



## **DETERMINATION**

**Case references:** ADA3109, ADA3110

**Objector:** Medway Council

**Admission Authority:** The Thinking Schools Academy Trust for Victory Academy, Chatham, Medway and Chatham Grammar School for Boys, Chatham, Medway

**Date of decision:** 7 October 2016

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for admission to Year 7 in September 2017 determined by The Thinking Schools Academy Trust for Victory Academy, Chatham, Medway and Chatham Grammar School for Boys, Chatham, Medway.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its arrangements within two months of the date of this determination.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the Office of the Schools Adjudicator (OSA) by the Student Services Manager on behalf of Medway Council (the objector), which is the local authority (LA) for the area. The objections concern the admission arrangements (the arrangements) for September 2017 for two schools that are within the Thinking Schools Academy Trust (the trust). The schools are the Victory Academy an 11-18 co-educational non-selective academy school and the Chatham Grammar School for Boys (whose name will change from January 2017 to Holcombe Grammar School), a selective academy school for boys aged 11 – 18 (the schools). The objections are that the inclusion of oversubscription criteria that give priority to children who have attended another of the trust's schools in Medway or have a

sibling in another of the trust's schools in Medway disadvantage children who live close to the schools but who do not attend a trust primary school.

## **Jurisdiction**

2. The terms of the funding agreement between the Thinking Schools Academy Trust which is the multi-academy trust (MAT) for the schools and the Secretary of State for Education require that the admission policies and arrangements for the trust's schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust, which is the admission authority for the schools, on the 7 January 2016 on that basis. The objector submitted the objections to these determined arrangements on 13 April 2016.

3. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

- a. the objector's objection forms dated 13 April 2016 together with supporting documents and subsequent comments;
- b. comments from the trust in response to the objection together with supporting documents;
- c. the funding agreements between the Secretary of State for Education and the trust for these schools;
- d. a map of the area identifying relevant schools;
- e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2017;
- f. confirmation of when consultation on the arrangements last took place;
- g. the minutes of the meeting of the trust on 7 January 2016 at which the arrangements for September 2017 were determined for these schools; and
- h. a copy of the determined arrangements for 2017.

## **The Objection**

6. The objections are to the trust's use of oversubscription criteria for these two schools that give priority to children who have attended a primary school within the same trust or have a sibling in another trust school.

7. The objector considers that giving priority for admission to these schools on the basis that a child has attended one of the trust's primary schools does not meet the requirements of paragraph 1.15 of the Code which says

*“admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”*

8. The objector also believes that the trust’s use of a criterion that gives priority to applicants who have a sibling in any trust school in Medway does not comply with paragraph 1.12 of the Code that says *“some schools give priority to siblings of pupils attending another state funded school with which they have close links (for example, schools on the same site, or close links between two single sex schools). Where this is the case, this priority **must** be set out clearly in the arrangements”*. The objector also considers that the arrangements could be considered unfair and therefore not in compliance with the requirement in paragraph 14 of the Code that arrangements should be *“fair”*.

9. The objector is concerned that the introduction of these criteria could disadvantage families who live close to the secondary schools because two of the three trust’s primary schools are in Strood which is more than three miles away from these two secondary schools which are in Chatham.

### **Other Matters**

10. When I reviewed the arrangements as a whole in the course of considering the objection, I noted that criterion iv of the arrangements does not comply with the Code. The criterion gives priority to children of staff employed by the trust. Paragraph 1.39 of the Code says that *“admission authorities may give priority in their oversubscription criteria to children of staff in either or both the following circumstances: a) where the member of staff has been employed at the school for two or more years at the time at which the application for the school is made, and/or b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.”* The clear reference is to “school” in subsection a) of this paragraph of the Code and the use of “trust” in the oversubscription criterion exceeds this permission as an employee of the trust might well not work at the school concerned or, indeed, at any of the schools. The arrangements do not comply with the requirements of the Code and the Code requires that they be amended.

11. The trust responded positively to this point and has agreed to make an appropriate change to the criterion to ensure that it is compliant with the Code.

### **Background**

12. The schools are academies within the Thinking Schools Academy Trust. This Trust comprises four secondary schools, three of which are in Medway and one in Portsmouth, and six primary phase schools, four in Medway and two in Portsmouth. The Portsmouth schools are not relevant to the objections or to this determination because attending these schools does not afford any priority for admission to Victory Academy or Chatham Grammar School for Boys (Holcombe Grammar School). Of the four primary schools in the trust in Medway, one is in Chatham sharing a site with Chatham Grammar School for Boys. The other three are in Strood and are a primary school and an infant and a junior school. The schools are a little over three miles away from the two

secondary schools. Two of the three trust secondary schools in Medway are the subject of this determination; the third is Rochester Grammar School for Girls which has different admission arrangements.

13. The Victory Academy is a non-selective school for children aged 11-18 and joined the trust in September 2015. It has a published admission number (PAN) of 240 but is undersubscribed with 146 places allocated at offer day in 2014 and 169 allocated in 2015.

14. Chatham Grammar School for boys (whose name will change to Holcombe Grammar School in January 2017) is a selective school for boys aged 11-18. As a selective school, only boys who have reached the required result in the Medway assessment tests are eligible for admission. It has a PAN of 120 that had been reduced from 140 because the school has been undersubscribed for some years. In 2014 there were 81 places allocated at offer day and in 2015 this figure was also 81.

15. The Victory Academy and the Chatham Grammar School for Boys have similar oversubscription criteria with the only substantive difference being that in the case of the grammar school they are applied only to boys who have achieved the required standard in the Medway 11 plus examinations. The oversubscription criteria can be summarised as follows:

- i. looked after children and previously looked after children;
- ii. children who have a sibling in any Thinking Schools Academy Trust academy in Medway;
- iii. children who attend New Horizons Children's Academy, All Faiths Children's Academy or the Gordon Children's Academy, Junior [these being the primary or junior schools in membership of the trust];
- iv. children of staff in the trust;
- v. health reasons;
- vi. children who live nearest the school.

16. Following consultation, the trust determined these admission arrangements for the schools on 7 January 2016 and included the new criteria of feeder schools and sibling links across the trust schools.

### **Consideration of the case**

17. The objector is concerned that the trust has decided to give priority in the arrangements for the two secondary schools both to children who have attended a trust primary school (that is to make the trust primary schools feeder schools for the secondary schools) and to children with siblings who attend another of the trust's school. Its reason for the objections is because it believes these arrangements will disadvantage local children who live near the schools, particularly as three of the trust's schools are three miles away in Strood, one is a primary, one is a junior and the third is an infant school that feeds the junior school. It recognises that the two schools are currently undersubscribed but local secondary pupil numbers are projected to increase and the LA believes that this may become an issue in the future.

18. The trust responded to the objection pointing out that the number of pupils admitted to the schools in Year 7 from primary schools within the trust is very small and both the schools are currently undersubscribed so all applicants are offered a place, subject only to the requirements relating to gender and passing the eleven plus in relation to the grammar school. The trust's legal adviser said that *"all the schools operated by the trust, whether primary or secondary, share the same ethos and, more importantly, teaching and learning tools. All students are trained to use the same "Thinking Toolkit" that includes Thinking Maps (Hyerle); Thinking Hats (de Bono); Thinkers Keys (Ryan) and Habits of Mind (Costa and Kallick). This approach is quality assured by regular in school reviews undertaken by the Cognitive Educational Development Unit at Exeter University. No other Medway schools are using this cognitive approach to education or the use of distinct cognitive structures to support learning. This "Thinking Toolkit" is used in all Trust lessons in both primary and secondary schools and provides the students with the framework for their lessons and their learning"*.

19. He goes on to say that *"Students trained in the" thinking toolkit" naturally want to continue to be taught in the same way as they move from primary to secondary school. They have been trained to think and learn within a particular set of cognitive structures. Moving to a school that does not use these structures would mean that a student no longer was able to use the learning tools that they had mastered at their previous school and so could damage their education."*

20. In its consultation documentation the trust says *"therefore if a parent has committed to this approach to education for their child it is appropriate that they should be able to continue the approach from primary to secondary school"*. The trust points out that it is common practice for schools to offer preferential places to students whose family already have a connection with the school. The trust said that it believes that *"for the benefit of families it is appropriate that students should have preferential access to a school if a sibling attends a trust secondary school"*. It went on to say that it has a clear educational philosophy in all its schools centred on a cognitive approach to education and the use of the Thinking Schools approach.

21. The LA responded to these points by saying that it acknowledged that the numbers admitted from trust schools was small but wished to highlight the potential unfairness for children that live close to these two schools who neither have a sibling in the schools nor have attended a trust primary school.

22. Medway has a mix of six selective secondary schools and eleven non-selective secondary schools. There are three "access areas" that serve between them six of the non-selective schools. The two secondary schools that are the subject of these objections are close to each other in the Chatham urban area. The LA's 2017 composite prospectus shows that in 2016, the secondary schools in the Chatham area were undersubscribed while the schools in the Strood, Rochester, Gillingham and Rainham areas which surround Chatham admitted up to their published admission numbers. One of the three named feeder schools shares a site with Chatham Grammar School for Boys; the other primary school and the junior school are located about three

miles away in the Strood area. The infant school is located next to the junior school in Strood.

23. I shall now consider whether or not these arrangements comply with the Code. My first consideration is whether or not they comply with paragraph 1.15 of the Code as set out in paragraph 7 above.

24. Paragraph 1.15 says that “*the selection of a feeder school must be transparent and reasonable*”. The trust clearly states which schools are the named feeder schools and says that it wishes to create a situation where children who begin their education in a school within the trust can continue in a trust secondary school if they wish and in doing so continue with a particular approach to learning. In this respect the selection of schools is transparent.

25. The Code requires the selection of a feeder school to be reasonable. The trust sets out arguments for why it is selecting the feeder schools on the grounds of a shared approach to learning within the MAT and provided documentation that gave examples of student work and how the thinking approach was being used routinely in the schools in the trust.

26. I observe that the trust comment that “*parents commit to a learning approach*” is not currently borne out in practice. The trust itself says that small numbers of children transfer from the trust primary schools to the trust secondary schools and there is little evidence of this commitment. I recognise, however, that this may be aspirational as the MAT is relatively new.

27. I note that the admission arrangements of the third trust secondary school in the Medway area (a girls’ grammar school) give priority for admission on the basis of rank results in the Medway test and do not include a priority for those who attended a trust primary school as a feeder school. This inconsistency within the MAT diminishes the trust’s argument for selecting feeder schools based on parental commitment and learning styles.

28. Despite these reservations, I am satisfied that for 2017 the reasons for selecting the schools as feeder schools are reasonable.

29. My next consideration is to the priority given to children with siblings who attend other trust schools. The Code at paragraph 1.11 permits schools to “*give some priority to children with siblings who attend the school or former siblings who attended the school*” provided that they define clearly what they mean by a sibling or former sibling. Paragraph 1.12 permits schools to “*give priority to children whose sibling attends another state school with which they have close links (for example, schools on the same site, or close links between two single sex schools).*”

30. The Code accordingly makes provision for the giving of priority in circumstances such as those which arise here where schools are members of the same trust. I am satisfied that the arrangements meet the requirements of the Code for defining clearly what is meant by a sibling and the explanation that justifies the requirement for “close links” between the schools.

31. However, any such priority for feeder schools or for siblings has to meet the requirements of paragraph 14 of the Code that says “*arrangements must be fair*”. In this case there are three trust secondary schools in the Medway area that a child could attend in order to give priority to a sibling in one of the four trust primary schools seeking a secondary place. As it is written in the arrangements, if there are two siblings attending different primary schools in the area, one of which is a trust school and the other not; the child who attends a trust primary school would bring priority for the child not attending a trust primary school in their admission to a trust secondary school. It may be an unintended consequence that this child would receive a higher priority for admission than a child who attended a trust primary school but with no older sibling. It is not currently an issue while the schools are undersubscribed but the trust may wish to consider if this was its intention in readiness for a year in which one or more of the schools are oversubscribed.

32. The objector has said that children who live near either of the schools could be disadvantaged if they are unable to gain a place because the place is allocated to a child who may live further away but who has a sibling in one of the trust schools or who has attended a trust primary school. I note the school’s argument that the numbers involved are small, but I also note the LA’s argument that as the secondary school population is forecast to rise in the area there will be a greater pressure on places in schools. Both the schools are currently undersubscribed, so at present there is no evidence that any child is being treated unfairly because all eligible children who apply can gain a place.

33. At the point that the schools have to use the oversubscription arrangements then the issue of fairness will become more significant. Even if pupil numbers in the area increase as forecast it will remain to be seen what the impact of the feeder schools will have on allocation of places to these schools. In considering the test of fairness the trust will need to take account of the fact that there are over 30 primary schools that are located closer to these two secondary schools than the trust primary schools. Half of these schools are directly between the named schools and the secondary schools and most of the children currently attending the two secondary schools will have attended one of these local primary schools.

34. The objection is that the use of these criteria is unfair for local children. My jurisdiction concerns the 2017 arrangements and I do not think that these oversubscription criteria are likely to have an unfair impact in 2017 because of the undersubscription for places. If numbers rise and the secondary schools reach their PANs then the outcome of a future objection could be different because there might at that time be unfairness for local children. However, for the 2017 arrangements I do not uphold the current objection. If this changes in the future then with a change of circumstances a different outcome to an objection about fairness is possible.

### **Summary of Findings**

35. The objection concerns the oversubscription criteria that give priority to pupils attending trust primary schools and to siblings attending another trust school. I have reviewed the feeder school criterion against the requirements of paragraph 1.15 of the Code and I have concluded that the arrangements

comply with this aspect of the Code and the selection of the schools is transparent and reasonable.

36. I considered the criterion giving priority for children who had a sibling who attended another school in the trust and found that as it is currently written there are some consequences that may be unintended that the school may wish to address. However, I am satisfied that the arrangements clearly state the definition of a sibling as required by paragraph 1.11 of the Code and the trust has set out the close links required in paragraph 1.12 of the Code.

37. I then considered the requirement for fairness in paragraph 14 of the Code. The secondary schools are currently undersubscribed and are likely to be so for the 2017 arrangements which are the subject of this determination. I have been shown no evidence that there is an issue of unfairness for local children since they are likely to be able to gain a place at one of the two secondary schools if they are eligible to apply. I note that pupil numbers in the area are projected to increase, and I observe that if this happens then the issue of fairness for local children will require further consideration if an objection is made. The trust may wish to review this aspect of its arrangements before such a time.

38. For the reasons given, I do not uphold the objections to these criteria for the 2017 arrangements.

39. The oversubscription criterion giving priority to children of staff across the trust does not comply with paragraph 1.39 of the Code and the trust has accepted this point and undertaken to ensure that it reviews this aspect of its arrangements and will ensure that it complies with the requirements of the Code.

40. Paragraph 3.1 of the Code says that "*admission authorities must, where necessary, revise their admission arrangements....within two months of the decision unless an alternative timescale is specified...*". I do not consider that an alternative timescale is required.

### **Determination**

41. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for admission to Year 7 in September 2017 determined by The Thinking Schools Academy Trust for Victory Academy, Chatham and Chatham Grammar School for Boys, Chatham.

42. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

43. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its arrangements within two months of the date of this determination.

Dated: 7 October 2016

Signed:

Schools Adjudicator: David Lennard Jones