

Proposed admissions appeals process for 2021-22 co-ordinated admissions round

On 1st February 2021, the Department for Education extended the previously revised regulations and non-statutory guidance for admissions appeals which were required following the COVID-19 outbreak and resulting restrictions. No changes have been made to these regulations beyond an extension of their end date from 31 January 2021 to 30 September 2021. National Offer Days for both Secondary and Primary schools remain the same and appeals are intended to be concluded before the start of the summer holidays. At the time of writing this report, the country is once again in a national lockdown, schools are closed apart from children of key workers, KCC offices remain closed with remote working from home and it is yet unknown when national restrictions will be lifted. It is therefore necessary to review the amended appeals processes to ensure they remain appropriate for the forthcoming appeals round.

Background as to 2020/21 Main Round process:

Before adopting the process of hearing main-round appeals via written submission, the Kent Panel undertook a rigorous analysis of the practical restrictions that the national lockdown created. This assessment identified that the established procedures and processes were untenable.

Covid 19 required admissions panels to balance the need to provide as fair a hearing as possible while ensuring that procedures did not result in a systemic failure to fulfil statutory duties. It became clear that the appeals system carried out remotely would not be able to cope with the large number of lodged appeals; children would not have their appeals dealt within on time or at all. It was also recognised that parents and young people were not connecting to their existing schools in the usual way and therefore the increased importance of early and clear communication of decisions to allow parents and young people to prepare.

The analysis of revised regulations and resultant adjusted process were recorded in a rationale document, which should be read in conjunction with this update (see Appendix 1).

Implementation of the revised process

The Kent Panel is currently responsible for appeals for 66 secondary schools. Kent County Council is the Admission Authority for three of these schools. The Kent Panel has a further 338 primary schools; 129 local authority schools and 209 own admission authority schools.

While there are other Appeal Panel providers in the marketplace, had the Kent Panel declined to act for any of the schools in Kent, other than those for which it is Admission Authority then it is very doubtful that there would have been sufficient capacity or expertise in the wider system to undertake all of those appeals within the time-limit required.

The appeals team is comprised of two full time Democratic Services Officers, one full time Administration assistant and one team Manager. This team has considerable expertise, an established track record of handling thousands of appeals each year and are dedicated to manage school appeals.

Since 'National Lockdown' and acting pursuant to Government advice, the Kent Panel's offices and print unit have been closed. The entire appeals team are working remotely from home which is ongoing.

Secondary School appeals were due to start 20 April 2020 and finish 17 June 2020. Primary school appeals were due to start 22 June 2020 and finish 16 July 2020.

Following national offer day and the reallocation process in Kent and Medway, out of the 66 secondary schools signed up for our service, 45 schools had registered appeals that needed administrating. The remaining 21 schools either were undersubscribed or were able to offer places without the need for parents to bring forward an appeal.

- 3 Secondary schools had appeals between 101-150 each
- 15 Secondary schools had appeals between 51-100 each
- 27 Secondary schools had appeals between 1-50 each

The non-statutory guidance was released by the Department for Education on 24 April 2020. The delayed guidance caused a significant impact on the Kent Panel being able to schedule appeals, with considerable issues for Secondary schools which would normally have been expected to start hearing appeals well in advance of 24 April.

Working closely with Microsoft and KCC's own IT department, the Kent Panel developed a system to store and dispatch case papers to all parties via Microsoft Teams. This ICT solution was developed within a matter of weeks following the emergency regulations being published. As a consequence of moving to a new way of working, this process, required 81 separate training sessions to be delivered to Panel Members and clerks to ensure that all updated and new processes were understood. This redevelopment and training added a considerable additional workload to the team.

Further additional support was provided to all secondary and primary schools as to how the process would work, their responsibilities for making parents aware of the changes along with allowing them sight of the defence statement and finally how documents were to be uploaded on the SharePoint folder within Teams. The Kent Panel was satisfied that this approach provided ample opportunity for appellants and schools to present all relevant information at the appropriate times.

Kent Panel membership consists of 81 volunteers, with no contractual obligation to hear appeals. Ninety percent of Kent Panel's volunteers met the definition of being "at risk" from Covid 19. The Kent Panel was therefore aware that there was a significant risk of Panel members dropping out during the process. The Kent Panel was also mindful that if it overworked the Panel members, this could have had a detrimental impact upon their mental well-being and ultimately could have led to Panel members

becoming ill or simply walking away from the process. Furthermore, it would have increased the risk of poor decision-making. If the Kent Panel had included a questions and answer session for stage 1 & 2, every Panel would have had to meet twice on each matter; once to draw up questions and a second time to reach a final decision. This would have effectively doubled the workload and the associated risks detailed above. The imposition of this provision could, and we believe would, have led to the partial or total collapse of the whole appeals system in Kent.

In spite of these considerations, 25 of the 81 Panel members declined to take part in the main round. Similarly, two of the Appeals Panel's 17 clerks also withdrew from the process. This 'drop-out' rate in Panel Members and independent clerks, without involving additional stages to the process, highlights the challenge in adequately resourcing the appeals process and the likelihood of a complete service failure had any other approach been taken.

Consequently, the first set of secondary appeals did not take place until 8 June, seven weeks after their original scheduled start date.

More than 2200 appeals needed to be concluded before the start of the summer holidays in what amounted to a six-week period. It was also recognised that parents and young people were not connecting to their existing schools in the usual way and therefore the increased importance of early and clear communication of decisions to allow parents and young people to prepare. Of this number, 1889 related to secondary school places and 333 for primary. Due to the procedure adopted, the hard work of both paid clerks and volunteer Members, all appeals were concluded for both Secondary and Primary before the start of the summer holidays.

The Procedure adopted by the Kent Appeals Panel since September 2020

Since September, we have seen a significant increase in 'In Year' appeals across Kent and Medway schools that the Kent Panel administrate. In mid-October, Panel Members agreed to participate in virtual appeals via video conferencing with all parties present and although this has so far proven to be successful, it does have limitations. Panel Members have indicated that they are only able to hear a maximum of 7 a day with 45-minute time slots. This is in stark contrast to hearing 12-16 a day through face-to-face appeals. As Panel Members are volunteers who have worked well to adapt to the virtual approach, reasonable consideration of their wellbeing and capacity has been a key part of our process. As has been stated earlier, the operation of the Kent Panel is reliant on the willingness of volunteer Panel Members, therefore attempts to require increased hearings per day involves a significant risk of limiting Panel Member numbers overall which would lead to a total service failure due to inability to hear sufficient numbers of appeals.

Due to a backlog during September/October 2020, the Kent Panel offered parents the option as to how their appeals could be heard either via a virtual setting with a possible delay of around 1-2 months, or for a quicker decision, as a paper-based appeal under the same setting as the 'In Round' appeals.

If the Kent Panel were to have conducted main round appeals via telephone conferencing for our largest school (147 appeals), it would have taken in excess of 20 days to complete appeals for that school alone. So, taking into account the significant number of appeals across all schools, the cumulative delays would have had negative impacts if the telephone conferencing approach had been applied universally.

Local Government & Social Care Ombudsman (LGSCO) challenge and subsequent report

Following a main round appeal, the LGSCO were asked to investigate a complaint in relation to maladministration of an appeal for an own admission authority school that utilised Kent Panel. The complainant sighted that the Panel deviated from non-statutory guidance and were therefore unable to make a decision in a fair and transparent way.

In their first response, the LGSCO referenced that where it was not possible to hold face to face appeals, they could be conducted entirely based on written submission as detailed under the emergency guidance.

For the panel to make a decision which was fair and transparent, they had to ensure the parties could fully present their case by written submissions. The emergency guidance suggested that:

- The clerk should contact the appellant and presenting officer, in line with the amended timetable. The presenting officer should be provided with a copy of the appeal lodged and asked to submit the admission authority's arguments and evidence. The appellant should be given the chance to send more evidence if they wish. All submissions should be in writing.
- The panel and clerk should meet by telephone or video conference to consider the submissions and draw up questions for the appellant and presenting officer. The aim should be to clarify points made and seek further relevant information. They should bear in mind that appellants may be less familiar with the information and arguments required, and may have less experience preparing written submissions.
- The clerk should send the questions and all the papers to each of the parties. For example, the presenting officer's submission will be sent to the appellant with both sets of questions, and vice versa.
- Both parties should reply with answers to the questions, and any further points they wish to make. On receipt, the clerk should send each party's submission to the other party. The parties should be informed that any information or evidence not sent by the relevant deadline might not be considered by the panel.
- The panel should meet by telephone or video conference, with the clerk, to consider all the information and reach a decision in the same way as prescribed in the Appeals Code.

In responding to the draft decision, officers provided the Ombudsman with a further explanation which set out the justification for the approach that had been agreed by Members.

At the same time, it was highlighted that the Education Skills Funding Agency (ESFA), who are the Ombudsman for Academy/Free schools, had found no fault in similar cases. Therefore having two Regulators reaching contradictory decisions on essentially the same facts was problematic for both legal certainty and for public confidence in the process.

Following this response, the LGSCO have issued a revised draft decision. Having considered the additional details provided by the council about how it decided its approach to appeals, the LGSCO no longer intend to find fault with the Admission Authority for departing from the non-statutory guidance. Based on the evidence available, they were satisfied that the Council gave considerable thought to its approach and that the alternative process it used offered families a fair and timely way to have their appeals heard.

The LGSCO have suggested that they are not concerned about a contradiction between their initial findings and those of the ESFA. They noted most of the complaints in the document the council provided were about the fact appeals were decided on written submissions. They did not find fault with this approach in their original draft decision. There appeared to have only been one complaint about a lack of opportunity to ask questions, and the amended draft now addresses that point.

While the LGSCO are correct that their findings were limited to a specific element of Kent's process, rather than the use of written submission-based appeals more generally, this does not address that fact that the ESFA still considered the entirety of Kent's process and found no fault. The ESFA were equally aware that Kent's process excluded a specific question and answer element, but raised no objection.

The LGSCO stated that while they had not found fault with the approach to appeals in the 2020 admission cycle, it did not follow that the same approach would remain acceptable in the 2021 admission round, when admission authorities and appeal administrators would have had a longer period to adapt to the changes imposed by COVID-19. Future complaints would be decided on their own merits, considering the circumstances at the time. It is therefore necessary to reconsider the most appropriate process for the forthcoming appeals round.

Key factors to consider for Main-round appeals 2021-22

In reaching a decision about how to manage appeals for 2021-22, the following factors require consideration:

- Reduction in availability of Panel Members. Out of 81 registered Panel Members, 56 volunteered their time for the 2020/21 appeals season. This could decrease further for the 2021/22 season.
- While vaccination programmes have begun, it remains unclear whether Panel Members & external clerks will qualify in time for the main appeals round.

- A large number of our volunteer Panel Members have been self-isolating for nearly a year, therefore with the vaccine and restrictions being lifted, the amount of time they would be willing to dedicate to appeals could reduce.
- The Appeals Team have been working remotely from home since March 2020 and it is unlikely, we will be able to return to the office within the next 6 months.
- Over 300 schools are reliant on KCC to provide admissions related support. If we were to withdraw the service for these schools, it would significantly reduce the availability of appeals for 2021 Admissions rounds. Parents and children have already experienced uncertainty and challenges faced with Covid and this would also add to this if KCC withdrew its services to Admission Authorities.
- Schools are under enormous pressure; we are currently in lockdown 3 and schools are closed to all except for vulnerable pupils and children of Key Workers. Admission Officers within these schools would be required to carry out a number of very important functions in assisting with setting up admission appeals which has further impacts if those Officers are required to work from home if there are any further lockdown restrictions in the future.
- In Year appeals are currently being carried out virtually using Microsoft Teams and parents are provided with an option as to whether their appeal is heard either via video conference or as a paper-based exercise. We have seen a significant increase in the number of In Year appeals since September which has put additional pressure on the team.
- Virtual appeals are limited to 7 appeals a day and feedback from Members are that they would not be willing to conduct appeals in this way during the Main round appeal season. Also, a limited number of Members have volunteered to participate in video appeals with all parties present.
- With schools currently being closed, 'In year' appeals have reduced, however as soon as schools start to re-open these numbers will significantly increase. This would be likely to occur around March / April 2021 at the same time as the Main Appeals season is starting, which would have significant impact on our Panels.
- To hear 2000+ In round appeals would not be possible to be conducted through a virtual setting with parents in attendance for the reasons previously detailed within last year's justification. This, along with the restriction to 7 virtual appeals a day would mean it would not be possible to conclude all appeals before the start of the summer term.

Implications of implementing an additional stage in Main round appeals for 2021

When Independent Appeal Panels conduct appeals as a written submission-based exercise, the non-statutory guidance requires Panels to ensure that parties are able to fully present their case and allow the Panel to make a decision which is fair and transparent.

While the Kent Panel regularly reviews its procedure to ensure they remain fit for purpose, the LGSCO's requirement for admission authorities to reconsider their approach to appeals for 2021/22 main round, has reinforced the need for further considerations as to how questions and answers (Q&A) could be incorporated into the process.

An example of how this process could be incorporated has been set out below along with what challenges this would create:

To incorporate questions and answers for both stages of the appeals process as detailed within the non statutory guidance, would require:

- i) Case papers being dispatched within a minimum of 14 calendar days prior to the Panel meeting by the Appeals Team via Teams.
- ii) Parents allowed 5 calendar days to submit any additional information.
- iii) Appeals Team to upload any additional information into Teams within this 5-day period.
- iv) Parents and panel allowed 5 calendar days to submit any questions in relation to stage 1 and 2 of the process.
- v) Appeals Team sends questions to Admission Officer of the school who will collate and pass back to Appeals Team in order to publish to all parties/individual within 7 calendar days.
- vi) Panels have a minimum of 2 days to consider all additional information/responses.
- vii) Appeals to then carry out as above with only the Panel & clerk meeting virtually.

During the 2020/21 the team administrated 47 secondary schools: 3 Secondary schools had between 110-147 appeals each; 15 Secondary schools had appeals between 50-87 each and 27 Secondary schools had between 1-50 appeals each.

While consideration has been given to increasing staffing of KCC's appeals team to support a more resource intensive process, this only accounts for a proportion of the administrative burden that such a process would create. It would be highly unlikely that all key partners could similarly provide the additional required capacity.

COVID-19 has placed considerable pressure on schools, who remain in lockdown at the point of writing. While a return to school is expected in the near future, schools will still have to accommodate a number of additional COVID-19 related tasks, such as lateral flow testing and a continuation of distance learning options for pupils who remain unable to attend. KCC must therefore consider the impact of any change on each of the potential 63 Secondary Schools and over 300 Primary schools.

The most significant limitation, however, is the availability of Panel members, as KCC is reliant on volunteers, who have already reduced in capacity as detailed above. Even if papers could be provided by KCC Appeals team members and schools to support an additional Q&A stage, there would be insufficient Panel member capacity to hear those appeals in a timely fashion. This would result in appeals being heard over a longer timescale, likely beyond the start of the following school year. This would in turn negatively impact KCC's ability to support In Year appeals in the following school year as well. Since September 2020, officers have been in regular contact with a number of other Local Authorities throughout the country to share experiences and develop best practice. These exchanges have validated concerns about the negative impact that an extend process can create.

The majority of authorities that had incorporated Q&As had far fewer appeals than Kent and Medway but were unable to conclude the main round process before the

summer holidays. LAs of comparable size to Kent that implemented a Q&A stage in their appeals did not conclude their processes until late September/early October. Delays of this scale would result in a greater and more widespread disadvantage to all appellants than any potential shortcomings of failing to include a dedicated Q&A stage.

When considering the above timeline and that national timetables have not been changed for main round appeals, the only viable option that Kent's Independent Appeals Team could offer Admission Authorities, would be a paper-based approach without a specific questions and answers process as outlined in the non-statutory guidance. However, recognising the need to develop our approach based on lessons learned in 2020, the following adaptations have been factored into the process. These additions will provide the desired outcomes of the non-statutory guidance, in that these elements will ensure that the processes in place allow for all appeals to be determined in a fair and transparent way, facilitating the appropriate involvement of parents, schools and Panels throughout.

Adaptions to the Paper Based system:

Kent Panel initially gave consideration to the potential of holding Stage 1 group meetings via zoom to allow for questions and answers for all parties. This would require around 56 separate group meetings (based on last year's figures) to be organised to hear each school's defence. Each would require three panel members, a Clerk, a Presenting officer, parents and also at least two facilitators from the Appeals Team to make sure the meeting is running correctly and to liaise with the Panel/Clerk in relation to any questions that might come from parents. Unfortunately, there are insufficient resources to facilitate such an approach and in practice, this would create a less effective version of virtual appeals rather than delivering an improved paper-based process.

This means that adaptations are focused on refinements and adjustments within the existing process, rather than the introduction of an entirely new approach.

Updated Process Summary:

- A) Schools using Kent's Independent Appeals service to publish their generic defence statement and accompanying documentation on their website on the relevant National Offer Day.
- B) Parents will be able to address any key points in relation to the school case within their appeal submission.
- C) Frequently Asked Questions document will accompany the generic defence statements on the school's website. This will explain the appeals process, key questions a Panel would usually ask on the school's case with responses, and questions that a Panel would usually ask a parent where it is relevant.

By introducing these additional steps into the process, parents would have all relevant information available to them to incorporate those into their submission. Parents would be able to highlight to the Panel any areas of the school's case that they may have an alternative view point on. By also providing parents with typical questions that the Panel would usually ask during an appeal, this can assist parents to provide the Panel with a full and robust explanations of their case that they might not have been aware of if this had not been incorporated.

As with last year's process, specific questions will continue to be accepted and answered where the Panel identify a disability discrimination allegation or any concerns around the admission arrangements being correctly carried out.

Conclusion

Main Round Appeals for 2021-22 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 will be 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.