

Advice to SoS on London Boroughs who are not able to invoke the contingency framework for school openings

Issue

There are currently 10 London Boroughs who are not on the list of areas that can invoke the contingency framework. All but one Borough, Kingston have individually asked for the list to be reviewed on an urgent basis and for the decision to be reversed. However, Kingston are signatories to the letter from all councils and are likely to challenge any decision to be singled out.

Situation

To limit transmission of the virus and protect the NHS, a decision was taken by ministers – based on a list of the most worrying local authorities established by DHSC and the Joint Biosecurity Centre – to limit attendance at primary schools in 50 local authorities. 23 London boroughs are covered by the new restrictions, with the rest largely in the south-east and east of England. 10 London Boroughs are not on the list. This means that currently those 23 Boroughs should limit attendance at their primary schools from 4th January to only children of critical workers and vulnerable children. Secondary schools across the country have already been asked to restrict attendance to those groups and to exam cohorts for the first two weeks of term, with full face-to-face attendance resuming on 18 January.

Since the announcement on Wednesday, the remaining 10 London boroughs have expressed discontent at the decision to exclude them – meaning their primary schools are expected to be fully open from Monday. They cite interconnected health provision and cross-border schooling, as well as an overall public health approach to treat London as a bloc wherever possible.

The London Boroughs are as follows:-

City Of London

Camden

Islington

Harrow

Hackney

Haringey

Greenwich

Lewisham

Lambeth

Kingston

Timing

Urgent – decisions to be taken swiftly today to enable communication to parents ahead of school term commencing on 4th January

Argument

As part of the Prime Minister's announcement on Wednesday 30th December of January re-opening of schools, DHSC led on the decision around which areas could invoke the Contingency Framework for school openings. London has not been treated as a whole but considered on a Borough basis. DHSC advise that the decision was based on the growth rate transmissions, hospital/NHS capacity as well as intelligence which factored in local insights. Given the mix of subjective and objective factors which is tricky to explain and defend, as well as DHSC owning the decision making and the underpinning rationale which has not been publicly explained by them, the decision has come under intense scrutiny.

We now need to decide how to proceed.

There are 3 options available:

1. Act quickly to revisit the decision, via an expedited Gold process.

The JBC's Contain Framework allows for the Local Action Committee structures to be convened rapidly as required. That is the regular decision-making structure for consideration of all local restrictions, including decision to apply the education contingency framework. It will ensure appropriate and wide-ranging consideration of the factors, including those raised by London's boroughs since the announcement was made, before coming to a decision.

There might remain some boroughs for whom the data do not show that application of the contingency framework – in this case to primary schools – is strictly necessary. The Local Action Committees will be able to consider these data alongside other intelligence and any public health arguments in favour of treating all London boroughs the same at this stage.

Given that restrictions on education are a last resort, however, we would need to ensure that all boroughs understand, and sign up to, the importance of reopening full provision as soon as possible – even if that is possible sooner in some parts of London than in others.

2. Wait and see – continue to hold the line and maintain dialogue with London and Regional stakeholders.

Under this scenario we would hold our line this weekend and expect primary schools in the 10 boroughs to open fully from Monday. Depending on how the data and local intelligence develops, some or all of those areas might be considered via the normal Gold process which means that schools would have re-opened for 4 or 5 days before a new decision took effect.

It is likely, given the pressure coming from most of the 10 boroughs, that all would seek to be considered via the Gold process this week. Ahead of that, they will continue publicly to reject the rationale and possibly to warn about the safety of the schools and their staff.

3. Hold the line and defend the decision.

Without a clearer rationale on public health grounds, the line is difficult for DfE to defend given that the decisions were based on health data as well as local NHS intelligence and insights – within a context of a rapidly shifting picture. If we were to do so, we anticipate that several or all of the 10 boroughs will continue to lobby for inclusion, and we may see some schools – or whole areas – taking unilateral decisions to limit attendance for primary children. Any direction made under the Coronavirus Act to remain fully open can only be made after considering advice from the CMO (or

DCMO) and if we can demonstrate that issuing such a direction is necessary and proportionate in all the circumstances. We do not think the CMO would advise that the schools ought to remain open, since public health advice has been to treat London *en bloc*.

Background

The Contingency Framework for education was agreed by Covid-O in November. It makes clear that any restrictions on education would only be as a last resort and may only be initiated following a ministerial decision. The framework sets out how such restrictions would be implemented as a containment measure for the rare circumstances in which they are required to address transmission within education settings and the community. The framework envisages that secondary schools and colleges would restrict attendance first, with primary schools restricting attendance only in extremis.

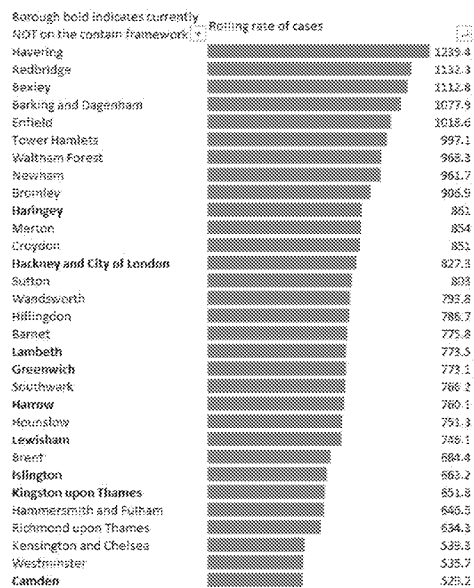
Since the decision to restrict attendance in education rests with Ministers, the framework envisages that restrictions will only be applied after consideration via the government's Local Action Command structure, escalating through bronze, silver and gold committees to Covid-O. Because of the timing – between Christmas and new year – and the urgency of the decision needed, that was not possible.

This week the contingency framework was applied for the first time, in light of DHSC's concern that the closure of schools is essential to tackle transmission in some areas. Covid-O had already agreed to limit attendance at secondary schools for the first 2 weeks of term, meaning primary schools also needed to be considered. After discussions between the Health Secretary and Education Secretary the framework was applied to the 50 local authorities where – taking all factors into account but with particular focus on case rates, rate of increase and intelligence about pressure on the NHS. 23 of the local authorities were London boroughs; 10 London boroughs did not have the restrictions applied to them.

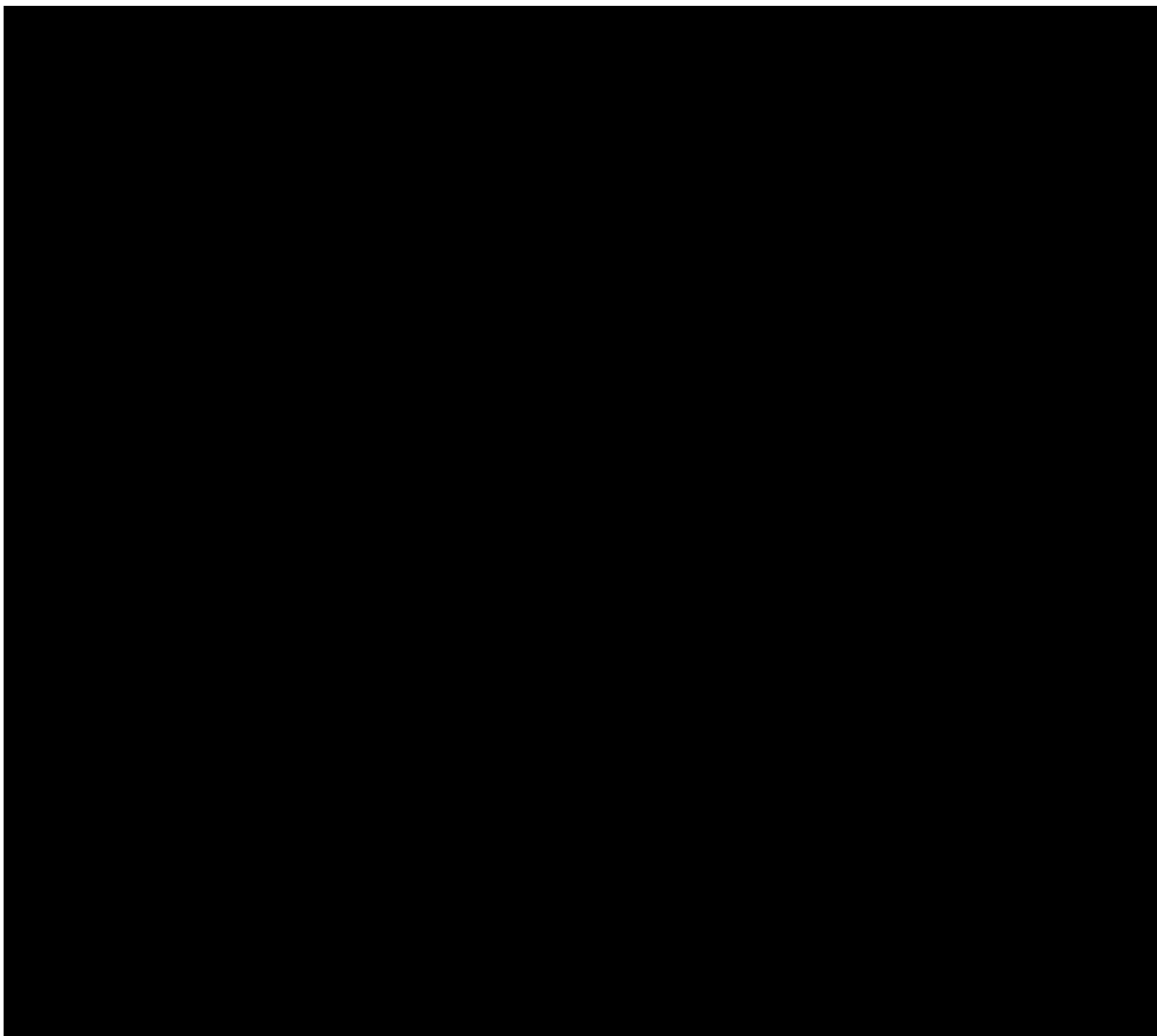
Data

Decisions to delay the return to face-to-face teaching in the majority of London boroughs have been based broadly on an assessment of borough level infection case rates, infection growth rates, and local and regional NHS capacity.

However, as context the headline rates of the London Boroughs are below. The data below uses the data at the point at which the decision was made (data relating to 24th December). The latest data (relating to the 26th December) is likely to be distorted by changes in testing patterns over the Christmas period.



Legal risks



Communications Handling

Following the announcement on the implementation of the contingency framework in some local areas, there has been significant reporting on the remaining London boroughs requesting to implement the framework and remain closed. This has been fuelled by a letter from the London Councils and concern about the data used to inform the decision making process.

We have taken a proactive communications approach to set out the rationale and rebut factual inaccuracies including the press notice, broadcast, social media, explainer blogs and media briefing, which sits alongside the sector and parent guidance documents. We have also been continuing to set this out within the wider approach for a staggered January return and the rollout of rapid testing in secondary schools and colleges.

Any decision to implement the contingency framework in the remaining London boroughs will need to be framed as a cross-government announcement, in order to avoid any suggestion that the department is not being led by the data and is giving in to pressure. Critics have already been questioning how decisions have been made and we will need a clear explanation on why these further areas have been moved, only days after the initial announcement. The narrative will also need to address why this approach is right for London and not for other areas of the country, and we will need to be clear that by having all/majority of London in the contingency framework that there will not be a one size fits all approach for the return to schools, once the transmission data supports this.

We are suggesting a holding position which makes clear that the contingency framework is to suppress transmission of the virus within communities, rather than anything to do with safety within schools, and that engagement with London continues. Subject to the final decision, we recommend a proactive communications approach, which ensures engagement with London councils and wider stakeholders happens before the media announcement. We will work with No10 and DHSC on more detailed handling plans and materials and will share them for clearance shortly.