



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3429

**Objector:** A member of the public

**Admission Authority:** The academy trust for Holcombe Grammar School, Medway

**Date of decision:** 3 September 2018

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Holcombe Grammar School in Medway for admissions in September 2019.**

**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 unless an alternative period is specified. In this case, I determine that the arrangements must be revised within two months.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector), about the admission arrangements (the arrangements) for September 2019 for Holcombe Grammar School (the school), an academy school within the Thinking Schools Academy Trust (the trust). The school provides for boys aged 11 to 18. The objection is that the school's arrangements do not comply with the Code in respect of the oversubscription criteria that give priority to boys with siblings in any trust secondary school, the criterion that gives priority to children of staff in any school in the multi-academy trust and the criterion that gives priority to children who attend any trust school.

2. The local authority for the area in which the school is located is Medway Council. The parties in this objection are the local authority, the objector and the trust.

### **Jurisdiction**

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the school 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 school, on that basis. The objector submitted the objection to these determined arrangements on 10 May 2018.
4. 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.

### **Procedure**

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 10 May 2018, supporting documents and subsequent submissions;
  - b. the legal adviser for the trust's response to the objection;
  - c. the local authority's response to the objection;
  - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. confirmation of the meeting of the local governing body when the arrangements were determined on behalf of the trust; and
  - g. a copy of the determined arrangements.

### **The Objection**

7. There are three parts to this objection:
  - a. The first is that the oversubscription criterion that gives priority to children with a sibling in any secondary school in the trust (Holcombe Grammar School, The Rochester Grammar School and The Victory Academy) does not comply with paragraph 1.12 of the Code and is unfair in contravention of paragraphs 14 and 1.8 of the Code in respect of fairness.

- b. The second is that the oversubscription criterion that gives priority to children attending any trust primary school does not comply with paragraph 1.15 of the Code because the schools are not named.
- c. The third is that the oversubscription criterion that gives priority to children of staff in the trust does not comply with paragraph 1.39 of the Code.

## **Background**

- 8. Holcombe Grammar School is a selective school for boys that is an academy within the Thinking Schools Academy Trust. The trust is a multi-academy trust comprising four secondary schools, three of which are in Medway and one of which is in Portsmouth, and six primary phase schools, four in Medway and two in Portsmouth. The Portsmouth schools are not relevant to the objection or to this determination because attending these schools does not afford any priority for admission to Holcombe Grammar School.
- 9. The other secondary schools in the trust in Medway are The Victory Academy and The Rochester Grammar School. Rochester Grammar School is a selective school for girls and The Victory Academy is a non-selective co-educational school. The Rochester Grammar School is around 2.7 miles from the school by road, The Victory Academy is closer and is about half a mile distant. By straight line distance they are approximately 1.5 miles and half a mile from the school. There are five other selective and eleven other non-selective secondary schools in Medway.
- 10. Of the four primary schools in the trust in Medway, one, New Horizons Children's Academy, shares the site with Holcombe Grammar School. The other three are in Strood. The schools are between just over two and just over three miles from the school by road and between one and two miles from the school by straight line distance. There are around thirty primary schools within two miles of the school by straight line distance, several of which are nearer to the school than the primary school members of the trust in Strood.
- 11. The school is a selective school and only admits boys who have reached the required level in the Medway selection test, which is administered by the Medway Council. The school has a published admission number (PAN) of 120 and has been undersubscribed until the last two years. In 2017 the school admitted over its PAN in order to take all applicants, some of whom came from the London boroughs. In 2018 the school has admitted 150 boys which again is over the PAN of 120 and all applicants have been admitted.
- 12. As a grammar school it is permitted to select applicants on the basis of their ability. The Code makes clear that grammar schools can either admit all pupils on the basis of rank score in their selection tests or by setting a threshold for eligibility and then using other oversubscription criteria such as distance or catchment area to prioritise admissions. Grammar schools are also unique in that they may keep places empty if not enough applicants reach the required standard.

13. The school's admissions policy states that if the number of applications for admission from boys who have reached the required standard in the school's selection test is greater than the PAN, places will be allocated using the following summarised oversubscription criteria:
- a. Looked After Children and all children who have been previously looked after,
  - b. Children who, at the time of the admission, have a sibling who attends the academy or any other TSAT secondary academy in Medway, i.e. The Rochester Grammar School and The Victory Academy.
  - c. Children who attend any trust primary school.
  - d. Children of staff employed by the trust: priority will be given to the child of a person who has been employed by the Academy for two or more years at the time the application was made and/or where the person was employed by the trust to fill a vacant post for which there is a demonstrable skills shortage.
  - e. Children with health reasons that require them to attend the school.
  - f. Children who live closest to the school.
14. For admissions in 2018, the school said that it admitted all applicants and exceeded its PAN. It said that it admitted one looked after boy, eleven boys as siblings, two from trust primary schools, one staff child, one boy for health reasons and 134 boys were admitted on distance. This gave a total of 150 boys with allocated places.

### **Consideration of Case**

15. I shall deal with each part of this objection in turn. The first part concerns the oversubscription criterion which says *"Children who, at the time of the admission, have a sibling who attends the academy or any other TSAT secondary academy in Medway, i.e. The Rochester Grammar School and The Victory Academy."*
16. The objector asserts that this criterion does not comply with paragraph 1.12 of the Code which states that *"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 argues that the result of this criterion is that boys who might otherwise have been able to gain a place at the school are disadvantaged and treated unfairly.
17. The school's legal advisors responded that the priority is clearly set out in the criterion in compliance with the Code.

*“All schools operated by the Trust, whether primary and secondary, share the same ethos and, most 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 student's the framework for their lessons and their learning. 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 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.”*

18. This criterion contains two elements, the first is the priority given to boys who have a sibling at Holcombe Grammar School, the second is the priority given to boys who have a sibling at one of the other secondary schools in the trust. I shall deal with these two sibling priority points separately.
19. In my view there is a great difference between giving priority for a place to a child who has a sibling at the school at which a place is sought and a child who has a sibling at another school – albeit one with which the school concerned has close links. The objector has not expressed concern about the giving of priority to boys who have brothers already at the school. For the avoidance of doubt, I do not consider that such priority is unfair or in any other way in contravention of the Code. Where a boy has a sibling attending the school itself there could be a benefit for his attending the same school as his sibling for logistical and other family reasons. Many schools give priority to children on this basis and this is specifically addressed in paragraph 1.11 of the Code.
20. The local authority admissions booklet gives the anticipated roll of this school as 860 so there seems to be a good probability that there will be a potential sibling link between one or more boys seeking a place who have a brother in this secondary school and who have not attended a primary school that is named as a feeder school. This will have the effect of enabling the brother of a boy already attending the school to gain a place irrespective of the distance he lives from the school. It also means that if the family lives some distance from the school a further place will be allocated at this distance and this could mean that a boy living closer to the school would not gain a place. The Code specifically permits priority to be given to siblings in this way. Although there will be some boys who live closer to the school who may not gain a place at the school as a result, I am satisfied that the criterion is clear and the potential for such sibling links assisting families logistically provides a justification for the criterion.

21. I turn now to the question of priority given to boys who have a sibling at another trust secondary school in Medway, that is The Rochester Grammar School for girls or The Victory Academy but who do not attend a feeder primary school (who will have priority under the separate criterion). The trust's legal advisors in setting out reasons for priority to be given based on the schools being in the same trust described the curricular and pedagogical links. I have not been provided with a reason other than that given above for why such a priority should be given for this criterion. The local authority gives the expected roll for The Victory Academy as 786 pupils and for Holcombe Grammar School as 1270. This gives a total of 2056 children whose brothers could have priority for a place at the school. Of course, some of these children will have no younger brothers and some will already be siblings of other children at the schools. Other younger brothers of those attending one of the schools will not reach the necessary standard in the school's test. In 2018 the number of siblings admitted was eleven; however, it remains the case that there is the potential for more places to be allocated on the basis of this priority. I looked at the location of these three secondary schools. The distance from Holcombe Grammar School to The Victory Academy is about half a mile and it is about one and a half miles to The Rochester Grammar School. While they are not far from each other they could not be described as co-located. I can see no logistical benefit for a family if a child attends one of these schools and a sibling another.
22. The trust's arguments for this priority were expressed in terms of curriculum and pedagogical continuity. However, there is no curriculum continuity argument since gaining priority under this criterion is dependent only on the secondary school attended by a sibling. The boy benefitting may or may not himself have attended one of the feeder primaries which use the same curriculum and pedagogical approach. In any case, there is provision elsewhere in the arrangements giving priority to boys who have attended trust feeder primaries. A possible argument is that the boy would be studying a similar curriculum to his sibling in another trust school. Against this, if such an eligible boy gained a place in Holcombe Grammar School, another boy would not gain a place as a result. An example would be an eligible boy living the same distance from the school as another eligible boy who does not have a sibling in either of these schools. A similar example would be a boy living the same distance from the school but is an only child with no siblings. The trust is permitted by the Code to set its arrangements but arrangements have to be reasonable and must comply with the requirements for fairness. In this case I am of the view that there are insufficient reasons to justify the criterion giving priority to boys with a sibling in another trust secondary school which in turn justify the displacement of one or more boys who might otherwise have obtained a place on the basis of the distance that they live from the school. I have given some examples of boys who might be considered to be unfairly treated by the use of the criterion.
23. The school has pointed out that for the last two years it has admitted over its PAN and taken every eligible child that has applied. It also argues that "*these applications represent a very small number of the applications generally received and so the impact is likely to be minimal.....*". It is permitted to admit over its PAN by virtue of paragraph 1.4 of the Code and if the school admits

all its applicants, no boy would be disadvantaged because the oversubscription criteria would not be used. This does not however remove the responsibility of the trust to ensure that the arrangements for the school comply with the Code and I uphold this aspect of the objection.

24. The second part of the objection concerns the giving of priority to boys who have attended one of the primary schools in Medway which are members of the same trust. The objector argues that it is unfair that boys should have a higher chance of securing a place at the school because of the decision about primary education made by their parents several years before. The Code provides that account may only be taken of a previously attended school if it is a named feeder school (paragraph 1.9b) and requires that feeder schools must be selected on reasonable and transparent grounds (paragraph 1.15). The use of feeder schools as an oversubscription criterion must also meet the core requirements of the Code set out in paragraphs 14 that the “allocation of places are fair, clear and objective” and 1.8 that “oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation..”.
25. In this case, the feeder schools have not been named. The arrangements therefore do not comply with the requirement of paragraph 1.9b of the Code. The school argues that the names of the schools are implicit in the reference to trust schools. I do not accept this argument; the unambiguous requirement in the Code is that feeder schools are to be named. I note also that if, in the future, another primary school joined the trust and the trust wished to name it as a feeder school, the trust would be required to consult over the addition of a further named feeder school to the arrangements. I therefore uphold this element of the objection.
26. If I take the names of the trust feeder schools as a given, I can accept they have been selected on the transparent grounds that they are part of the same multi-academy trust. The trust’s legal advisor makes the case that the schools within the trust are linked for curriculum purposes and this provides the reason for the schools to be feeder schools. I consider that these are reasonable grounds for selecting the feeder schools. The links and shared ethos and approach of the schools which are members of the trust will result in educational benefits to girls who are able to spend their school life in schools run by the trust. However, I must also consider the effect of the inclusion of feeder schools in the arrangements and whether or not the admission arrangements which take account of these reasons meet the requirements of the Code and, in particular, whether the arrangements are fair, clear and objective as required by paragraph 14 of the Code and whether the oversubscription criteria are reasonable, clear, objective and procedurally fair as required by paragraph 1.8.
27. The Code is clear that it is for admission authorities to decide what arrangements will be best in their local circumstances provided that the arrangements meet the requirements as to admission. In this case the four named feeder schools have a combined PAN of 320. Approximately half of those children will be boys and thus eligible to be considered for a place at the school. Not all of these boys will reach the required threshold for a place at the school. The school has pointed out that for the last two years it has

admitted over its PAN and taken every eligible child that has applied. It also argues that *“these applications represent a very small number of the applications generally received and so the impact is likely to be minimal..... Given the ethos and curriculum offer of the trust, the arrangements are fair in the context of the likely limited impact on applicants and the importance to the children who attended a Trust primary school of being able to continue to build on the specific skills they will have been taught that make Thinking Schools different.”*

28. The objector argues that each year more secondary schools in the area appear to be introducing criteria that offer places to those who have attended feeder schools. The objector argues that this will lead to a growing pressure on primary schools to join multi-academy trusts so that their children can have some priority for a secondary school. It could also mean that children who do not reach the eligibility score for a selective place but who attend a feeder school for a selective school will have no priority for a place in a local school. I note these concerns. I have looked at the area secondary admissions data for 2018 and can see that there were undersubscribed schools in the area and all the selective schools have admitted up to or over their PANs. I have been provided with no evidence that any child will not be able to secure a place in a school which is within a reasonable travelling distance of his or her home for 2019 which is the year for which I have jurisdiction.
29. I have already noted that the addition of further feeder schools for the school (or for any other school) would be subject to consultation and the scope for objections to be made to the adjudicator. My decision in this case is only about this school with its existing feeder schools for 2019. It does not affect the ability for concerns about future changes to admission arrangements to be tested by the adjudicator if there was evidence in future years of unfairness being caused to one or more children. Having upheld the part of the objection that points out that feeder schools must be named, for the 2019 arrangements, I do not uphold the part of the objection that says that the selection of feeder schools does not comply with the requirements of the Code for fairness.
30. I observe that, in this case, the feeder schools are within the trust. The trust therefore has the means to ensure that even though they are named as feeder schools for this selective boys school, the primary schools must also make provision for effective transition to secondary school for all their pupils. They will have boys and girls who are eligible for a grammar school place and girls and boys who do not reach the required score in the selection tests and must find a place at a non-selective school. I note that a girls selective school and a non-selective secondary school are also members of the same trust in Medway.
31. The third part of the objection concerns the oversubscription that says *“Children of staff employed by the Trust..... priority will be given to the child of a person who has been employed by the Academy for two or more years at the time the application was made and/or where the person was employed by the Trust to fill a vacant post for which there is a demonstrable skills shortage.”*. The objection is that the criterion refers to staff in the *“trust”* when paragraph 1.39 of the Code refers to staff at the *“school”*. The trust is the



employer for all of its staff irrespective of the school they work at or, for that matter, whether they work at a school at all or at, say, any administrative headquarters of the trust. It is not permitted by the Code for priority to be given to this wider group; only to those who work at the school which is the subject of the admission arrangements and even then only in the circumstances concerned. The school's arrangements give priority to a wider group than is allowed. They are also unclear as they suggest that a higher priority is to be given to those covered in paragraph 1.39 of the Code than to the other staff of the trust (notwithstanding that the latter is not compliant with the Code in any case). The question of the distinction between staff of the trust and staff at the school is a matter that has been raised in a previous determination for this school and the school agreed at that time to make the necessary change to its arrangements. It is disappointing to see that the school has not fully complied with the determination that upheld this point. I note that the school has accepted that an error has been made in the redrafting of its arrangements. I am assured that this will now be addressed so that the criterion is fully compliant with the Code and will only refer to the priority to be given to the children of staff at the school who have been employed for two or more years. I therefore uphold this part of the objection.

### **Summary of Case**

32. There were three parts to this objection. I have upheld the objection that giving priority to boys who have a sibling in another trust secondary school does not comply with the Code on the grounds that the reasons given do not justify the displacement of one or more boys who would otherwise have anticipated gaining a place on the basis of distance from the school.
33. The second part of the objection concerned the naming of feeder schools. I have upheld the objection concerning the requirement to name each feeder school. I have not upheld the part of the objection that argues that the inclusion of the feeder school criterion has unfair consequences.
34. The third part of the objection is about the priority given to the children of staff and I have upheld this part of the objection and require the school to change its arrangements. The school has agreed to do this.
35. The Code requires the school to make necessary changes within a period of two months from the date of publication of this determination.

### **Determination**

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Holcombe Grammar School in Medway for admissions in September 2019.

37. 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 unless an alternative period is specified. In this case, I determine that the arrangements must be revised within two months.

Dated: 3 September 2018

Signed:

Schools Adjudicator: David Lennard Jones