

Proposed admissions appeals process for 2022-23 co-ordinated admissions round & updates

The Omicron variant is now the dominant strain throughout the country. Although it has been reported to be less harmful than the Delta variant, it is causing significant disruption in terms of sickness and other leaves of absence. Anyone infected is required to self-isolate for 5 days alongside two negative lateral flow tests. In addition, the Omicron variant has been proven to be considerably more contagious than any other strain.

Government guidance has been to work from home where possible and while plan B measures have since been rescinded (as of January 2022), flexible working arrangements remain in place for many organisations and KCC continues to recommend minimising gatherings where they are not necessary. School term has resumed following the Christmas break, although there have been reports of high staff absences within schools due to the high infection rates.

The basis for the previous justification, along with the new variant, compounds the need to continue to ask our Independent Appeal Panel Members to draw upon the temporary regulations until further notice.

Preparations are having to be made for the up-and-coming Main Round appeal season for both Secondary and Reception/year 3 allocations.

Appendix 1 & 2 of this report sets out the justification process for the administration of Main Round Appeals for 2021/22. This justification remains the bases for the proposal for hearing the 2022/23 Main Round appeals.

We have already provided up to date information about the current issues we are faced with in terms of Covid, and preparations for the Main Round appeals must be made within the coming weeks.

It will be our intention to recommend to the Independent Appeals Panel to continue to hold Main Round Appeals under a paper-based exercise, along with the adaptations that were made for the 2021/22 season.

The introduction of schools' generic defence statements, Appeal forms and the FAQ's on the school websites, that was put in place for 2021/22, enabled parents to fully present their cases even when not able to attend their appeal either in person or via a video/telephone conference.

The approach taken by the Independent Appeals Panels set out in Appendix 1 & 2 was ratified by the Education Skills Funding Agency (ESFA) following 9 complaints from appellants following their Main Round Appeals.

The ESFA stated that they were satisfied that the information issued to appellants prior to the hearing enabled appellants to fully present their case by way of written submissions in a fair and transparent way.

They went on to say that Admission Authorities had put in place a system that worked for them locally and had reasonably explored remote access hearings before deciding upon appeals on written submissions. Therefore, Admission Authorities had complied with the Coronavirus Regulations when determining the appeals for that school. They were also satisfied that the information issued to appellants prior to the hearing could reasonably be considered adequate in ensuring parties were able to fully present their case by way of written submissions.

The information issued prior to the hearing showed the panel took reasonable steps to ensure that the hearing was fair and transparent. The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) (No.2) Regulations 2021 set out a suggested process for written appeals. The suggested process included a stage where the panel and each party could ask questions of the both the appellant and the school. The panel chose not to ask any questions at the hearing, neither was there an opportunity for either party to ask questions of the other; however, appellants were informed that they could provide additional information up until a set date.

As the temporary guidance did not mandate that the panel must ask questions of the appellant, the ESFA were unable to find the panel in breach of the guidance.

There were a small number of complaints made to the Local Government & Social Care Ombudsman (LGSCO) during the early part of July/August. Although these complaints were responded to by Democratic Services within 5 days of the complaints being received, we are still yet to receive a draft decision. These cases did include complaints about the process that the Panel took in terms of not including a questions and answer process for paper-based appeals.

Although we have stressed to the LGSCO the importance of the decision being issued before preparations are made for the 2022/23 Main Round process, we have been advised that a decision would not be likely until February.

Taking this into account we must proceed based on the knowledge we hold at this moment in time from decisions already received from ESFA. Should either of the outstanding complaints from the LGSOC come back with a statement that, if we had known in a more timely manner, would have affected our preparations for this year's appeals, this is a matter we can then formally raise with the LGSCO.

Conclusion

Main Round Appeals for 2022-23 to continue to be facilitated as a paper-based option for both primary and secondary schools. This offers KCC the strongest potential to hear all necessary appeals in a fair and transparent way by the beginning of the new school year and mitigations have been developed to ensure that appellants are not unduly disadvantaged as a result of the unavoidable limitations of hearing appeals in this ongoing pandemic situation.

Adaptations have been made to the process to provide parents additional school specific information, which will allow them to prepare their cases more effectively and offer an alternative to a dedicated question and answer phase. Officers request that

the proposed process is approved to allow the additional necessary tasks to begin, ensuring appeals can start to be heard as quickly as possible.

Monthly updates for In year Appeals

Update 30.11.21 – The temporary regulations have continued to be used as the risk of holding face to face appeals has remained high. All appeals have been heard either under a virtual setting or through a paper-based exercise, with parents choosing which options best suits their needs.

Within the last couple of days, a new variant, Omicron has caused serious concern globally, with the full impact still unknown but cases have been identified in the UK. Restrictions such as wearing face masks have been reintroduced, along with the booster vaccine programme being brought forward for all adults over 18. The basis for the previous justification, along with the new variant, compounds the need to continue to ask our Independent Appeal Panel Members to draw upon the temporary regulations until further notice.

This will be reviewed monthly.

Update 7.10.21 – The DfE have now extended the temporary regulations until 30th September 2022. In terms of Covid, the current daily positive tests across the country in the last 24 hours is 33,869, with 166 daily fatalities being recorded amongst people who tested positive in the previous four weeks.

Although not covered under the current emergency regulations in terms of Admission Appeals, the country has faced significant disruption over the previous weeks due to issues with fuel shortages.

The basis of the previous justification remains, in addition to winter approaching and the possible further increases that might be seen in terms of Covid, colds and flu illnesses. At the present time the risk of holding face to face appeals is still too great and we will continue to draw upon the extended temporary regulations until further notice.

This will be reviewed monthly.

Current thoughts on Appeals as of 1st September 2021:

At the time of writing this email, all restrictions in relation to Covid have been lifted by Central Government. After a spike in infection rates, those numbers now seem to be reducing according to Government figures.

The emergency regulations issued by the DfE are in place until 30th September and we have recently been notified that the DfE intend to extend these further subject to parliament approval. At this time we know nothing further about what if any changes the DfE plan to make to these emergency regs or for how long they will be in place for. Currently the Appeals Team have 57 'In year' appeals which need to be heard at the start of the new academic year as they were received following schools breaking up for the Summer holidays. In addition, there will be a number of secondary sixth form appeals which will need to be arranged, however these numbers will not be known

until after exam results have been issued, but will be approximately 50 -100 and will be heard during September/October.

Although most of our Volunteer Panel Members and Clerks would have received both vaccines, the current Delta variant is prevalent throughout all towns in Kent/Medway and bordering authorities. In addition, for 'In year' appeals, the clerking of these meetings are carried out by both our internal staff and a number of external clerks.

Although most of the Panel and Clerks 'should' be more resistant to infection, we have seen throughout the country tens of thousands of people being 'pinged' by 'track and trace', stating that they have been in contact with someone with Covid and that they are by law, required to self-isolate for a set number of days. Since the initial drafting of this, further restrictions have been lifted allowing all those who have been double vaccinated not now having to self-isolate if they have been in contact with someone with Covid.

For face to face appeals, our Clerks & Members will be in contact with up to 12 different families during the day and I would be concerned about them contracting Covid or being contacted by track and trace and asked to self isolate if they are not double vaccinated. For our internal/external clerks, if this was to happen, then this could lead to the collapse of appeals being arranged, administrated and clerked within a reasonable time. In addition, there is a requirement that a presenting officer is in attendance during the appeal and they would be either a member of staff from the school such as the Headteacher or someone from the Governing Board or Senior Leadership Team. If they were to be either infected or asked to self isolate, this could have a detrimental effect on the school community.

For those schools that buy into the Primary/Secondary Admissions Team service, and where the presenting officer is a Member of the LA Admissions Team, throughout September and October they would be also dealing with the Kent Testing process. If any of those officers became either ill or were asked to self-isolate due to attending appeals, there would be real concerns about what effect this would have on the authority being able to facilitate the Kent Test process.

As the procedure for arranging/administrating both 'In year' and sixth form appeals needs to start at this point in time, the most viable option would be to continue to draw on the emergency regulations and to continue to offer parents the option as to having their appeal conducted either under a virtual setting, or as a paper based exercise as detailed within our 2021 justification paper. It is worth remembering that the final decision would rest with the Volunteer Panel Members.

I have been contacted by one Panel Member who has allowed me to share his concern in relation to Members returning to face to face appeals which are:

I will hold on my participation in future face to face appeals pending:

- the general rate to the Delta variant escalation and government guidance on this and the proven effectiveness of vaccination to all the current variants with the aid of the proposed Autumn supplementary vaccines.

- the level of protection you intend to provide with 'social distancing'. I don't think County Hall has much future with this respect
- personal family circumstances. Currently have family staying with us who are not yet fully vaccinated and therefore vulnerable.
- also the fact that if the Secretary of State for Health has got C19, despite being double vaccinated, and with no control over the health situation of any parents who attend FtF appeals, I believe that any FtF meets are a high risk strategy

I don't envy your position under these circs especially if a panel member becomes ill as a consequence of a C19 + parent attending an appeal

I believe the simplest solution is to hold appeals using a video conferencing during the casual appeals season as last year. I believe these worked well in the circs and do give the parents the opportunity to puts to the Defence FtF an important aspect of the normal FtF appeals. Perhaps you could push for this approach with DoE as it would also get over the issue of half a million people a week being PINGed to take care of contacts which will cause chaos with any attempts for you to put forward any appeals programme.

I have also listed some of the benefits that have been observed since conducting 'In year' appeals under a virtual/ paper based setting.

Appeals

For parents

It has taken away some of the perceived formality from the process. A parent/s are able to present their case from the comfort of their own homes, or at their place of work and has allowed them to speak freely and not feel so pressured in a room under such a formal setting.

Often parents have to travel longer distances and may have issues with transportation. By being able to have their appeal heard virtually they do not have to worry about attending a venue, sometimes which is not near their house. It has saved parents the cost of having to travel such as petrol, car parking, public transport and child care. In addition, some parents might have to take a day's annual leave to attend a hearing, under a virtual setting, they are able to do this from a place of work or take smaller amounts of time off work.

It provides a more digital approach to appeals. The idea of having to attend a physical meeting is an outdated one and shown to be unnecessary since the pandemic began. People expect a more flexible approach and one that provides options in how it is heard.

By offering a more flexible approach which includes face to face, virtual and paper based appeals it would allow parents an option to fit the appeal in around their busy schedules, open up more options for our lower income families and those with disabilities.

A flexible approach means that we can cater for all needs. Many parents have enjoyed the paper based as they are more capable of writing their views rather than being pressed on the spot for answers. The Virtual approach has also been useful for those who are happy to speak but would be anxious either in returning back to face to face or feel pressured in a room full of strangers. Anxiety about people returning back to normal life after the Pandemic is already being spoken about and the effects are still unknown.

A large number of parents who would attend face to face appeals might still not have had both vaccines, therefore the risk of them attending a hearing where a Panel might have already met up to twelve parents could be a concern for them.

KCC

For face to face appeals, officers from the Admission Teams who represent a school are often required to travel all around the County to present a case depending on the school that is being appealed for. This could mean that those Officers can be out of the office for one appeal anything up to three hours. Holding appeals under a Virtual or paper based setting reduces this considerably, enabling Officers to be able to conduct their day to day work in addition to attending appeals. For those schools that represent themselves, for face to face appeals, the same situation arises with Headteachers or members of the Senior Leadership Team being away from the school for considerable time for one appeal.

The strides forward made in a more digital world will take a step back if all parties are forced back to face to face. KCC has been a proactive authority in providing new and exciting options for its residents in approach to how appeals are created and heard.

Panel Members are in the higher risk categories and forcing them back to face to face may mean we end up losing some who would be happy to be involved still if it was virtually held.

Cost to the Authority, not only has virtual meetings made it easier and more straightforward to get people together it has also provided a welcome saving in terms of venue hire, staff travel costs, printing and sundries. With Authorities being asked to tighten budgets constantly this is a huge factor.

Brexit

Kent is one of the largest authorities in the country and the effect of Brexit especially around travel will be felt here. There are already parts of the county suffering from traffic issues and if and when there is a problem at the Port of Dover huge areas of that corner of the county become congested.

Therefore, with the above in mind, I recommend that we seek agreement from our serving Volunteer Panel Members that appeals are to continue under a virtual/paper based setting all the while the emergency regulations are in place, and while infection rates are prevalent. If any parents request alternative arrangements for their appeal to be considered, then this would be looked at on a case by case basis.

