

Proposed Admissions Appeals process for 2020-21 Co-ordinated Admissions Round

1. Introduction

Revised regulations and non-statutory guidance were released by the Department for Education on 24 April 2020 providing Local Authorities with an opportunity to develop alternative arrangements for Admissions Appeals given the COVID-19 outbreak and resulting restrictions.

KCC has two inter-related responsibilities in relation to school appeals:

1. As defending party for schools for which KCC is the admissions authority
2. Provision of services to own admission authority schools.

At the time of finalising this process, it was not known when Covid-19 related restrictions would be relaxed. However, it is imperative that we do all that we reasonably can to resolve admission appeals before the start of the new school year in September 2020.

It is recognised that these are unprecedented times. However, the important role of the County Council in determining and supporting educational choice is of significant importance to Kent residents and we therefore intend to move at pace to try and best discharge our responsibilities. This will ensure that children are given the best opportunity to start at a school of their preference.

This paper details the proposed process to meet these requirements and what considerations have been required to design this approach. Whilst this paper predominantly focuses on main-round admissions appeals for normal points of entry into schools from September 2020, if necessary, this process will also be used for subsequent in-year appeals.

2. Key requirements and consideration from updated regulations and guidance

The new regulations (Appendix A), which apply until, but not beyond 31 January 2021 and related non-statutory guidance (Appendix B) include the following requirements and suggestions that must be considered when finalising a preferred approach:

- *That the Local Authority or admissions authority has given due regard as to whether the Coronavirus exception applies to their current circumstances (Regulation 7 School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020) - As guidance from the Department for Education makes clear, the combination of social distancing requirements, including a restriction of gatherings of more than 2 people who do not live in the same household and closure of schools for the majority of pupils makes the normal requirements detailed in the School Admissions Appeals Code and related legislation untenable in the vast majority, if not all appeals until such restrictions are lifted. Given the range and number of appeals and the need to ensure an equal and proportionate approach to all, this decision cannot be delayed and, as such, the current circumstances for the purposes of the policy are those in place on 30 April 2020. Circumstances will be kept under review and further amendments to this approach will be issued if necessary.*

Typical appeals will require no fewer than six people, the majority of whom would have no familial connection, to meet in person for an extended period of time. This

would be a clear breach of social distancing requirements and undermine national efforts to limit the spread of infection. As admissions authorities are still required to hear appeals, KCC and other Kent admissions authorities will be required to rely on the “Coronavirus exception” to find alternative methods to fulfil this requirement in a timely fashion. The fact that such exceptions have been developed and implemented via emergency legislation is the most compelling proof of the necessity for admissions authorities to make use of them.

- *That where an appeals panel cannot comply with its usual procedure because of Coronavirus, that it should consider offering meetings by remote access. Where it is not possible to offer remote access appeals, it may decide to make decisions based on the written evidence submitted (Schedule 2, Regulation 2) -* When deciding whether an appeal can be considered via remote access methods, appeal panels are required to ensure such arrangements fulfil the following requirements:
 - (a) the parties are able to present fully their case;
 - (b) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the appeal hearing; and
 - (c) the panel considers that the appeal is capable of being heard fairly and transparently.

Where admission authorities are unable to evidence that it was not possible to offer remote access hearings, there is potential for future judicial review. It is therefore imperative that paper-based processes are only implemented where one or more of these requirements are not possible.

KCC has trialled virtual appeal hearings (with the prior consent of all parties present) to analyse their suitability for the forthcoming main admissions appeals round. Findings from these trials indicate that while they may be tenable on a smaller scale, it is likely that all three requirements will be breached if a virtual process was applied on a wider scale. As such, we are not confident that within the current circumstances as defined above we can deliver a lawful, consistent appeal process using virtual appeal hearings.

To remain fair and transparent, it is vital that all appeals are held in the same manner, (unless adjustments are required to accommodate a disability). Due to the lack of consistent video capable hardware for all parties and difficulties associated in requiring the use of a single video calling protocol, it is not possible to guarantee that every appellant would be capable of taking part in a video-based appeals process. This would require some appeals to be heard via video call and others to be heard via telephone. Trials have shown that each approach has different shortcomings, that are likely to affect appellants in different ways.

While video calls offer a comparable environment to physical meetings when they are working efficiently, they rely on all parties having access to a consistent and reliable broadband connection for the entirety of the call. As broadband connections are placed under extraordinary strain as a result of the Covid-19 situation, video calls are regularly impacted negatively by dropped connections or poor call quality. There are also equality and socio-economic implications for parties that are unable to

secure the necessary hardware or reliable broadband connection, which varies in availability across Kent, to take part in such appeals.

Where appeals are heard via teleconferencing instead, clerks reported significant difficulties in making accurate records of the points raised as a result of a lack of inherent understanding as to who was talking or parties talking over one another. Teleconferencing is also negatively impacted by substandard network conditions.

It was also noted that appeals held via either method took in excess of one hour to be completed. KCC is required to hear around 2300 appeals before September 2020 and there is likely insufficient time available to hear appeals on this basis.

As such, Officers do not believe that it is possible in the current circumstances to ensure that appeals that are heard remotely can always guarantee that parties can present their case fully, as poor connectivity or lack of access to remote options will limit some in presenting their case. It is expected that not all parties will have access to the necessary means to take part in remote meetings and where this is possible, appeals may be cut short as a result of technical difficulties. Finally, it is unlikely that remote appeals can be held fairly as it will not be possible to schedule in over 2300 hours' worth of appeals within the available timescales. A remote option therefore fails all three requirements.

While it may be possible to agree a remote based option for schools with smaller numbers of appeals, it is advised that most schools will be required to hear appeals via a paper-based process.

- *That where appeals are considered on written evidence only, parties are able to present their case fully, to allow for a fair and transparent decision to be made (Schedule 2, Regulation 2, Paragraph 3)* - The related non-statutory guidance provided by the DfE includes a proposed paper-based process that admissions authorities may wish to consider when finalising their own processes. This process closely replicates a normal appeals procedure, allowing the panel to ask initial questions to both parties who are then able to respond collectively and raise their own questions which are then answered and shared with all parties before a final decision is made.

As has been highlighted above, KCC is required to hear in excess of 2300 appeals before the start of the expected school year in September 2020. Due to the limited availability of staff on site and the restrictions in collecting and distributing vast quantities of information outside of an office environment, it is not possible to create a process with this level of interactivity while still hearing appeals within the necessary timescales. It would also require panels to sit on more than one occasion to finalise a decision for each school, adding significant strain to panel members who are already impacted by Covid-19 related restrictions.

As such, KCC's proposed process will allow appellants an opportunity to submit additional information to that which was already included in their original casework. Appellants will be advised that they need to include all information that they feel is pertinent to their case within 14 calendar days, so they are given sufficient opportunity to make their case in full. To ensure that appellants are not disadvantaged as a result of not being able to ask additional questions once they have been made aware of the defence submitted by the admissions authority, this will be

provided to parents in full so that they can consider it when deciding what additional information they wish to submit. Admissions authorities will likewise be advised to ensure that their defence includes all information that they feel the appeals panel need to be made aware of to make an accurate decision on the case.

Clerks will be informed to ensure that paperwork is checked for all appeals and that any questions relating to the proper application of admission arrangements, any allegations or suggestions of disability discrimination or potential undeclared disabilities are addressed fully before the appeal hearing date, so that the necessary information can be provided to panel members.

Panel members will be carefully advised throughout the appeals process that their decision will need to be made on the basis of the information made available to them. If paperwork does not include information that they feel would aid in reaching a conclusion, they will be required to make one without it as both parties will have been given sufficient opportunity to present whatever information they felt best served their case.

In this way, the proposed process will allow both the admissions authority and the appellant sufficient opportunity to fully present their case and for decisions to be made in a fair and transparent way in the confines of the current circumstances.

- *That the deadline, which parties have been given, for appeals to be lodged is thought to be suitable in light of revised guidance. If in any case it is found not to be, a revised deadline will be set which conforms to those requirements (Schedule 2, Regulation 3)* – appeal deadlines are normally derived by calculating 20 school days from the date that applicants were informed of their outcome. As school closures meant that school days were no longer a suitable measure, new regulations created a number of requirements for consideration to decide if an appeal deadline needed to be revised.

For Secondary appeals, applicants were informed that appeals needed to be lodged by 27 March, which did not fulfil the new requirement in sub-paragraph 1, that appeals deadlines were 28 calendar days from the outcome date (in this case 26 calendar days). Because appeals have been lodged and the specified deadline has already passed (a condition in sub-paragraph 3), the regulations do not require a new deadline to be set. It should also be noted that appeals continued to be accepted beyond this the set deadline, while KCC awaited confirmation from the DfE as to how appeals would proceed in light of Covid-19 restrictions.

The Primary appeals deadline was already set 28 calendar days from the outcome date, so no adjustment is needed here either.

- *That due regard is given to the Equality impact of any decision that is made in relation to an alternative process* - as has been highlighted above, there are potential equality implications for a process which relies on access to expensive technology or a reliable broadband connection, which is not offered consistently across Kent, particularly in rural areas. A written process is likely to have fewer limitations for those who would be so disadvantaged, as written submissions do not require more complex IT solutions or high-speed internet connections. Where parties are unable to submit information electronically, handwritten submissions can be provided via post or hand delivered to either KCC or the school.

The Appeals Code makes clear that school appeals must be made in writing, however, the proposed process will allow appellants who can evidence that they are unable fairly to take part in a written based process to request that alternative arrangements are made. This may include appellants with English as an additional language or those that have requested translation services (currently fewer than ten such requests have been made this year). These requests will be considered on a case by case basis by the Appeals Team to allow for suitable adjustments to be made where it is reasonable to do so. This is a positive equality impact and mitigation and the Appeals Team will ensure that alternative arrangements offer a consistent equivalent appeals process when compared to other appeals for the same school. Equality considerations will be dynamically and continually assessed as the proposed process is deployed.

3. Proposed process

- Clerk contacts panel members to confirm what process will be followed. As outlined above, this is likely to be limited to a paper-based process for many KCC schools.
- Admissions authority contacts the appellant to inform them of the agreed appeal format, provide a copy of the complete school defence paperwork and inform them of their appeal hearing date.
- Appellants will be given 14 calendar days to provide any additional information required fully and clearly to explain their case. The admission authority shall ensure that the shared school defence is complete and will not require any additional amendments at a later date. It will be made clear to the appellant that non-response to any communication will be considered confirmation that they are content to proceed on the basis of any prior submissions that have been made.
- Where an appellant can evidence that they are unable fairly to present their case via a paper based submission as a result of a equality consideration, they will be required to inform the Clerk within 5 calendar days so that consideration can be given as to what adjustments may reasonably be made. Those cases would be scheduled first, depending on the parental circumstances, followed by the remaining paper-based appeals. Panels and Clerk will need to be mindful of potential impacts to the schedule which would be discussed with Appeals Team on a case by case basis.
- Following the deadline for submission of additional information, admission authority will send complete paperwork for all appeals at least 14 calendar days before appeals hearing date
- Where Panel members or Clerks identify issues relating to queries around individual admission arrangements, alleged disability discrimination or potential undeclared disabilities, they are to seek further advise from Appeals Team prior to hearing the stage 1 & 2 process and the Appeals Team will communicate with Admission Authority on any queries that are raised. Any responses from Appeals Team will be detailed within the Panel's decision letter.
- Final paperwork to be sent to appellants at least 7 calendar days before appeal hearing date

- Panel & Clerk to meet virtually to decide stage 1 of the appeals process followed by stage 2. The clerk will ask each panel member for their comments on each child's case giving their individual scores (for multiple appeals) for that child and explaining the reasons for that score.
- Once all comments and scores have been noted in detail by the Clerk, Panel to issue their decision and provide their individual reasons.
- The Clerk shall compile decisions and forward to the Appeals Team to compile and issue outcomes only to parents within 7 calendar days of the last appeal to be heard. Depending on resources a more detailed letter will follow outlining the Panel's decision during the Summer break.
- If parents remain dissatisfied and believe that they have suffered injustice as a result of maladministration by the Panel, parents have a right to lodge a complaint through the Local Government & Social Care Ombudsman or Educations Skills Funding Agencies or may seek judicial review of the decision. Where schools remain dissatisfied as a result of maladministration by the Panel, they have a right to seek a judicial review.

4. Conclusion

The proposed process 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 unprecedented manner. 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.

Appendices

Appendix A – Coronavirus Appeals Arrangements Amendment Regulations



Coronavirus
Appeals Arrangemer

Appendix B – Department for Education non-statutory guidance

[Available here](#)