

**Richard Long – Member for Tonbridge
Cabinet Member for Education and Skills**



The Rt Hon Nick Gibb MP
Minister of State for School Standards
Via email – ministers@education.gov.uk

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19 June 2020

Dear Rt Hon Nick Gibb MP

You will be aware that Kent County Council, as a selective authority, has been liaising with officials in the Department to explore what changes may be required to allow selection to take place in the safest and fairest way possible this year, within the wider confines of the restrictions that the pandemic has placed on us and our pre-existing legal requirements. Firstly, I would like to thank Mark Earl in your Admissions Team for the time and effort he has spent on this area. However, if the Department intends to give us any formal guidance on what it considers appropriate adjustments to be, we are eager to receive it. In particular we are seeking Regulatory change to ensure any amendments we have to make can be defended if challenged. Clearly it is not in the interests of our families for our admissions arrangements to become embroiled in legal challenges and create uncertainty about the process and the legitimacy of any decisions.

Unfortunately, the absence of new guidance from the Department, and lack of Regulatory change leaves selective LAs in the difficult position of having to make alternative plans in the knowledge that no option is free of the risk of further legal scrutiny. While we have delayed finalising an approach to allow guidance to be provided, this has resulted in ongoing uncertainty for parents and children who wish to know how assessment will take place this year. This means that KCC now has no choice but to propose an alternative plan to allow families and schools sufficient opportunity to prepare for the most likely outcome.

I wanted to draw your attention to our proposal, to give you an opportunity to raise any concerns you might have, and importantly to enable you to consider how these fit against any Regulatory change you might propose. Our proposal can be found [here](#), but to summarise, we intend to delay the Kent Test by around one month, given the ongoing uncertainty as to when the relevant cohort of children, current Year 5s, will return to school, and to allow these

children an opportunity to settle back into school life. Due to the nature of Kent's process, which includes an element of Head Teacher assessment to ensure children who are suitable for a Grammar education but who were unable to evidence this via the test still have an opportunity to receive a selective assessment, we estimate that results will be made available in late November, after parents have expressed preferences. To mitigate any disadvantage that this may cause, we are intending to extend preference options from four to six for this year only, to allow parents to name up to two Grammar schools without impacting their other preference options.

As you are aware, the main limitations faced by selective LAs are the requirement to make all reasonable efforts to release assessment results to parents before applications for school places are submitted, and that there is no clear mechanism in which to vary an admissions scheme once it has been determined. We have examined our options and, regrettably, have concluded it is not feasible for us to provide assessment results before parents express preferences by 31 October as set out in the Code, even if we were able to safely test pupils in September. Lockdown prevented standardisation sampling for Kent, and although a solution is under way, it will delay the delivery of this year's test scores. Given the uncertainties surrounding the return of pupils to school generally and the fact pupils will not have been in school for many months, testing at the start of September is, in our view, simply untenable and would be unfair to a significant number of children. Therefore, a reasonable response to the unique circumstances is to delay testing and provide assessment results as soon as possible, but to extend the number of options parents can name to mitigate any perceived disadvantage of not having results before preferences are submitted. Given the code provides that all preferences are equal, we believe this mitigation is sufficient, but KCC will remain open to challenge unless this is clarified by central government. I also felt that this was necessary to evidence the support of Kent schools for this proposal. The LA contacted all 431 primary and junior schools in Kent and of the 325 which have responded to date, 91% supported the proposal to delay the Kent Test. While I feel that these are strong grounds on which to base the decision of a change, clarity from Government, in the form of Regulation, is also necessary to remove the threat of legal challenge.

As raised above, currently we do not see that we will be able to comply with the requirements of the Admissions Code, specifically that we do not believe we will be able to provide parents with assessment decisions before 31 October 2020. Potentially this puts the Authority in an unlawful position. Additionally, our proposed actions change our coordinate admissions scheme, and potentially the admissions arrangements for our three grammar schools and those of 29 autonomous grammar schools. The Code is silent on how a co-ordinated admissions scheme is changed, but it is arguable the Schools Adjudicator should decide, something we do not have time for. If we do not make alternative arrangements, we face challenge under the Equalities Act for not making reasonable adjustments for children with protected characteristics. It seems, therefore, that if we act this will be unlawful, if we do not act, that too will be unlawful. I urge you to make the necessary Regulations to enable

Kent, and other selective authorities, to confidently and lawfully manage this situation on behalf of its residents.

The report on which my decision will be based will be finalised on 29 June. My decision will be made on 20 July. I request, as a matter of urgency, clear guidance from the Department on these proposals and Regulatory change to support these. KCC has no option but to proceed as outlined above. In the absence of Government guidance and Regulation, the ongoing risk of Judicial Review will weigh heavily on the families of Kent who may fear their child's future school provision remains uncertain for many months to come.

Kent remains available where we can be of any further support to your efforts to finalise guidance on this area.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Long', with a stylized, cursive script.

Richard Long
Cabinet Member for Education and Skills