

CODE OF PRACTICE FOR SCHOOLS

(FROM 1 SEPTEMBER 2020 – FOR REVIEW JUNE 2021)

1. The Code's status

- 1.1. This Code sets out principles agreed by the five Heads' Associations (GSA, HMC, IAPS, ISA and the Society of Heads) in relation to pupils attending, or seeking to attend, schools in membership of one or more Association.¹ The contents and the provisions of the Code of Practice are not at risk of breaching UK or EC competition law. Far from having anti-competitive effects, the Code is likely to foster competition between schools. The Code ensures freedom of choice for parents (and pupils).
- 1.2. Each Association has its own code which applies directly to schools in its membership. Each Association agrees that, in applying and interpreting its own codes, it will observe the principles set out in this Code. Each Association further agrees that it will apply the principles set out in this Code to any dispute between schools in membership of different Associations which is referred to it for mediation or intervention.

2. Ensuring high standards

- 2.1. Schools must fulfil all the legal requirements to which they are subject and ensure fair, honest and transparent dealings with parents, staff and colleagues in independent and maintained schools and external bodies.
- 2.2. Schools in England are inspected under statutory provisions by the Independent Schools Inspectorate (ISI) or other government accredited inspectorates. Schools in Wales, Scotland and Ireland are inspected under separate statutory arrangements. All the regulatory requirements of the inspectorates in this regard must be met by Governors, Heads, Bursars and their staff.

3. Provision of information

- 3.1. Schools must make available to parents of pupils and prospective pupils the information required by law.

4. Relationships with parents

- 4.1. Members should adopt good communication practices with parents. Parents should be given clear and transparent information regarding fees, deposits, financial assistance, admissions policy, periods of notice and other matters.

5. Relationships with other schools and other institutions

- 5.1. It is hoped and accepted that dialogue at a number of levels will take place between schools, including between bursars. However, responsibility for compliance with the Code ultimately rests with the Head.
- 5.2. Members operate in a competitive environment. Fair competition is encouraged. Schools should adopt a fair and professional attitude towards their colleagues and try to ensure good relations within the limits of fair competition.

¹ The term 'school' should be interpreted widely to include, where appropriate, proprietors, governors and/or other legal entities responsible for operating the school.

6. Advertising and marketing

- 6.1. Schools will wish to have policies and practices that maximise the number of suitable applicants for places. Marketing and publicity policies should be adopted that ensure fair practice between schools. Advertisements and other promotional material must be factually accurate and must not make improper claims and must comply with the law.
- 6.2. If a school intends to compare itself or its services in any manner which, either explicitly or by implication, identifies another school or schools, it is incumbent on the Head to make him/herself fully aware of the school's duties under comparative advertising law before endorsing or promoting any such comparison.
- 6.3. Details of scholarships offered by many member schools are published annually by GSA, HMC, the Society of Heads and MMA.

7. Staff

- 7.1. The injunction to ensure fair, honest and transparent dealings must apply to the recruitment and appointment of staff. All contractual obligations of employees should be respected. Vacancies should normally be advertised publicly. Current safeguarding guidance and legislation must be adhered to.
- 7.2. Schools need to be aware of current employment legislation and abide by it. Model contracts are available from Associations.

8. Statistical information

- 8.1. UK schools must complete the annual ISC Census and supply public examinations results to ISC in accordance with their Association's policy.

9. Admission of pupils

- 9.1. The independent sector contains schools which vary widely in size and type. This means that, within the sector, children will be able to find a suitable school for their abilities and interests. Conversely, not every school will be suitable for every child. It is therefore of great importance for the welfare of the child that parents and schools make sensible choices, so that children join schools which are suitable for them.
- 9.2. Schools should make known their admissions policy including their general procedures and criteria for entry and the dates of examination, interviews and results. If possible, early announcements should be made of any likely and intended changes, for example in entrance numbers.
- 9.3. Schools may accept registrations at any stage in advance of proposed entry and charge a non-returnable registration fee to help defray administrative costs.
- 9.4. It is also reasonable for a school to seek a deposit, which is a confirmation of an earlier registration and an affirmation of the parents' final choice of school, where the amount of the deposit is a genuine pre-estimate of the loss the school will suffer should the parents fail to honour the contract with the school. This deposit is either deducted from the fees after a pupil takes up a place or held until the pupil's final term.
- 9.5. Where the parents fail to honour the contract with the school and the pupil does not take up the contracted place, the school should consider whether to retain or return some or all of the deposit. In circumstances where the school does not suffer any financial loss as a result of the parents' failure to honour the contract, schools should be aware that failure to refund the deposit may be a contractual penalty, unenforceable under English law.

- 9.6. It is recommended that schools should not take non-returnable deposits for 13+ entry before 1st January in the year prior to year of entry, (i.e. 20 months before entry). If deposits are required earlier than 20 months before entry, it must be made clear in writing to parents making such a deposit that they have a right to a full refund of that deposit should they change their mind about entry at any time up to 20 months before entry.
- 9.7. Some senior schools hold entry tests for entry at 13+ up to eight and a half terms before entry for the purpose of de-selection. Such early screening may help parents assess the likely success of any application and the most appropriate point of transfer. Schools may also include means-tested bursary and scholarship assessments to give an indication of the financial support that might be available. These early entrance tests and assessments must not be used to preclude other schools from competing for any of these pupils. Though offers of places may be made at any time, parents of successful candidates must be informed that they are not committed to taking up a place at the senior school until the date when other parents are required to confirm their senior school place with a deposit: any deposit paid before this date is refundable.
- 9.8. Schools should avoid any explicit or implicit threat that failure to take up a place at a particular age may make it difficult to obtain entry at a later date.

10. Transfer between schools

- 10.1. It is essential to have close liaison with the Heads of feeder schools at all stages in the transfer and admission processes for pupils of all ages. Difficulties in making contact (e.g. holidays) do not absolve a Head from trying to communicate with the other schools. Schools can always be given the opportunity to respond to a written request.
- 10.2. Parents should be asked to keep the Head fully informed of any applications they are intending to make, and the recipient Head should encourage this. Parents may be reluctant to talk to their child's current school about a move, but the choice of school lies with them and their son/daughter. They should be assured that any question of transfer would be handled professionally and with care by both schools involved. Under no circumstances should any pupil be placed under pressure by staff, or be made to feel uncomfortable, once interest in a change of school has been declared.
- 10.3. When a formal application has been made, the Head of the current school should be informed by the Head of the receiving school prior to assessment. A request should be made to the Head of the current school for information relevant to the candidate's application and transfer as appropriate. Heads, both giving and receiving references, need to be aware of the implications of the Data Protection Act 2018 and the EU General Data Protection Regulation in particular as regards the legal ground/s relied upon to request and provide a reference, the content of the reference, the period for which it should be retained and the entitlement of the pupil to require sight of it.² Every effort should be made by the current Head to reply promptly and the receiving Head should ensure that the current Head is aware of the outcome of any application.
- 10.4. Where a pupil leaves and changes school, the current school must ensure that the pupil's child protection file (if any) is transferred to the new school or college as soon as possible but transferred separately from the main pupil file. The transfer of the child protection file is a statutory obligation and as such, all schools must comply with this duty. Schools must ensure any data that is processed is done so in line with the principles of the Data Protection Act i.e. securely and confidentially.

² See Appendix for summary.

- 10.5. It should be borne in mind that most schools require a full term's written notice of leaving and that a term's fees are payable when this notice is not given. There are good reasons for checking that the parents of a transferring pupil have paid or are expected to pay any outstanding fees due to the pupil's current school. The Governors of the receiving school owe a duty to their school to ensure they are not taking on a risk of bad debts unnecessarily; and the receiving Head will wish to avoid the disruption to the education and welfare of a child who has to be excluded for non-payment of fees very soon after arriving at a new school.
- 10.6. Schools are therefore strongly encouraged to include in their contracts the right to pass on information about unpaid fees. Two courses of action are recommended:
 - 10.6.1 They can include in the school contract authority for information about unpaid fees to be passed on to the next school if the pupil is transferred.
 - 10.6.2 The receiving school can make clear in its admissions documentation that it reserves the right to establish from any previous school that all fees have been paid.
- 10.7. Schools embarking on either of these courses should consider approaching their own professional advisers about the exact wording to be used.
- 10.8. Schools should make known their admissions policy, and annual arrangements, including:
 - 10.8.1 scholarships, bursaries and other financial assistance
 - 10.8.2 the number of places likely to be available at each stage of entry; parents, with the advice of Heads of feeder schools, will then be able to make decisions on the basis of sound information
 - 10.8.3 other factors affecting entry e.g. number of boarding places available for boys and girls (bearing in mind the Equality Act 2010), number of scholarships and bursaries at each age group; and
 - 10.8.4 general procedures and criteria for entry
- 10.9. Schools should where reasonable and practicable discuss mutual problems with schools operating in the local area and not announce changes at a time and in a manner which invites confusion for parents and other schools. Senior schools should give feeder schools as much notice as possible of intentions to make changes so that the best provision for pupils can be made.

11. Sixth form transfer

- 11.1. Parents should be asked to consult the Head of their child's current school fully when considering whether to apply for a sixth form place at another school, and subsequently should be asked to keep the Head fully informed of the progress of any application that they may decide to make.
- 11.2. When parents decide to apply for a sixth form place at more than one school they can reasonably be advised that the number of such applications should be subject to a sensible limit in order to avoid undue distractions during an important period of academic work. Schools may hold Open Days and organise visits for parents who wish to find out more about these schools in advance of making an application for a place. However, any preliminary visits to schools should be arranged so as to cause the minimum amount of disturbance to a pupil's work.

- 11.3. When a firm application for a sixth form place has been received from an applicant in the UK, the Head will ask the pupil's current school for a report on the candidate with as much warning as possible in advance of any decision over the allocation of a place. Such reports will not normally be sent before the beginning of November in year 11 (i.e. the year in which he/she expects to complete GCSE examinations).
- 11.4. The first term of year 11 is a critical period for pupils preparing for GCSEs and a time when schools offer advice on careers and sixth form subject choice. Schools have a central duty to their pupils at this time to ensure that disruptions are kept to a minimum. Accordingly, selection interviews and/or examinations should not be held before the beginning of November in the pupil's year 11 and offers of places, including bursaries and scholarships, should not be made until 1st December. Offers of a place may be accepted on behalf of the pupil at any time but, in order to allow parents and pupils sufficient time to consider all offers which have or may be made, schools must allow a reasonable time (and in any event no less than one week) before requiring the acceptance of any offer (i.e.: not before 8 December).
- 11.5. Parents should be asked to inform their child's Head of the outcome of any application as soon as it is received. Parents should bear in mind that the majority of schools require a full term's notice of leaving, and that a term's fees are payable when this notice is not given.
- 11.6. Nothing in Section 11 applies to pupils studying overseas proposing to enter the sixth form of a UK school.

12. Scholarships, bursaries and other financial assistance

- 12.1. It is understood that 'scholarships' refer to awards made on merit, and that 'bursaries' and 'other financial assistance' refer to fee reductions made solely as a result of means-testing.
- 12.2. Schools which are charities are strongly advised to review their policies on scholarship awards in the light of the need to demonstrate public benefit.
- 12.3. Concessionary fees available to certain sections of the public, such as those for siblings, members of the armed forces and clergy, should be openly published.
- 12.4. All scholarships should be clearly identified and published. In order to maintain fairness and transparency they should be awarded in open competition and at known times and not on an ad hoc basis. Once offered, they should not be amended prior to admission, other than by means-testing or through waiver by the parents of the right to receive part or all of the fee reduction arising from the scholarship. They must be offered to individuals chosen by the senior school and not to candidates nominated by a third party e.g. a prep school.
- 12.5. Bursaries should be given only on the evidence of a full statement of financial circumstances. Heads and Bursars should make every reasonable effort to ensure that applications are based on genuine need. ISBA provide a suitable form and guidance on bursaries.

13. Late applications

- 13.1. Some parents make very late decisions to send their children to independent schools. Heads who are still filling places in the summer holiday will need some freedom of operation. Contact should nevertheless be made with the feeder school seeking a report and giving the opportunity to establish that financial obligations have been cleared. It is advisable to ascertain the academic standards of such applicants in relation to those already admitted.

14. Assessment and entrance examinations

- 14.1. Although it may be reasonable to give an indication of the suitability of a child for the school during a preliminary visit, no unconditional offer or promise of a place should precede the results of an assessment or entrance examination, as appropriate.
- 14.2. Formal entrance examinations for UK applicants should not take place before 1st October for entry in the September of the following academic year.
- 14.3. Schools must adhere to a national date of the first Monday in March as the date before which acceptance offers for senior school places, relating to 11+ entry in the subsequent academic year, cannot be required by schools. Offers may be made and accepted by parents before this date, but acceptances cannot be required. When an offer is made it remains open until the March deadline. It is important that all schools agree and adhere to the common date in the interests of children and parents. These requirements also apply to non-Common Entrance transfer at 13+.
- 14.4 It is recognised that assessments for a variety of scholarship awards, including sport, art and music, take place throughout the Autumn and Spring terms, and at a number of different entry points. For entries for the following September, all scholarship awards (except those offered to pupils in Year 11 and those under the MMA scheme) must adhere to the first Monday in March deadline.
- 14.5 It is recognised that where there are regional variations in admissions procedures in the maintained sector, local agreements between **all** independent schools, irrespective of Association, may be necessary.

15. Common Entrance

- 15.1. Schools using the Common Entrance examination abide by the regulations set down by the Independent Schools Examinations Board. Particular attention is drawn to ISEB guidance on the publication of Common Entrance results.

16. Resolving Disputes

- 16.1. There may be occasions when schools find themselves in dispute on professional or ethical issues that are subject to this Code or to individual Association Codes. In all cases where disputes arise, schools are expected to make every effort to resolve them through discussion. If they are unable to do so, the Association or Associations to which they belong will be asked to mediate and advise. In so acting, each Association will apply the letter and spirit of the principles set out in this Code consistent with applicable English legal principles of interpretation.

17. Summary of Annual Key Dates for applicants in the UK

1 st October in the year prior to the academic year of entry	First date for formal entrance examinations
1 st November	First date for sending reports on year 11 pupils seeking transfer to another school
1 st November	First date for selection interviews/examinations for year 11 pupils
1 st December	First date for offers of places, scholarships or bursaries for year 11 pupils
8 th December	Date before which schools cannot require parents' acceptances of offers to year 11 pupils

1 st January in the year prior to the year of entry	First date for acceptance of non-returnable deposits for 13+ entry (i.e. 20 months in advance)
First Monday in March (2 March 2020/1 March 2021)	Date before which acceptance of offers for senior school places, relating to 11+ entry in the subsequent academic year, cannot be required by schools (excluding those taking 13+ Common Entrance and offers to year 11 pupils). When an 11+ offer is made it remains open until the deadline.

Data Protection Act and Pupil References

Opinions

- 1.1. The Data Protection Act 2018 (the Act) and the EU General Data Protection Regulation (GDPR) regulate the processing of personal data. Personal data means any information relating to an identified or identifiable natural person. A reference, by its very nature, is likely to include facts and opinions about an individual and both fall within the definition of personal data. The Act does not lay down specific rules about what should or should not be recorded. In many cases the person giving the reference will have a duty of care to the person who is the subject of the opinion. They will need to decide what information they need to record to fulfill this duty, and they will use their professional judgment to do this. However, the Act does lay down standards that should be followed.
- 1.2. When an opinion is given in writing, recommended good practice from the Information Commissioner includes the following:
 - 1.2.1. Make it clear that it is an opinion. The record should show who gave the opinion and when.
 - 1.2.2. If possible, provide contact details.
 - 1.2.3. Structure the record so that if someone objects to its accuracy, their view or challenge can be included in such a way that it is given proper weight.
 - 1.2.4. Have a records policy that lays down the criteria that should be considered for continuing to keep the information or, where appropriate, specific retention periods for certain categories of information (see paragraph 1.6 below).
 - 1.2.5. Make sure that when an opinion is disclosed it is not presented as fact.
- 1.3. **Confidentiality:** If the reference is intended to be confidential, it is important to preserve the reference's necessary "quality of confidence" by making it clear that the reference should be treated as confidential and not freely disseminated. Whilst identifying a reference with a confidentiality marker does not of itself render the content confidential, it does provide evidence that the reference is intended to be given and received in confidence.
- 1.4. **Lawful Basis:** Seeking or providing a reference will involve the processing of personal data and in order to process personal data lawfully, the School will need to identify a relevant legal ground from the six legal grounds listed within the GDPR. If the reference contains special category personal data, the school will also need to identify an additional legal ground from a separate list of ten legal grounds for processing special category personal data. The legal grounds that are most likely to be relevant to process a reference containing general personal data are (i) with consent, (ii) because the reference is necessary for a contract and (iii) the processing is necessary for the purposes of the legitimate interests of the school providing these do not outweigh the rights and freedoms of the individual or involve special category personal data. If the reference contains special category personal data such as information about the pupil's health, the legal ground that is likely to be relevant is "explicit consent". The practical effect of this is that if a reference will or is likely to include special category personal data then explicit consent should be obtained. Explicit consent must be affirmed in a clear statement, whether oral or written. If the pupil agrees verbally that the Head's reference can include some special category personal data it is important that you keep a written record of the "script".
- 1.5. **Accuracy:** Personal information should be accurate, and where necessary kept up to date. The standard of care is high and the author of a reference must take every reasonable step to ensure that the information provided is accurate. This requirement will be met if a record accurately reflects a professional opinion. The Act and the GDPR cannot be used to challenge

a professional opinion on the basis that it is inaccurate just because another person may have a different opinion. However, if the opinion contains factual information that is incorrect then it could be challenged. If it transpires that factual information was inaccurate the School will need to rectify the error. A challenge to a factual inaccuracy or the reliability of an opinion may be recorded alongside it, since it will usually be important to maintain the original record.

- 1.6. **Adequacy/relevance:** The personal information provided in the reference should be sufficient for its intended purpose and restricted to what is necessary in relation to the purpose. It should not include irrelevant material. This does not mean that someone can demand an opinion to be deleted because they think it has taken account of irrelevant information, or not taken account of information they think is important. It does mean that when an opinion is recorded, it (or the context in which it is held) should contain enough information to allow a reader to be able to interpret it correctly. For example, the date, the name and position of the author should be made clear. Where an opinion is likely to be controversial or very sensitive, or when it will have a significant impact when used or disclosed, it is likely to be even more important to explain the circumstances, or evidence on which the opinion is based.
- 1.7. **Retention:** Personal information should not be kept in a form which identifies an individual any longer than is necessary in order to do the job it is intended for, unless there is another valid need to keep a comprehensive record. Individuals may ask for an opinion to be deleted which they think is irrelevant or unjustified (for example, because they have obtained a second opinion which contradicts the first) or its retention is no longer required. Under the GDPR, individuals have a legal right to request that their personal data is erased in certain circumstances, such as where the personal data has fulfilled its purpose and retention is no longer necessary or where the individual withdraws their consent and consent was the legal basis upon which the information was being held. However, this is not an absolute right and organisations and practitioners will need to consider if they need the information for the adequacy of the record and for their own purposes. For example, they may consider that the information needs to be kept to explain action that was taken at a later stage or in connection with legal claims.
- 1.8. The ISBA has a guidance note on their website for use by member schools which details the legal requirements for independent schools. There is a useful table which lists the timeframe of retention for each type of information held by schools. Alternatively, the Information and Records Management Society (IRMS), a professional association concerned with records and information management, publish a [Records Management Toolkit for Schools](#). This was originally created to assist maintained schools in their compliance with their statutory duties under data protection, freedom of information and other laws applicable to local authority controlled schools. The IRMS is currently developing a module specifically for independent schools but until this is available, independent schools using the toolkit will need to bear in mind that certain parts of the current version of the toolkit will not be relevant to them.

Disclosure

- 1.9. Under the Act and the GDPR, data subjects are entitled to request a copy of their personal information that was supplied in a reference. This right is specifically given to data subjects and is known as the right of subject access. However, where a pupil reference has been given (or is to be given) in confidence, schools are entitled to rely upon Schedule 2 of the Act (see paragraph 1.11 below) which expressly exempts confidential references given or to be given for education purposes from the subject access request provisions of the Act. This means that the pupil, who is the data subject of the reference (or a third party requesting it on their

behalf, such as a parent), cannot require either the school that has authored or received the reference to disclose it to him/her.

- 1.10. Heads should note that the exemption from the right of subject access that applies to confidential references is materially different under the new Act. Under the old Data Protection Act 1998, the exemption was only available to the school providing the reference and not the school receiving it. Under the new Act, providing the reference is confidential, the exemption from the duty to provide a copy under the subject access provisions is available to both the school that provided it and the school that received it.

This, however, is subject to a further caveat: the right of subject access only extends to the data subject's own personal data and not to personal information relating to other people. Where the reference also contains information that identifies another individual such as another pupil and that individual has not consented to the disclosure of their information, then the reference may be withheld unless considering the circumstances, it is reasonable to disclose the reference without the consent of the other identifiable individual. The practical outcome of this is that when the school is considering a subject access request for a reference, if the reference contains information that identifies a third party, it should first try and edit out (or redact) the information that identifies the third party. If doing this leaves the document unintelligible, the school could seek the third party's consent to release their data to the requestor. If that consent isn't forthcoming or seeking consent isn't a reasonable option then the subject access request may be refused unless its disclosure is reasonable in the circumstances. Whether or not disclosure without the third party's consent is reasonable will depend upon a range of different factors such as whether disclosure would adversely affect the third party's own rights and freedoms and whether the School owes a legal duty of confidentiality to the third party. In deciding this, the school will have to balance the pupil's right to access his or her reference against the third party's privacy rights regarding their own information.

In most cases, a school would not usually be entitled to withhold a reference on the basis that its disclosure to the pupil would reveal third party personal data in circumstances where the third party was a member of staff including the author of the reference.

- 1.11. Subject to the restrictions that will apply to third party personal data, in most situations, Heads that receive a subject access request for a reference will be expected to disclose the reference to the pupil or the person that is making the request on behalf of the pupil, such as the parents.
- 1.12. The relevant paragraph of Schedule 2 to the Act provides:

"The listed GDPR provisions* do not apply to personal data consisting of a reference given (or to be given) in confidence for the purposes of the education, training or employment (or prospective education, training or employment) of the data subject..."

**The relevant GDPR provisions include Articles 5 and 13-15 inclusive i.e. a confidential reference is exempt from the right of subject access and also the school's duty to provide privacy information. However, the School still needs a legal ground to provide a reference such as consent.*