

Admissions Appeals

Options for hearings during the
COVID-19 outbreak

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Please note

The information contained in these notes is based on the position as at 2 April 2020. It does, of course, only represent a summary of the subject matter covered and is not intended to be a substitute for detailed advice. If you would like to discuss any of the matters covered in further detail, our team would be happy to do so.

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Admissions appeals options

Your options for hearings during the COVID-19 outbreak

Admission appeals for state funded schools take place in accordance with the framework set out within the School Admission Appeals Code 2012 (“the Code”). All state funded schools (and local authorities where they provide appeal services for those schools) are required to comply with the requirements of the Code.

The Code

The Code allows for a process to be established by admission authorities which results in an independent admission appeal panel hearing the parental appeal against a refusal to admit their child to the specified school. Under the Code, parents are entitled to attend an appeal panel hearing and make oral representations (in addition to any written representations that may have already been sent to the appeal panel). Parents may also be represented at these hearings. In light of the current Covid-19 outbreak and the measures imposed by central government around social distancing and avoiding unnecessary journeys outside of the place of residence, it is necessary to consider alternative methods of hearing appeals in good time to allow both parents and schools to make the necessary preparations for children to be admitted in September 2020.

The initial options outlined are for appeals to be determined via paper hearings or hearings using video or telephone conferencing facilities. It is open to admission authorities to choose any, or all, of the options as the preferred package to hear appeals. This will depend on an assessment of whether the school has the IT infrastructure and expertise to run the appeals via video or telephone conferencing, the availability of such technology for the parties, panel, clerk and parents and the ability of those persons to effectively use the technology to ensure that the appeals process retains the key principles of fairness, transparency and independence.

Whilst the running of admission appeals is an operational issue, admission authorities (usually governing boards or academy trusts) are responsible for compliance with the Code. All admission authorities should therefore ensure that they are aware of the amended appeals process being adopted in respect of their school(s).

The initial options refer to the current requirements set out in the Code. Potential amendments to the Code are suggested at the conclusion of this briefing.

Timescales

Both the options set out will require some preparation and therefore it may be necessary to amend the timetable for appeals which admission authorities must have published by 28 February 2020 (paragraph 2.3 of the Code). For summer appeals, the timetable states that appeals must be heard within 40 school days from the deadline for lodging an appeal. As a school day means a day when a school session takes place and the current restrictions have closed schools, it does mean the timing of appeals is currently paused. It would appear to be good practice to revise that timescale and inform parents of the revised appeals schedule, irrespective of which option is taken forward.

Availability of panel members and clerks

Admission authorities may be hit by a reduction in their pool of panel members and clerks due to illness or self-isolation. As the Code already promotes collaboration between admission authorities on appeals (paragraph 1.3), contact should be made with other schools to ascertain whether their panel members could be shared or whether governors/trustees/ teachers from those schools may be willing to assist by sitting as panel members. Equally, clerks could be provided by expert education law firms or via shared arrangements around clerks to governing boards stepping up into this new role.

Where any new member or clerk is found, they must attend training. This can be provided on-line, via a webinar.

Option 1 - Paper hearings (in the absence of parents and school)

Whilst the Code works on the presumption that both parties will attend an appeal panel hearing, it already permits a hearing to proceed in the absence of parents (2.12) or the school (2.11), the latter where there would be no prejudice to the parents. It would therefore be permissible within the Code to hold paper hearings to determine admission appeals.

The appeals would still be heard by an appeal panel constituted in accordance with the Code and advised by a clerk. Arrangements would be required to ensure the panel members and clerk had access to all the same information and were able to effectively communicate with each other during the appeal hearing through a video or telephone conference call.

In order to make this happen, the following would be required:

- Consent from the parents to waive their right to attend a panel hearing and instead have their appeal determined on the papers
- Agreement from the school to the same arrangements
- A revised timetable, to ensure both parties have the opportunity to make written representations to the panel and for the panel to ensure that it has all the information required to make lawful decisions on the appeal(s)
- Revised guidance to appellants on the steps that will be taken.

Paragraphs 2.7 - 2.10 of the Code set out the steps prior to an appeal panel hearing. The broad scope of these requirements could apply to paper hearings if:

- Parents who have lodged appeals are asked for consent to hold a paper hearing. It would need to be explained to the parents that if consent is not given, the appeal panel hearing for their child would be delayed and may be heard at a later date than other appeals for the school and, potentially, could be after the start of the school term in September 2020
- Parents who consent are given the revised timescale for appeals and deadlines for lodging information in accordance with the requirements of paragraph 2.7
- Paragraphs 2.8 and 2.9 of the Code would apply as currently - the school would need to answer reasonable queries from parents and would need to supply the relevant information (the prejudice statement etc) to the clerk to the appeal panel. Considering the current situation, a regularly updated FAQ section on the school's website would appear to be good practice to reduce the need for repeat responses
- Paragraph 2.10 would apply but there would be a need to replicate the questions and answers between parents, appeal panel and school which would generally happen at stage 1 of the appeal hearing (3.2 - 3.7). The clerk's letter should set out deadlines for questions and responses:
 - Clerk circulated appeal documentation
 - Parents, panel ask questions of the school information with a deadline of 7 working days (via the clerk) from the date of the clerk's letter
 - School responds to the clerk regarding questions raised and make comments on parental reasons in support of the appeals within 14 working days of the clerk's letter
 - Clerk circulates questions, responses and document to the panel prior to the hearing.
- The hearing proceeds and decisions are made in line with sections 3 or 4 (infant class size appeals) of the Code.

Option 2 - hearings by video/telephone conference

A conference call would be permissible under the framework imposed by the Code as it does not expressly state that a face to face hearing is required and the Code provides for the parent appealing to “appear in person” and make representations to the Panel. These key issues could be satisfied using conference call facilities.

Key points to note are:

- Consent to this form of appeal and confirmation that the parent has the appropriate facilities for either a video or telephone conference call would be required. As above, there may need to be provision for those parents who are not able to participate, and due regard must be had to the admission authorities’ duties under the Equality Act 2010. This would be required given the Code’s requirements set out in paragraph 2.12 (opportunity to be heard) and paragraph 2.14 (appropriate and accessible venues)
- In scheduling appeals, consideration must be given to appeals being made by key workers to ensure that the conference appointment given, particularly for stage 2 of the appeals process, is convenient given their work patterns.
- Consideration must be given to the security and confidentiality of the conference call considering the personal information being shared during the hearing (paragraph 2.15)
- Consideration must be given to the conferencing arrangements to ensure the right people are on the call at the right time and that, as above, the call is only accessible to those who are invited to attend (paragraph 2.15). This may be resolved using pin numbers to access the call alongside an appropriate timetable for appeals which allows enough time between appeals. This could be raised during correspondence with the parents under paragraph 2.7
- Guidance must be provided around the etiquette for and expected behaviour during conference calls/appeal hearings. There may be a need for the panel to be able to decide to terminate the call where the guidelines are not followed. This may especially be relevant where multiple appeals are heard together and therefore a conference call may have many parents on the call at any one point. This approach flows from the requirements in the Code for the appeal panel to follow the principles of natural justice and to allow each party to put its case without unreasonable interruption (paragraph 2.21). The guidelines could be presented in correspondence flowing from paragraphs 2.7 or 2.10 of the Code and could be reinforced by the Chair of the Appeal Panel when opening the appeal hearing
- Ensure that appeal panel members and the clerk have appropriate facilities to deal with the conference call and are appropriately supported via the IT department within the admission authority.

Please do speak to a member of the team if you any questions or would like support with training panel members or running appeals. You can reach us by phone (0370 270 6000) or email (education@brownejacobson.com) at any time.

Options if amendments made to education legislation

Potential options requiring legislative changes

In this section we explain some further options that we believe would be helpful for the sector to be able to implement but would require legislative changes. We have worked with CST to propose these approaches to the Department for Education and will update this guidance if the Department looks to proceed with any legislative changes in this area.

Potential amendments to education legislation

The current framework for appeals derives from the Code and the requirement for a range of bodies to act in accordance with its mandatory requirements (section 84 School Standards & Framework Act 1998). Academies are contractually required to act in accordance with the Code and comply with admissions law under their funding agreements with the Secretary of State.

Given the possibility of legislation coming forward to amend existing duties within education legislation, it would be possible to make these options easier to manage for admission authorities if the Department for Education amended section 84 as follows:

- Section 84(1) to include academy trusts within the list of bodies to whom the duty to act in accordance applied; and
- Section 84(3) to change the duty to “act in accordance” to “have regard to”. The latter duty would place the Code on the same level as other statutory guidance issued by the Department for Education and whilst there would be a duty to follow the statutory guidance on admissions and appeals, the relevant admission authorities could depart from it when it was reasonable to do so, i.e. to allow them to hold appeals whilst implementing social distancing. This would allow admission authorities to implement the changes proposed in this briefing and hold appeals without the need for parental consent to implement the necessary changes.

Whilst this would be a change in practice for most admission authorities, supplemental guidance on appeals could be produced to cover the expected arrangements across paper hearings or those by conference call. This would provide a basis for consistency of practice across all admission authorities.

If the approach was to look at temporary amendments to the Code:

Option 1A - paper hearings with Code amendments

It would be necessary to amend:

- Paragraph 2.7 and 2.10 to be amended to reflect the change in procedure and deadlines for submitting questions.
- Paragraphs 2.11 and 2.12 to be disapplied.
- Paragraphs 2.14 and 2.15 to be disapplied.

Option 2A - conference call with Code amendments

It would be necessary to amend:

- Paragraph 2.12 to be amended to allow, for the avoidance of doubt, that hearings by conference call are acceptable methods to allow parental participation in appeals.
- Paragraphs 2.14 and 2.15 to be amended to reflect the need for appropriate measures to be in place to ensure security and confidentiality during the call.
- Paragraph 2.21 to be amended to permit the Appeal Panel to terminate the conference call where behaviour by one (or more) individuals is prejudicial to the effective running of the appeal hearing and in those circumstances for the appeal to be determined on the papers.

Contact us

Birmingham office

Victoria House
Victoria Square
Birmingham
B2 4BU

+44 (0)121 237 3900
+44 (0)121 236 1291

Exeter office

1st Floor
The Mount
72 Paris Street
Exeter
EX1 2JY

+44 (0)370 270 6000
+44 (0)1392 458801

London office

15th Floor
6 Bevis Marks
London
EC3A 7BA

+44 (0)20 7337 1000
+44 (0)20 7929 1724

Manchester office

14th Floor
No.1 Spinningfields
1 Hardman Square
Spinningfields
Manchester
M3 3EB

+44 (0)370 270 6000
+44 (0)161 375 0068

Nottingham office

Mowbray House
Castle Meadow Road
Nottingham
NG2 1BJ

+44 (0)115 976 6000
+44 (0)115 947 5246



