

OXFORDSHIRE SCHOOL
ADMISSION APPEALS SERVICE

A GUIDE TO:
ADMISSION APPEALS and INFANT CLASS SIZE REVIEWS

This guidance applies to all cases received on or after 1st February 2012.

For further information

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Introduction

The School Standards and Framework Act (SSFA) 1998, as amended by subsequent legislation and case law, and the Codes on School Admissions and School Admission Appeals produced by the Department for Education (DfE), govern all school admission appeals/ reviews. The **Panel members have a statutory duty to act in accordance with the two Codes.**

The legislation requires all Admission Authorities (AAs) to make arrangements for enabling parents to appeal against decisions made by AAs as to the school at which education is to be provided for their child.

In Oxfordshire, AAs include Oxfordshire County Council (OCC) for Community & Voluntary Controlled schools; the Governing Bodies of Voluntary Aided (VA), Foundation (F), Trust (T) schools and Academies.

Please note: this guidance only applies to OCC schools and the VA, F, T schools and Academies that have requested this Service to arrange and clerk the hearings in relation to their school/academy.

This guidance explains how the process works and **will help you to prepare your case** against an AA's decision not to offer your child a place at your preferred school(s).

Below are the most frequently asked questions that will help you to:

- understand the process;
- know what will happen at a hearing;
- understand how Independent Panels make their decisions.

1. I thought I could choose and get the school I wanted my child to attend!

The legislation allows you to express a preference regarding the school you would like your child to attend. However, you do not have an absolute right to choose a school because the law states that an AA need not meet your preference if the Year group has reached its Published Admission Number and, as a result, compliance with your preference would “prejudice the provision of efficient education or the efficient use of resources”.

2. Why is there an Independent Panel hearing?

As your child has not been offered a place at your preferred school, you have the right to appeal against the AA's decision and can be made in relation to any

school year group i.e. up to and including Years 12 and 13, including when transferring from Year 11 to Y12 in the same school.

The legislation gives you the opportunity to put your case to a Panel, whose decision is made independently of the AA. The hearing is your chance to put your side of the argument – to have your say.

3. Are there circumstances where I do not have a right to appeal?

If your child has been permanently excluded (PEX) from two or more schools, you do not have the right to appeal for a school for a period of two years from the date on which the latest exclusion took place.

A PEX does **not** include where the child has changed schools as a result of a “planned transfer / managed move”; nor where an Independent Review Panel subsequently quashes a Governing Body’s (GB) decision and directs the GB to reconsider its decision. Please also see Question 4.

4. What if my child has a Statement of Special Educational Needs or an Education, Health and Care Plan?

If your child has a Statement of Special Educational Needs or an Education, Health and Care Plan, please contact the Clerk to the Panel as **a matter of urgency** as your case must be made to the First-tier Tribunal (Special Educational Needs & Disability).

5. Who will be at the Hearing?

- You, if you choose to attend
- If attending with you, your partner, friend, supporter or witness
- Your representative or legal adviser, if you have appointed one
- The Panel (3 members)
- The Clerk to the Panel
- A presenting officer from the AA and possibly their witness(es): an Administrative Officer and / or a representative of the school

Sometimes there is also an observer.

Where the Panel directs, any member of the local authority (or governing body of the VA, F or T school or Academy in question); or any person attending for training or the appraisal of the performance of clerks or Independent Panel members may attend as an observer.

6. Will the hearing be in private?

As well as the people already mentioned, if there is more than one person appealing for a place at your preferred school the presenting officer will present his/her case in the presence of all the parents appealing for the school.

Sometimes it may be just one other parent or it may be e.g. up to thirty (or more) other parents. This is because this part of the hearing concerns facts and figures about the school and it ensures that all parents have the same opportunity to hear the presenting officer's case about the school.

However, **when you present your personal case it will be heard without any other parents** in the room. The presenting officer will also remain in the room (sometimes with the Local Authority's (LA) Administrative Officer). The school's witness may remain with the Panel's permission.

Any observers, will remain in the room at the discretion of the Panel.

7. Who are the Independent Panel members?

The Independent Panel will have three members and:

- One member must have experience in education; be familiar with educational conditions in the authority's area; or be a parent of a registered pupil at a school
- One member must be a lay person, that is, someone without personal experience in the management of any school or the provision of education in any school (disregarding any such experience as a school governor or in any other voluntary capacity)
- The 3rd panel member will be from either of the above two categories

No member of the Independent Panel will have any connection with either your preferred school or the school you have been allocated. The decision of the Panel is made **independently** of the admission authority.

8. What powers does the Independent Panel have?

The Panel can either refuse or allow your appeal. It has no other power.

The Independent Panel cannot:

- attach any conditions if it allows your appeal/review
- hear complaints or objections on wider aspects of local admission policies and practice e.g. it cannot change the catchment area of a school
- order the AA to change your position on the Continued Interest List for the school

However, an Independent Panel **must** consider if the AA's admission arrangements have not contravened the mandatory provisions in the School Admissions Code and Part 3 of the SSFA 1998, and also if the admission arrangements have been properly implemented, including the co-ordinated arrangements.

Therefore, if an Independent Panel finds that your child would have been offered a place if the (co-ordinated) admission arrangements had not contravened the SSFA 1998 or School Admissions Code, or if the arrangements had been properly implemented, the Panel will normally allow your appeal/review except where too many children would be admitted and, as a consequence, the school would experience serious prejudice i.e. difficulties.

If you would not have been offered a place but, where the AA keeps one, it finds that your position on the Continued Interest List has been altered, the AA should make any necessary changes to that list.

The Panel's decision is binding on the AA unless it is overturned by a Court.

9. What is the role of the Clerk to the Panel?

The Clerk is present to ensure the hearing is conducted fairly. The Clerk does not have any say at all in the Independent Panel's decision but is there to:

- explain the basic procedure and deal with any questions you may have;
- make sure each party is heard in turn;
- ensure the relevant facts are established;
- be an independent source of advice on admissions/appeals law and procedures;
- record the proceedings, attendance, decisions and reasons; and
- after the hearing, notify all parties concerned of the Panel's decision.

10. What is the role of the presenting officer at the hearing?

The AA's presenting officer is **not** involved with the decision making process of the hearing in any way.

The AA is responsible for producing its case stating why a place cannot be offered to your child at your preferred school. The presenting officer will present the case about the school on behalf of the AA at the hearing and answer any questions raised by you, any other parents and the Panel members.

Also, in the same way you can ask the presenting officer questions about the AA's case, to ensure a fair hearing, the officer is given an opportunity to ask you questions about your case.

11. Should I attend the hearing?

Yes, if at all possible! **You are the best person** to tell the Panel why you want your child to go to the school as you know your situation and will be able to provide information to help the Panel make an informed decision.

12. What happens if I need an interpreter/signer or other help?

You may arrange for your own interpreter/signer to attend with you. Alternatively, if you would prefer, please identify that you would like an interpreter on your appeal form.

13. Can I bring someone with me to help me present my case?

You may bring a member of your family, a friend, your neighbour, an adviser or a representative along with you, either to help you say what you want or to speak for you or to simply give you support. You may also bring a witness so long as you a) notify the clerk and b) their evidence is relevant to the case.

It should not normally be necessary for you to bring a solicitor or lawyer as this is not a court of law and we aim to keep the hearing as informal as we can. Any legal costs incurred by you are not recoverable in any event.

Please note: Paragraph 2.13 of the School Admission Appeals Code states Panels **must not** allow representatives of the school that is the subject of the appeal to support individual appeals for places at their school at the hearing itself, or by providing supporting letters because such support could create conflicts of interest and unfairness to other appellants.

14. Can I bring my son/daughter to the hearing?

It is for you to decide whether your child, who is the subject of the hearing, should attend. Unless there are exceptional circumstances, **you should not bring your other children** but, if you need to because of last minute problems with childcare arrangements, please contact the School Appeals Office as soon as possible.

15. What happens if I do not attend the hearing?

If you (or your representative) cannot attend and another date cannot be arranged, your case will be heard in your absence and your case will be decided on the information that is available at the hearing.

Please note: if you are not at the hearing and the Clerk has not been notified whether or not you will be attending, your case will be decided on the information that is available at the hearing.

16. Can I withdraw my case?

Yes. You can withdraw your case before the hearing. You can do this via your AppealsPro portal account.

However, if you wish your case to be reinstated you will normally be expected to show good reason why it should be, such as if there has been a significant change in your circumstances. So please **give the matter careful consideration** before you decide to withdraw your case.

17. Will I have any information about the AA's case before the hearing?

Normally, you will be sent a full set of papers via your portal account at least eight working days before the hearing which should include:

- The case for the AA explaining how the admission of an additional child would cause prejudice to the provision of efficient education or the efficient use of resources; and
- How the (co-ordinated) admission arrangements for the preferred school apply to your application, including relevant background documents which the AA took into account e.g. application form, and where used, supplementary information form or references from religious ministers;
- Where the distance criterion has been used, how this was applied to your application compared to those offered a place;

- The form lodging your appeal/review and/or letter and relevant correspondence between yourself and the AA;
- Papers you had already supplied to support your case;
- Where relevant, a map showing where you live, your preferred school and the school which you have been allocated; and
- Where relevant, details of how the locally agreed Fair Access Protocol scheme operates.

These documents will also be sent to the Independent Panel and its Clerk at the same time as they are sent to you.

18. How can I prepare for the hearing?

You are responsible for presenting your case, for deciding what you would like to say at the hearing and what written information you want the Panel to have.

So before the hearing you are advised to:

- Familiarise yourself with the hearing procedures (see Question 25);
- Make a note of any questions you may have about the process of the hearing;
- Make sure you have read the AA's case before the hearing procedures;
- Make a note of any questions you would like to ask the AA's presenting officer about the AA's case;
- Spend some time deciding what you would like to say when the Panel invites you to explain your reasons for wanting your child to attend your preferred school – it might be helpful to make a note of the main points;
- Make sure you **send all the paperwork to support your case** such as a doctor's letter, confirmation of completion of your house purchase, or a rental agreement, or any other documentation **by the specified deadline** to ensure the Panel takes it into account.

19. Is there anyone who can help me with preparing for my case?

If you have any queries or concerns about the appeal process and/or hearing, please contact the School Appeals Office for help.

20. What can I say at the hearing?

It is very important that you tell the Independent Panel everything that is relevant to your case. The **hearing is confidential** so please feel free to say whatever you need to.

Do not think “Oh, that’s not really important” – make the most of your opportunity to talk to the Panel. The Clerk and members of the Panel want to be certain that you do not leave your hearing thinking that things have been left unsaid.

The members of **the Independent Panel** have to make their decision on what information they have been given; they **cannot guess, presume or assume**. So make sure you **tell them what is relevant and important** about your case!

21. Does the Independent Panel need any supporting evidence about the reasons for my case?

Yes but also see Question 23 regarding the **deadline for receipt**. (However, if it is an infant class review please also read Question 38.)

- If you are making a case of disability discrimination and/or your case is based on medical or social grounds of either your child or anyone else in your family, you should, wherever possible, provide written evidence from a doctor or other professional, such as an Educational Psychologist or social worker, to support this.
- If your case is based on a house move you should provide evidence of confirmation of the completion of your house purchase; or a tenancy agreement; or any other relevant documentation.
- If part of your case for seeking a new school for your child is dissatisfaction with the current school, such as you believe your son/daughter is being bullied, you are advised to provide evidence such as letters of complaint and other correspondence or any other relevant documents/evidence.
- You are also invited to put forward any letters, written reports or documents or any other evidence that you think will support your case.

22. Can I ask the Panel &/or Clerk to contact anyone, such as my doctor or social worker, to confirm what I have said on my appeal form or at the hearing?

NO! You are responsible for making sure that the Independent Panel has any written supporting evidence you wish the Panel to take into account by the specified deadline.

23. When can I provide my supporting evidence?

To ensure the Panel considers all your information/evidence, **you must submit it by the specified deadline, 5 working days before the hearing date**. The deadline will be notified when you are given notice of the hearing date. However, please note:

- If you have already forwarded your supporting evidence to the AA it will be included in the papers sent out before the hearing.

VERY IMPORTANT: If you do not submit all your information and evidence by the specified deadline, the **Panel has to decide *(before the hearing starts)* whether or not it will accept the late information / evidence**. In deciding, the Panel will take into account the significance of the late information/evidence and the effect of a possible need to adjourn the hearing.

In addition, if the Panel accepts late evidence and the Panel decides it needs more time to consider the late evidence, or the issues raised require further investigation and/or the AA needs time to respond, **it may be necessary to adjourn the hearing to a different date, which might be a few weeks later** due to the Panel members not being available, or for any other appropriate reason.

Please note: If you do not attend the hearing your case will be decided on only the information available at the hearing.

Therefore, it is important that you **make sure the Panel has all the letters and documents you wish it to consider** as well as **original** proof of your address (photocopies are not sufficient). All of these must be sent to the Panel's Clerk to arrive **by the specified deadline** to be certain the Panel takes them into account. The Clerk will return your proof of address and any other documents which you ask to be returned to you with the decision letter.

24. How long does a hearing take?

It is difficult to say exactly.

- If yours is the only case the whole hearing will normally take somewhere between $\frac{3}{4}$ - 1 $\frac{1}{2}$ hours or, occasionally, longer.
- If there is more than one case you are given a time for the presenting officer's case about the school, which is also your, and the other parents', opportunity to ask him/her questions about the AA's case. This part can take somewhere between 2 - 5 hours (or more), depending on the complexity of the points raised and the number of parents attending.

You are also given a second time for your personal case, which normally takes about 30 minutes that includes time for questions and summing up by both the presenting officer and you.

25. What will happen at the hearing?

The procedure for hearing a case will depend on whether or not it is an “infant class size” review.

Please see Question 30 – 38A for full details about reviews for an infant class (normally Reception/Foundation 1, Year 1 and Year 2 but please note that it could also include Year 3 or above)

We try to make hearings as informal as possible and ensure that both you and the presenting officer have the same opportunity to speak.

- (i) Where it is **NOT** an “infant class size” review we normally hear the case(s) in the following order:

Stage 1

(The factual stage – with all parents present if more than one case)

- Welcome & introductions
- Explanation of procedure & how decisions will be made
- The AA officer presents the case about the school
- Questions

*NB You must ask **all** of your questions about the AA’s case at this point of the hearing and, if you have any observations or comments to make about the AA’s case, you should raise them as questions!*

NEXT:

THE PANEL THEN DECIDES IF THE MANDATORY REQUIREMENTS* HAVE BEEN COMPLIED WITH, THE ADMISSION ARRANGEMENTS* HAVE BEEN PROPERLY IMPLEMENTED, AND IF THE PRESENTING OFFICER HAS PROVED THE AA’S CASE

If the presenting officer has not proved his/her case for all the cases being heard for a particular year group at the school the Panel will allow all the appeals and all the children will be admitted to the School.

In all other circumstances: the Panel will move on to Stage 2.

Stage 2

(The balancing stage – no other parents in the room)

- You present your case
- Questions
- Summing up by the AA's presenting officer
- Summing up by you
- Chairman or Clerk asks you and the presenting officer if you have said everything you wish to and if you have had a fair opportunity to put your case

NB Where the Panel has accepted there would be difficulties in admitting any more pupils, in all circumstances, the Panel will then hear parents' personal reasons to decide whether or not they outweigh the difficulties of another child being admitted to the school. Therefore, the Panel makes further decisions after Stage 2.

***Please note:** For practical reasons **where there is more than one appeal**, at the end of Stage 2, the Panel also has to decide: i) if the school's published admission arrangements comply with the mandatory requirements of the relevant School Admissions Code + Part 3 of SSFA 1998, and, if not, if it would have made a difference in your case; &

ii) if the (co-ordinated) admission arrangements had been properly implemented and, if not, if it would have made a difference in your case.
(See Question 38 for how decisions are made)

OR

(ii) Where it is an "infant class size" review we normally hear the case(s) in the following order:

The AA's case – with all parents present if more than one case

- Welcome and introductions
- Explanation of procedure & how decisions will be made
- The AA officer presents the case about the school
- Questions

NB You must ask ***all*** of your questions about the AA's case at this point of the hearing and, if you have any observations or comments to make about the AA's case, you should raise them as questions!

Parent's case – no other parents in the room

- You present your case
- Questions
- Summing up by the AA officer
- Summing up by you
- Chairman or Clerk asks you and the presenting officer if you have said everything you wish to and if you have had a fair opportunity to put your case

26. Why does the Chairman or Clerk ask if we have had a fair opportunity to put our case?

The members of the Panel and the Clerk want to be sure that you and the presenting officer both feel that you have had the opportunity to present your case in the way you wanted to. They also want to be sure that you both feel you have been treated fairly and that the Panel has listened to you.

If you do not think that this is the case, please tell the Chairman so that it can be put right immediately. **It is very important that you leave the room satisfied you have said everything and feeling that you have been treated fairly.**

27. Does the Panel ever adjourn the hearing?

Yes. The Panel may adjourn the hearing to later in the same day **or another day** in the following circumstances:

- If substantial new issues are raised for the first time at the hearing it may be necessary to adjourn to allow any party taken by surprise to consider the issues; or
- If a parent submits late information/evidence and the Panel decides to accept that information/evidence and the Panel considers it is in the best interests of both parties that the Panel ensures it gives full consideration to the new information (see Question 23); or
- If the Panel requires further information to be obtained by the AA or parent; or
- If, due to the time it takes to deal with any stage of any case that was not anticipated, the Panel may have to adjourn that case or any other case to a later time or another day; or

- If a Panel Member is ill or absent; or
- For any other appropriate reason.

Please note: Sometimes a case (or cases) has (have) to be adjourned for a few weeks because the same panel members have to meet again.

28. What should I do if I think the AA has made a mistake in applying the admission arrangements, or they have not complied with the mandatory requirements?

You should ensure that you challenge what the AA has or has not done. For example, if you think that the Local Authority has not measured the nearest designated public route as defined on the Local Authority's measuring system, or, if you think the AA has not complied with the mandatory requirements, you should raise this in your grounds of appeal and query this at the hearing.

It is helpful if you raise the distance issue with the Local Authority before **as well as** at the hearing so that they can check the route and/or distance; otherwise it may be necessary to adjourn the hearing (possibly to a much later date) to have the route and/or distance checked before the Panel can make its decision.

29. When does the Panel make its decision if there are other cases being heard for the same school?

Decisions should not normally be made on individual cases until all parents have been involved in the stages of the process or an injustice could result.

However, in very exceptional circumstances, and, if the gap is significant, it might not be reasonable to hold up decisions for the other parents. The Panel would take advice from the Clerk, which would depend on the particular issues regarding the cases under consideration.

30. What does the Panel have to take into account in coming to its decision about my case?

The Panel must take into account your preference of school, the reasons for your preference, and the legality and application of the admission arrangements and rules published by the AA.

NB The AA is not required to comply with your preference if:

- your child has been permanently excluded from two or more schools (see Q3); or

- to admit your child “would prejudice the provision of efficient education or the efficient use of resources”.

In the case of infant classes, “prejudice” may also arise because of “relevant measures” (see Q34) required to be taken to comply with the limit on infant classes. Where the AA makes its case on this basis it is known as an “infant class size” review.

INFANT CLASS SIZE REVIEWS

NB: THIS SECTION ONLY APPLIES TO SOME INFANT CLASSES IN PRIMARY SCHOOLS

31. What is an infant class?

An infant class is a class in which the majority of pupils will reach the age of 5, 6 or 7 during the academic year.

32. What is the limit to the number of pupils in an infant class?

The legislation states that, subject to certain limited exceptions* (* See Appendix 2), no infant class with a single school teacher may contain more than (currently) 30 pupils.

Therefore, an AA must normally refuse to admit a child to a school if it judged that, in order to do so and to meet the limit on infant classes, it would be necessary to take “relevant measures”.

33. Which Year Groups are infant classes?

Normally infant classes are the Reception/Foundation 1 Year and Years 1 and 2 but sometimes, when a school mixes its year groups, it might affect a class that has some Year 3 pupils (or even higher year groups).

For example, a class could have 18 Year 2 pupils mixed with 12 Year 3 pupils and this would be counted as an infant class because the majority of pupils in that class will reach the age of 7 in the school year.

Please note: If an application was for a place in Year 2 and the class contained 15 Year 2 & 15 Year 3 pupils, again it would be a “class size” review because the admission of a further Year 2 pupil would mean that the majority of the pupils in that class would reach 7 years old in that academic year.

34. What is meant by “relevant measures”?

If the Admission Authority admits pupils, “relevant measures” are the measures required to be taken in order to ensure compliance with the statutory limit on infant class sizes and would prejudice the provision of efficient education or the efficient use of resources. For example: this may include the need to employ an additional school teacher, or the need to build an extra classroom, or the need to mix year groups or mix key stages.

35 When does the infant class size limit of 30 apply?

The limit applies now but even if the infant class size limit is not reached in the academic year of the application but, by the admission of another pupil now, it would be reached in a subsequent academic year when the pupils were still in infant classes, then the AA can argue its case on this basis.

For example:

If a school’s Admission Number is 45 and the Reception/Foundation 1 Year is organised as 2 classes of 22 and 23 pupils in each class, the infant class size limit would not be reached in the first year at the school by the admission of one further pupil to the Reception/Foundation 1 Year.

However, if that school then organises its Year 1 and Year 2 classes so that they are taught as 3 mixed classes of Years 1 and 2 then the infant class size limit would be reached in the subsequent infant class years.

(i.e. Year 1 & Year 2 = 45 + 45 = 90 divided into 3 classes of 30 pupils in each class)

Therefore, in this example, the infant class size limit would apply to an application for a place in the Reception/Foundation 1 Year now as the class size limit of 30 would be reached when the child moves into Years 1 and 2. This is known as “future prejudice”.

36. Are all cases for infant classes going to be “class size”?

Not necessarily. It depends on a variety of factors such as:

- the numbers admitted to the school;
- whether or not the pupils are taught as single Year Groups or mixed with other Year Groups; and
- how many other cases the Panel will hear.

Here are 4 examples:

Example 1: If the Admission Number is 60 and the school organises as 2 classes of 30 Reception / Foundation 1 Year pupils then it will be an “infant class size” review.

Example 2: If the Admission Number is 33 and the school mixes the seven year groups into nine classes there will be 25 or 26 in each class, it will not be an “infant class size” review (but also see Example 4 where several cases are being heard by the Panel)

Example 3: See examples in Questions 33 & 35, which will be “class size” reviews

Example 4: If the Admission Number is 25 and the school teaches in single Year Groups and 10 parents appeal, in the first instance it would not be an “infant class size” review.

However, if five cases were allowed (following the process described in Question 38B) making the total number in that class 30 then at that point the Panel would have to consider the remaining cases as “class size” reviews (following the process described in Question 38A).

Please note: This does **not** mean that a Panel would definitely allow appeals just because the number had not reached the infant class size limit of 30.

For example: In some small village schools a classroom might only be able to accommodate 22 pupils but the AA may have admitted 25 pupils to ensure that all pupils who lived in the catchment area or had siblings at the school were allocated a place at that school and it might be very difficult to accommodate any more pupils in the classroom due to the size of the room

Therefore, it is **very important** that you read the answers to questions 37 and 38 very carefully!

37. How will I know if my infant class appeal is to be an “infant class size” review?

When the AA’s case papers are sent, normally at least eight working days before the hearing (as explained in Question 17), they should state clearly whether or not it is an “infant class size” review.

IMPORTANT

- if the AA's case papers are not clear; or
- if it has been indicated that there are other cases being heard for the school

You are advised to prepare your case for **both** an appeal where the Panel can take into consideration your personal circumstances **AND** also prepare your case on the basis that it is an "infant class size" review where the Panel can **only consider your case on limited grounds**. NB See Question 38A and Appendix 1 (iii) for full details.

38. How does the Panel decide whether to allow or refuse my appeal?

This depends on if admission has been refused due to infant class size limits!

A Where it IS an "infant class size" (ICS) case:

In these circumstances, under the legislation, an appeal is in fact **a review** whereby the Panel is only able to look at three factors. The Panel can only allow an ICS review where:

- (i) It finds that the admission of additional children would not breach the infant class size limit; or
- (ii) It finds that the (co-ordinated) admission arrangements did not comply with admissions law (i.e. the mandatory requirements of Part 3 of the SSFA 1998 or the School Admissions Code) or were not correctly and impartially applied and the child would have been offered a place if the admission arrangements had complied or had been correctly and impartially applied; or
- (iii) It decides that the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.

1 How does the Independent Panel deal with this?

The Panel can only **review** the AA's decision to refuse admission.

2 How does this affect my case?

As it is a review, it means that the Panel can **only consider the information and material that was available to the AA at the time the AA made its decision**, or, exceptionally, information which would have been available if the AA had acted properly e.g. where the AA lost an application form.

The Panel may allow you to submit fresh information and material so that you can show the basis for your claim that the infant class size limit would

not be breached, or the admission arrangements did not comply with mandatory requirements or had not been properly implemented.

The Panel may also consider information and evidence which shows what your circumstances were **at the time the decision was made** in order to support your claim that no reasonable AA would have made the decision to refuse admission.

3 *As it is a review, what can the Independent Panel take into account?*

The Panel must take into account all relevant circumstances, including:

- the published admission arrangements, including the co-ordinated admissions scheme where applied;
- your preference;
- the circumstances of your child and family; and
- the practical consequences for the school and the children in the relevant infant classes if any or all of the cases being heard were to be successful (also see 12).

4 *On Factor (i), what does the Independent Panel consider?*

The Panel must decide whether the case that infant class size prejudice would be caused is justified, including future prejudice (see Question 35).

Where the Panel finds that the school could admit a certain number of children without breaching the infant class size limit (or without needing to take measures to avoid breaching it that would prejudice the provision of efficient education or efficient use of resources) the Panel must uphold at least that number of children's cases it is considering.

5 *On Factor (ii), what does the Independent Panel consider?*

The Panel has to decide whether the admission arrangements complied with (a) the mandatory requirements of the School Admissions Code + Part 3 of SSFA 1998; and (b) whether the AA kept to its own rules and criteria as set out in the published admission arrangements.

If the admission arrangements did not comply with the mandatory requirements, or the AA did not follow the admission rules, either deliberately or by mistake, your case would normally succeed but **only if** you can show that your child would have got a place at the school if the requirements & process had been applied properly except for where a significant number of children are affected in this way and the admission of all of them would cause serious difficulties at the school (also see 12).

6 *On Factor (iii), what does the Independent Panel consider?*

The Panel must decide if the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case i.e. was the decision "perverse in the light of the admission arrangements".

7 *In Factor (iii), what does “reasonable” mean?*

It is not the usual meaning of reasonable because, in this situation, it is the legal meaning (see 8 & 9) and is known as “Wednesbury unreasonable”, which refers to a court case of that name. It is a high threshold and means **more than extreme inconvenience and/or practical difficulties**.

8 *What do I have to show to win my ICS review on Factor (iii)?*

In effect, as the Panel has to consider if the decision was “Wednesbury unreasonable”, you have to show that either the AA ignored relevant information, or took into account irrelevant information, or that the decision was perverse in the light of the admission arrangements.

9 *What does “perverse” mean in this situation?*

The School Admission Appeals Code states it means it was “*beyond the range of responses open to a reasonable decision maker*” or “*a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it.*”

In **simpler terms**: It is an illogical decision or irrational / wildly ridiculous decision which is **not based on the facts of the case**.

10 *What are the facts of the case in my ICS review?*

They include:

- the published (co-ordinated) admission arrangements;
- your preference;
- the circumstances of your case i.e. your child and family; and
- the internal operation of the school.

11 *As it is a review, should I tell the Panel why I want my child to go to the school?*

You have to decide what you want to tell the Panel. You can tell the Panel about your personal reasons but **you are strongly advised you should focus on** showing that either:

- the infant class size limit would not be breached; or
- the admission arrangements did not comply with the mandatory requirements and, if they did, your child would have had a place; and/or a mistake had been made in your case, which meant that your child did not get a place at the school when they would have; or
- when considering your application, the AA either ignored relevant information or took into account irrelevant information or the decision is illogical or irrational in the circumstances of your case.

12 What else does the Panel have to consider?

Where the Panel decides that a number of the reviews succeed on any of the 3 grounds but considers that to admit that number would seriously prejudice the provision of efficient education or efficient use of resources, the Panel must compare each successful case and decide which of them, if any, to uphold i.e. be admitted to the school. (See Appendix 1 (iii))

NB Please also refer to Q 38“C” re disability discrimination.

38B Where it is NOT an “infant class size” review the Independent Panel normally has three things to decide in the following order:

IMPORTANT

This is a “fresh” hearing, which means that the Panel can take into account **all** the facts known up to and including the hearing. However, it has to consider the mandatory requirements and admission arrangements on the basis of the information available at the time the decision to refuse admission had been made or, exceptionally, information that would have been available if the AA and/or LA had acted properly.

1. Has the AA proved “prejudice to the provision of efficient education or the efficient use of resources”?

Please note: The burden of proof is on the AA to prove “prejudice”.

- *If yours is the only case being heard (see Appendix 1(i)):* If the Panel finds that the AA has not proved its case, your child must be admitted.
- *Where there is more than one case being heard (see Appendix 1(ii)):* At the end of Stage 1, if the Panel finds that all the cases being heard could be admitted to the school without causing prejudice, all the children must be admitted. If your case is not allowed on this basis, the Panel moves on to the next question (Q2).

However, where there is more than one person appealing there may be an extra decision that the Panel has to make at the end of Stage 1. The Panel might find that the school could admit some more pupils before prejudice of the kind referred to would occur but that number is less than the number of parents appealing. In this case, at the end of Stage 1, the Appeal Panel will specify the number of pupils which it finds could be admitted before prejudice would occur.

Then, at the end of Stage 2 after all the personal cases have been heard, in considering which appeals to allow as part of the specified number, the Panel may take account of the legality and application of the admission arrangements, parents’ personal cases, and the admissions criteria. If your appeal is not allowed at this stage of the decision making process, the Panel moves on to the next question

IMPORTANT: Even when the Panel decides a certain number could be admitted before prejudice would arise, the Panel hears everyone's personal case before it makes any further decisions.

Please see Appendix 1(ii) - Multiple Appeals for further information.

2. *Do the admission arrangements comply with the mandatory requirements and have they been properly implemented?*

The Panel has to review the original decision and decide whether the admission arrangements complied with the mandatory requirements of the School Admissions Code + Part 3 of SSFA 1998, and whether the AA kept to its own rules and criteria as set out in the published admission arrangements.

If the Panel finds that the admission arrangements had not complied with the mandatory requirements or that the AA had not followed the admission rules and, but for this, your child would have been offered a place at your preferred school, then it will normally allow your case **except** where a significant number of children are affected in this way and the admission of all of them would cause serious difficulties at the school. If it is not allowed on this ground, the Panel moves on to the next question.

3. *Do your reasons outweigh the “prejudice to the provision of efficient education or the efficient use of resources”?*

The Panel will balance your reasons against the effect the admission of an extra pupil will have on the school.

- If the Panel decides that your case is not stronger than the case for the school, it will refuse your appeal; OR
- If it decides that your case for your son/daughter is stronger than the case for the school, it will normally allow your appeal **but see Appendix 1 (ii).**

NB If your appeal is allowed, the decision is binding on the AA and the governing body and your son/daughter must be admitted to the school

NB Please also refer to Q38“C” re disability discrimination (next section)

38C If your case is that the AA has refused admission for a reason related to your child's disability the Panel will also consider your case as follows:

With effect from September 2002, schools have been under a duty not to discriminate against disabled pupils and prospective pupils in their access to education, including admissions. The Panel will consider your case under the provisions of the Equality Act 2010.

The responsible bodies e.g. the Local Authority, or Governing Body, or Academy Trust:

- **must not treat disabled children less favourably** than other pupils, or prospective pupils, for a reason relating to their disability without justification, and
- **must make reasonable adjustments** to ensure that disabled pupils, or prospective pupils, are not placed at a substantial disadvantage compared with non-disabled pupils.

It is **not** discrimination if, at the time, the responsible body did not know and could not reasonably have been expected to know that a pupil was disabled.

There are **three aspects of admission** specifically covered by legislation. The responsible bodies must not discriminate against a disabled child:

- in the arrangements made for determining the admission of pupils to a school. This includes any criteria for deciding who will be admitted to the school when it is over-subscribed, and it includes the operation of those criteria.
- in the terms on which they offer to admit a disabled child to the school.
- by refusing or deliberately omitting to accept an application for admission to a school.

Therefore, the Panel will consider whether:

- your child is disabled as defined by the legislation;
- the admission arrangements complied with the mandatory requirements & the admission criteria have been applied correctly and impartially;
- your child has been discriminated against for a reason that relates to his/her disability;
- the school has taken reasonable steps to try and provide for your child; and
- the refusal to admit could be justified - adjustments required would be unreasonable in terms of costs and the efficient education of other pupils.

In considering these cases, the Panel should take into account the Equality & Human Rights Commission's disability guidance for Schools.

IMPORTANT

The Act defines "disabled person" as a person who has **“(a) a physical or mental impairment and (b) the impairment has a substantial and long-term**

adverse effect on a person's ability to carry out normal day-to-day activities". [s6(1)] NB See Appendix 1(iv)

39. How will I find out the outcome of my appeal/ICS review?

You will be informed of the Panel's decision by a letter from the Clerk to the Panel, which sets out the reasons for the decision. At the hearing the Clerk will tell you when you can expect to receive the letter.

If your case is heard in the Autumn and Spring terms you will normally be notified in writing within five school days. However, during the Summer term, when the majority of appeals/ICS reviews are heard, the notification of decisions will take longer because the Panel normally has to hear all the cases for a particular school before it is allowed to decide on any one case for a school.

Some appeals/ICS reviews for schools may take place over two to four weeks or more and, in this case, the Clerk will send you a short letter informing you whether your case has been allowed or refused. The full decision letter, giving the Panel's reasons, will normally be sent within 10 school days of the conclusion of the hearing, if not sooner, depending on the volume of appeals and ICS reviews in general.

40. If my appeal/ICS review is refused can I appeal again?

No. There is no appeal against the decision of the Panel.

However, if there are **significant** and material changes in the circumstances of the **school or your circumstances** (e.g. you move into the catchment area, or a medical condition has arisen since you last applied), you have the right to re-apply for admission within the same academic year. If the school still cannot admit your child, you have the right to a fresh appeal/review.

Also, **you may re-apply in the following academic year** and you have the right to a fresh appeal/review if it is necessary because the year group is still full.

41. What can I do if I am unhappy about the appeal process?

If you think that the proper procedures have not been followed you can ask the Local Government Ombudsman (LGO) to investigate. This is **not a right of appeal** as the LGO can only investigate complaints about maladministration on the part of the Independent Panel.

Maladministration means that there has been a fault in the way something has been done or not done. It has to relate to issues, such as, you believe the Panel has not been properly set up or has not followed procedures correctly. On the other hand, the LGO / EFA would not criticise the decision of a Panel, which fairly took into account the evidence presented by both the parents and the AA, just because the parents disagreed with the decision reached.

If, following investigations, the LGO /EFA finds there has been maladministration that might have caused you an injustice, one of the remedies they sometimes suggest is that there should be a fresh hearing with different Panel members and, where possible, a different clerk.

42. Can anyone complain to the Secretary of State for Education (DfE)?

Yes. However, the Secretary of State can only consider:

- Whether the Panel was correctly constituted; and
- Whether the AA has acted reasonably in exercising functions in respect of the appeal process; and
- Whether the AA has failed to discharge any legal duty in relation to the process e.g. by acting in breach of the mandatory provisions of the School Admission Appeals Code.

If, for example, the Panel was not properly constituted, the Secretary of State could exercise his/her powers by directing that a properly constituted Panel should be set up.

43. What if I think that the decision of the Panel was wrong in law?

If you, or the AA consider that the decision of the Panel is legally flawed, either party could apply for a judicial review.

If a judicial review was granted, the Court would consider the lawfulness of the Panel's decision. If it found the Panel's decision to be unlawful or unreasonable (irrational or perverse in the legal sense), it could overturn the decision, and it may order that a fresh hearing be set up with new Panel members.

If either party to the appeal/infant class size review wishes to consider this course of action they should take independent legal advice **as soon as possible** as normally there is a 3 month time limit

44. What should I do if my case has been refused and I do not want to send my son/daughter to the school that has been allocated?

You can apply for other schools/academies and, if refused admission, you have the right of appeal for a place at these other schools/academies.

Also, you may appeal against the decision to allocate your child a particular school/academy. However, this type of appeal is normally heard only if and when all your appeals/reviews for your preferred schools/academies have been unsuccessful.

You should contact the Local Authority's Admissions Team regarding places available at other schools/academies as soon as possible as **you have a legal duty** to have your child educated whether at school/academy or at home.

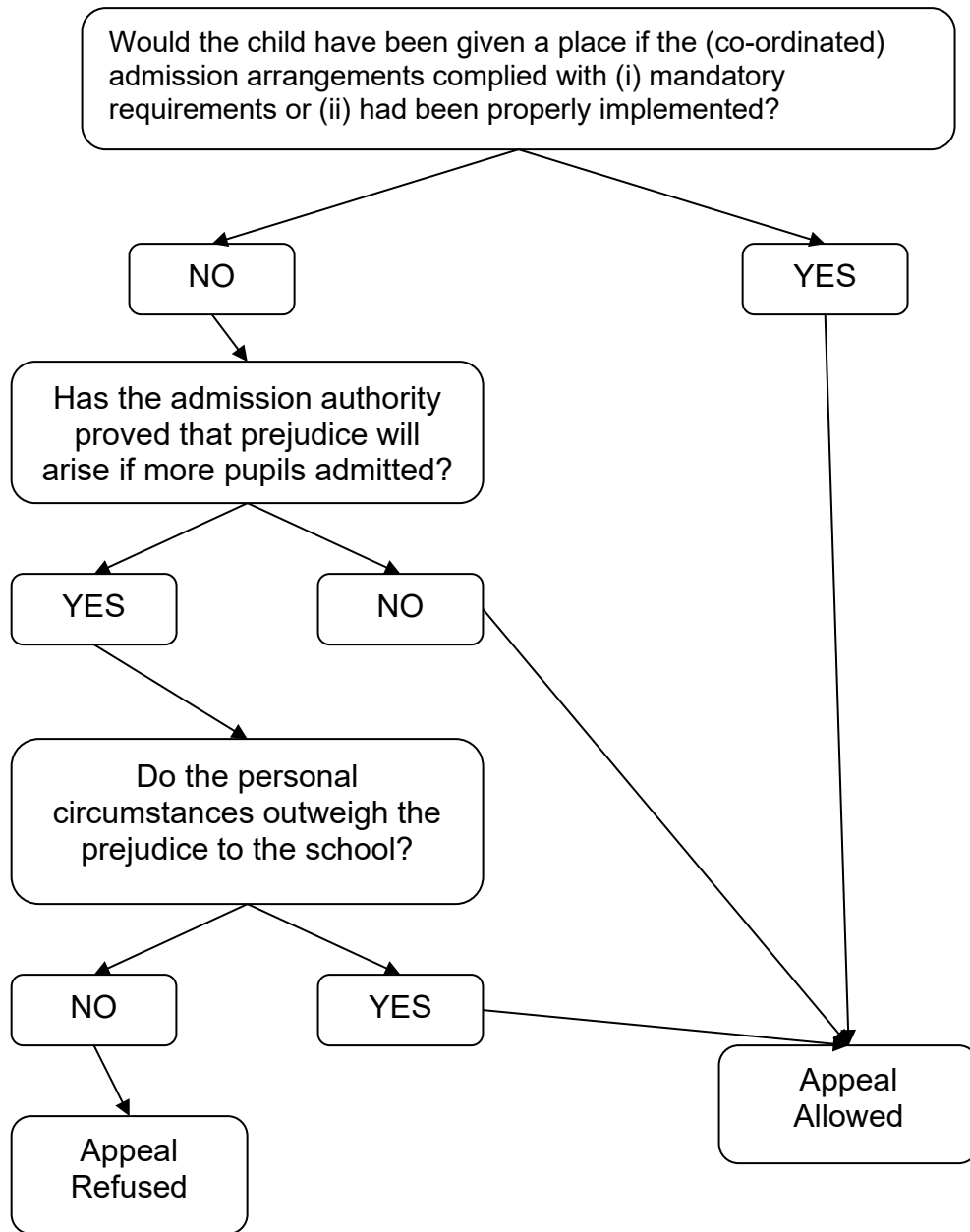
45. Where the AA keeps one, does my child move up the Continued Interest List if I appeal?

No. Your child's position on this list is not affected by appealing unless, during the appeal process, the AA realises there has been an error which affects your child's place on that list. Where this happens the AA should amend the Continued Interest List (CIL) and, as a result, your child could move up or down that list.

46. What happens if a place becomes available at my preferred school after the decision has been made?

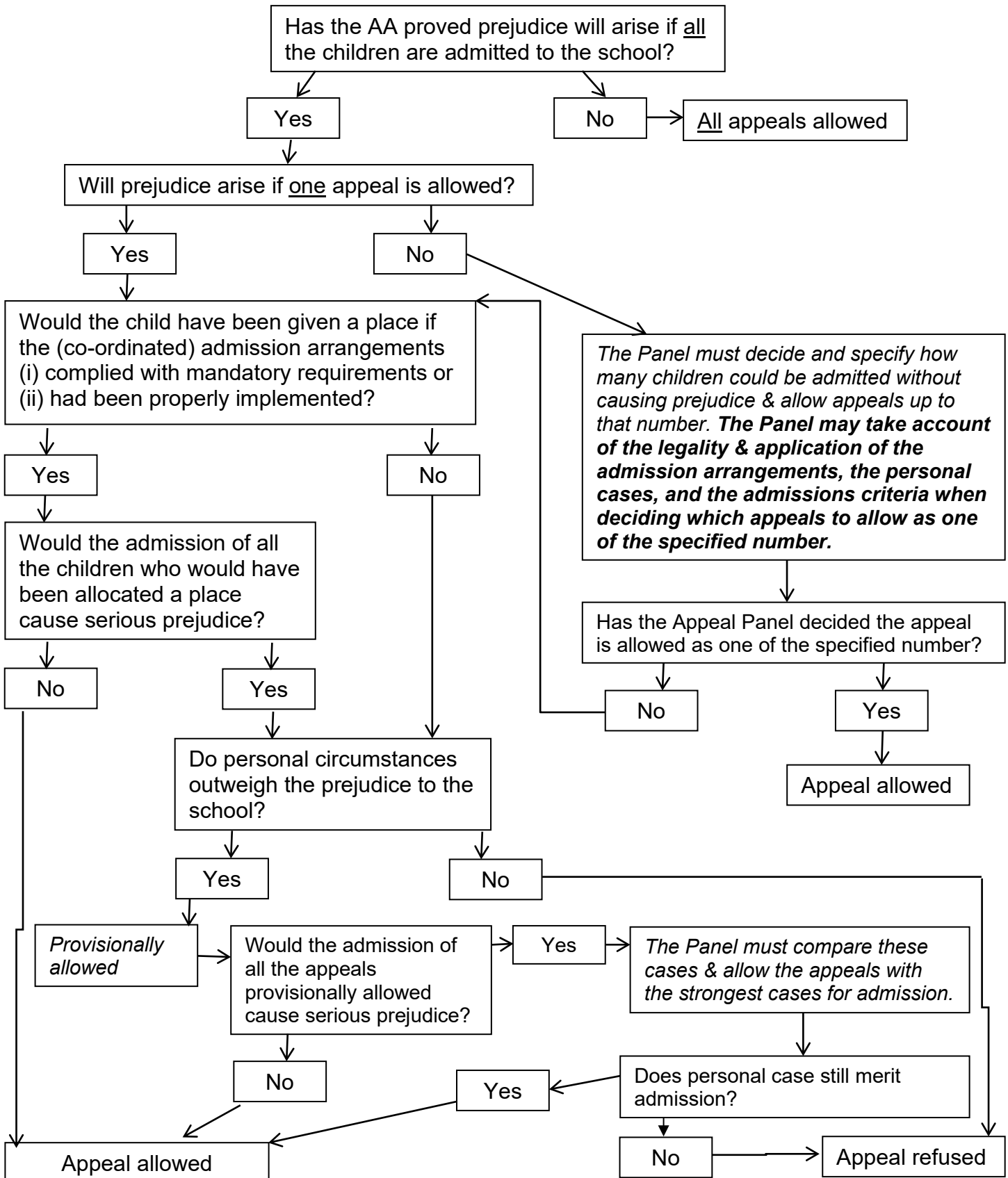
Unless the number of pupils in a year group drops below the Admission Number for that cohort, further pupils will not normally be admitted. However, when a place becomes available, where the AA keeps a CIL, if your child's name is top of that list, s/he will be offered that place.

Please note: You may wish to contact the person responsible for the Continued Interest List (CIL) in the AA or, where a CIL is not kept, the School and Admissions Team during the remainder of the academic year to see if places have become available after your case was heard. However, if the year group is still full during the same academic year, you would not be entitled to another hearing in these particular circumstances.

APPENDIX 1 (i) – DECISION MAKING FLOW CHARTS**SINGLE 'PREJUDICE' APPEAL**

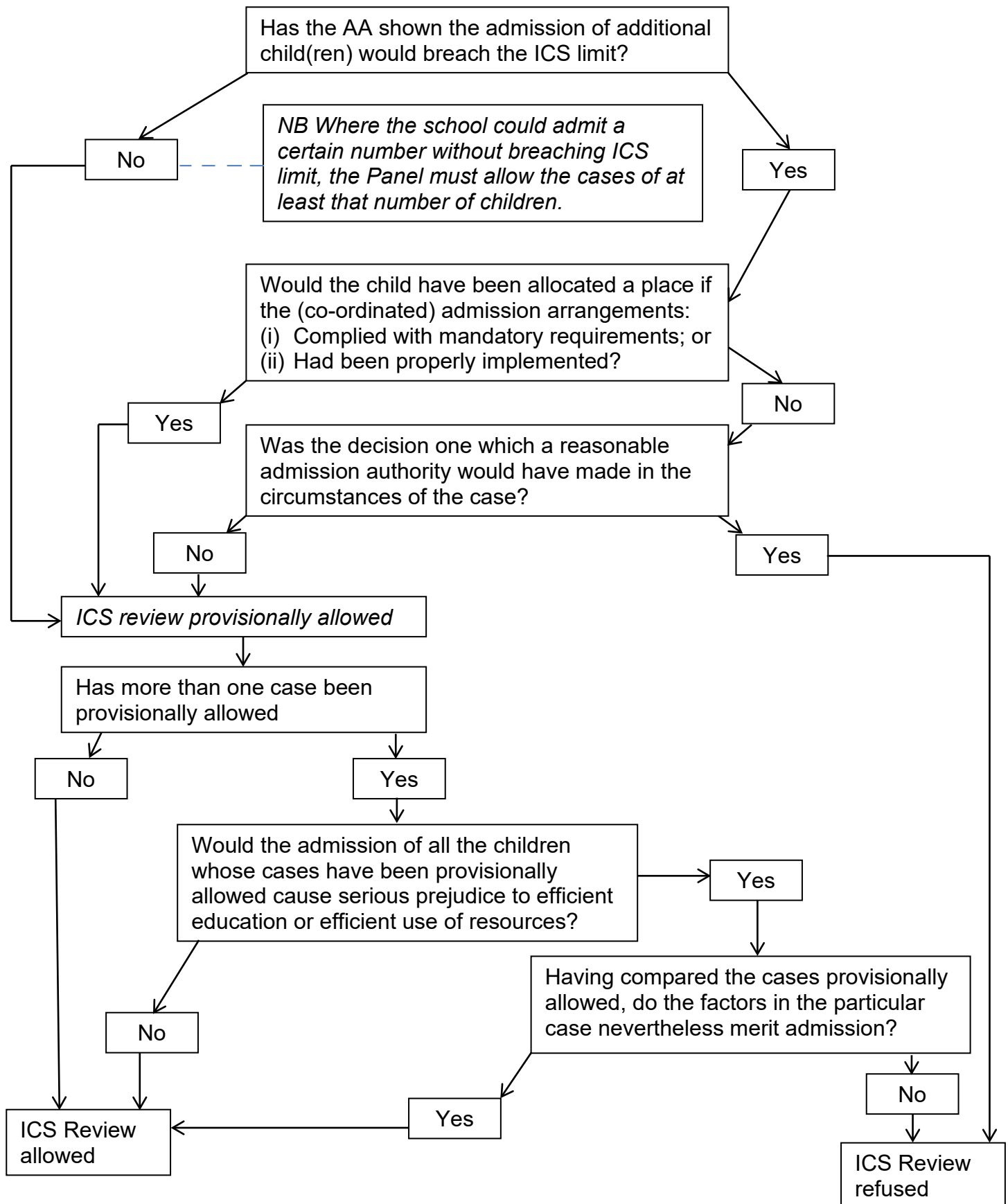
APPENDIX 1 (ii)

MULTIPLE APPEALS: HOW DECISIONS WILL NORMALLY BE MADE WHERE THERE IS MORE THAN ONE APPEAL AND INFANT CLASS SIZE LIMITS DO NOT APPLY

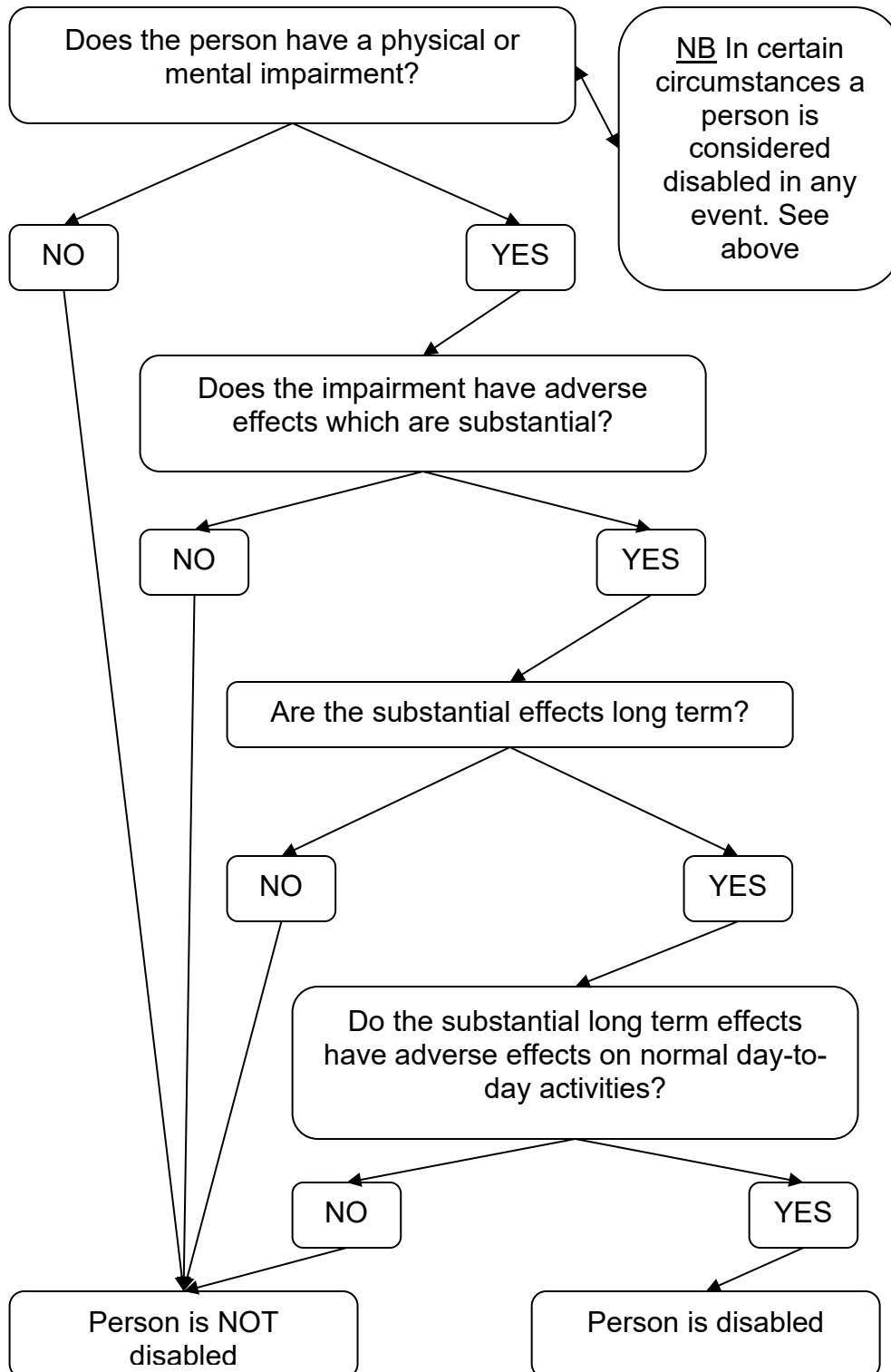


APPENDIX 1 (iii)

INFANT CLASS SIZE: HOW DECISIONS WILL BE MADE WHERE ADMISSION AUTHORITY ARGUES ITS CASE AS INFANT CLASS SIZE (ICS) REVIEW



APPENDIX 1 (iv) - DECISION FLOW CHART – IS A PERSON DISABLED?
Important! Always refer to *Guidance on Matters to be Taken Into Account in Determining Questions Relating to the Definition of Disability*



APPENDIX 2: Infant Class Size – “Excepted pupils”

(see Question 32)

The legislation requires that infant classes (i.e. those where the majority of children will reach the age of 5, 6 or 7 during the academic year) **must not** contain more than 30 pupils with a single school teacher.

However, additional children may be admitted under **limited exceptional circumstances** and they are called “excepted pupils”. These children will remain an “excepted pupil” for the time they are in an infant class or until the class numbers fall back to the current infant class size limit.

The circumstances where a child may be admitted as an “excepted pupil” are as follows:

- a) a child admitted outside the normal admissions round with a Statement of Special Educational Needs or an Education, Health and Care Plan that specifies that school;
- b) a Looked After Child or a previously Looked After Child who is admitted outside the normal admissions round;
- c) a child admitted, after the initial allocation of places, because of a procedural error made by the admission authority or local authority in the original application process;
- d) a child admitted after an Independent Appeals Panel allows an appeal;
- e) a child who moves into the area outside the normal admissions round for whom there is no other school within a reasonable distance;
- f) a child of UK service personnel (excluding the Army Reserve and Territorial Army) admitted outside the normal admissions round;
- g) a child/children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil; and
- h) a child with special educational needs who is normally taught in a special educational needs unit attached to the school, or registered at a special school, who attends some infant classes within the mainstream school.