Admission authorities of all maintained schools and Academies **must** have regard to any advice from the Forum in the exercise of their functions. Regulations made under that Act allow local authorities to establish a joint forum with one or more other local authorities to consider and advise on admissions in more than one authority area.

Admission Forums have a key role in ensuring a fair admissions system that promotes social equity, and are required by section 84 of the School Standards and Framework Act 1998 to act in accordance with this Code. Admission Forums **must** act in accordance with the provisions of this Code and **should**:

- a) consider existing and proposed admission arrangements in their area;
- b) consider and provide advice on the effectiveness of the proposed co-ordinated admission scheme in their area;
- c) assess how well the admission arrangements serve the interests of local parents and children collectively, and try to promote agreement on admissions issues;
- d) consider how admission processes might be improved and monitor how admissions relate to published admission numbers;
- e) refer an objection to the Schools Adjudicator where it identifies policy, practice or oversubscription criteria that may be unfair or that do not comply with the mandatory provisions of this Code;
- f) review the comprehensiveness and accessibility of guidance for parents and the composite prospectus produced by the local authority and the effectiveness of Choice Advice to parents provided by the local authority.

- g) agree, promote and monitor protocols for potentially vulnerable children, including those previously excluded from school, those who have special educational needs, disabilities or those who are looked after and those other children who are hard to place or arrive in the area outside the normal admissions round.

Reports on effectiveness of local admission arrangements

The Education and Inspections Act 2006 amends the School Standards and Framework Act 1998 to give Admission Forums an important power to publish a report on how well admission arrangements are working locally, including whether admission arrangements are working fairly for all members of the community. In preparing their report Forums should also consider the effect that the arrangements are having on ethnic and social segregation and the admission of vulnerable children and whether this changes over time. These reports are a valuable tool in ensuring an open and fair admission system, and will be of use to the Schools Commissioner in drawing up his two yearly national review of fair access. The Admission Forum (England) Regulations 2002 as amended by the Admission Forum (England) (Amendment) Regulations 2006 set out what these reports **must** cover. All Admission Forums **should** produce a report on an annual basis.

The Schools Adjudicator

The Schools Adjudicator also has a key role in ensuring a fair admissions system by enforcing the requirements of this Code and considering whether any departure from its guidelines has been justified. Once an objection has been received the Adjudicator may consider the admission arrangements as a whole, not just the specific aspect objected to, for any maintained school.

The Adjudicator may consider the following categories and forms of objections:

- a) from admission authorities (including local authorities) on any aspect of the admission arrangements for a school of which they are not the admission authority;
 - b) from Admission Forums on any aspect of the admission arrangements for schools in the area which they cover;
 - c) from parents who live in the area to pre-existing partially selective admission arrangements, including any partial selection by ability (below the sixth form); any selection by aptitude other than for up to 10% of places in a prescribed or formerly prescribed subject; and any form of banding which does not meet the 1998 Act's definition of "fair" banding;
 - d) from parents who consider that an admission authority is using or proposing to use practices or oversubscription criteria that are unlawful or that are prohibited by this Code;
 - e) from parents who live in the area to the determination of an admission number which is lower than the one indicated by the net capacity formula;
 - f) from governing bodies of community and voluntary controlled schools to any admission number determined by the local authority for their own school but not to any other aspects of the admission arrangements for their school;
 - g) from admission authorities (including local authorities) which appeal within seven days against a local authority direction to admit a looked after child on
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the grounds that admission would seriously prejudice the provision of efficient education or the efficient use of resources;

- h) from governing bodies of community and voluntary controlled schools to the admission arrangements of other schools within the relevant area, although they may not object to the admission arrangements for other community and voluntary controlled schools whose admission arrangements have been determined by the local authority;
- i) from local authorities or governing bodies of any school to all partially selective admission arrangements. Complaints may be made to the Adjudicator about tests that are not objective, or which appear to test for ability or another aptitude, even where selection for a proportion of places by aptitude is accepted; and
- j) from faith groups about admission arrangements at schools designated as of their faith.

Adjudicators **must** consider each objection on its individual merits, taking account of the reasons for disagreement at local level and in the light of the legislation and the mandatory provisions and guidelines set out in this Code.

The Adjudicator's determination is binding. If an admission authority or other party do not implement the determination, the Secretary of State may direct them to do so using his powers under section 497 of the Education Act 1996.

Objections **should** be made within six weeks of the date on which the admission authority published its determined arrangements. Adjudicators have discretion to consider late objections, but will need to be persuaded that it was not practicable to submit them earlier. Adjudicators are not able to consider objections about aspects of admission arrangements for which other statutory procedures are required. For example, the Adjudicator may consider objections to the admission arrangements of grammar schools, but not about the principle that a grammar school selects its pupils on the basis of high academic ability.

Adjudicators may uphold, reject or partially uphold objections.