**SCHOOL ADMISSION APPEALS 2020**

**PROCESS GUIDE FOR ADMISSION AUTHORITIES**

1. **Introduction**
	1. The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020 came into force on 24 April 2020 and will apply until 31 January 2021.
	2. The Department for Education (DfE) published non-statutory guidance on 24 April which explains the temporary changes to admission appeals and provides guidance for managing appeals during the coronavirus outbreak.
	3. A summary of the temporary changes with links to the regulations and guidance is at Appendix 1.
	4. The new regulations aim to:
* Give admission authorities (AAs) as much flexibility as possible to manage appeals in a way that best suits local circumstances
* Ensure families appealing an admission decision are supported and are not disadvantaged by the measures in place to protect public health.
	1. The new regulations:
* Dis-apply the requirement that appeals panels must be held in person and instead give flexibility for panel hearings to take place either in person, by telephone, video conference or through a paper-based appeal where all parties can make representations in writing.
* Relax the rules with regard to what happens if one of the 3 panel members withdraws (temporarily or permanently) to make it permissible for the panel to conclude the appeal as a panel of 2.
* Amend the deadlines relating to appeals.
	1. The admission appeals administered by the Appeals Team at Buckinghamshire Council will be determined by the Independent Appeal Panel (IAP) on the basis of written information submitted only. A written question and answer process will enable clarification and testing of the parties’ cases. A flow chart showing the process is at Appendix 2.
	2. The decision to determine the appeals on the basis of written information instead of through video or telephone conferencing was taken on the basis that the conditions in Schedule 2 (2) of the 2020 regulations cannot be met, in particular that the IAP could not be satisfied that each participant would have access to video or telephone facilities allowing them to engage in the hearing at all times and enable fair process. Other factors taken into account include (as allowed for in the DfE guidance): local conditions such as poor Wi-Fi connections and the number of complex multiple appeals; the DfE’s timescales; the lack of Buckinghamshire Council support for some platforms due to security issues; and the lack of necessary equipment and facilities available to the panel members.
	3. **The vast majority of the requirements of the School Admission Appeals Code, 2012 (SAAC) remain appropriate and must still be complied with.**
	4. **The overriding principle is that IAPs must be transparent, accessible, independent and impartial and operate according to principles of natural justice.**
1. **Admission Authority Duties**

 2.1 The DfE’s 24 April guidance states that Admission Authorities:

* remain legally responsible for making arrangements for appeals against the refusal of a place at their school
* will need to review any arrangements they have already put in place to ensure they comply with the temporary arrangements
* should clearly set out for all parties to an appeal how the appeals process will be carried out, including how appeals will be conducted and the expected timescales for each part of the process
* are urged to determine appeals lodged as part of the main admissions round before the start of the September term, wherever possible.
	1. The temporary regulations impose some new rules relating to appeal timetables. The DfE explains that appeals should be determined as soon as is reasonably practicable and in accordance with the deadlines set by the temporary regulations.
	2. As the 24 April guidance explains that most of the provisions in SAAC still apply, the AA should therefore ensure it complies with its obligations under SAAC (see link at Appendix 1).
	3. The DfE published guidance in March 2019 which provides specific detailed advice for AAs about school admission appeals (see link at Appendix 1). It explains that AAs have 2 distinct roles in relation to appeals, to both:
* arrange for an IAP to hear appeals for a place at the school; and
* present evidence to the IAP as to why the admission authority refused to admit the child who is the subject of the appeal.
	1. Where an AA has asked the Appeals Team at Buckinghamshire Council to administer their appeals, we shall make the necessary arrangements as set out in SAAC and the DfE’s 2019 and 2020 guidance.

 2.6 However, the AA remains responsible for presenting the AA case to the IAP and therefore the AA and its presenting officer should carefully consider the advice in the 2019 guidance about:

* The role of the presenting officer
* The evidence that should be produced by the AA at appeal
* How the AA should demonstrate prejudice, where relevant
* Factors that will be considered by the IAP
* Infant Class Size Appeals (for primary schools)
1. **Details of the Appeals Process in 2020**
	1. A Parent who applies for a school place for their child and is refused that place by the AA has a right to make an appeal to an IAP. The AA is required under SAAC to inform Parents about their right to appeal. To make an appeal, the Parent submits an appeal form explaining in writing their reasons for appeal. They may send supporting evidence with their appeal form or later.
	2. The Appeals Team advises Parents about the appeals process (and the information they should consider including in their appeal) in: the appeal form, the online Parents’ Guide, letters from the Appeals Team and the appeals pages on the Buckinghamshire Council website. The Appeals Team promptly responds to Parents’ email and telephone queries.
	3. This year, appeals submitted in the normal admissions round (following first allocations) for September entry will be considered before September, wherever possible. Immediate entry appeals will take place from mid-May, Year 7 appeals will take place from June and Late Transfer and Primary appeals will take place from July.
	4. No specific appeal dates will be set. This will allow the IAP to work flexibly and efficiently and enable the questions and answers process (see below) to take place.
	5. All appeals for a school will be considered by the same IAP (and supported by the same Clerk, wherever possible).
	6. IAPs will be convened in the normal way (i.e. 3 panel members including at least one lay and one non-lay member, with one member sitting as Chair) from a pool of available trained, unpaid, volunteer panel members. However, the 2020 regulations allows 2 panel members to continue to determine the appeal if the third needs to withdraw for a reason relating to the incidence or transmission of coronavirus.
	7. The Appeals Team will send a hearings list, (including appellants’ names), for each school to the AA Representative, IAP and Clerk (to enable them to check for conflicts of interest).
	8. At least 14 calendar days’ notice of appeal arrangements will be sent by email to Parents explaining: when their appeal will take place and the process that will be followed; and providing the deadline date by which extra evidence supporting their appeal should be submitted. The Notice letter will explain late evidence may not be seen by the IAP; give advice about what information they should consider including in their appeal; and say that it is very important they explain fully their reasons for appealing in writing and should contact the Appeals Team if they need translation or other support. The letter will explain that decision letters will be sent within 7 calendar days of the decisions/s being made.
	9. The Appeals Team will contact AAs (via the Admissions Team for most September entry appeals) and ask for written cases to be submitted and the contact details of the AA representative who will be responsible for the questions and answers process.
	10. The Appeals Team will collect in and copy the AA’s written case and the Parents’ case-papers and circulate hard copies by post to: Parents, the AA Representative, the IAP and the Clerk.
	11. No orders of business will be sent out but a Circulation Letter will be sent with the paperwork to the AA Representative explaining the process.
	12. Circulation Letters will also be sent to Parents with the appeal paperwork: providing the names of the IAP members to check for conflict; explaining the proceedings; asking Parents to contact the Appeals Team immediately if anything is missing from their case papers; advising they can ask questions about the AA case; and asking them to contact the Appeals Team if they require support.
2. **The Question and Answer Process**
	1. The IAP will make its decision on the basis of written information submitted only. However, in order for the IAP to make a decision which is fair and transparent, it must ensure that the parties are able to fully present their case by way of written submissions.
	2. A written Question and Answer process will allow the IAP and both parties to probe and challenge the AA’s case and the Parent’s case.
	3. The Appeals Team offers support to both parties about preparing their written submissions. In addition the IAP will be mindful of the guidance from the DfE, in particular as set out in 4.4-4.6 below.
	4. “IAPs must exercise their own judgment in the circumstances of any particular appeal being considered. This is to determine that the approach ensures the parties are able to fully present their case and allow the panel to make a decision which is fair and transparent” (DfE, 24.4.2020).
	5. “ [Panels] should bear in mind that appellants, in particular, may be less familiar with the kind of information and arguments that are required, and may have less experience preparing written submissions” (DfE 24.4.20).
	6. “The aim [of the questioning process] should be to clarify points made and solicit further relevant information” (DfE 24.4.20).
	7. Questions formulated by the IAP and AA Representative:
* Should be limited to being relevant and related to a specific issue to be decided by the IAP
* Should “test and question the case put forward by” the parties (DfE, March 2019)
* Should be phrased clearly, sensitively and appropriately
* Will form part of the appeal paperwork and will be circulated to all parties (and the Local Government and Social Care Ombudsman or Education and Skills Funding Agency, if requested)
	1. The IAP will formulate questions for the AA and the Parents during MS Teams meetings.
	2. The Parents and the AA will be invited to ask questions about the other’s party’s written case. Both parties will be given 7 days to provide responses to questions about their cases.
	3. The Clerk will play a vital role in liaising between the IAP and the Parents and the AA Representative during the Questions and Answers process, which will take place at both Stage One and Stage Two. No decisions will be made until the Question and Answers process is complete at each Stage.
	4. The IAP will make its decisions following the procedures set out in SAAC in the normal way. The Clerk will complete the Clerks’ Notes and normal appeal proformas as evidence of the IAP’s decision-making process.

**5.** **Stage One Process**

 5.1 The AA’s case will be sent to the IAP and Parents as soon as possible.

5.2 The Clerk will contact the IAP members and agree a convenient day and time when they can “meet” using MS Teams.

* 1. At the first Teams meeting, the IAP will agree and formulate questions for the AA on its written case. The Clerk will send the questions to the AA and the Parents. The Parents will be asked to submit any additional questions on the AA case by a deadline date (7 calendar days from receipt of the AA case).
	2. The AA will be asked by the Clerk to submit their Answers to the IAP’s questions (and any additional Parents’ questions) with “any further points they wish to make” (DfE 24.4.20) by a deadline date (7 days). The AA’s answers will be forwarded to the IAP and Parents.
	3. The Clerk arranges a second Teams meeting at which the IAP deliberates and makes its Stage One decisions.

**6. Stage Two**

* 1. The Parent’s case/s will be sent to the IAP and AA as soon as possible.
	2. The Clerk will contact the IAP and agree a convenient day and time when they can “meet” using MS Teams.
	3. At the first Stage Two Teams meeting, the IAP will agree and formulate questions for the Parent on their written case. In multiple appeals, the IAP may formulate questions for a number of the appellants in one meeting or over several meetings. As most appeals proceed to Stage Two, the IAP can begin the Stage Two meetings immediately after the first Stage One meeting as the IAP is probing the written evidence (and will make final decisions only after it has received all information it requires).
	4. The Clerk will send the questions to the Parent with notice that the written answers “and any further points they wish to make” (DfE 24.4.20) should be received by a deadline date (7 days).
	5. The Clerk will ask the AA Representative to submit any additional questions on the Parent’s case by a deadline date (7 days) and the questions will be forwarded by the Clerk to the Parents.
	6. The Parent’s answers will be forwarded by the Clerk to the AA Representative and the IAP.
	7. The Clerk arranges a second Teams meeting at which the IAP deliberates and makes its Stage Two decisions (or provisional decisions in the case of multiple appeals). There will be a number of these second meetings where there are multiple appeals for a school ending with a final meeting/s where decisions are completed.
	8. An IAP hearing multiple appeals for a school must not make final decisions on the appeals until all the appeals have been considered.
	9. In multiple appeals, the IAP must not compare the individual cases when deciding whether an appellant’s case outweighs the prejudice to the school. However, when the IAP finds there are more cases which outweigh prejudice than the school can admit, it must then compare the cases and uphold those with the strongest case for admission.
	10. Decision letters will be sent to the AA and Parents within 7 days of the decisions/s being made for the school, wherever possible.

**APPENDIX 1**

**CHANGES TO ADMISSISON APPEALS DURNG THE CORONAVIRUS OUTBREAK**

1. **Background**

On 23 March, the government announced a nationwide lockdown due to the coronavirus outbreak. On 24 April, emergency regulations concerning school admission appeals came into force and the Department for Education published guidance for managing appeals.

1. **Main features of the emergency regulations**
* Will cease to apply in most respects on **31 January 2021.**
* Temporarily amend the School Admission Appeal Regulations 2012.
* Provide some additional flexibility when dealing with appeals during the outbreak.
* Ensure appeal timetables work in light of school closures.
* *“Our aim is to give admission authorities as much flexibility as possible to manage appeals in a way that best suits local circumstances , while also ensuring families appealing an admission decision this year are supported and are not disadvantaged by the measures in place to protect public health”* (DfE 14.4.20 guidance).

**3. The Department for Education Guidance**

* 1. **Main features**
* Explains the temporary changes and provides guidance for managing appeals during the Covid-19 outbreak.
* Is non-statutory and, therefore, describes “best practice”.
* Explains that the statutory School Admission Appeals Code 2012 (SAAC), is amended by the regulations in a few areas **but the vast majority of SAAC’s requirements remain and must still be complied with.**
* Confirms that face-to-face appeal hearings should not take place until the government guidelines on social distancing indicate it is safe to do so and it is reasonably practicable to hold appeals in person.
* Note: the guidance contains: “musts”, “mays” and “recommends”!
	1. **Key principles**
* *“Overriding principles governing all appeals are procedural fairness and natural justice”.*
* *“IAPs must be transparent, accessible, independent and impartial, and operate according to principles of natural justice”.*
* Admission authorities (AAs) remain responsible for appeal arrangements and need to review their arrangements to ensure they comply with the temporary regulations.
* Need to *“clearly set out for all parties to an appeal how the process will be carried out, including how the appeals will be conducted and the expected timescales for each part of the process”.*
	1. **The IAP and Clerks**
* Where a panel member needs to withdraw “*for a reason relating to the incidence or transmission of coronavirus*”, the other 2 panel members may continue to determine the appeal (irrespective of whether they are lay / non-lay members).
* The clerk should note the reason for the panel member withdrawing.
* If the chair withdraws, one of the other panel members is appointed chair.
* Decision-making by simple majority but chair has casting vote if 2 panel members.
* If more than one member withdraws, panel of 3 must be constituted in the normal way and part-heard appeals must be reheard.
* Panel members should have a full understanding of the temporary regulations and guidance and how the new process will work.
* No removal of clerking duties: *“Clerks carry out a key role and provide advice on admissions law as well as keeping an accurate record of proceedings”* (DfE 14.4.20).
	1. **Timescales**
* “*Appeals should be determined as soon as reasonably practicable”.*
* *“Urged to determine appeals lodged as part of the main admissions round before the start of the September term, where possible”.*
* The regulations work to ensure the appeals can continue during school closures by removing references to school days.
* Timetables and deadlines set in accordance with SAAC are temporarily disregarded.
* Appellants must be given at least 28 calendar days from the date they were refused the school place to lodge an appeal.
* Appellants must be given at least 14 calendar days’ written notice of an appeal.
* Decision letters should be sent within 7 calendar days of the decision/s being made.
* Flexibility is provided in relation to setting deadlines for lodging appeals and submitting and circulating documents, to take into account circumstances of individual appeals and family circumstances during the outbreak.
	1. **Appeal Hearings**
* The IAP can hold an appeal remotely if it is satisfied that: the parties will be able to present their cases fully; each participant has access to video or telephone facilities allowing them to engage in the hearing at all times; and the appeal hearing is capable of being heard fairly and transparently in this way.
* Where any of these conditions are not met an IAP may make their decision based on the written information submitted. The IAP must ensure that the parties are able to present their case fully in order for the panel to make a decision which is fair and transparent.
* Recommended: the clerk contacts appellants as soon as possible, by telephone where possible, to explain the new temporary arrangements and establish if they have access to necessary equipment for telephone or video conference.
	1. **Telephone and video conference appeals**
* Recommended: security of remote access platforms is considered.
* Recommended: panel members only appointed if they have necessary equipment and facilities.
* IAPs must comply with Equality Act including duty to consider reasonable adjustments. Recommended: the clerk ensures any requests for reasonable adjustments are recorded and confirmed in writing with the appellant before the appeal. Note: EQA applies to written process too even though it isn’t mentioned!
* Chair should ensure appeal is held in private, all parties can hear everything that is said and have equal chance to participate. Recommended: IAPs bear in mind that appellants may be less familiar with this kind of hearing.
* Multiple appeals – principles in SAAC should be considered (i.e. one panel for all appeals for a school, no decisions until all heard etc.) in deciding whether it is possible for multiple appeals to be heard on a remote basis and how organised.
1. **Written submissions**
* AAs and IAPs *“must exercise their own judgment in the circumstances of any particular appeal being considered. This is to determine that the approach ensures the parties are able to fully present their case and allow the panel to make a decision which is fair and transparent*”.
* All submissions should be in writing, preferably by email.
* Panel and clerk meet by telephone or video conference to consider submissions and formulate questions for both parties “*to clarify points made and solicit further relevant information”.*
* *“Should bear in mind that appellants may be less familiar with the kind of information and arguments that are required and may have less experience preparing written submissions”.*
* Parties reply with answers and any further points they wish to make.
* Questions, answers and all papers sent to each party.
* Parties should be informed that any information/evidence not submitted by any relevant deadline might not be considered in the decision.
* Panel and clerk meet by telephone or video conference to consider all information and reach decision.

**Further information**

**Department for Education guidance on admission appeals, 24 April 2020:**

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

**School Admission Appeals Code 2012:**

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275897/school_admission_appeals_code_1_february_2012.pdf>

**Department for Education guidance for Admission Authorities, March 2019:**

<https://www.gov.uk/government/publications/admission-appeals-for-school-places/advice-for-admission-authorities-on-school-admission-appeals>

**APPENDIX 2: ADMISSION APPEALS PROCESS DURING COVID-19 OUTBREAK**

Parent submits appeal (with evidence) to Appeals Team

Appeals Team writes to Parent with:

* Details of appeal process & timing
* Date for submission of additional information
* Reference number

Parents send additional information to Appeals Team

Admission Authority (AA) sends AA case to Appeals Team

Appeals Team sends case papers (Parents’ appeal & evidence and AA case) to Parents, AA, IAP & Clerk

**Stage 1**

* IAP & Clerk (by telephone/video Teams meeting) discuss & formulate Questions (Qs) on AA Case
* Qs sent to Parents who are asked to send any additional, relevant Qs on AA case by deadline date
* IAP’s & Parent’s Qs sent to AA with request for Answers (As) by deadline date
* As from AA sent to IAP & Parents
* IAP & Clerk (by telephone/video Teams meeting) deliberate & make Stage 1 decisions

**Stage 2\***

* IAP & Clerk (by telephone/video Teams meeting) discuss & formulate Qs on Parent’s case
* AA is asked to send any additional, relevant Qs on Parent’s case by deadline date
* IAP’s & AA’s Qs sent to Parent with request for As by deadline date
* As from Parent sent to IAP & AAs
* IAP & Clerk (by telephone/video Teams meeting) deliberate & make Stage 2 decisions

Appeals Team sends decisions to Parents & AA within 7 calendar days of decision/s

\*In multiple appeals (where there are a number of appeals for a school) the same IAP must consider all the appeals for the school before making its decisions, so there will be multiple IAP and Clerk’s