

Report

on an investigation into complaint nos
06/A/03575, 06/A/03644, 06/A/04074,
06/A/04102, 06/A/04105, 06/A/04112,
06/A/04211, 06/A/04297, 06/A/04383 and
06/A/04747 against
Queen Elizabeth's Grammar School,
Faversham

14 May 2007

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Key to names used

Mr Acton	Chairman of the Admissions Appeal Panel
Mr Bridge	Another member of the Admissions Appeal Panel
Mrs Norton	Another member of the Admissions Appeal Panel

Report Summary

Subject

This report relates to ten complaints about ten parental appeals against the refusal of the Governors (as the admissions authority) of admission, at secondary transfer stage, to this Foundation Grammar School. The complainants' children had been unsuccessful in selection tests, but the school was not full. The Governors had been entitled to refuse admission as the children had not been assessed as being of selective ability. The parents were entitled to appeal against the Governors' refusals to an independent Appeal Panel arranged by the Governors.

The Governors engaged Kent County Council to provide the Panel and its Clerk to consider the appeals. There was maladministration in the way in which the appeals were handled.

The principal faults were these:

1. information about the test scores was provided too late, and in a way which was unfair to appellants;
2. there was confusion about whether local politicians could take part in hearings as appellants' advocates;
3. the introduction to the hearings by the Chairman of the Panel was delivered in a manner which did not convey the relevant information clearly and sensitively to appellants;
4. the Panel put pressure on the Governors' representative and on appellants to keep some hearings unnecessarily short;
5. the Panel was reluctant to accept and consider samples of work;
6. some of the Panel's approach to, and questioning of, appellants was wholly inappropriate;
7. the Panel took account of irrelevant factors, such as waiting lists, the absence of a non-statutory "appeal" by a head teacher, and the schools at which some appellants' children had been offered places;
8. the Panel applied an inappropriate standard for determining whether appeals should be allowed for places at a selective school which was not full;

9. the clerking service was inadequate to prevent the maladministration described in the report; and
10. there was contact between the Governors' representative and the panellists in the absence of the appellants.

Finding

The Ombudsman concludes that this maladministration led to injustice to the complainants, as they were deprived, in the first instance, of their entitlement to have their appeals considered in a fair and sensitive manner.

Recommended remedy

Early in the Ombudsman's investigation, the Governors offered to arrange rehearings of the complainants' appeals by a fresh Panel consisting of completely different members, and with a different Clerk. The Governors agreed to be bound by the outcomes of the rehearings. The appeals of all ten complainants were upheld by the Panel at the rehearings.

The Ombudsman welcomes the Governors' decision to arrange rehearings. He also welcomes the County Council's initiative to improve the even-handedness of the presentation of material at appeals for places in Voluntary Aided and Foundation Schools.

The Ombudsman requires the Governors to review, in consultation with the Council, their arrangements for the hearing, consideration and clerking of appeals against their decisions to refuse admission, with a view to preventing a recurrence of the maladministration which affected the ten appeals. The Ombudsman also requires the Governors to provide training for members of the governing body, and Appeal Panels, their Clerks and other staff to eliminate the faults identified in the report.

Introduction

1. The parents of ten children complain that there was administrative fault in the way the governing body of Queen Elizabeth's Grammar School, Faversham ("QEGS") considered their applications for the admission of their children to the school for September 2006, and in the way the Admissions Appeal Panel considered their appeals against the Governors' refusal of their applications. They complain particularly about the manner in which the Panel heard their appeals.
2. For legal reasons¹, the names used in this report are not the names (apart from those of the authorities concerned) of the people involved.
3. I am publishing this report because of the likely public interest in the issues raised by my investigation.
4. Two of my investigators met the head teacher, who had also acted as the Governors' presenting officer at the appeal hearings. They also met the Chairman of the Appeal Panel (Mr Acton), one of the panellists (Mr Bridge) and the Panel's Clerk. They also inspected the notes made by the Clerk to the Panel and by two of the panellists. One of my investigators met another of the panellists (Mrs Norton) and the adviser to eight of the complainants. I sent copies of the factual portion of this report in draft to the complainants, Mr Acton, Mr Bridge, Mrs Norton, the Clerk to the Panel, the head teacher, the educational adviser, and the County Council. I have taken the comments of all those who responded into account in preparing the final text and in reaching my conclusions.

Legal and administrative background

Admissions arrangements

5. QEGS is a Foundation mixed secondary school. The governing body of a Foundation school is the admissions authority for that school and, within certain statutory and other restrictions, sets its own admissions criteria.

¹ Local Government Act 1974 ("the 1974 Act"), section 30(3).

6. Generally speaking, an admissions authority for a secondary school has a duty to admit any child for whom an application for admission is made, unless the child's admission would prejudice the provision of efficient education or the efficient use of resources². These factors are commonly referred to as "prejudice grounds".
7. QEGS is also a grammar or selective school. Grammar schools are permitted to select their pupils on the basis of high academic ability³, and to leave places unfilled if they have insufficient applicants of the required standard. Most such schools assess ability by means of tests. Kent County Council, as the local education authority, organises selection tests⁴ as part of the co-ordinated admissions arrangements applicable to pupils transferring to secondary schools in Kent at the age of 11 plus. The Kent tests are used in selecting pupils for admission to QEGS at 11 plus.

Appeals

8. Applicants who are refused a place at a school for which they have expressed a preference may appeal against that refusal to an independent Admissions Appeal Panel established by the admissions authority. Such a Panel, having heard and considered evidence from the admissions authority and the appellant in each other's presence, reaches its decision in the absence of the parties, supported by its Clerk.
9. Government guidance on school admissions⁵ and admissions appeals⁶ appears in two statutory⁷ Codes of Practice, published by the Secretary of State for Education and Skills. The versions of the Admissions Code and the Appeals Code published in February 2003 apply to the events considered in this report. Admissions authorities and Appeal Panels are required⁸ to have regard to the applicable Codes.

² School Standards and Framework Act ("the 1998 Act"), section 86.

³ The 1998 Act, section 86(3)(c).

⁴ "The Kent tests".

⁵ "the Admissions Code".

⁶ "the Appeals Code".

⁷ The 1998 Act, section 84(1).

⁸ The 1998 Act, section 84(3).

10. The Appeals Code⁹ says, about the preparation and production of evidence:

“At least 7 days (5 working days) before the hearing.... the admission authority should supply the clerk of the appeal panel with the following documents which should be circulated to the panel members and sent to the parents... a written statement summarising how the admission arrangements for the school apply to the parent’s application, with any relevant background information. Where the parent’s appeal relates to the LEA’s administration of co-ordinated arrangements....., details of co-ordinated arrangements or a statement from the LEA should be provided.”

11. The Appeals Code also includes¹⁰: “... there should be no grounds for the admission authority to produce substantial new information at the appeal...”

12. The Appeals Code says¹¹:

“The admission authority concerned may submit, as part of its evidence to the panel, that the child in question has been allocated a place at an alternative school. This may be of particular relevance where the question of distance between home and school is being discussed. Equally, it is open to the parent to state any reasons why an alternative school would be unsuitable or less suitable.”

13. In relation to appeals for selective schools, the Appeals Code says¹² (emphasis added):

“Panels may take account of parents’ arguments as to why their child did not perform their best on the day of the test, or of *any* evidence to support their contention that the child is suitable for admission to a grammar school.... However, the panel’s role, as for appeals to other schools, is to consider an appeal against the decision to refuse admission and to determine whether the child should be admitted to the school. The panel should not attempt to make its own assessment of a child’s ability, but may need to decide whether

⁹ Paragraph 4.28.

¹⁰ Paragraph 4.32.

¹¹ Paragraph 4.61.

¹² Paragraph 4.65.

the original decision that the child was not of the required standard was reasonable. In doing so, it may want to consider whether any review process was carried out in a consistent and objective way....”

14. The Governors of QEGS arranged that Kent County Council would, as their contractor, provide an Admissions Appeal Panel and its Clerk in connection with the consideration of appeals against the Governors’ refusals of admission for September 2006. In law, any maladministration by contractors (such as the County Council or an Appeal Panel) acting on behalf of an authority within my jurisdiction (such as the Governors of QEGS) is, for my purposes, the maladministration of that authority¹³.
15. The County Council makes provision¹⁴ for a non-statutory review, to be sought by the head teacher of the applicant’s primary school, as the last stage of the Council’s co-ordinated admissions arrangements. While I consider it reasonable for an Appeal Panel to take account of what is often described as a “head teacher’s appeal”, it is not, in my view, appropriate for an Appeal Panel to take account of, and draw inferences from, the absence of such a “head teacher’s appeal”. Although such reviews may be helpful in moderating the effect of selective testing, they are not wholly objective because head teachers’ reasons for seeking a review may vary, and parents are unable to seek, or participate in, such reviews.
16. The Appeals Code says, about the chairperson¹⁵:

“The chairperson plays a central part in directing the proceedings, and ability to control the hearing fairly and firmly is essential.... The chairperson should aim to put the parents at ease, and ensure the hearing is conducted in an informal but structured manner.”
17. The Appeals Code says, about panel members¹⁶:

“At hearings, they need to be aware of the order of the proceedings and play an active part in the questioning both of the presenting officer and the parent.

¹³ The 1974 Act, section 26(1).

¹⁴ In accordance with paragraph A.57 of the Admissions Code and paragraph 4.62 of the Appeals Code.

¹⁵ Paragraph 4.24.

They must not favour either party and should be conscious at all times of acting and being seen to act independently of the.... school's governing body.”

18. The Code continues:

“A hearing, no matter how informal, can seem intimidating to a parent... The appeal panel should be sensitive and courteous in its treatment of parents but, at the same time, parents should expect to be questioned about their case by the panel¹⁷..... At the conclusion, all parties should:

- have understood the nature of the proceedings;
- have been given proper opportunities to speak, put evidence forward and to ask questions.....;
- feel that they have been treated courteously and made to feel at ease¹⁸.....”

19. The Appeals Code says, about the Clerk¹⁹:

“Each panel must have the services of a clerk. The clerk is not a member of the panel but has an important part to play in ensuring that relevant facts are established and that the appeal hearing is fair. Clerks should have knowledge of the law on admissions, but should not deal with admissions as part of their normal employment..... Governors should look outside their own staff for people who have relevant experience in working as a professional committee clerk or legal adviser or have experience in the conduct of inquiries or disciplinary hearings.”

20. The Appeals Code also says²⁰:

“The clerk’s key tasks are to:

¹⁶ Paragraph 4.25.

¹⁷ Paragraph 4.26.

¹⁸ Paragraph 4.45.

¹⁹ Paragraph 4.21.

²⁰ Paragraph 4.22.

- explain the basic procedures to appellants and deal with any questions they may have;
- ensure that the relevant facts, as provided by both the appellant and the admission authority, are presented and recorded e.g., where there is an inexperienced chairperson, the clerk might tactfully intervene to assist the panel or parents with procedure;
- order the business;
- be an independent source of advice on procedure, the Codes of Practice, and the law on admissions (usually giving any advice in the presence of the parties to the appeal);
- record the proceedings, decisions and reasons; and
- notify all parties of the panel's decision."

21. The Appeals Code also says²¹:

"In addition to notes taken during appeals to assist the panel's decision-making process the clerk of an appeal panel should keep brief notes of the proceedings, the attendance, the voting and the decisions (together with the reasons for these decisions) in such form as the admission authority may agree is appropriate... Notes of the proceedings may be typed or hand written and should be clear."

22. The Appeals Code says²², of the Panel's decision letter:

"The written decision should be sent by the clerk..."

23. The Appeals Code says, of the nature of an effective hearing:

"The procedure should be explained clearly and simply by the panel chair, giving details of the issues which the panel will be addressing and in what

²¹ Paragraph 4.73.

²² Paragraph 4.82.

order²³..... The functions which appeal panel members have to perform at a hearing [include] establishing the material facts in the light of the evidence presented²⁴..... It is essential that no part of the proceedings takes place other than in the presence of all the panel members. One party should never be alone with the panel in the absence of the other party where both parties are attending the hearing²⁵.”

24. The Appeals Code includes²⁶:

“It is unlikely to be appropriate for local politicians to attend as witnesses because of potential conflicts of interest.”

Investigation

The applications for admission

25. In the autumn of 2005, the complainants separately expressed preferences for places at the school for the admission of their children in September 2006. Their children took part in the Kent tests.
26. The complainants’ children were unsuccessful in the Kent tests, as their scores did not indicate that they were of selective ability. On 1 March 2006 the County Council offered the children places at non-selective schools. The Council’s letters explained that disappointed applicants might appeal against any refusal of admission by lodging an appeal with the admissions authority (in this case, the governing body) by 21 March.

The appeals

27. The complainants appealed against the Governors’ refusals of admission.
28. On 7 April, the head teacher wrote to the Clerk to the Admissions Appeal Panel with the Governors’ cases opposing the appeals by the parents who had appealed against the Governors’ refusals of admission. The Governors’ cases were that the children had not achieved the minimum entry requirement in the

²³ Paragraph 4.39.

²⁴ Paragraph 4.44.

²⁵ Paragraph 4.41.

²⁶ Paragraph 4.37.

Kent tests, but did not include the children's scores. The cases went on to say that the Governors had accepted 100 students into Year 7 for September 2006, but the Governors' planned admissions number was 128, beyond which admissions would prejudice the provision of efficient and effective education. The Governors' cases opposing the appeals included no information about the suitability of the schools at which the appellants had been offered places (see paragraph 12 above).

The arrangements for the appeal hearings

29. On 27 April, an Appeal Panel Administrator on the staff of the County Council's Legal and Democratic Services Secretariat wrote to parents about the date, time and location of the appeal hearing, together with a copy of the Council's guidance for parents about Education Appeal Panels in Foundation schools. (The County Council acknowledges that it sent the papers for one parent to an incorrect address, for which it has apologised.) The Council's guidance did not include the guidance of the Appeals Code about attendance by local politicians (see paragraph 24 above).
30. On 4 May, an Appeal Panel Administrator sent the appellants further details of the arrangements for the appeal hearings, including copies of the Governors' cases opposing their appeals (see paragraph 28 above).
31. The Appeal Panel was scheduled to hear twelve appeals between 9.00 am and 4.00 pm on 22 May, thirteen appeals between 9.00 am and 4.30 pm on 23 May, and eleven appeals between 9.00 am and 3.30 pm on 24 May. The Panel was scheduled to make its decisions on all the appeals after 3.30 pm on 24 May.
32. Mr Acton was the Chairman of the Appeal Panel. Mr Bridge and Mrs Norton were its other members. The Panel's Clerk was a freelance clerk engaged by the County Council. The head teacher was the Governors' presenting officer.
33. The Governors' cases opposing the appeals did not include the children's Kent test scores. The head teacher says these scores were not available to Governors at the time, but were available to the parents from their children's primary schools. The County Council faxed the test scores to the Clerk on 15 May. The scores were made available to the members of the Panel and the presenting officer when they arrived for the hearings on 22 May.

34. The schedule for the appeals allowed 30 minutes for each hearing (including the arrival and departure of the appellants), 15 minutes for tea and coffee in the morning, and 45 minutes for lunch. The Clerk's notes suggest that few, if any, hearings lasted as long 30 minutes, and that some took as little as ten minutes.

The Panel's decisions

35. None of the complainants' appeals was upheld by the Panel. The Panel upheld 15 appeals. (Where the Panel, as it was entitled, reached a decision by a majority, the Clerk's notes show that the appeal was either upheld or not upheld by two votes to one, or by a majority, without recording the way in which the individual panellists had cast their votes.) On 26 May, another Appeal Panel Administrator sent the appellants decision letters on the Panel's behalf. The letters to the disappointed appellants explained that their child was reported to have a number of strengths in terms of academic ability, but the Panel was satisfied that the Governors had shown that the child did not meet the criteria for transfer to a grammar school. The letters explained that the Panel had very carefully considered the parents' points in support of their appeals. The letters also explained that the Panel had not been persuaded by the available information and could not justify making exceptions. The Panel had considered that the children would be best educated in a non-selective environment.

The complaints

36. The complainants complained to me, particularly about the manner in which the Panel had heard the appeals. Eight of the complaints were supported by an educational adviser. The adviser complained that some parents had felt intimidated or humiliated by what they saw as the Panel's inappropriate, irrelevant or intrusive questions about the lifestyles of the parents, rather than the needs of their children. The complaints made through the adviser were accompanied by a supportive statement from the head teacher.

The Governors' response to the complaints and the rehearings

37. When my investigator made enquiries of the head teacher about the complaints, she offered, on the Governors' behalf, to settle the complaints by exercising their inherent discretion to arrange rehearings of the complainants' appeals by a Panel consisting of completely different members and with a different Clerk. The

Governors agreed to be bound by the outcomes of the rehearings. The Panel and the Clerk were provided from another Foundation school in another part of Kent. The appeals of all ten complainants were upheld by the Panel at the rehearings. That Panel concluded that the appellants' evidence and the other points they made at the hearings were of sufficient weight to overturn the original decisions not to offer the children places at QEGS. The Clerk's decision letters told the appellants that it was the Panel's considered opinion that selective education was the appropriate provision for their children. (Mr Acton and Mr Bridge say the Governors' decision to arrange rehearings of the appeals was collusive and placed the original Panel, of which they had been members, in an impossible position.)

The head teacher's views

38. The head teacher says she had been shocked by the conduct of the Panel. She says Mr Acton had read his procedural introduction to each appeal so quickly that it had been difficult to follow. She also says Mr Acton had asked her, during the first hearing and in the appellants' presence, to modify her oral case in order to include in her presentation to future hearings the answers to questions which the panellists had asked during the first hearing. She says the Chairman did this in order to reduce the length of what she had to say overall. The head teacher considers Mr Acton's approach to the appeals to have been excessively brisk. She also says she had heard Mr Acton say, during a coffee break on the second day, that he disliked some parents. (Mr Acton says the head teacher may have overheard him say a parent had been aggressive.)
39. The head teacher says that, in her view, Mr Bridge's questioning of several parents had been intrusive and unnecessary. She also describes Mr Bridge's approach as provocative and humiliating. She says that Mr Bridge had asked women appellants attending an appeal alone about the reason for the father's absence and about other domestic circumstances. She also says Mr Bridge had asked technical questions about the degree of support given by primary head teachers, both in head teachers' appeals and in correspondence. The head teacher recalls that Mr Bridge had raised the question of the suitability of other schools for the appellants. This had not formed part of the Governors' case opposing their appeals (see paragraph 28 above).

40. The head teacher also says that Mrs Norton had asked her, and expected her to know, about the number of children in each feeder primary school who had passed the Kent tests. The head explains that this information had not been available to her, but it might be available to presenting officers opposing appeals in Community and Voluntary Controlled schools, where the County Council is the admissions authority, or in some Foundation schools where the Governors use tests other than the Kent tests to select pupils. (Mrs Norton says the head could have obtained such information from the Council, but does not explain how appellants could have had notice of it or challenged it.)
41. The head teacher considers that there had been no input from the Clerk who, in her view, had acted merely as a scribe. The head teacher explains that the Clerk had provided the Kent test results for her and the Panel just before the first hearing. All parents, except one couple, had obtained the Kent test results elsewhere.

The views of the educational adviser and the complainants

42. The complaints made through the adviser include statements by the individual complainants. The complainants' concerns include what they see as pressure from Mr Acton to conflate (or contract, or reduce) their oral cases to avoid repetition of their written cases, Mr Acton's apparent hostility to two local councillors supporting appellants (although the County Council's advice to parents did not discourage local politicians from attending - see paragraphs 24 and 29 above), the Panel's tendency to take into account the merits of the other schools at which their children had been offered places (although this did not form part of the Governors' case opposing the appeals), the Panel's reluctance or refusal to consider samples of work or the results of standard attainment tests (SATs), the Panel's questioning about the absence of head teachers' appeals, and questioning about children's transport to and from school. One complainant is also concerned lest Mr Acton misinterpreted her child's Kent test results; a fault she says is reflected in the Panel's decision letter. (Mr Bridge says the County Council has advised Panels simply to "note" SATs results, which should have no bearing on a Panel's decision. While Mr Bridge says parents introduced the question of the alternative schools at which their children had been offered places, the evidence suggests that the Panel actively sought and took account of the alternative schools at which the children had been offered places.)

43. The adviser says that one complainant left the hearing in tears, and that another would not attend another appeal hearing in connection with another school where Mr Bridge was to be a panellist. He says that the Panel's requirement that the head teacher should modify the Governors' case was unusual and inappropriate. The adviser is concerned about the Panel's requests that individual appellants should conflate their cases. The adviser draws attention to Mr Bridge's questioning of lone women appellants. He also draws attention to the number of significant issues raised by the complaints, the wide range of circumstances of the complainants, and the consistent concern of the complainants and the head teacher that the matters complained of should not recur.

Mr Acton's views

44. Mr Acton has been a panellist for more than 20 years and often chaired Panels. He says he receives training. He says that, when he has finished his procedural introduction, he always asks appellants whether they have understood it. He accepts that a Panel should not take account of the absence of a head teacher's appeal. He says that, because the appellant children had been unsuccessful in the Kent tests, they were not of selective ability, but a Panel has discretion to uphold the appeals of such appellants who would benefit from a grammar school education. Mr Acton says it is his function, as Chairman, to marshal the business (including, if necessary, the Governors' case) and to avoid the oral repetition of the parents' written cases. (Mr Acton suggests that panellists might, in future, be professionals, rather than volunteers.)
45. Mr Acton says that he would have stopped Mr Bridge if his questions had been inappropriate, but a Panel needed to know whether, in the case of a single-parent family, there was a supportive family network. Mr Acton also accepts that Mr Bridge's questions had been "a bit close to the mark, but he did not tip the scales."
46. Mr Acton says that it is appropriate for a local politician to attend an appeal if he or she is a family friend of the appellant, but not otherwise. He says that one local councillor, who attended an appeal which is the subject of one of the complaints, was not a family friend of the appellants.
47. Mr Acton says the Clerk had provided the bare minimum service to the Panel, and had acted as no more than a scribe, whose notes were thin. He suggests

that, where the Panel had reached a majority decision, the Clerk should have recorded not only the voting, but also the way in which individual panellists had voted. He says the head teacher has a conflict of interest in supporting the complaints, as the complainants' eventually successful appeals meant that pupil numbers increased in QEGS, an undersubscribed school. (The head says she had no conflict of interest, as her support for the complainants arose from her having been present during the appeals and witnessing behaviour by Mr Acton and Mr Bridge which, in her opinion, had been inappropriate and humiliating.)

Mr Bridge's views

48. Mr Bridge has been a panellist for eleven years and has often chaired Panels. He says he receives training. He says that Mr Acton's procedural introduction is quick, but clear. He also says that the Clerk had provided no advice to the Panel. He considers it appropriate that a Panel should take into account any school at which an appellant has been offered a place. He also considers that, in connection with appeals for places at selective schools, parents should find out their child's Kent test scores beforehand. He also considers that the head teacher had a conflict of interest in supporting the complaints, as successful appeals would lead to the admission of more pupils to QEGS. (See the head teacher's comment in the previous paragraph.)
49. Mr Bridge says he had been accused of being rude and offensive and of persisting in talking about family life. He acknowledges that he is inquisitive and direct. He says he asks about family life because he never knows "what will come out of the woodwork." He says he wants to have information about how a child would be delivered to school. He says that, if there is some kind of "family situation", he wants to know what it is, as there is nothing worse than being "conned" - such as finding out six months later that the child was living elsewhere. Mr Bridge says Panels need as much information as possible about parental support, as this factor is likely to be decisive in borderline cases where a child's ability is at issue. Mr Bridge's own notes in connection with the hearings are consistent with his having asked questions about appellants' family life.

Mrs Norton's views

50. Mrs Norton has been a panellist for 20 years and has chaired Panels. She says she receives training. She says the Panel first saw the Kent test scores

15 minutes before the first hearing on 22 May. She says the Chairman tries to put appellants at their ease. Mrs Norton accepts that Mr Acton “gabbles” his procedural introduction. She also acknowledges that it was “quite probable” that Mr Bridge had asked intimate questions. Mrs Norton says questions are “never wholly inappropriate”, as they may draw out relevant information, even where the answer to the original question is not used in making the decision. She points out that some appellants raise such issues and that, in any event, a Panel may wish to be satisfied that both parents are “on board” about their child’s education. Mrs Norton says the Panel did accept and look at samples of children’s work, but it may have appeared reluctant to do so. She also says the Panel upheld a reasonable number of appeals, but concluded that the unsuccessful appellants were not suited to a selective education.

51. Mrs Norton is concerned about the head teacher’s involvement. She says the head had been with the Panel before the hearings, and also at coffee time during the hearings. (The head says she was invited on one occasion to make coffee with the panellists and spoke briefly to Mrs Norton.) Mrs Norton’s view is that the complaints are distorted and exaggerated. She says that, even in a school (like QEGS) where the County Council is not the admissions authority, she prefers the presenting officer to be a member of that Council’s staff, as he or she is likely to have better information about the appeals (see paragraph 40 above).

The Clerk’s views

52. The Clerk says she has provided a freelance clerking service to the County Council for two years. She says she has not received much training, apart from shadowing other Clerks. (The Council says it gave the Clerk training, and supervision by one of its officers.) The Clerk says she suggested to the Panel that some of its questioning was irrelevant, but the members took no notice. She says that questioning about the absence of a head teacher’s appeal was irrelevant. She says Mr Bridge’s questioning about the absence of a father from the hearing was inappropriate, as well as the manner of the questioning.
53. The Clerk says the complainants are correct in their view that Mr Acton’s introduction is quick. She does not consider that Mr Acton puts appellants at their ease. She considers that the Panel’s approach tended to distract appellants from the cases they wished to make. She says that the times she recorded for

the hearings are accurate, and that the Panel consistently finished hearings early. The Clerk accepts that, where the Panel reached a majority decision, she should have recorded not only the voting, but also the way in which the individual panellists had voted.

The County Council's views

54. The County Council says it was very concerned to read about the allegations set out in paragraphs 38, 39, 42 and 43 above and has included the issues, on an anonymous basis, in its recent training of panellists. The Council says it sees no harm in a Chairman seeking to persuade a presenting officer to conflate his or her arguments in a way which might prove helpful to appellants.
55. The Council accepts the need to ensure that all parties at appeals for places at Voluntary Aided and Foundation schools have the same information, including Kent test scores. It has brought forward proposals to allow it to give the Governors of such schools, as the admissions authorities for those schools, relevant written information about the application of the admission arrangements which can be distributed to all parties to appeals.
56. The Council acknowledges that Panels should not attach weight to whether or not a head teacher has appealed (see paragraph 15 above) but, if there has been a head teacher's appeal, may take account of the content of the appeal as part of the overall evidence. The Council considers that panellists should not raise questions about a child's position on a waiting list or about the alternative school where the child has been offered a place. (Paragraph 4.76 of the Appeals Code includes: "Panels should take no account of where the admission authority has placed a child on the waiting list, or of the fact that the parents of other children on the waiting list may not be appealing.")
57. The Council's guidance to panellists includes the following material about appeals for grammar schools:

"In essence an appeal against assessment only is still an appeal for a place at a named grammar school. The two stage process should still apply. The [admissions authority's] case is that it would prejudice the provision of efficient education or the efficient use of resources to admit a pupil who

could not cope with the pace and pressure of teaching at a grammar school.

The balancing stage would involve the Panel exercising its discretion taking into account the strength of the case put forward by the appellant as to why the child would be appropriately placed in a grammar school balanced against the case put by the [admissions authority].”

58. Officers of the Council have advised Members of the Council that most Members (apart from lead Members) will not have conflicts of interest, and may attend Appeal Panels. (But see paragraphs 24, 29 and 42 above.)

Conclusion

59. I find the following:
- (a) The procedural guidance for one parent issued on the Governors’ behalf was sent to an incorrect address, for which a full apology has been given.
 - (b) The Governors’ written cases opposing the appeals did not include the Kent test scores, which were crucial to an understanding of precisely how the appellants’ children’s applications were unsuccessful. I do not see that parents should have to seek this information from primary schools. I therefore welcome the Council’s proposal that all parties at appeals in such schools should have the same information, and commend it for adoption by the Governors of those schools.
 - (c) The Clerk gave the Kent test scores to the head teacher and to the panellists only about 15 minutes before the beginning of the first hearing. This was too late and not even-handed. The information was not provided directly to the parents in writing at any stage.
 - (d) The procedural guidance to appellants issued on the Governors’ behalf did not include the guidance in the Appeals Code (see paragraph 24 above) about local politicians not participating in appeal hearings.
 - (e) The Governors do not appear to have taken an opportunity to consider whether or not local politicians should be able to participate in appeal hearings. The conflict between the statutory guidance in the Appeals Code and the guidance to panellists appears to have led to confusion in two of

the hearings described in this report. The Panel does not appear to have handled the discrepancy sensitively.

- (f) On balance, I conclude that the Chairman's introduction to the hearings was delivered in a manner which did not convey the relevant information clearly and sensitively to the appellants.
- (g) The Panel put pressure on the presenting officer and the appellants to keep some hearings unnecessarily short, bearing in mind that 30 minutes overall had been allowed for each hearing. While some marshalling of the evidence may occasionally be justified, it does not appear appropriate for the Chairman to have reorganised the cases of the presenting officer and the appellants on the scale described in this report. Presenting officers and appellants, not all of whom will be experienced speakers, will have prepared their cases and may find it distracting to be asked to reorganise them at short notice.
- (h) The Panel was reluctant to accept and consider samples of pupils' work or SATs results. It is, in my view, insufficient for a Panel simply to "note" such evidence, so that it would have no bearing on its decision. It is for a Panel to consider such evidence on its merits and decide what weight to attach to it.
- (i) The Panel, in some cases, took account of, and drew inferences from, the absence of a head teacher's appeal, which was an irrelevant factor. The County Council's guidance, properly in my view, makes it clear that the absence of a head teacher's appeal is not a relevant factor for an independent Appeal Panel.
- (j) The Panel, in some cases, sought information about, and took account of, a child's position on the waiting list. This was an irrelevant factor. In any event, the school was not full.
- (k) In at least one instance, the Panel sought information about and took account of another school at which the appellant's child had been offered a place by the County Council. Neither the Governors nor the parent had

raised this issue in their written cases about the appeal for a place at QEGS. Given this, it was not open to the Panel to take account of the place at the other school.

- (l) The Panel considered whether appellants would benefit from a grammar school education, rather than whether they were qualified by ability, which is a precondition of admission to a grammar school. The Panel had regard to whether appellants *deserved* places. While this approach followed the Council's guidance (see paragraph 57 above), it is inconsistent with the Appeals Code. The Code does not suggest that "prejudice" is a relevant consideration in a grammar school which is not full, such as QEGS. (Prejudice might have become a relevant consideration in the unlikely event of the Panel upholding nearly every appeal, so that the school became full.)
- (m) The Panel's approach and questioning, particularly by Mr Acton and Mr Bridge, were wholly inappropriate. I am particularly concerned about the suggestion by Mr Bridge that he might discover that he had been deceived by an appellant, and how he could do this.
- (n) The clerking service, provided on behalf of the Governors, was inadequate to prevent the apparent faults, such as inappropriate questioning. The notes of the hearings and the decision making are thin. The notes of majority decisions record only the number of votes cast, and not the way in which individual panellists voted.
- (o) There was some contact between the presenting officer and the panellists in the absence of the appellants. The presenting officer and the panellists should always be separate, except during the hearings. Casual contact, even during refreshment breaks, should be avoided.
- (p) The Panel's decision letters were not sent by the Clerk to the Appeal Panel, which can lead to confusion over the content and legitimacy of decision letters. (The Clerk who clerked the rehearings despatched that Panel's decision letters.)

Maladministration

60. I conclude that the faults set out in the previous paragraph represent maladministration by the Governors and by the Admissions Appeal Panel. I also conclude that some administrative practices of and guidance to the Panel, coupled with the clerking service provided, contributed to the maladministration.
61. While the complainants experienced anxiety over their concerns, I warmly welcome the Governors' initiative in arranging rehearings of the appeals by a Panel consisting of different members and with a different Clerk. The outcome of the reheard appeals was a matter for a properly constituted Panel acting fully in accordance with the law and the Codes of Practice, and not for me, to decide.
62. I also welcome the Council's initiative (see paragraphs 55 and 59(b) above) to make available, through the Governors of Voluntary Aided and Foundation schools, full written information in an even-handed way about the application of the admission arrangements for those schools in preparation for appeals for admission to those schools.

Injustice

63. The maladministration identified in paragraphs 59(b) to 59(o) above caused the complainants injustice. The maladministration will have deprived the complainants of the opportunity to have their appeals considered in a fair and sensitive manner. Appellants are entitled, whatever their circumstances and outlook, to have their appeals considered in accordance with the applicable law and Codes of Practice, but this did not happen. The denial of this opportunity amounted, of itself, to a serious injustice, which was largely remedied by the rehearings which the Governors promptly arranged.

Remedy

64. As noted in the previous paragraph, the injustice has been largely remedied by the rehearings. In addition, the Governors should review, in consultation with the Council, their arrangements for the hearing, consideration and clerking of appeals against their decisions to refuse admission to the school in order to

prevent a recurrence of the maladministration identified in paragraph 59 above. The Governors should also provide training for members of the governing body, and Appeal Panels, their Clerks and other staff to eliminate the faults identified in this report. The Governors should tell me the outcome within three months of the date of this report.

65. I recommend that Governors of Voluntary Aided and Foundation schools (who are the admissions authorities for their schools), where they engage a local education authority or another outside agency to provide an Appeal Panel, a clerking service, or both, should satisfy themselves that the service to be provided will meet their expectations, and also accord with the law and the applicable Codes of Practice. Governors cannot take it for granted, without proper enquiry, that the appeals service which they commission will be fit for purpose.

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14 May 2007