



## School Admission Appeals During Coronavirus

### Introduction

The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020 (“the Regulations”) came into force on 24 April 2020 and can be accessed by following this link:

<http://www.legislation.gov.uk/uksi/2020/446/contents/made>

The Regulations apply to all appeals that are already underway and any appeals that have not been concluded by 31 January 2021.<sup>1</sup>

On the same day, guidance was also issued by the Department for Education (“the Guidance”). The Guidance can be accessed by following these links:

<https://www.gov.uk/government/publications/school-admissions-appeals-code/changes-to-the-school-admission-appeals-code-regulations-during-the-coronavirus-outbreak>

[https://www.gov.uk/government/publications/admission-appeals-for-school-places?utm\\_source=4c8a1b54-c97d-47fd-8ffb-c8f766b75c6e&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=immediate](https://www.gov.uk/government/publications/admission-appeals-for-school-places?utm_source=4c8a1b54-c97d-47fd-8ffb-c8f766b75c6e&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate)

The published Guidance comprises the following documents:

- Changes to the admission appeals regulations during the Coronavirus outbreak (24 April 2020);
- Changes to school admission appeals due to Coronavirus (24 April 2020);
- Coronavirus (COVID-19): school admission appeals (14 April 2020);
- Advice for clerks and appeal panels on school admission appeals (24 April 2020);
- Advice for parents and guardians on school admission appeals (24 April 2020); and
- Advice for admission authorities on school admission appeals (24 April 2020).

Whilst the three advice documents noted above are stated to have been updated on 24 April 2020, they have not, in fact, been updated in order to reflect the provisions of the Regulations and therefore may include information which contradicts the Coronavirus specific guidance. In such cases, the Coronavirus specific guidance and the Regulations will take precedence.

The purpose of this note is to provide admission authorities with guidance as to how to run school admission appeals in light of the Regulations and the Guidance. This guidance note is not a substitute for reading the Guidance and the Regulations and for seeking more detailed advice from Solicitors with experience in this area if you have a complex question that needs to be answered. Guidance is being issued on a daily basis and this note is up to date as at 1 May 2020.

This guidance note is relevant to schools and academies.

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<sup>1</sup> Regulation 2 and Regulation 4

### **The School Admission Appeals Code 2012 (“the Appeals Code”)**

The Regulations relax some of the requirements that are currently set out in the Appeals Code, with a view to providing admission authorities with more flexibility to be able to deal with admission appeals during the Coronavirus pandemic. It should be noted that the Appeals Code has not been amended and the vast majority of its requirements remain in place. The Regulations make temporary changes to the Appeals Code, and where there is a conflict between the Regulations and the Appeals Code, the Regulations prevail.

The overriding principle is that admission authorities should use the flexibility they have been afforded whilst also ensuring that families are not disadvantaged by any alternative arrangements. All appeals must be procedurally fair and must adhere to the principles of natural justice. For this appeals round we would advise admission authorities to pay more attention than ever to the transparency, accessibility and independence of their appeals processes.

We would advise admission authorities to consider each appeal on a case by case basis and, wherever possible, to provide parents with support in order to ensure that their appeals can be heard effectively.

The main relaxations to the Appeals Code are as follows:

- Appeal panels do not need to be held in person, they can be held by telephone or video conference and in some circumstances, on the basis of written submissions as set out in the paragraph below headed “What arrangement can be made to hear appeals virtually?”;
- If one of the three panel members withdraws as a result of the incidence or transmission of coronavirus, then it will be permissible for the panel to continue and conclude the appeals as a panel of two. In these circumstances, the Clerk should make a note of the reason why the panel member withdrew and the fact that the panel will be continuing with two members. The Chair will have a casting vote and if it is the Chair who withdraws then it will be for the Clerk or the admissions authority to determine who the new Chair should be out of the two remaining panel members. If more than one member withdraws then a new panel will need to be constituted and any part-heard appeals will need to be reheard;<sup>2</sup>
- Admission authorities are able to review their existing deadlines for appeals to be submitted and must set new or revised deadlines in certain circumstances as outlined in the paragraph below headed “Appeal Deadlines”.

What has not been relaxed is the duty to ensure that admission appeals are appropriately clerked.

It is imperative that admission authorities continue to deal with admission appeals in order to ensure that parents and children have certainty regarding where their children will be attending school in September. This may mean some appeals having to be heard in the summer holidays. The Guidance clearly states that admission authorities should determine appeals lodged as part of the main admissions round before the start of the September term, wherever possible.

### **What arrangements can be made to hear appeals virtually?**

Paragraph 2(1) of Schedule 2 states that an appeal panel may decide to hold an appeal hearing using remote access provided that:

- The parties are able to present fully their case;

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<sup>2</sup> Schedule 2, Paragraph 1

- 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
- The panel considers that the appeal is capable of being heard fairly and transparently.

Where any of the above conditions are not met, an appeal panel may make their decision on the appeal using written information provided that they have ensured that the parties are able to present their case fully and provided that the panel can make their decision on the appeal in a way which is fair and transparent<sup>3</sup>.

Where appeals are progressed using written representations, it will be important to ensure that all parties have the ability to see the written information submitted, answer questions on that written information and have those questions answered. It is clear from the Regulations that written representations should only be used if it has been established that one or more of the criteria above cannot be met and we would advise that decisions to proceed on the basis of written information are recorded in case of any future challenge. The Guidance provides details of a useful approach that could be taken where an appeal is going to be determined on the basis of written submissions only.

We would advise clerks to contact all appellants and discuss with them whether or not they are able to engage with the technology the panel intends to use. If parents are unable to engage with the suggested technology, Clerks will need to discuss how they might best proceed in collaboration with parents. The Guidance suggests that Clerks should make contact by telephone. It will also be necessary to consider whether appellants will require translators or other forms of support.

Questions to consider:

- Are the parents key workers? Will this mean it is difficult for them to attend an appeal hearing during the day? Will it be necessary to vary any deadlines for such parents?
- Where parents have children at home will they be able to give appropriate attention to the hearing? Will they have people at home who can look after the children?
- Do any reasonable adjustments need to be made? Make a note of all decisions made in this regard and confirm any suitable adjustments with the appellant prior to the hearing.
- How will you ensure that the hearing is being held in “private”?
- How will you ensure that all parties have an equal chance to participate? Have you considered how the “mute” facility will be used? Has this been made clear to all the parties?
- Are your panel members sufficiently comfortable with the technology that you are planning to use? Is the Chair happy with how he or she will conduct the proceedings? Would a dry run help to identify any issues?
- Parents have the right to be accompanied, how will you ensure that this right can be exercised?
- How will you ensure that any documentation is going to be delivered securely?

### **Appeal Deadlines**

All appeals must be held as soon as is reasonably practicable and in accordance with the deadlines set by the Regulations. The requirement to hear appeals as soon as is reasonably practicable is a change to paragraph 2.3 of the Appeals Code which states that appeals in the normal admission round must be heard within 40 school days.

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<sup>3</sup> Schedule 2, paragraphs (2) and (3).

Pursuant to the regulations, where parents have already been informed of their right of appeal the deadline for lodging that appeal must:

- be at least 28 days from the date of notification; and
- where reference has been made to appeals being submitted within a particular number of days, this must refer to calendar days or provide a specific date rather than referring to school days.

Provided that the two requirements above are complied with there will be no need to review the deadline for lodging appeals. This is a change to paragraph 2.1(a) of the Appeals Code which states that the deadline for lodging appeals must be at least 20 school days from notification that an application for a place is unsuccessful.

However, if parents were provided with a deadline for submitting their appeal which is either:

- less than 28 days after notification; or
- is stated to be a certain number of school days after notification;
- or is in any other way unclear,

then a new date will need to be set which is at least 28 days from the date of notification unless the existing appeal deadline has already expired or an appeal has already been lodged.

If a new deadline is issued, then it must be expressed as a specific date or determined by reference to calendar days not school days. If admission authorities are in any doubt as to whether or not a new deadline should be set, we would advise erring on the side of caution and giving parents extra time to determine whether or not they wish to appeal.

If a new deadline needs to be provided, admission authorities must notify potential appellants of the new deadline within 28 days of 24 April or within 7 days of the relevant decision letter which does not meet the new requirements relating to deadlines, whichever date is later.

Appellants must be given at least 14 calendar days' written notice of an appeal hearing although appellants are free to waive this right if they would like to proceed sooner. If appellants indicate a wish to proceed sooner, it is important to ask that this is confirmed in writing. This is a change to paragraphs 2.1(b) and 2.7 of the Appeals Code which states that appellants should receive at least 10 school days' notice of an appeal hearing.

Decision letters should be sent within 7 calendar days of a hearing or within 7 days of the panel making a decision, if they do so on the basis of written submissions only. This is a change to paragraph 2.24 of the Appeals Code which state that decision letters must be sent as soon as possible but no later than five school days after the hearing.

The Guidance recommends that admission authorities and those involved in appeals prepare for appeals to be conducted in the normal way after the end of January 2021. In particular, timetables for 2021 should be prepared in the normal way and published by 28 February 2021 as required by paragraph 2.2 of the Appeals Code.

### **Training for Clerks and Panel Members**

Clerks and Panel Members will need to be trained as usual pursuant to paragraph 1.10 of the Appeals Code. Additional training will need to be provided in order to ensure that Clerks and Panel Members understand the Regulations and are familiar with the Guidance and they will also need to be trained to use the relevant telephone or video conferencing facilities.

## **Security**

The Guidance advises admission authorities to review the privacy terms and conditions of any remote access platform being used and to enable any security features they deem appropriate. IT providers and relevant school staff should be asked to provide support in this regard and a note should be made of the decisions made in response to this advice. You may also wish to ask your Data Protection Officer to conduct an impact assessment in order to determine whether there are any additional data protection risks as a result of any processes you are going to adopt.

It is not advisable for admission authorities or panels to record virtual hearings.

You may also wish to refer to the following guidance:

<https://www.ncsc.gov.uk/guidance/video-conferencing-services-using-them-securely>

<https://www.ncsc.gov.uk/guidance/video-conferencing-services-security-guidance-organisations>

## **The Catholic Education Service**

**1 May 2020**