

Council
on
Tribunals

School Admission and Exclusion Appeal Panels

Special Report

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The Council on Tribunals

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Executive Summary

Introduction

This Special Report by the Council on Tribunals is made to the Lord Chancellor and Scottish Ministers in accordance with the terms of the Council's governing Act, the Tribunals and Inquiries Act 1992 (as amended). The Report is produced under the Council's statutory obligation to report from time to time on the constitution and working of the tribunals which fall within its jurisdiction.

The Report concerns the operation of school admission and exclusion appeal panels in England and Wales (previously education appeal committees, before the 1998 School Standards and Framework Act), and restates the Council's concerns about the panels. Few of these concerns will be novel to those with an interest in this area of tribunal policy, and particularly not to the policy makers and Ministers in the Department for Education and Skills, with whom the Council have maintained an ongoing dialogue over the years.

In addition to members' regular programme of visits to tribunal hearings, over the past year the Council has undertaken a programme of additional visits to admission and exclusion appeal panel hearings. Council Members observe the private deliberations of the panels, which gives them a valuable insight into the fairness or unfairness of the hearing. Discussions are also held with panel Chairs, members and clerks. In the preparation of this Report, Council members have also held meetings with other interested parties, including representatives from the Local Government Ombudsman's office, representatives from the training organisation ISCG (Information for Schools and College Governors), and researchers from Sheffield Hallam University who have recently completed an academic study of admission appeal panels.

Sir Andrew Leggatt, in his Report of the Review of Tribunals published in March 2001¹, expressed concerns about admission appeal panels – his team had been unable to observe a hearing by an exclusion appeal panel. His Report touched on many of the matters discussed in this report, including the need for better and more timely information for parents about the appeal process; better access to independent advice and support; a wider spread of, and stronger, lay representation; better administrative support for panels by properly trained clerks; better training for panel

¹ *Tribunals for Users - One System, One Service* (ISBN 0-11-702731-6)

members and Chairs; a proper appraisal system for panel members; and better use of IT for managing cases.

In view of the perceived weakness of admission appeal panels noted by the Leggatt Review, and our own observations of both admission and exclusion appeal hearings, we believe that greater consistency could be achieved through moves towards a more coherent national structure, initially through regionalisation, and in the longer term by inclusion in a national unified system.

Summary of key issues

The Report considers and makes recommendations in respect of the following matters:

- the Council's concerns about the lack of independence of admission and exclusion appeal panels;
- concerns about the constitution of admission and exclusion appeal panels, and particularly the over-representation of teachers on the panels, and the Department's recent decision to increase the numbers of teachers on exclusion appeal panels;
- the need for greater consistency in the arrangements for clerking admission and exclusion appeal panel hearings;
- the need for a clear and uniform policy on training for panel members, and particularly in respect of the skills needed by panel Chairs;
- the need for better guidance and information for parents about the appeals processes for admission and exclusion appeals, and about access to local representation services;
- the need for better and more appropriate accommodation for appeal panel hearings;
- the need for admission panels to have proper regard to the two-stage appeal process;
- the handling of multiple admission appeals;
- the need for better information for parents about "class size" admission appeals, and particularly concerning the limited jurisdiction of the panels in these cases;
- the need for more effective co-ordination of school admission arrangements;
- concerns about the operation of admission appeal panels for voluntary-aided and foundation schools.

Key Recommendations

The Report's key recommendations are that:

- (1) In view of the recurring link between exclusion and special educational needs, exclusion appeals should be heard by the Special Educational Needs and Disability Tribunal (SENDIST), which has legally qualified chairs and a national structure.
- (2) Admission appeals should be organised on a regional rather than a local basis, involving the grouping of the appeals function for several LEAs. This would be an interim measure, pending the establishment of a national appeals system.

Implementation of these and some of the other recommendations made by this Report would undoubtedly require primary legislation.



Part 1

Introduction

The Council on Tribunals

- 1.1 The Council on Tribunals is an independent advisory body which was established in 1958 by Act of Parliament following the publication of the Franks Report on Administrative Tribunals and Enquiries¹. Our functions are set out in the Tribunals and Inquiries Act 1992 (as amended), and include keeping under review the constitution and working of a large number of tribunals under our supervision (currently around 90 different systems) and, from time to time, reporting on their constitution and working. Government Departments are also obliged statutorily to consult us on proposals concerning the procedural rules of the tribunals under our supervision.
- 1.2 An important aspect of keeping the working of tribunals under review is our programme of visits to tribunal hearings. This enables us to observe at first-hand how tribunal procedures operate in practice and to note the variations in the operation of the wide range of tribunal systems we supervise. It also provides us with the opportunity to discuss relevant issues with tribunal Chairs, members and clerks. We also attend post-hearing deliberations.
- 1.3 In the past year, we have increased our programme of visits to admission and exclusion appeal hearings, to the extent that we have devoted almost a quarter of our entire visits programme to observing how these panels operate. This has enabled us to re-examine some long-standing views about the panels, and to identify some new issues, particularly in respect of the impact of school admissions arrangements on the operation of admission panels, and concerns about the panels serving foundation and voluntary-aided schools. In reporting our views, we have included appropriate extracts from our visit reports in order to highlight particular issues.
- 1.4 As part of our information gathering exercise, we have also had useful meetings with other interested parties in this area, including staff from the Local Government Ombudsman's office, representatives from the training organisation, ISCG – Information for Schools and College Governors, and academic researchers from Sheffield Hallam University, who have recently completed a study of admission appeal panels on behalf of the Department.

¹ *Report of the Committee on Administrative Tribunals and Enquiries (Cmnd. 218)*

1.5 Whilst this Report was being prepared, the Department was consulting on draft regulations and new guidance affecting the admission and exclusion appeal panels in England, which came into effect as publication of the Report was being finalised. The relevant sections of the Report have been annotated accordingly.

The Purpose of this Report

1.6 This Report examines the operation of school admission and exclusion appeal panels in England and Wales and highlights where improvements have taken place, and those areas where we see scope for further improvement. The purpose of the Report is to draw together the findings from our recent visits to hearings of school admission and exclusion appeal panels, and, in particular, from the additional visits we have made in the past year. The operation of the panels has gone through a period of considerable change in recent years, particularly following the enactment of the School Standards and Framework Act 1998. Since that time, we have paid close attention to the impact of the legislative changes and other initiatives affecting the operation of these panels, introduced by the Department for Education and Skills.

1.7 Whilst there are many common themes in our findings on admission and exclusion panels, the Report deals with each of them separately, in recognition of the fact that they are quite separate statutory bodies, which operate under their own distinct legislative provisions and procedures. Chapter 4 on Training, however, covers both panels since our concerns are broadly the same.

Framework of Standards for Tribunals

1.8 During the past year, we have published the Council's Framework of Standards for Tribunals, which is reproduced at **Appendix A**. It is intended that the Standards Framework should serve not only as a tool for us in overseeing the constitution and working of tribunals, and providing feedback to them, but also for tribunal systems and their sponsoring Departments, to assist them in reviewing their own operation.

Framework of this Report

- 1.9 The 6 key principles of the Framework of Standards are that tribunals should:
- be independent
 - provide open, fair and impartial hearings
 - be accessible to users
 - focus on the needs of users
 - offer cost effective procedures
 - be properly resourced and organised.
- 1.10 In producing this Report, we have had particular regard to these principles in assessing the operation of admission and exclusion appeal panels.
- 1.11 In **Part 2** we set out our findings and recommendations in respect of **admission appeal panels**, based on the findings from our programme of visits to observe panel hearings.
- 1.12 In **Part 3** we set out our findings and recommendations in respect of **exclusion appeal panels**, based on the findings from our programme of visits to observe panel hearings.
- 1.13 In **Part 4** we pay particular attention to the important issue of **training** for both panels, since this is, in our view, one of the key components in the effective operation of the tribunal systems under our jurisdiction.
- 1.14 At **Appendix B** we set out all the recommendations made within Parts 2 to 4 of the Report.
- 1.15 We invite those responsible for the policy for these panels, and their operation, to consider carefully the views and recommendations in this Report. We would, of course, welcome a formal response to our findings and recommendations from the Department for Education and Skills, which we would be pleased to publish on our website alongside this Report.



image: www.freeimages.co.uk

Part 2

Admission Appeal Panels

Background

- 2.1 Education Appeal Committees, as they were previously known, came into existence following the Education Act 1980, initially to hear appeals concerning parental choice of school. The Education Act 1981 extended the Committees' jurisdiction to include appeals concerning children with special educational needs; these appeals are now dealt with by the Special Educational Needs and Disability Tribunal, which was established in 1994. In 1987, the Committees' jurisdiction was further extended to include appeals against permanent exclusion from school. The Committees became admission and exclusion appeal panels following the enactment of the School Standards and Framework Act 1998.
- 2.2 Throughout their existence, the operation of admission and exclusion appeal panels has caused us considerable concern, and has been the subject of detailed comment in our Annual Reports. There have, however, been some notable improvements in the operation of the panels, many of which have taken effect following the 1998 Act.
- 2.3 Some of the provisions of the 1998 Act will be amended by provisions in the Education Act 2002, which, among other things, provides for the panels' procedural regulations to be contained in secondary legislation. We have long urged this, and were disappointed that the Department did not seek our advice at an earlier stage, while its policy was being developed, to enable us to offer suggestions about a more comprehensive approach for the new rules for the panels. We would have suggested that the regulations include matters such as the time limits for appeals and the circumstances in which late appeals may or may not be accepted. The guidance contained in the Code of Practice on Admission Appeals is unsatisfactory, since it leaves these matters to the discretion of appeals clerks, which inevitably leads to an inconsistent approach.

Constitution of Admission Appeal Panels

2.4 The School Standards and Framework Act of 1998 established admission appeal panels, distinct from exclusion appeal panels, under Section 94 and Schedule 24 to the Act¹. Under Schedule 24, which specifies separately the appeal arrangements to be made by local authorities for maintained schools and by governing bodies for foundation and voluntary-aided schools, a panel may comprise 3 or 5 members, including:

- one lay member with no experience of management or in the provision of education in any school, other than in a voluntary capacity; but excluding any person who is a member of the relevant LEA or a governor of the relevant school, anyone employed by the LEA, or anyone with any connection with the authority or school in question which might raise doubts as to their impartiality; and
- other members who have experience in education, or who have knowledge of local education conditions, or who are parents of pupils at a school.

2.5 Schedule 24 also provides for joint arrangements for the constitution of admission appeal panels by local authorities and governing bodies of one or more schools. The Schedule also prescribes some of the procedures for dealing with appeals (which are now defined by secondary legislation).

2.6 Admission appeal panels are required by law to have regard to guidance issued by the Secretary of State in the discharge of their statutory functions. A Code of Practice on School Admission Appeals was published by the Secretary of State in November 1999. The Department has since consulted on a draft revision of the Code of Practice, which came into effect in February 2003.²

Independence – openness, fairness and impartiality

2.7 One of the main criticisms we have made in the past in respect of both admission and exclusion appeal panels is that they could appear not to be entirely independent and impartial. School admission appeal panels are appointed, trained, financed, constituted, serviced and often clerked by the LEA, or in the case of voluntary-aided or foundation schools, by the school's governing body. The LEA determines the procedures of the panels, other than those procedures specified in Schedule 24 to the 1998 Act.

¹ Schedule 24 was repealed with effect from 20/1/03 and replaced by provisions in S.I.2002 No.2899

² School Admission Appeals Code of Practice – DfES/0030/2003

Extracts from our visit reports:

- “ Mrs X is an absolutely excellent clerk, but unfortunately she is also the personal assistant to the Headmaster of the school. I did not think she should be acting as clerk. ”**
- “ I was surprised that the school governor showed no sign of leaving. It then transpired that he needed to wait to give the clerk a lift. Although I was sure that the school governor would not in any way seek to influence the decision of the panel, it would be good practice if he left once he had presented the case for the school in all cases before the panel. ”**
- “ The governor representing the school was already well settled in his place when the mother had been invited in, so in her view of the situation, it may have looked as if he was part of the panel. ”**

The LEA also maintains local schools on behalf of the Secretary of State and employs the staff. There is, therefore, not the degree of separation between the original decision-making and appeal functions that we would usually expect to see in an independent appeals system. As Sir Andrew Leggatt stated in his Report of the Review of Tribunals³, *“Responsibility for tribunals and their administration should not lie with those whose policies or decisions it is the tribunals’ duty to consider. Otherwise for users, as has been said, “Every game is an away game.””*

2.8 On the question of how parents themselves perceive the appeal process, the study of admission appeal panels⁴, carried out by researchers from Sheffield Hallam University, reported that “most parents and panel members believe that the process works well and is as fair as it can be in the circumstances”. However, the majority of parents and panel members have little or no experience of any other appeals systems against which to compare the operation of admission appeal panels. Parents are unlikely, therefore, to be able to assess how well or otherwise their appeal has been handled, the result of the hearing usually being the main criterion by which they will judge it. In addition, parents usually have low expectations of the appeals process, and if the appeal panel treats them sympathetically and allows them to have their say, they are less likely to feel dissatisfied about the process. We, of course, have the advantage of observing post-hearing deliberations, an opportunity not available to parents.

2.9 In our Special Report, “Tribunals their Organisation and Independence”⁵ we set out what we considered to be the key conditions for independence which tribunals systems should be able to demonstrate. These conditions included such matters as:

- proper rules of procedure;
- high quality appointments of chairmen and members;
- proper training for chairmen and members;
- appropriate standards of judicial performance;
- the freedom to take decisions uninfluenced by resource or other external considerations;
- proper administrative support by way of hearing clerks and support staff;
- adequate and appropriate hearing accommodation in premises which are not connected with one or other of the parties; and

³ *Tribunals for Users - One System, One Service* (ISBN 0-11-702731-6)

⁴ *“Admission Appeal Panels”* by John Coldron et al. (ISBN 1-84185-744-0)

⁵ Cm 3744

- sufficient resources to meet their needs.
- 2.10 However, we acknowledged in our Report that some of these conditions might not be universally applicable to all tribunals and particularly to locally-based appeals systems (such as admission and exclusion appeal panels) which do not have a judicial Head to give leadership and guidance.
- 2.11 We have in the past suggested that the appeal panels (particularly in respect of exclusion appeals) should be organised on a regional basis rather than within each LEA⁶, and we remain firmly of that view. What we have in mind is an early reorganisation (albeit only an interim measure before a national system can be established) involving the grouping of all panels for 3 or 4 counties, or such other larger administrative area as is geographically manageable. Such grouping should be sufficient to give a critical mass of experience and to demonstrate independence from individual schools.
- 2.12 School admission authorities are currently separated into many small units, either at LEA or foundation/voluntary-aided school level. We have frequently observed how isolated these panels and their clerks are, and particularly those hearing appeals from foundation and voluntary-aided schools. However, a regionally based service, both in terms of the management and organisation of appeals and appeal panel hearings, and in the provision of training to members, would provide the potential for a much improved service. This would also bring the advantage of saving on resources, through reducing the unnecessary duplication of effort among LEAs in servicing admission appeals. It would also provide for a greater degree of separation between the appeal panel and the LEA or admission authority whose decision is under appeal, and improve the actual and perceived independence of the panels.

Recommendation 1 – In order to increase their independence and improve the quality and consistency of services to parents, admission appeal panels should be organised and managed on a regional basis.

⁶ Annual Report for 1997/98, para 1.24

“ The Chair was a governor of an associated school in the area. She was, thus, technically independent of the school whose admission procedures were being questioned but was involved with the overall management. She herself was clear as to the need to demonstrate independence of decision but an aggrieved parent might have perceived a lack of independence and even considered their human rights to have been infringed.”

- 2.13 The changes brought about by the 1998 Act to the composition of the panels have resulted in a greater degree of independence in their constitution. In particular, the Act disqualified certain persons from membership of the panels; including, members of the appointing authority or of the governing body, i.e. local Councillors, any person employed by the authority or the governing body (other than a person employed as a teacher), and any person whose connections with the authority or school might raise doubts about his or her ability to act impartially.
- 2.14 However, there remain, in our view, some outstanding concerns related to the actual and perceived independence of the panels, both resulting from their constitution and as a result of inadequate standards of chairmanship skills.
- 2.15 On the constitution issue, the Code of Practice makes it clear that a teacher may not be a member if he or she is a teacher at the school which is the subject of the appeal or appeals in question. However, we do not believe that this disqualification provision goes far enough. There are still too many teachers on the panels, which skews the balance of the panels against parents. In particular, we have observed many cases where teachers from schools within the same LEA area regularly sit on appeal panels to hear cases for the other schools within their own area, which makes it more likely that they will know the staff at the school. We cannot see how in those circumstances these particular panel members can ever truly be regarded as wholly independent. It would be preferable if the disqualification criteria were extended to exclude from membership of the panels all teachers from within the particular LEA area of the school which is the subject of the appeal(s) in question.

Recommendation 2 – The disqualification criteria should be extended to exclude from membership of the panels all teachers from within the particular LEA area of the school which is the subject of the appeal(s) in question.

Accommodation for Hearings

“ The room being used for the hearing is normally used for training, so there had been a hasty re-arrangement of the furniture... The arrangement did not lend itself to informality, and when coupled with the echoing bare floorboards and rather stark minimalist decor, the whole effect was rather intimidating. The arrangement of the room also meant the clerk had to sit alongside the panel and, given her enthusiasm to contribute to the proceedings at some points, she could well have looked like a member of the panel.”

“ The venue was imaginative, neutral, accessible and pleasant, being the board room of the theatre in the centre of town.”

“ The accommodation was wholly unsuitable ... on the outskirts of the town. The hearing room was a second floor attic room with no access provision for disabled people. The appellants congregated in the bar on the first floor. Toilet provision was on the ground floor. Workmen were replacing the roof immediately above the hearing room and the hammering and drilling were intolerable...”

2.16 We have commented in the past on the unsuitable nature of the accommodation in which we have observed some hearings taking place, particularly where the hearing takes place within the school itself. This inevitably impacts on the extent to which parents perceive the panel to be independent from the school. It is pleasing to note that the incidence of hearings taking place in schools appears to be reducing, (other than in relation to appeals from foundation and voluntary-aided schools, covered at paragraphs 2.47-2.50). Hearings now usually take place in the local Town Hall or in other local authority accommodation, no doubt because such accommodation is more freely available. Whilst this is an improvement, it is still not ideal. We have frequently observed that parents are unlikely to be able to draw the distinction between the local authority and the local education authority.

2.17 We continue to have some concerns about the standards of the venues for hearings (as highlighted in the extracts from our visit reports), for example: the hearing room may be too large or too noisy; there may be a lack of waiting room facilities; poor access for disabled people; or a poor arrangement of the furniture for the panel and the parties. We are pleased to note that the revised Code of Practice includes additional guidance in respect of the venue for appeal hearings, including such matters as the need for a more neutral location and ensuring the venue is reasonably accessible, with facilities for private discussion between appellants and their representatives.

The Chairing of Admission Appeals Panels

“ The Chairman was friendly and tried hard, sometimes too hard, to keep the proceedings informal. The result was that the hearing wandered into almost irrelevant areas of questioning and therefore overall took too long.”

“ The Chairman had practised at the bar, and was a district judge before he retired. His training and experience showed.”

“ The Chairman invited the mother to put questions to the school governor. Unfortunately, she launched into a series of statements and was stopped each time by the Chairman, insisting that she must ask questions. However, he made no effort to help her turn her comments into questions.”

“ The Chairman gave an excellent introduction, emphasising the panel’s independence. He also explained the two-stage process in a manner which the mother clearly understood. He skilfully guided the proceedings. He also picked up on a number of points on the mother’s behalf.”

2.18 We have observed poor chairing skills, which is often a direct result of a lack of training (which is discussed in more detail in Part 4). The Chair of an appeal panel plays a critical role in the proceedings: the Chair is responsible for directing the hearing and ensuring fair play, by allowing everyone to have their say and to put questions to the other parties. Where parties are unrepresented, as is usually the case in admission hearings, the chair has a duty to assist each of the parties. Sir Andrew Leggatt, in his Report “Tribunals for Users—One System, One Service”, described this as an “enabling” role. We believe that Chairs have an equally important “management” role, in directing proceedings in a timely and efficient manner.

2.19 In respect of the necessary qualifications of tribunal chairmen, the Franks Report⁷ stated *“There has been substantial agreement among witnesses that at any rate the majority of chairmen of tribunals should have legal qualifications. We attach great importance to the quality of chairmanship. Objectivity in the treatment of cases and the proper sifting of facts are most often best secured by having a legally qualified chairman, although we recognise that suitable chairmen can be drawn from fields other than the law. We therefore recommend that chairmen of tribunals should ordinarily have legal qualifications but that the appointment of persons without legal qualifications should not be ruled out when they are particularly suitable.”* That view holds as true today as it did when first published in 1957.

2.20 Our observations suggest that the general standard of chairing of admission panels is variable but, overall, remains less than satisfactory. The main reason for this, in our view, is because the Chair of the panel will usually have had neither legal training nor any training in chairing skills. Some of the best Chairs we have seen have usually had previous experience as a magistrate or judge.

2.21 We have observed some hearings where the Chair has adopted a heavy-handed, almost dogmatic approach, and others where the Chair has exercised very little control, allowing the proceedings to be taken over, either by the clerk or one of the wing members, or by one of the parties to the appeal. We have advocated on many occasions the need for a legal Chair for admission panels or for dedicated training in chairing skills for lay Chairs.

⁷ Report of the Committee on Administrative Tribunals and Enquiries (Cmnd. 218)

Recommendation 3 – Admission appeal panels should have either a legally qualified Chair or separate panels of lay Chairs, with special training in chairing skills.

“ The Chairman was chosen by the panel members at the start of the pre-hearing discussions. It was not until this point that the clerk handed to the Chairman the relevant correspondence from the Council’s secretariat.”

“ The Chair had been decided on the day, shortly before my arrival. Given their collective experience, I think that any one of them could have coped, but it is not a very satisfactory way to arrange things.”

2.22 The Chair has significant judicial and management functions to perform on the day, which require careful preparation and planning in advance of the hearing. It is important that the Chair of the panel should be selected and notified to the other members and the parties in advance of the hearing. We have observed on many occasions the unacceptable practice where the panel chooses the Chair on the day of the hearing. It is often a lack of planning and preparation on the part of panel Chairs which can result in the kind of unsatisfactory hearings that we have witnessed during our visits.

Recommendation 4 – The Code of Practice needs to include guidance on the selection of panel Chairs in advance of the hearing.

2.23 The need for good preparation also applies to the other panel members. We have noted hearings which have been flawed as a result of poor preparation on the part of the wing members, and in particular, the failure by the panel to identify the key issues in the appeal and to agree before the hearing which matters need to be clarified. This often leaves the panel in no better a position to reach an informed decision after the hearing than they were before.

Recommendation 5 – The Code of Practice should include advice on the need for good preparation by panel members, and the benefits of identifying in advance the key issues for clarification at the hearing.

The Clerk

“ The hearing itself was in effect conducted by the clerk. It was he who introduced everyone present and outlined procedures. He indicated to the Chairman throughout what she should do next, suggested questions she might ask and asked some questions himself. The clerk began drafting formal decisions on the basis of what appeared to be the consensus of opinion. His draft decisions, carefully worded to give the impression that full consideration had been given to all relevant matters, were not questioned or altered in any way. I doubt that it was intended that clerks should run the hearing with panel members little more than observers.”

“ The clerk was clerk to two Parish Councils locally and to the governors at a primary school. She handled arrangements well and took extensive notes, to which the panel referred at various times during the deliberations. She was not legally qualified. Some legal points arose on which she could not give a clear ruling. The panel had received no training whatsoever which put them at a disadvantage when seeking to interpret some of the points in the guidance.”

“ The Council’s solicitors take it in turns to handle appeal panels. They confirmed my view that either a legal Chair or a good legally qualified clerk is a pre-requisite for a satisfactory hearing.”

2.24 The traditional role of clerk to the appeal panels, which may be carried out by more than one person, involves the following functions:

- acting as the main contact point for the parties to the appeal;
- making the arrangements for the hearing within the statutory time limits;
- giving advice on the appeals procedures;
- notifying the parties to the appeal of the arrangements for the hearing;
- ushering the parents and the school representatives on the day of the hearing;
- giving advice to the panel on procedure and the law;
- noting the proceedings;
- assisting the panel to draft its decision letter in order to reflect the reasons for the panel’s decision;
- notifying the parties of the panel’s decision.

2.25 We have observed a variety of different arrangements as regards the clerking of admission appeal panels. The role of the clerk is often carried out by a member of staff from the local authority’s committee section, sometimes accompanied by a member of the authority’s legal Department. The clerking role is usually an add-on to the individual’s main job, which can often have a negative effect on the way the individual operates in that role. At hearings of appeals from foundation and voluntary-aided schools we have observed clerks from a range of different backgrounds, from an ex-Magistrates’ Court clerk to a PA to the school’s headteacher. Regardless of how skilled in clerking the particular individual may be, the close working relationship of the clerk to one of the parties to the appeal can make it entirely inappropriate for that person to be the clerk to an independent appeal panel. Equally, the clerk should not be involved in admissions within the LEA.

2.26 We see certain advantages in the clerk having a legal qualification, particularly where the Chair is not legally qualified, but, in any event, as a minimum requirement, we would expect that the clerk should be sufficiently familiar with the law and the Secretary of State’s guidance to be able to give advice to the panel and the parties to the appeal as required. For this reason, it will often be necessary for the clerk to remain with the panel during the

deliberation stage, so as to be on hand to provide advice on procedure and the law as required. All parties to an appeal should receive information about the clerk's role, and specifically that the clerk provides legal advice to the panel but takes no part in the deliberations or the decision making process.

Recommendation 6 – Panel clerks should be legally qualified and specially trained if the Chair of the panel is not legally qualified.

“ Last year was the first time the school had had admission appeals and the clerk had to learn how to cope with them without any support. Her position illustrates how isolated some of these panels can be, and reinforces how often people are having to “reinvent the wheel”, and acting without suitable and helpful networks.”

2.27 In a regionally based appeals service, it would be possible to create a cadre of specialist clerks to service appeal panels. This would enable clerks to build up a more detailed and specialist knowledge of the law and the procedures, thereby enabling them to offer a more effective and efficient service to the panels and the parties to an appeal. This would also give clerks a greater degree of independence and place them within an effective support network.

Recommendation 7 – We recommend the establishment of a specialist cadre of admission appeal clerks.

Education Appeals Support Initiative

“ EASI is a model of good practice, with local authorities working together... I tried to encourage them to consider hearing each other's appeals, sharing clerks and panels, to reinforce independence. It would be good if the “free-standing” foundation and voluntary-aided schools could be encouraged to operate in a similar way.”

2.28 We wish to highlight an initiative known as the Education Appeals Support Initiative (EASI), which comprises a group of admission and exclusion appeals clerks from a range of LEAs who meet every 6 months to share experiences and good practice in the conduct of admission and exclusion appeals. We have taken a keen interest in the work of the group and applaud the members for their initiative in getting this group started and maintaining its momentum. The group's members keep in close contact between meetings via e-mail, in order to share information and exchange ideas about such matters as recent court judgments or the latest policy initiatives affecting the panels. The Department takes an interest in the group and its officials regularly attend the group's meetings, to speak about the latest policy developments and to answer any questions the group's members may have.

- 2.29 We hope that the group will continue to meet and share good practice and would urge the Department to promote positively the EASI group's work. We would also urge the establishment of a similar group for panel members.

Recommendation 8 – To encourage more widely the sharing of best practice, the Department should positively promote the work of the EASI group.

Representation

“ Once the mother was invited to put her case, I suspect she was feeling quite cowed by the proceedings. With support and advice, or knowledgeable representation, there appeared to be a number of points she could have made which might have helped with her case. However, she tended to concentrate on the wrong things. After some fairly limited questioning, she was asked to sum up her case... I left feeling rather sad that the mother had suffered such a sterile experience, when I am sure it would have been possible to send her away with the feeling that she had had a good hearing.”

“ The parents on the whole represented themselves, or had a friend to help them. For some of them this was quite an ordeal, despite all the panel did to help, whilst for others who had been through this system several times with older children, less so.”

- 2.30 Appearing before an appeal panel can be a daunting experience for many parents, despite the best efforts of the clerk and the panel. We have come away from many hearings with the impression that the parent(s) did not have a fair hearing, principally because they did not have the knowledge and/or experience to put their case properly and fully to the panel. It is often only by observing the panel's private deliberations that the unfairness of a hearing can be detected. We have concluded, therefore, that there is a need for parents to have access to specialist advice and representation, both in preparation for a hearing and on the day of the hearing to assist with the presentation of their case. We recommend that the information given to parents about the appeals process should, therefore, include details of where parents might obtain such assistance and advice locally.

- 2.31 The Sheffield Hallam study canvassed parents' views on what improvements might be made in the organisation of the appeals process. A strong theme in the responses concerned the need for more guidance and representation. Many parents said that they would like some kind of representation from the beginning of the procedure. Panel members expressed a similar view but also thought that this could become very legalistic and expensive.

Recommendation 9 – Parents should receive information about where they can obtain specialist advice and access to local representation services.

The two stage process

“ Nothing in the early part of the deliberations would have indicated that the panel was aware that there is a two stage process in these cases.”

“ Nothing in the procedure adopted in the hearing would have indicated to the parents, or reminded them, that this was a two stage process that the panel was undertaking.”

“ The Chairman explained the two stage process in a manner which the mother clearly understood.”

“ The Chair's explanation of the two stage process was very effective, translating the technicalities of “prejudice” into language which was more understandable, with the effect that the questions which emerged were all relevant.”

2.32 We have observed shortcomings in respect of panel members’ understanding of the two stage process in admission appeals. The two stage process comprises a first stage, where the panel must decide whether admitting the child or children would “prejudice” the provision of efficient education or the efficient use of resources. At the second stage (which only arises if the first stage test is satisfied), the panel must exercise its discretion in balancing the degree of prejudice against the weight of the parent’s case for admission. (There are, in our view, three stages – before panels consider the prejudice question they should first satisfy themselves that the admission criteria have been properly applied, which, from our observations, many panels fail to do).

2.33 There appears to be some correlation between how well or otherwise the panels operate the two stage process and the extent to which panel members have or have not received training (which is covered more fully in Part 4). In the first two extracts the panel members had received little or no training, whereas the panels in the latter two extracts had received some training (although indicated their wish for more). This highlights why we place such high importance on the need for all panel members to receive appropriate training before they themselves sit on appeal panel hearings.

2.34 The apparent lack of understanding of the two stage process also suggests that some panel members (including some Chairs) are not sufficiently familiar with the Code of Practice on Admission Appeals, which includes a full explanation of the process. This is equally disappointing, and we would urge that every panel member should be given their own personal copy of the Code as part of their initial induction, and be required to refer to it.

Recommendation 10 – Every panel member should be given a personal copy of the Code of Practice on Admission Appeals as part of their initial induction.

Multiple Appeals

- “ There were 16 appeals to be heard, divided between the morning and afternoon sessions. The parents for the morning session were invited into the hearing room, and the Chairman proceeded to give a very full introduction. The panel asked a series of questions of the school’s representative. Questions from the floor were asked generally by the more confident, articulate parents. The parties were then asked to withdraw and the panel quickly came to the view that the school succeeded at this stage. There followed a series of individual cases. In the afternoon the whole two stage process was repeated with a new set of parents. This was where a slightly unsatisfactory, but perhaps inevitable, feature emerged. The same evidence for the school had to be elicited, so that these appellants could hear and challenge it. The question and answer session between the panel and the school’s representative therefore had the feel of “this is one we prepared earlier”. ”
- “ I also highlighted the problem of the panel not repeating their questions to the head teacher, as it meant that later parents did not know what had been elicited by the panel in earlier hearings. I ventured the suggestion that, after the first case, they could ask the head teacher to ensure that he commented in his presentation on issues which had been raised by questions in earlier cases. ”

- 2.35 Admission appeals usually arise at particular times in the academic year, when some of the more popular schools receive large numbers of appeals from parents who wish their children to be admitted to the school. The Code of Practice states that it is desirable that one appeal panel, comprising all the same members, considers all the appeals, and advocates dealing with them either in “grouped” or “individual” appeals. The “grouped” method involves going through stage one, where the admission authority presents the prejudice case for the school, with all the parents present, and then, if prejudice is established, going on to the second stage for each of the parents individually. The “individual” method, as its title suggests, involves dealing with both stages for each appeal individually.
- 2.36 The extracts from our visit reports highlight some of our findings in respect of our observations of hearings of multiple admission appeals. The Code of Practice states that either method is acceptable. Each method has its own advantages and disadvantages but, on balance, we favour the grouped approach to organising hearings. This appears to us to be fairer to parents, and avoids some of the artificiality involved in dealing with cases individually. It also reduces the risk of panels failing to deal separately with the two stages. The grouped approach also offers a certain advantage to those parents who are apprehensive or nervous, who can benefit from the questions put to the other side by parents who are more articulate and experienced.
- 2.37 We were pleased to note in the draft of the revised Code of Practice that the Department was advocating the grouped method as the preferred approach of the two where there were large numbers of appeals. We have urged that this be emphasised more fully in the Code, by highlighting the advantages of the grouped approach over dealing with cases individually.

Recommendation 11 – The grouped method should be recommended for hearing multiple admission appeals.

Class Size Appeals

“ In my subsequent discussion with the panel, they agreed that most of these appeals were now a waste of time. It was almost impossible to prove that the LEA had acted improperly, and if only there were better communication with the parties, or if there were an advice agency which could assist parents, then many of these lengthy hearings would be unnecessary. ”

- 2.38 The extract from one of our visit reports is typical of the comments which are regularly made to us by panel members in respect of appeals against infant class size provisions. We have been concerned to learn from many panel members that they have refused to sit on class size appeals.
- 2.39 Broadly speaking, the class size provisions specify that infant classes may not contain more than 30 pupils with a single teacher. The circumstances in which an appeal panel can allow an infant class size appeal are quite limited – the panel must show that the decision not to admit the child was not one which a reasonable admission authority would make in all the circumstances of the case, or that the child would have been offered a place if the admission arrangements had been properly implemented.
- 2.40 We have learned from a representative of the Local Government Ombudsman’s office that, from the cases received by his office in respect of class size appeals, some panels appear to take too narrow a view of their jurisdiction in these cases; and in particular, fail to consider, first, whether the school admission arrangements have been properly applied; and secondly, whether the decision not to admit a child was unreasonable. In addition, the Ombudsman’s office has noted a number of cases where factual errors have resulted in children failing the admission criteria, which when corrected, allowed them to be admitted subsequently. Some panels clearly need to take greater care to establish fully the facts of each case, rather than simply assuming that the facts as presented to them by the admission authority are correct.
- 2.41 Even taking account of the remedial steps suggested by the Ombudsman, it is clear that very few class size appeals are ever likely to succeed. And whilst we do not necessarily share the view that such appeals are “a waste of time”, we do agree that parents’ expectations of the likelihood of success of these appeals need to be better managed. This could be achieved through the provision of clear information about the class size provisions, and the limited circumstances in which an appeal panel may allow such appeals.

- 2.42 Some of the panel clerks in the EASI group have been working together to produce clear and comprehensive information leaflets for appellants in their own areas. We suggest that these could be adopted as a template for producing a standard format for this type of advice leaflet.

Recommendation 12 – Better information should be provided to parents about the special case of infant class size appeals.

Admission Arrangements

“ In both February and May, it was not known whether other appeals would be forthcoming. In February, the panel allowed a sizeable number of appeals. In consequence, there was far less flexibility in May, and most were refused. However, soon after that, a number of parents who had been holding two school offers for their child made their decisions, and let the school know that they were withdrawing. In consequence, there was more flexibility again in July, when several more appeals were successful... This worked very unfavourably against those who appealed in May.”

“ There were two unsatisfactory elements in the figure of 250 in respect of pupils already admitted. At the time of the appeal hearing, places had not yet been offered by public and grammar schools in the area. Annually, this has the effect of reducing the number of pupils seeking entry to this school.”

- 2.43 The extracts from our visit reports highlight the effect of the lack of co-ordination in admission arrangements between admission authorities, and the resulting impact on appeals, according to the time of year an appeal is heard. This leads to a particularly unsatisfactory outcome for some parents. Better co-ordination between admission authorities, particularly as regards the timetable for deciding on admissions for the prospective academic year, would do much to improve matters. Furthermore, it would also be helpful if parents were required formally to confirm acceptance of an offer of a school place by an agreed date (either locally, regionally or nationally) so that, by the time appeals are being heard, final admission numbers have been agreed among all local schools.
- 2.44 We were pleased to note that the Department’s consultation on new school admission arrangements addressed this issue, and proposed a common timetable for local school admissions. We have urged in our response that the new arrangements should also include a common cut-off date for acceptance of all offers of school places by parents.

Recommendation 13 – The new school admission arrangements should include a common cut-off date for acceptance of all offers of school places by parents.

The Panel's Decision and Reasons

- 2.45 Our Framework of Standards, at paragraph 1(d)x, states *“Decisions should wherever reasonably possible be given on the day of the hearing, and if not, as soon as possible thereafter. They must be supported by reasons, explained clearly to the parties, and if given orally, confirmed in writing. Reasons should identify findings of fact, apply the relevant law and explain the decision”*.
- 2.46 We have expressed concern in the past about the lack of substantive reasons in the written decisions of admission panels. It is not sufficient in giving reasons simply to repeat the words of the Act. Recent decisions of the courts have required panels to provide more detailed reasons for their decisions. The revised Code of Practice states *“The panel must communicate the decision, and the grounds on which it is made, in writing to parents and the admission authority”*. We would have liked to see included in the Code some sample model decision letters, which would be a helpful means of improving the standards of written decisions across the board.

Recommendation 14 – In order to improve standards of written decisions the Code of Practice on Admission Appeals should include sample model decision letters for use by appeals clerks.

Voluntary-Aided and Foundation Schools

- 2.47 Our programme of visits to admission appeal hearings included a number of visits to hearings in respect of foundation and voluntary-aided schools, which are their own admission authorities. Despite an instruction in the Code of Practice on Admission Appeals asking admission authorities to notify the Council of the dates on which they are due to hold appeal hearings, only a dozen or so schools regularly contact us. We therefore wrote to around 500 foundation and voluntary-aided schools reminding them of the need to notify us of forthcoming hearing dates. A number of schools wrote back subsequently, advising us that the reason we had not heard from them was that they had elected to let the LEA arrange their appeals on their behalf. However, we remain concerned that we do not hear from the vast majority of foundation and voluntary-aided schools.

“ The panel was convened by the clerk to the governors, who was also the Headmaster’s secretary. The accommodation arranged was in the school’s music Department ... which was not neutral territory... There was nobody to greet the parents, and the first person they were likely to meet was the Headmaster, because he conducted the case for the governors, and was constantly coming and going from the hearing room between each case.”

“ The panel did not very clearly demonstrate their independence from the school, and it was plain that parents did not really understand that the panel were independent. Each of the panel members knew some of the parents, usually as a result of worshipping at the same church. The pragmatic solution arrived at was that only the other two members of the panel would vote in such cases. Since the panel is supposed to have a minimum number of three, I presume this was improper, but the clerk did not object.”

“ My unease is increased by the absence of real independence. Jokingly, when they talked about allowing a large number of appeals, one member said to another “You won’t be invited back next year if you do that”. This seems to me to be a true word spoken in jest. Although they would no doubt have been prepared to act independently from the school, the panel did not actually recognise the need to do so, and no doubt the school is happy with that state of affairs... The panel members’ sympathies appeared to remain with the school rather than the parents.”

2.48 The extracts from our visit reports represent some of our key concerns following our visits to voluntary-aided and foundation schools’ panel hearings. We acknowledge that these cases, which highlight some of the worst examples of bad practice, involve schools which may not have had to deal with many admission appeals in the past and not built up any level of expertise. We have also observed some well conducted hearings of appeals in respect of those voluntary-aided and foundation schools which have built up a good level of expertise arising from the high levels of appeals they receive each year.

2.49 Overall, we remain concerned about the following aspects of the operation of the appeal panels from voluntary-aided and foundation schools:

- panel members are less likely to be recruited through open advertisement, and more likely via word of mouth or the HeadTeacher’s contacts. This has implications as regards actual and perceived independence—both in the sense of how the panels perceive their own independence and in how it is perceived by others;
- the panels are likely to be rather isolated, with little or no access to support and advice, and with few opportunities for networking with peers;
- panel members are less likely to have received appropriate training;
- hearings are more likely to take place within the school itself rather than in a neutral location; and
- panel clerks are less likely to have the necessary level of expertise to be able to provide the appropriate level of support and advice to the panel.

2.50 Many of our concerns about the operation of admission appeal panels for voluntary-aided and foundation schools would be alleviated if these schools’ appeals were all organised and run by the LEA regionally. The LEA currently manages all exclusion appeals and has the necessary expertise to manage all admission appeals. We suggest that this change should be effected at the earliest opportunity.

Recommendation 15 – All admission appeals, including those for voluntary-aided and foundation schools, should be managed and run by LEAs regionally.



Image: www.freemages.co.uk

Part 3

Exclusion Appeal Panels

Constitution of Exclusion Appeal Panels

- 3.1 The School Standards and Framework Act 1998 established the current exclusion appeal panels under Section 67 of, and Schedule 18 to, the Act¹. Schedule 18 prescribes the constitution of the panels as consisting of three or five members appointed by the LEA, including at least one person from each of the following categories:
- persons who are eligible to be lay members, that is a person without personal experience in the management of any school or the provision of education in any school;
 - persons who have experience in education, are acquainted with educational conditions in the local authority area or who are parents of registered pupils at a school.
- 3.2 The following persons are excluded from membership of the panels:
- any member of the authority or of the governing body of the school in question; or
 - any person employed by the authority or governing body, otherwise than as a teacher; or
 - any person with any connection with the authority or the school; or with any person employed by the authority or governing body; or with the pupil who has been excluded; or who has any connection of a kind which might raise any doubts as to the person's ability to act impartially.
- 3.3 In discharging their statutory functions exclusion appeal panels are required to have regard to guidance issued by the Secretary of State, currently contained in Circular 10/99 – Social Inclusion: Pupil Support (as revised).

Independence – openness, fairness and impartiality

- 3.4 The Education Act 2002 provides for the procedural rules for exclusion panels to be contained in regulations, rather than, as at present, in the Schedule to the 1998 Act. Whilst we were pleased at this new development, which we had urged during the legislative passage of the 1998 Act, we were concerned to note in the accompanying Explanatory Notes that the Department intended to alter the constitution of the panels.

¹ Schedule 67 of, and schedule 18 to, the 1998 Act were repealed with effect from 20/1/03 and replaced by provisions in Section 52 of the Education Act 2002, S.I.2002 No.3178 and S.I.2002 No.3179

3.5 The Department issued a consultation paper last year outlining policy proposals in respect of exclusion appeal panels. This included a proposal to alter the composition of the panels so that, whilst they were intended to remain independent, they would consist predominantly of people with direct experience of classroom management. We objected strongly to this in our response to the consultation on the ground that it would shift the balance of the panels too far in favour of schools, thereby fundamentally altering the panels' actual and perceived independence. In our view, exclusion panels are already heavily weighted in favour of schools – the panels are run by the LEA; they may include serving or former teachers; hearings often take place in LEA premises; and the clerk is a member of LEA staff. Teacher and school governor members of the current panels are already inclined to use their knowledge of local conditions without giving the parties to an appeal any chance to comment on these matters; no doubt, because they believe that they have been recruited for their specialist knowledge and because they are often not properly trained in the basics of a fair hearing.

3.6 In our view, the panels need to retain a strong lay element in their composition in order to maintain a proper balance and to promote a greater perception of independence. Some panel members and clerks to whom we have spoken have also expressed concerns about the proposed change.

“ The panel members were unpersuaded by the Department’s suggestion that all members should have a background in education. They felt that this would reduce the panel’s independence in the eyes of the appellants.”

3.7 We were consulted on draft Pupil Exclusions and Appeals Regulations which provided, among other things, for the new constitution of the panels to comprise, in the case of a 3 person panel, 1 lay member, 1 headteacher and 1 school governor; and in the case of a 5 person tribunal, 1 lay member, 2 headteachers and 2 school governors. The “lay member” can also be a governor or a person who has experience in school management in a voluntary capacity. We are concerned at the cumulative effect of this proposed change, particularly on the independence of the panels, when viewed alongside all the other concerns we have about their operation.

- 3.8 We also expressed concern about a proposal to extend the range of decisions the panel can make. Currently, the panel can either uphold the decision to exclude or direct that the child be reinstated. A new provision in the regulations provides that *“the appeal panel may decide that because of exceptional circumstances or other reasons it is not practical to give a direction requiring his reinstatement, but that it would otherwise have been appropriate to give such a direction”*. This provision lacks clarity and has the potential to operate to the detriment of parents.
- 3.9 The new provisions came into force on 20 January 2003 through the Education (Pupil Exclusions and Appeals) (Maintained Schools) Regulations 2002, and analogous regulations governing Pupil Referral Units. The new regulations provide for the panels to be chaired by the lay member. Whilst this allays some of our initial concerns, we believe that the new composition of the panels still results in their being too heavily weighted in favour of schools.
- 3.10 The key principles of openness, fairness and impartiality, as set out in paragraphs 2.7 to 2.14 in respect of admission appeal panels, apply equally, and in some instances even more so, to exclusion appeal panels:
- for the reasons mentioned in paragraph 3.5 above, concerning the constitution and organisation of the panels, and the unsatisfactory arrangements for hearings, there is less separation between the original decision making and appeals functions than is usual in a truly independent appeals system;
 - the case for reform is even greater for exclusion panels, given the penal nature of the cases they hear, and the likelihood that, with local teachers on the panels (albeit not from the school involved), parents are unlikely to feel that their appeal in respect of their child’s exclusion has received a fair hearing by an impartial appeal panel;
 - there is a powerful case for a national appeals service for exclusion cases under a judicial President, which we would ideally wish to see.

A legally qualified Chair

“ At this visit there were signs of improvement, but I was confirmed in my view that exclusion appeals need, at the least, a legal chairman, and if exclusion appeals are going to involve so much consideration of special educational needs, they would be much better decided by the Special Educational Needs Tribunal.”

“ The Chairman made little effort to restrict the hearing to the key points under appeal, I suspect, because the panel had not agreed what these should be.”

3.11 We have repeatedly discussed in our Annual Reports the strength of the case for exclusion appeal panels to have a legally qualified chair, and the findings from our additional programme of visits have reinforced that view. The need for high quality chairmanship, to which the Franks Report² attached great importance, is particularly relevant to exclusion panels. Exclusion appeals are among the most significant of all the hearings we observe, principally because of the potentially adverse impact the panels’ decisions can have on the lives of those affected by them. They are also akin to penal proceedings. Hearings are likely to be more adversarial in nature, and involve emotive issues. The Chair must exercise proper control of the proceedings and ensure that the panel’s deliberations are structured so as to reach a properly reasoned decision. There is also a greater emphasis on the need for the panel to weigh often conflicting evidence and exercise discretion in a judicial manner. All these factors lead us to conclude that the effective operation of exclusion panels is fundamentally flawed by the absence of a legally qualified chair.

Recommendation 1 – Exclusion appeal panels should always have a legally qualified Chair.

² *Report of the Committee on Administrative Tribunals and Enquiries (Cmnd. 218)*

Exclusion and Special Educational Needs

“ The pupil in this case was about to be assessed for a statement of special educational needs just at the time he was excluded. The recently published consultation on exclusion from school states that the most recent data (July 2001) shows that the permanent exclusion rate for pupils with a statement of special educational needs is seven times higher than for pupils without a statement. As concluded in previous visit reports, exclusion appeals should be handled by the SENT, who would deal with matters much more professionally than this particular panel.”

3.12 A recent Audit Commission report³ has shown that 9 out of 10 primary school and 6 out of 10 secondary school exclusions involve children with special educational needs. In the light of this and our own observations of the recurring link between exclusion and special educational needs, there would appear to be a clear case for exclusion appeals to be heard by the Special Educational Needs and Disability Tribunal (SENDIST), formerly the Special Educational Needs Tribunal (and from 1 September 2003, by the Special Educational Needs Tribunal for Wales). The SENDIST is a well-established, independent tribunal, with a presidential Head, whose constitution includes a legally qualified Chair. The current President of the SENDIST, Trevor Aldridge QC, is aware of our views and has acknowledged that the SENDIST could hear exclusion appeals satisfactorily, although recognising that there would be significant organisational issues to be addressed. The SENDIST already has limited jurisdiction over cases of temporary exclusion from maintained schools as a result of discrimination on grounds of disability (but more widely in relation to independent schools). We have no hesitation in repeating this recommendation, which we first raised with the Department during the passage of the Education Act of 1993.

Recommendation 2 – Exclusion appeals should be heard by the SENDIST.

³ *Special educational needs – A mainstream issue (ISBN 1-86240-409-7)*

The Clerk

“ The County Council’s solicitors take it in turns to handle exclusion appeal panels. They have to make up for the inadequacies of the chairmen. The clerk did a good job, making sure that everyone understood the order of events and the law which applied, and then, effectively chairing the deliberations. This confirmed my view that either a legal chairman or a good legally qualified clerk is a pre-requisite for an effective hearing.”

3.13 As with admission appeal panels we have observed a variety of different arrangements for the clerking of exclusion appeal hearings. A positive aspect is that, whilst practices vary between LEAs, overall, we have found that there is more likely to be a legally qualified clerk present at an exclusion appeal hearing.

3.14 The Secretary of State’s guidance to the panels, in Circular 10/99 – Social Inclusion: Pupil Support (which has been revised from 20 January 2003), advises at Annex D that *“the appeal panel should have the services of a clerk who ... ideally, should have received some legal training and have experience in the conduct of appeal hearings”*. In our view, for as long as exclusion appeal panels do not have a legally qualified Chair (but see paragraph 3.11 above), it should be mandatory for there to be a legally qualified clerk at the hearing to provide a source of advice on the law and the procedures to be followed by the panel.

Recommendation 3 – In the absence of a legally qualified Chair exclusion panels should have the services of a legally qualified clerk.

3.15 It can often be all too easy for the clerk, particularly where he or she is legally qualified, to assume control of the proceedings at a hearing. This should be avoided, and particularly in the presence of the parties to the appeal, since it inevitably impacts on the extent to which the parties perceive the panel to be independent. The Secretary of State’s guidance to the panels does not provide sufficiently comprehensive guidance on the clerk’s role (the key elements of which are covered in paragraph 2.24) and we suggest that the Department should remedy this in a future revision of the guidance material.

Recommendation 4 – The Secretary of State’s guidance to exclusion appeal panels needs to include more comprehensive guidance on the role of the clerk.

Representation

“ The hearing was very carefully conducted. However, it was difficult to determine exactly what the boy and his mother wished to say. The panel tried very hard to elicit questions and comment from them but they never really contested any of the allegations or the decision to exclude.”

“ The Chairman of the discipline committee which had upheld the Head’s decision to exclude was accompanied by a solicitor from the Council. In all there were three solicitors at the table. The bundle of papers in the case ran to nearly two hundred pages and they had not been paginated.”

“ The mother said practically nothing and asked no questions.”

The Appeal Hearing

“ The panel did not take time to decide on what the key issues were in the appeals before the parties were brought in... The panel had two key issues to consider– whether the allegations of assault were malicious, and if so, whether the decision to exclude the children permanently was a reasonable course of action for the headmaster to take in the circumstances. The panel had some difficulty in deciding the former, mainly because they had not explored the issue of the allegations of assault in sufficient depth.”

3.16 It is particularly important, given the penal nature of exclusion cases, for parents to have access to good quality specialist advice and representation, both in preparation for the hearing and on the day of the hearing to assist with the presentation of their case. Moreover, there is a strong case, in our view, for providing access to appropriate legal representation for exclusion cases, and we have become increasingly concerned by the lack of any provision for this. We have observed instances where those present at a hearing included the school’s legal representative, a teacher and a member of the Discipline Committee, opposite an unrepresented parent.

3.17 We are pleased to note in the revised guidance on exclusion from schools and pupil referral units that one of the suggested model letters from head teachers to parents includes contact details for the Advisory Centre for Education, an independent national advice centre for parents of children in state maintained schools.

3.18 Good preparation is one of the key factors in ensuring a successful appeal hearing, and particularly given the significance of the issues under consideration in exclusion appeal hearings. We have frequently observed hearings which have been less than satisfactory because of a lack of good preparation by the panel. Whilst the members will usually have each read the papers and familiarised themselves with the issues, they do not always take the opportunity before the hearing, as a panel, to agree among themselves the issues which need to be clarified and the strategy for establishing the facts and evidence at the hearing. The end result is often a hearing which fails to highlight the importance of the issues under appeal, which in turn leads to difficulties for the panel at the deliberation stage in weighing the evidence and reaching a properly and fairly balanced decision.

- 3.19 We recommend that panels should be encouraged to hold a pre-meeting before an appeal hearing to review the papers, clarify the issues under appeal and agree their strategy for the hearing. This need not be a time consuming exercise and would, in most instances, only take around 15 minutes. This will be time well spent, and may often result in a saving in the time taken by the hearing as a consequence of the panel being better prepared.

Recommendation 5 – The guidance to exclusion appeal panels should emphasise the benefits of holding a pre-meeting before the hearing to clarify the issues under appeal and agree the panel’s strategy for the hearing.

Accommodation for Hearings

“ The venue was the local teacher training establishment, which was clearly a local authority building. It was rather off the beaten track and did not appear to be accessible by public transport. However, there were adequate parking facilities.”

“ The Municipal Building is an old building with a modern reception. There was adequate disabled parking and good lifts. The hearing took place in a very warm panelled room. The panel of three sat at one side of a large table, the clerk and the Council’s legal adviser at one end, the boy and his mother opposite the panel and the four other participants ranged round the other end. It was fairly crowded but adequate. At various points the noise from offices next door was so loud that participants found it difficult to hear and the Council’s legal adviser had to leave the room on two occasions in order to quieten things down.”

- 3.20 The Secretary of State’s guidance to exclusion appeal panels states that “the appeal hearing should not be held at the excluding school”; but gives no other guidance as regards the need for LEAs to identify suitable venues. As with admission appeal hearings we have found the standards of hearing accommodation to be variable. For the most part hearings take place in Council accommodation, which may not always be sufficiently neutral since some appellants may not be able to distinguish the local authority from the local education authority. However, we recognise that local authority accommodation may often be the only option within the short timescale for organising exclusion hearings.

- 3.21 LEAs could be encouraged to do more to improve the standards of accommodation for hearings, perhaps by investigating alternatives to local authority buildings, whose committee rooms are often too large and intimidating.

Recommendation 6 – The guidance to exclusion panels needs to include better and more detailed advice about accommodation for appeal hearings.

**The Panel’s Decision
and Reasons**

- 3.22 Our Framework of Standards, at paragraph 1(d)x, states *“Decisions should wherever reasonably possible be given on the day of the hearing, and if not, as soon as possible thereafter. They must be supported by reasons, explained clearly to the parties, and if given orally, confirmed in writing. Reasons should identify findings of fact, apply the relevant law and explain the decision”*.
- 3.23 We have expressed concern in the past about the lack of detailed reasons in the written decisions of exclusion panels. Recent decisions of the courts have clarified that panels must provide more detailed reasons as to why the panel reached its decision. We are pleased to note that the revised guidance to panels includes a model letter for use by the clerk in notifying parents of a panel’s decision, which recommends the inclusion of detailed reasons.

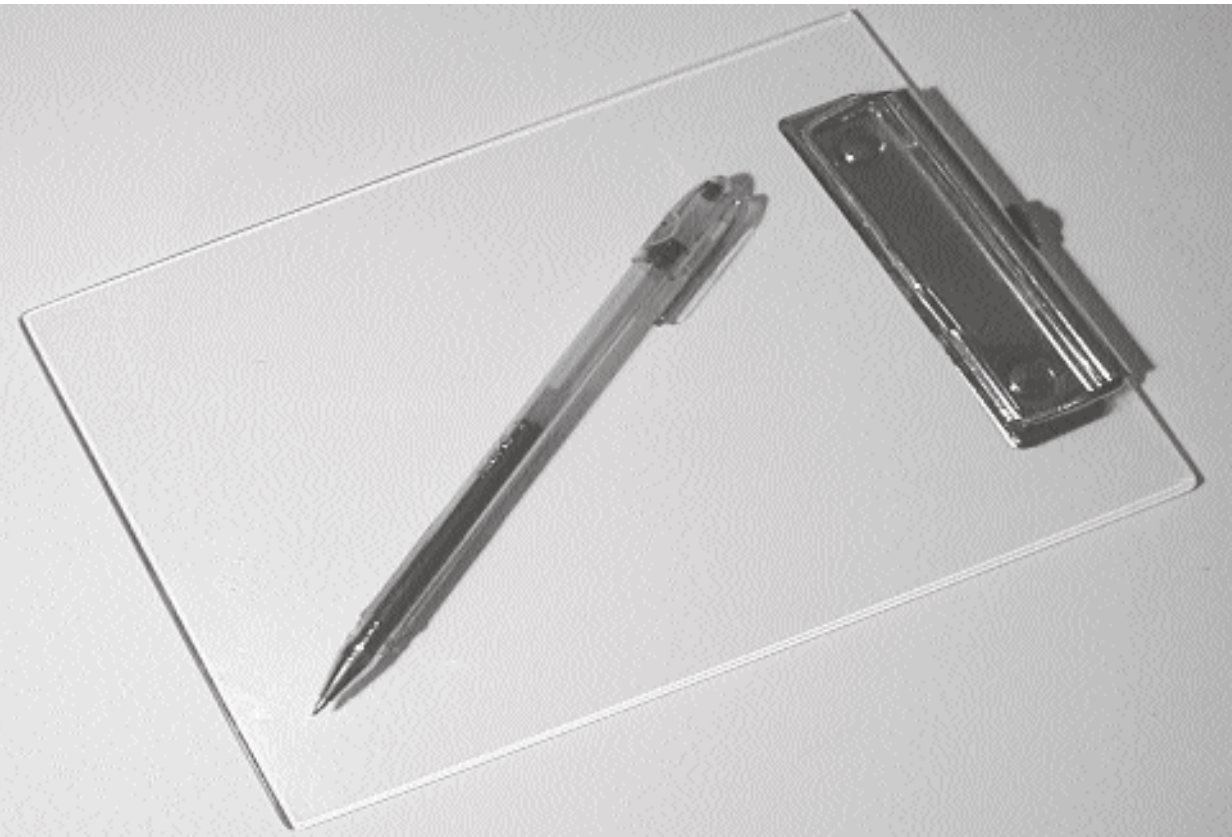


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Part 4 Training

Overview

“ Training has largely consisted of sitting in a couple of times before acting as a panel member. The combined training of the three members could best be summed up as minimal. ”

“ They were all very enthusiastic about the training which they received. Whenever there was any change in the regulations, for example, they were invited to attend a half-day session, which included briefing from the Legal Adviser. There was no separate training for Chairmen. ”

“ None of them, including the Chairman, had had any training of any kind. The clerk said that the LEA was in the process of recruiting additional panel members and if sufficient numbers were forthcoming, training would be considered. ”

“ Both the Chairman and the members said that they had been trained using the new training material which they thought was excellent. The training was delivered by the people from ISCG—Information for School and College Governors. ”

“ Neither of the wing members have had any training specifically for this role and the clerk was unsure how she could organise some for them. It became clear what a problem an untrained wing member can be. One of them insisted on getting his point or question in, no matter what stage of the procedure the case had reached. ”

4.1 It is our long-standing view that training for all tribunal Chairs and members is an absolute prerequisite before any person sits to hear an appeal. Tribunals are judicial bodies and proper training is essential to enable them to carry out their functions effectively. Ideally, every tribunal system should have a robust and comprehensive training policy in place, both knowledge and skills based, which includes a clear commitment to the provision of induction training for new members, regular refresher training for existing members and specific training for Chairs. This applies equally to school admission and exclusion appeal panels.

4.2 Our recently published Standards Framework sets out our specific requirements in respect of training, including:

- induction training before tribunal members begin sitting;
- regular refresher training for all members;
- lead members to be trained in chairing skills;
- regular provision of guidance to members on matters of law and practice;
- training for all members in diversity and equal treatment issues.

4.3 We have on many occasions in the past urged the Department for Education and Skills to ensure that better arrangements are put in place for training panel members of both admission and exclusion appeal panels. We would have liked, ideally, to see a specific statutory requirement in the 1998 Act for local education authorities to provide the necessary resources for training admission and exclusion appeal panels. However, the Department did not accept this suggestion.

4.4 In respect of training for panel members, the revised Code of Practice on School Admission Appeals states *“The Secretary of State considers that it is very important for appeal panel members and chairpersons to receive training, both before being appointed to a panel and afterwards, to continue to update their skills and knowledge during membership.”* The Code also includes the message that it would not be appropriate for untrained members to sit on a panel. We will monitor what impact this has in our future visits to hearings. Similarly, the revised guidance for exclusion appeal panels simply states *“LEAs should ensure that all panel members and clerks receive suitable training and that the chair is trained in the specific chairing skills the panel requires”*.

Developments in Training

- 4.5 In September 2000, the Department issued new training material for members of admission appeal panels. This material was developed by ISCG – Information for School and College Governors. When we were consulted on the draft of the training material we said we were pleased that this work was finally being taken forward by the Department. We also considered that the material was of a high standard and urged that it be promulgated widely to all LEAs and admission authorities. We attended some of the early training sessions involving the use of the new material. These sessions were well received by the trainees, with the one proviso that some of the more experienced panel members found parts of the training material quite basic. Feedback from trainees suggested that future training sessions needed to be better tailored to the suit the specific needs of the audience.
- 4.6 In September 2001, the Department issued separate training material for members of exclusion appeal panels. This material had been adapted from the admissions training pack, and was again developed by ISCG. We were pleased at this further development, and were impressed by the high quality of the material. We urged again that the material should be promulgated widely to all LEAs.
- 4.7 Since then we have asked the Department for feedback on the take-up of the new training materials, because evidence from our visits suggests that some panels and their clerks are still unaware of the existence of this material. Indeed, during one of our most recent visits a very experienced and enthusiastic clerk from a large LEA, who had herself been very proactive in providing training for her panel members, had neither heard of nor seen any of the new training material issued by the Department. This suggests that the material may not be reaching its intended target audience.
- 4.8 The Sheffield Hallam study found a high level of satisfaction with the quality of training from those panel members whose views were canvassed. However, the study also found that more and differentiated training for Chairs and presenting officers was needed. The particular sample of members canvassed, in general, appeared to have a greater level of awareness of the new training material than we have found at our visits.

The current position on the provision of training

4.9 In a meeting with representatives from ISCG, we learned that they have run a number of training sessions, funded by the Department, although largely covering admissions. They estimated that their training sessions have targeted around 30% of all LEAs across England and Wales, the feedback from which has been overwhelmingly positive. The position in respect of training for exclusion panels is not so encouraging, since it would appear that LEAs have to a large extent been left to arrange their own training sessions using the new material.

4.10 It is clear from our most recent visits that the new training material has had a positive impact on the effectiveness of admission and exclusion appeal panels, in those LEAs and admission authorities where it has been taken up. However, evidence from our visits shows that the overall position in respect of the provision of training to panel members remains patchy, with pockets of good practice in some LEAs and admission authorities, but very little improvement in others. Whilst the Department has made efforts to promulgate the new training material widely, there is evidence that this has been to little practical effect in some LEAs and admission authorities. It remains the position that the limited training offered to many panel members still amounts to no more than arranging for members to observe one or two hearings before they are asked to sit on an appeal panel. This is entirely unsatisfactory. We have noted the new references to training in the respective guidance to admission and exclusion panels, which are an improvement but do not go as far as we would wish. In our view, it should be mandatory for all new panel members to receive full induction training before being allowed to hear appeals.

Recommendation 1 – There is need for a specific requirement in the Secretary of State’s respective guidance to admission and exclusion appeal panels to the effect that it is mandatory for all panel members to receive full induction training before being allowed to hear appeals.

“ The aim of the seminar, which appears to take place annually, is to bring together new and existing panel members to share experiences and discuss matters of interest. We both felt distinctly uncomfortable about the underlying messages in two of the presentations, and felt sure that, despite a robust defence of their role, some panel members might well think they were being got at. We both agreed that the sort of propaganda being propounded was wholly inappropriate in a training event of this kind.”

4.11 We have attended training seminars run by some LEAs for new and long serving panel members, and have been impressed by the commitment of the clerks who make the effort to run such events on an annual basis. However, we have experience of unsuitable content at seminars, including material from a senior LEA official whose address to panel members comprised a critique of the impact on schools of admission panels’ decisions. We also observed a local headteacher give a presentation with the same underlying message, that panels did not fully appreciate the results of their decisions. In our view, such presentations, which attempt to influence panel members not to allow appeals, are entirely inappropriate for training seminars of this kind.

Training for panel Chairs

“ Training is provided for new members and is now compulsory. It is given by a trainer who is experienced and all three agreed that the quality was good. No specific training is given for chairs.”

4.12 Whilst the new training material gives helpful guidance on matters such as the respective roles of panel Chairs and members, in our view, the technical nature of this material does not fully address the more practical training needs in respect of the skills required by panel Chairs. The Department had previously indicated that it was in contact with the Tribunals Committee of the Judicial Studies Board, which provides advice and support on training to tribunals, with a view to setting up “Training the Trainer” courses in LEAs. We are not aware that any LEA or admission authority currently offers any form of training in chairing skills to panel Chairs. This is a matter which we would urge the Department to remedy at the earliest opportunity.

“ The members are part of a busy team who are given one day’s induction and an annual training day. This is probably sufficient for admission appeals, but the chairman had evidently been given no special training in chairmanship and, although he was evidently willing and keen, he was not always in control.”

4.13 In making arrangements for training for panel Chairs, we would urge the Department to have regard to the JSB’s “Competence Framework for Chairmen and Members of Tribunals”, which has recently been published. The framework comprises six “headline” competences, the latter three of which are of particular importance in the “management” skills required by panel Chairs. The headline competences are:

- law and procedure
- equal treatment
- communication
- conduct of hearings
- evidence
- decision making

Recommendation 2 – There is a need to remedy the lack of training in chairing skills for the Chairs of admission and exclusion panels, having regard in particular to the JSB’s Framework of Competence for tribunal Chairs and Members.

Resources for training

- 4.14 We consider that the general lack of provision for training for panel members stems from the failure of LEAs and admission authorities to provide adequate resources for training, for which there is no specific requirement in the 1998 Act. It is apparent that, in those LEAs where we have noted good practice in the provision of training, this has usually been due to the positive influence exerted by the clerk to the panel. Some of the clerks to whom we have spoken have admitted that they have faced an uphill struggle to obtain funding for training, which often has to be diverted from other budgets. This is a particular problem for foundation and voluntary-aided schools which are their own admission authorities.
- 4.15 We recognise the competing demands on education budgets, and that ultimately the main priority must be the provision of education. Nevertheless, LEAs and admission authorities have a statutory duty to operate these appeal panels, and it is in the best interests of children, their parents and schools that they should be run efficiently and effectively. Providing an adequate level of training for panel members is essential in order to achieve this. We consider that efforts should be made to identify the level of resources required for training panel members and to earmark the necessary resources from the relevant budgets.
- 4.16 Echoing the theme developed in chapter 2 about a regionally based appeals service and the sharing of best practice among LEAs, we recommend that the training function should also be organised on a regional basis, harnessing the existing good practice that already exists in some LEAs. This would:
- enable levels of experience in training provision to be built up quickly in areas where it is most needed;
 - avoid unnecessary duplication of effort between LEAs; and

- enable training costs to be shared among LEAs and admission authorities.

Recommendation 3 – The training function for admission and exclusion panels should be organised regionally, and proper systems put in place within LEAs and admission authorities for estimating and earmarking resources for future training needs.

Foundation and Voluntary-Aided Schools

- 4.17 We have particular concerns about the training provided for admission appeal panel members serving foundation and voluntary-aided schools, particularly where these admission authorities run their own appeal panels rather than asking the LEA to do this for them. These authorities have the poorest record overall in terms of the training they provide to their members. There appear to be two main reasons for this. The individuals responsible for organising the panels can often be quite isolated from access to advice and information, with the result that they may not be aware either of what training is available and/or how to access it. The problem of finding the necessary resources for training is even more acute, since it will often be thought to be too resource-intensive to organise training for one or two panel members.
- 4.18 We take the view that this problem could be overcome if, as recommended at paragraph 2.50, responsibility for running the admission appeal panels for all foundation and voluntary-aided schools, including the responsibility for training, were to be transferred to LEAs. This arrangement appears to work well for those admission authorities on whose behalf the LEAs already organise and manage their appeal panels.

Appendix A

Framework of Standards for Tribunals

**1. Tribunals should:
Be independent;
Provide open, fair and
impartial hearings.**

- a) **Tribunals should be free to reach decisions according to law without influence (actual or perceived) from the body or person whose decision is being challenged or appealed, or from anyone else**
- b) **Judicial officers should be independent**
 - i. Procedures for the selection and appointment of Tribunal members should be fair and independent of related departments of government and other interested parties¹
 - ii. Appointees must have appropriate security of tenure, subject to procedures for re-training or removal from office in case of poor performance, misbehaviour, incapacity or persistent failure to comply with sitting requirements
 - iii. Procedures should be in place to ensure conflicts of interest are identified and avoided
- c) **Appointments to judicial office² should take account of the diversity of our society, and the composition of tribunals should be monitored to inform those making appointments**
- d) **Tribunal hearings should be open and fair**
 - i. Hearings should normally take place in public, although a private hearing should be provided in appropriate circumstances³
 - ii. At the hearing, the identity of the tribunal membership should be communicated to the parties
 - iii. Hearings should be conducted with an appropriate degree of informality, and the necessary steps taken to ensure all relevant issues are explored
 - iv. Appropriate guidance about evidence and procedures should be given at hearings especially where individuals have no legal representation
 - v. Special procedures should be provided for hearings involving children or other vulnerable groups e.g. those with severe mental health problems
 - vi. The parties should be accorded equal status (e.g. presenting officers should not be present with tribunal members in the absence of an appellant)

- vii. If the hearing proceeds in the absence of a party, or his or her representative, the tribunal should nevertheless seek to ensure that that party's case is fully considered
- viii. Where an interpreter is required by one of the parties, the interpreter should be used throughout the hearing to ensure the proceedings are understood
- ix. Decisions should be soundly based on the evidence and relevant law
- x. Decisions should wherever reasonably possible be given on the day of the hearing, and if not, as soon as possible thereafter. They must be supported by reasons, explained clearly to the parties, and if given orally confirmed in writing. Reasons should identify findings of fact, apply the relevant law and explain the decision

**2. Tribunals should:
Be accessible to users;
Focus on the needs
of users.**

a) Potential users of the tribunal should be given access to information about its services

- i. Information in plain language about the tribunal, translated where appropriate into other languages, should be disseminated to interested organisations, and made available in places where it is likely to be seen by potential users. It should inform users about:
 - the range of issues that can be referred to the tribunal
 - how to contact the tribunal
 - what information the tribunal will require
 - where to get help and advice
 - where previous decisions of the tribunal are recorded
- ii. Makers of decisions from which there is a right of appeal to a tribunal should be obliged to inform those affected by decisions of the right of appeal and how a guide to such rights and procedures can be obtained

b) Procedural Rules should be short, clear, simple, and up to date

- i. The same procedures and prescribed forms (if any) should be used without local variations except where necessary for the greater convenience of local users
- ii. Full written copies of all the tribunal's rules, procedures and prescribed forms relevant to a party's case should be made available, free of charge, to all parties and their advisers on request
- iii. Requirements imposed on parties under procedural rules should be appropriately modified where a party is not legally represented
- iv. An up to date plain language guide to the procedures should be available for users. This should be translated where appropriate into other languages
- v. Rules should be regularly reviewed in consultation with users and with the Council on Tribunals. The object of such review should be to improve accessibility to users, simplicity, fairness, effectiveness and speed⁴
- vi. Whenever amendments are necessary they should be made promptly and brought to the attention of users

c) Forms should be short and simple

- i. Where there are timetables, e.g. for the submission of documents, they should be made clear

d) The papers required by the tribunal should be proportionate and appropriate to the issues at stake

- i. Users should be able to understand:
 - what papers they have to provide
 - what papers the other party will provide
 - what additional papers the other party can be required to provide
- ii. Provision should be made for users with special needs, e.g. braille, audio tape, large print, translation into languages other than English
- iii. There should be a clear time limit for lodging of all papers

- e) Tribunals should provide users with clear information about how their case will be handled**
- i. Users should be clearly informed about what is expected of them, what they have to provide, what will happen at a hearing, the circumstances in which travelling expenses are payable and how to make a claim
 - ii. Users should be provided with clear and timely information about the date and venue of any hearing
 - iii. Users should be clearly informed where a tribunal has the power to order one party to pay the costs or expenses of another. Wherever practical that information should include an indication of the scope and extent of a likely award
 - iv. Users should be able to find out about the progress of their case and how long they are likely to have to wait for a hearing or decision
 - v. Where it is possible to do so, users should be given a specific time for their hearing
 - vi. Users should be informed whether they have to attend or not, and advised whether it will usually be in their interest to do so
 - vii. Information about the venue should include parking facilities and public transport routes, refreshment and other facilities, access for people with disabilities⁵, and a map
 - viii. The tribunal's decision should be accompanied by information about appeal rights and where independent advice may be obtained
- f) A complaints policy and procedure should be in place in relation to the performance of both judiciary and administration, and should be publicised to users⁶**
- g) Tribunals should establish and publish a clear policy on the payment of travelling expenses**
- h) Tribunals should establish and publish a clear policy on equal treatment and continuously monitor compliance**

3. Tribunals should:
Offer cost effective procedures;
Be properly resourced and organised.

- a) **Judicial resources should be managed to provide a good service, and to ensure that individuals sit often enough to maintain knowledge and skills**
- b) **Standards for judicial behaviour and performance should be set and monitored**
 - i. The results of monitoring should be regularly assessed and used to raise standards
 - ii. All chairs and members should participate in a review of their performance at appropriate intervals to identify areas of good performance and areas for improvement. Suitably experienced colleagues, specially selected and appropriately trained to be able to give constructive feedback on performance, should undertake annual reviews
- c) **Cases should be heard, and a final decision given, within a reasonable period**
 - i. Judicial practice should take account of the need for expedition and reasonable economy
 - ii. Management information about the age and type of outstanding cases should be collected and monitored
 - iii. Waiting time targets for cases should be set and monitored
- d) **Programmes of induction and refresher training⁷ should be provided for tribunal chairs, members and administrative staff**
 - i. Induction and training should take place before tribunal members begin sitting
 - ii. Regular refresher training should be provided to all members, including the opportunity to discuss matters of concern with other members
 - iii. The lead members of tribunals should be trained in the skills of chairing
 - iv. Guidance should be provided regularly to all members upon matters of law and practice
 - v. Chairs, members and administrators should have participated in training in diversity and equal treatment issues

- e) Appropriate levels of administrative and clerical support should be provided for the proper conduct of tribunal hearings**
- i. Tribunals should provide appropriately trained and skilled staff and administrative facilities sufficient to ensure that tribunals are properly administered and hearings are properly supported, with advice and assistance from clerks, ushers and other administrative staff
 - ii. Roles and responsibilities of tribunal clerks and other administrative staff should be clearly determined and communicated to those concerned
- f) Standards for hearing venues and for service and performance should be set and monitored in consultation with users**
- g) Appropriate planning, budgeting and monitoring procedures should be in place**
- i. Data about patterns in the caseload of the system (errors in first tier decision making, cost of cases going to judicial review etc.) should be collected and monitored
 - ii. Administrative processes should be responsive to the needs of those who wish to use them
 - iii. Targets should be reviewed regularly and improved where possible
 - iv. Information about the performance of the tribunal should be published at least once a year
 - v. Information about performance should include, where relevant:
 - Key performance statistics (waiting times, outstanding caseload, age of caseload, intake and clearance)
 - Performance against quality standards
 - Expenditure and investment figures
 - Details of training for judiciary and administrative staff
 - Information about complaints
- h) Where relevant, tribunals should work with first tier decision makers and/or second tier tribunals continuously to improve the “end to end” experience for the user (e.g. to ensure the whole appeals process is completed in a reasonable time)**

Notes

- ¹ In respect of appointments within her remit, the Commissioner for Public Appointments published a Code of Practice for Ministerial appointments to Public Bodies in July 2001, reflecting the principles formulated by the Committee on Standards in Public Life.
- ² The reference to “judicial office” is intended to include all tribunal Chairs and members who exercise judicial powers. The Lord Chancellor makes many appointments to the tribunal judiciary. The Lord Chancellor’s approach to equality and diversity in the judicial appointments processes, including current policies and aspirations for the future, are on the LCD website (www.lcd.gov.uk). The text is also available from the LCD Judicial Appointments Policy and Diversity Unit.
- ³ All hearings should be in public except that the press or public may be excluded from all or part of the hearing in the interests of morals, public order, national security, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the tribunal in special circumstances where publicity would prejudice the interests of justice (Article 6, European Convention on Human Rights). See also the Council’s Model Rules of Procedure for Tribunals available on the Council’s website (www.council-on-tribunals.gov.uk).
- ⁴ The Council’s guidance on Procedural Rules is set out in its Model Rules of Procedure available on the Council’s website (www.council-on-tribunals.gov.uk).
- ⁵ The Council has published guidance on access to tribunals for disabled people. This was developed in consultation with the Disability Rights Commission and a working group of tribunal representatives.
- ⁶ This standard concerns complaints which may appropriately be dealt with through an administrative procedure, and not those which amount to an appeal against a judicial decision and to which a judicial remedy may apply.
- ⁷ The Judicial Studies Board Tribunals Committee has developed a Competence Framework for tribunal judiciary. Training should enable chairs and members to acquire the full range of competences required for their respective roles.

Appendix B

Synopsis of

Recommendations

Admission Appeal Panels

1. In order to increase their independence and improve the quality and consistency of services to parents, admission appeal panels should be organised and managed on a regional basis (*paras 2.11-2.12*).
2. The disqualification criteria should be extended to exclude from membership of the panels all teachers from within the particular LEA area of the school which is the subject of the appeal(s) in question (*paras 2.13-2.15*).
3. Admission appeal panels should have either a legally qualified Chair or separate panels of lay Chairs, with special training in chairing skills (*paras 2.18-2.21*).
4. The Code of Practice needs to include guidance on the selection of panel Chairs in advance of the hearing (*para 2.22*).
5. The Code of Practice should include advice on the need for good preparation by panel members, and the benefits of identifying in advance the key issues for clarification at the hearing (*para 2.23*).
6. Panel clerks should be legally qualified and specially trained if the Chair of the panel is not legally qualified (*paras 2.24-2.26*).
7. We recommend the establishment of a specialist cadre of admission appeal clerks (*para 2.27*).
8. To encourage more widely the sharing of best practice, the Department should positively promote the work of the Education Appeals Support Initiative (EASI) group (*paras 2.28-2.29*).
9. Parents should receive information about where they can obtain specialist advice and access to local representation services (*paras 2.30-2.31*).
10. Every panel member should be given a personal copy of the Code of Practice on Admission Appeals as part of their initial induction (*para 2.34*).
11. The grouped method should be recommended for hearing multiple admission appeals (*paras 2.35-2.37*).
12. Better information should be provided to parents about the special case of infant class size appeals (*paras 2.38-2.42*).
13. The new school admission arrangements should include a common cut-off date for acceptance of all offers of school places by parents (*paras 2.43-2.44*).

14. In order to improve standards of written decisions the Code of Practice on Admission Appeals should include sample model decision letters for use by appeals clerks (*paras 2.45-2.46*).
15. All admission appeals, including those for voluntary-aided and foundation schools, should be managed and run by LEAs regionally (*paras 2.48-2.50*).

Exclusion Appeal Panels

1. Exclusion appeal panels should always have a legally qualified Chair (*para 3.11*).
2. Exclusion appeals should be heard by the Special Educational Needs and Disability Tribunal (SENDIST) (*para 3.12*).
3. In the absence of a legally qualified Chair exclusion panels should have the services of a legally qualified clerk (*paras 3.13-3.14*).
4. The Secretary of State's guidance to exclusion appeal panels needs to include more comprehensive guidance on the role of the clerk (*para 3.15*).
5. The guidance to exclusion appeal panels should emphasise the benefits of holding a pre-meeting before the hearing to clarify the issues under appeal and agree the panel's strategy for the hearing (*paras 3.18-3.19*).
6. The guidance to exclusion panels needs to include better and more detailed advice about accommodation for appeal hearings (*paras 3.20-3.21*).

Training

1. There is need for a specific requirement in the Secretary of State's respective guidance to admission and exclusion appeal panels to the effect that it is **mandatory** for all panel members to receive full induction training **before being allowed to hear appeals** (*para 4.10*).
2. There is a need to remedy the lack of training in chairing skills for the Chairs of admission and exclusion appeal panels, having regard in particular to the JSB's Framework of Competence for tribunal Chairs and members (*paras 4.12-4.13*).
3. The training function for admission and exclusion panels should be organised regionally, and proper systems put in place within LEAs and admission authorities for estimating and earmarking resources for future training needs (*para 4.16*).