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Your ref: Various/EDR
Our ref:
Date: 28 September 2011

Dear Ms Seex

Complaints against Tunbridge Wells Girls Grammar School and the Kent County Council

Thank you for your report dated 29 June 2011 and your request for information on what action the County Council proposes to take on the recommendations contained in the report (regarding your investigation into complaints against the Council and the Governors of Tunbridge Wells Grammar School).

Whilst the County Council is in no way complacent as to the events leading up to your investigation, I do think that it is important that the findings of the report are taken in the context of the number of appeals that this Council administers. The number of appeals for places in Kent schools is the largest in the country and this point was acknowledged by your investigators Mr P Whitely and Mr D Roberts at the Council's last feedback meeting with them. In 2010 the Council heard approximately 2300 appeals. Of those appeals less than 4% of the appellants made a complaint to the Ombudsman. Re-hearings were agreed for approximately 30% of the complainants. This did not necessarily mean that the Council accepted that it was at fault but it felt that if there was any doubt it was prepared to re-hear cases in the interests of natural justice and good relations.

With regard to the specific recommendations made in paragraph 115 of the report, my comments are as follows:

Geoff Wild LL.B, Dip.LG, Solicitor
Director of Governance & Law



- Require its officers to consult on and introduce a procedure for reviewing incidents or errors affecting selective testing together with a means to enable, in appropriate circumstances, candidates to be retested.

When the complaint was originally investigated in 2009 /10 we explained to your investigators that there were no equivalent tests readily available - Kent would need each year to commission and have standardised two sets of tests, rather than one. In order to have an additional set of tests in place for September 2011, the Council would have had to commission them a year ago. Two sets of tests would each notionally have their own threshold, which might differ from one to another, and there are clear difficulties in allowing some children to qualify for admission to grammar school through a different set of tests from others, particularly where schools rank candidates for admission by test score. In these areas in particular we regularly have complaints that something has disrupted testing (e.g. noisy radiators, sunshine, building work next door, a child fainting in the room, etc) and it would give the council's officers the responsibility, if we had a second set of tests, of demonstrating why certain children should *not* be given access to them. It is worth mentioning, in regard to the issue of "appropriate circumstances", that the candidate in question scored well enough to be assessed suitable for admission to grammar school, so no intervention would have been necessary to secure an appropriate assessment.

We already have a well-established procedure for dealing with cases where a child's test scores may be unrepresentative, which will provide a remedy for testing mishaps affecting the performance of individuals or groups. An initial assessment based purely on scores can be overridden on the basis of additional evidence presented to a local Head Teacher Assessment panel and a grammar assessment recorded in its place. The only situation it does not address is where (against our advice) schools have chosen to use our test results to rank pupils for admission, because although a child's initial assessment can be altered, the test scores clearly cannot. As the majority of schools which have chosen to use Kent's 11+ assessment process do not rank by score, it seems disproportionate to require the Council to expand its process to accommodate those which do, none of which are Community grammar schools.

These schools are not prepared to change their admission arrangements, and our challenge that they were unfair was not accepted by the Schools Adjudicator. It does not seem reasonable to place the blame on the Council for injustice caused by an element in the admissions process that we cannot control. If we were to adopt the recommendation, it would significantly increase the cost of running Kent's 11+, and add to the administrative burden we already bear without necessarily providing a definitive solution.

- Require its officers to report to it on how its test invigilators will be trained and supported to deal efficiently and calmly with untoward events during testing.

The Council has already addressed the matter of invigilator training and introduced a set of record sheets for invigilators, as a response to the problem.

- Require its officers to report to it on how it can ensure that any clerking and appeals service which it provides is effective and complies with the law and Statutory guidance.

Whilst I agree that this particular set of appeals was not dealt with as effectively as we would have expected from one of the Council's Independent Appeals Panels, it was clearly an exception and not the norm.

The Council has always taken the training of its clerks and panel members very seriously and in fact representatives from your office very helpfully attended and contributed to the sessions held in 2010.

Since 2008 the following training has been provided for Panel members:

2008 – The new School Admission Appeals Code including constitution of panels, procedures before and after the hearing, decision making, effective questioning

2009 - The revised School Admission Appeals Codes, fair oversubscription criteria and the Kent 11+ selection procedure. Chairmen training included roles and responsibilities, preparation for the hearing and decision making.

2010 – The decision making process, new proforma for recording hearings, KS1 appeals and a presentation from the Local Government Ombudsman.

Training was held for new Appeal Panel Members including an overview of Education in Kent, the Admission and Appeals Codes, the appeal hearing, effective questioning and the decision making process.

2011 - The decision making process, questioning and time management, the new in year admission process, online admissions and the equalities act.

Clerks have also received the following training:

2008 - The new School Admission Appeals Code, management of the hearing and a newly developed Clerks information pack.

2009 - Training on panel administration

2010 – The Appeals Code, Clerk's role, decision making and a new proforma for recording decisions. Training for new clerks included an overview of education in Kent, the Admission and Appeals Codes and use of an agreed proforma to record decisions.

2011 - The decision making process, management of the appeal hearing, the new in year admission process, online admissions and the equalities act.

The issues identified in your report have already been targeted again as key areas to include in the 2012 training programme.

- Instruct its Legal and Democratic Services Section to stop sending Appeal Panel decision letters with the Clerks' facsimile signatures and ensure that any letter that it prepares on behalf of the Panel is the one selected by the Panel.

We are of the view that the Admissions Appeals Code definition of the role of the clerk is ambiguous in places and therefore open to interpretation. There are functions attributed to the clerk to the panel which are clearly the responsibility of those carrying out the administration of the appeals as opposed to the individual clerks specific responsibility for the management of the appeals that they are clerking on the day. Examples of this are found in paragraph 1.3 which states the *clerk **must** appoint the members to each panel* and also paragraph 2.21 which states that *it is the clerks role to send out appeal papers to the appellants, presenting officers and panel members*. The responsibilities described in both of these paragraphs are carried out by the Council's appeal panel administrators and not the individual clerks as it would be impractical for them to do so. Your investigators are aware of this but have chosen not to criticise this practice even though paragraph 1.3 is mandatory in its statement that it is the **clerk**. In our view the clerks signature of the letters should be considered in the same manner.

Kent employs external clerks during the busy appeals period and there are several reasons why your recommendation is not practical given the complexity and volume of the appeals administered and they are as follows:

- Because of the huge volume of appeals we in Kent have to deal with we use Impulse, which is an internal on-line database, and decision letters are generated via this system, to which external clerks do not have access.
- Occasionally clerks do select the wrong letter but excepting in the current case invariably on these rare occasions this is picked up by the Appeal Panel Administrators who are able to liaise with the clerk and send out the correct one.
- When letters are sent out by the Appeal Panel Administrators they are normally checked by two people. If a clerk was to do this from home that would be less likely to happen.
- Some clerks might not have access to a suitable printer.
- It is possible that holding letters would have to go out as there could be a delay with clerks sending out their own letters and undertaking the clerking of appeals. Who would be responsible for signing the holding letter?

We are, however, already looking at the glossary letters used by the Appeals Team to make these easier for clerks to identify.

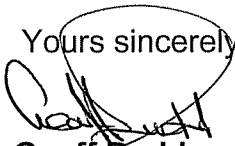
The clerks currently liaise with the Panel Chairman to confirm the Panel's decision and the reasons behind it. The clerks then identify the appropriate glossary letter to be used and email this information to the Appeal Panel Administrators on a template.

We propose that the clerk signs an endorsement to the template stating "Please send this letter (Glossary XXX) agreed by the Panel and signed on my behalf". The clerk will then return the signed confirmation to the appeal panel Administrators.

It is intended that these proposals will be submitted to a future meeting of the County Council's Governance and Audit Committee for endorsement.

The Council hopes in this letter that it has fully addressed the findings of your investigation but please do not hesitate to contact me should you require any further information or clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Geoff Rudd', is written over the typed name below.

Geoff Rudd

Assistant Democratic Services Manager