



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3430

Objector: A member of the public

Admission Authority: The academy trust for Fort Pitt Grammar School, Medway

Date of decision: 6 September 2018

Determination

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

I have also considered the arrangements for 2019 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 unless an alternative timescale is specified by the adjudicator. 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 Fort Pitt Grammar School (the school), an academy school within the Fort Pitt Thomas Aveling Trust (the trust). The school provides for girls aged 11 to 18. The objection is in three parts. The first part is that priority is given to girls attending feeder schools that are not named in the arrangements. The second part is that the school arrangements do not

comply with the Code in respect of the oversubscription criteria that give priority to girls with siblings in any trust secondary school and that for both of these two oversubscription criteria the arrangements are unfair. The third part is that priority is given to daughters of staff but it is not made clear if this is staff at the 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. I have also used my power under Section 88I of the Act to review the arrangements as a whole as they have been brought to my attention.

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 trust's response to the objection;
 - c. the local authority's response to the objection;
 - d. maps of the area showing the location of schools and the distribution of applicants;
 - e. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - f. confirmation of when consultation on the arrangements last took place; and
 - g. a copy of the determined arrangements.

The Objection

7. The first part of this objection concerns the oversubscription criterion that gives priority to “*students who attend a school..... within the Fort Pitt Thomas Aveling (FPTA) Academies...*”. The objection is that this does not comply with the Code’s provision for feeder schools set out in paragraph 1.15 of the Code which states “*Admission authorities may wish to name a primary or middle school as a feeder school...*”. The objector argues that in these arrangements the schools are not named and it is unfair that girls should gain a place on the basis of decisions made by parents some years before.
8. The second part of the objection concerns the part of the oversubscription criterion that gives priority to “*studentswho have a sibling in a school within the Fort Pitt Thomas Aveling (FPTA) Academies...*”. The objection is that this does not comply with paragraph 1.12 of the Code, which says 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 this criterion is unfair.
9. The third part of the objection is that a criterion refers to “*children of staff*” but is ambiguous whether this means staff at the school as required by paragraph 1.36 of the Code or is referring to staff anywhere in the trust.

Other Matters

10. When I reviewed the arrangements I noticed that they appear not to conform with the requirements relating to admissions in the following respects.
11. The definition of looked after and previously looked after children does not comply with the definition given in paragraph 1.7 of the Code and the relevant footnotes which refer to “*looked after and all previously looked after children*”.
12. The admission of those with an Educational, Health or Care Plan (EHCP) is included in the oversubscription criteria. Paragraph 1.8 of the Code is clear that where the school is named in a statement, the child **must** be admitted. In consequence this cannot be an oversubscription criterion.

Background

13. Fort Pitt Grammar School is a selective school for girls that is an academy within the Fort Pitt Thomas Aveling Trust. There are five schools within the trust. Three are secondary schools and are Fort Pitt Grammar School, Thomas Aveling School (a non-selective high school) which is located one and a half miles away and Robert Napier School (a non-selective high school) which is two and a half miles away. There are two primary schools in the trust: Phoenix Junior Academy which is one mile away and Balfour Junior Academy which is three quarters of a mile away.

14. Among its oversubscription criteria, the school gives priority to girls who live within a two mile radius of the school and to girls who live on the Hoo peninsula. It has a Published Admission Number (PAN) of 120. It is routinely oversubscribed and for admissions in September 2018, it received a total of 476 on time preferences (this figure includes girls who did not reach the qualifying score in the tests), of which 149 were first preference. The total number of eligible preferences (children having attained the eligible score in the selection tests) was 364, of which 116 were first preference.

15. Where applications from eligible girls exceed the PAN of 120, places will be allocated using the following summarised oversubscription criteria:

- i. "Looked After Children/ Children in public care - as defined in the Medway Coordinated Admissions Scheme – this includes adopted and previously Looked After Children*
- ii. Students with an Educational Health Care Plan (EHCP) - where Fort Pitt Grammar School is specifically named*
- iii. The sibling of a student who will still be attending the school*
- iv. Students who attend a school or who have a sibling in a school within the trust.*
- v. Children of staff where the member of staff has been employed for three years or more*
- vi. Girls residing within 2 miles of the school*
- vii. Girls residing in one of the named parishes below*
 - Allhallows*
 - Cliffe and Cliffe Woods*
 - Cooling*
 - Cuxton*
 - Frindsbury Extra*
 - Halling*
 - High Halstow*
 - Hoo St Werburgh*
 - St James, Isle of Grain*
 - St Mary Hoo*
 - Stoke*
- viii. All other eligible girls".*

16. If the PAN is reached and exceeded within a particular oversubscription category, priority is decided using the rank order of test scores with those scoring highest given priority.

17. In the past two years the school has been able to admit the following numbers of girls against the different criteria:

Criteria	admitted in 2017	admitted in 2018
Looked After Children / Children in Local Authority Care	1	0
The sibling of a student who will still be attending the school at the time the student would be admitted.	18	19
Students who attend a school or who have a sibling in a school within the FPTA Academies.	17	16
Children of staff	0	0
Girls residing within two miles of the school	52	36
Girls residing in one of the named parishes	32	26
All other eligible girls	0	23

Consideration of Case

18. These arrangements include an oversubscription criterion that refers to two different groups of girls, that is, girls who have attended another trust school in the area and girls with a sibling in another trust school in the area. The criterion gives these girls an equal priority within the arrangements. In order to address the objection made about this criterion I shall consider each of the elements of the criterion separately.
19. The first part of the objection concerns the priority given to girls who have attended one of the other schools in Medway in the same multi-academy trust. The objector argues that this does not comply with paragraph 1.15 of the Code which requires feeder schools to be named. The objector also argues it is unfair that some girls 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. Although it is not mentioned by the objector, paragraph 1.9b of the Code says admission authorities **must not** *“take into account any previous schools attended unless it is a named feeder school.”*
20. My first observation is that this part of the criterion is ambiguous. This is because it could mean that priority is given to girls who have attended one of the two primary schools within the trust or it could also mean that priority is given to girls who are attending one of the two other secondary schools within the trust. The second meaning is unlikely for admission at Year 7(Y7) because it would require exceptional circumstances for a girl attending either Thomas Aveling School or Robert Napier School to be able to apply for a place at Fort Pitt Grammar School in this year group. Year 7 is referred to in paragraph 1.2 of the Code as a *“relevant age group”* which means *“an age group at which pupils are or will normally be admitted to the school”*. I shall not discuss this possible meaning further and the trust must ensure that the ambiguity is removed in order to meet the requirement in paragraph 14 and paragraph 1.8 of the Code for criteria to be *“clear”*.
21. I shall now consider the criterion on the understanding that it refers to attendance at one of the primary schools in the trust. 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 *“practices and criteria used to decide 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..”*. In its response to me, the trust said that based on researching the admissions policies of many other grammar schools in small multi-academy trusts it is common for individual primary schools not to be named. It also said that both primary schools in this case are amongst the closest in terms of geographical location to the high school.

22. In this case, the feeder schools have not been named. The arrangements therefore do not comply with the clear and unambiguous requirement of paragraph 1.9b of the Code. The school refers to other schools where feeder schools in small multi-academy trusts are not named. I have not been given the evidence for this nor do I have the jurisdiction to comment on this statement about the admission arrangements of other schools in this determination. I also note that if, in 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 uphold this part of the objection.
23. For the purpose of the next part of my consideration, and having already dealt with the matter of naming the schools, I shall assume that Phoenix Junior Academy and Balfour Junior Academy have been named as feeder schools within the arrangements. They have been selected because they are part of the same multi-academy trust and because the schools in the multi-academy trust share the same ethos and are close in terms of geography. I consider that these are reasonable grounds for selecting the feeder schools. I have accordingly gone on to consider whether the inclusion of feeder schools in the arrangements meets the requirements of paragraphs 14 and 1.8 of the Code.
24. Some grammar schools admit all or most children on the basis of test scores and admit only those with the highest scores. Others such as this school take a different approach and uses different criteria to allocate places to applicants who have reached the required level in the selection tests to become eligible for a place. 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 two named feeder schools have a combined PAN of 180. Approximately half of those children will be girls who can be considered for a place at the school. Not all of these girls will reach the required threshold for a place at the school and so there will continue to be places available for other eligible girls who have attended other primary schools. In reviewing this particular criterion, I have considered whether there are any eligible girls whose chances of a place at the school are likely to be reduced because of the priority given to those who attend the feeder schools. The figures provided to me suggest that in 2017, the school was able to admit all eligible girls who lived within two miles of the school but not all of those who lived within the named parishes. In

2018, the school was able to admit all of the eligible girls who lived within two miles of the school and all those who lived in the named parishes and 23 other girls. The two feeder schools are one mile and three quarters of a mile respectively from the school and will be attended very largely by children living close to the schools. It would therefore be highly unlikely that the admission of a girl from either of the feeder schools will result in the denial of a place to another girl who might reasonably have expected to obtain a place there.

25. 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. For the reasons, I have set out above, I do not consider this concern to be well founded in relation to the existing feeder schools for the school for 2019.
26. I add 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. I have upheld the objection on the grounds that the schools are not named. I have considered the issue of fairness and if the feeder schools had been named as required I would not have upheld this particular part of the objection concerning the fairness of selecting these two feeder schools.
27. I shall now consider the second part of the objection which concerns the priority given to girls with siblings in another school in the trust. As noted above, this is part of the same criterion which gives priority to those who have attended named feeder schools. 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 girls who might otherwise have been able to gain a place at the school are disadvantaged and treated unfairly. The trust argues that this criterion has been in place for a number of years and there have been no complaints about it. It implies that the fact that the schools are within the same multi-academy trust is sufficient reason for the criterion.
28. This criterion contains two elements. The first element is the priority given to girls who have a sibling at one of the other secondary schools in the trust and the second element is the priority that could be given to a girl who has a sibling in a primary school. The way that this is worded is ambiguous as it combines these two points and may also cover some of the girls who are covered by the feeder schools category that I have already covered. I shall deal with these two sibling priority points separately.

29. My first consideration is the question of priority given to girls who have a sibling at another trust secondary school in Medway, that is Thomas Aveling School or Robert Napier School but who do not attend a feeder primary school.
30. The trust takes the view that the schools within the trust are linked for curriculum purposes and this provides the reason for the schools to be linked in respect of paragraph 1.12 of the Code quoted above. The Code does not specify what "close links" means but gives the examples of schools on the same site or linked single sex schools. The Code does not make specific provision for priority to be given in circumstances such as those that arise here where schools are members of the same trust.
31. In my view it is for the admission authority to decide whether or not there are close links between two or more schools and be able to provide a reason for this decision. However, it is for me to judge whether or not the admission arrangements which take account of those close links 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.
32. 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 Thomas Aveling School as 1165 pupils and for Robert Napier School as 1060. This gives a total of 2225 children whose sisters could have priority for a place at the school under this criterion. Of course, some of these children will have no younger sisters. Other younger sisters of those attending one of the schools may not reach the necessary standard in the school's test. However, it remains the case that there is the potential that many places could be allocated on the basis of this priority. I have set out above details of the numbers of girls admitted to the school against the different criteria. The figures show that the numbers admitted within the criterion under consideration are about 13 per cent of the PAN of 120 in these two years.
33. I then looked at the location of these three secondary schools. The distance from Fort Pitt Grammar School to the Thomas Aveling School is one and a half miles and the distance to Robert Napier School is two and a quarter miles. 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.
34. The trust's argument for this priority is that they are within the same multi-academy trust and by inference I assume this means that there is a shared philosophy and shared values. However, this brings no benefit here for a girl applying for a place since gaining priority under this criterion is dependent only on the secondary school attended by a sibling. The girl benefitting may herself have attended one of the feeder primaries but these applicants are covered in the part of the same criterion giving priority to girls who have attended trust feeder primaries which is discussed above. A possible argument is that the girl would be studying a similar curriculum to her sibling in another trust school. Against this, if such an eligible girl gained a place in

Fort Pitt Grammar School, another eligible girl would not gain a place as a result. An example would be an eligible girl who lives in one of the parishes on the Hoo peninsula and who did not gain a place when an eligible girl living outside the two mile circle and not in one of the named parishes gains a place because she has a sibling in one of the trust's secondary schools. In this case, I am of the view that there are insufficient reasons to justify the criterion giving priority to girls with a sibling in another trust secondary school which in turn justify the displacement of one or more girls who might otherwise have obtained a place because of where they live.

35. I shall now consider the priority that could be given to eligible girls who have a sibling in one of the trust's primary schools but who have not themselves attended one of these schools. There can be no curriculum continuity benefit for the girl who has attended a school that is not part of the trust. Her sibling will be attending a trust primary school so there is a possible logistical argument that the siblings will end up in the same secondary school. However, this is a weak argument because there is a fifty per cent chance that her sibling will be a boy and he will not be able to attend this school as it is a school for girls. If the sibling is a girl she will still need to pass the selection test before she can join her older sister at the school. As with the siblings discussed above, I can see insufficient reasons for the criterion giving priority to a girl with a sibling in a trust primary school that justify the consequence of a girl without this sibling link not gaining a place under one of the other oversubscription criteria. I therefore uphold this part of the objection concerning the priority given to girls with a sibling in another trust school.
36. The third element of the objection is that the arrangements give priority to "*children of staff*" without specifying that they must be the staff of the school. The trust responded that as the multi-academy trust is one employer, the children of staff refers to all staff in the trust. It also points out that although the criterion for staff in the admissions code refers to two years of employment, in these arrangements the period specified is three years which makes this available to a smaller number of parents.
37. The relevant paragraph of the Code is paragraph 1.39 which says that admission authorities may give priority to children of staff "*where the member of staff has been employed at the school for two or more years...*". The clear reference is to employment at **the school** (my emphasis) and there is no reference to a trust or indeed, any other large employer such as a local authority. 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. The arrangements do not comply with the Code in this respect and must be changed. The Trust has made a decision to specify three years of employment and this complies with the Code's requirement for a minimum of two years of employment.

Summary of Case

38. There were three parts to this objection. The first part of the objection concerned admission of girls who attended another school in the trust. I have upheld this part of the objection because an admission authority may only take account of a school previously attended if it is a named feeder school.
39. I have upheld the second part of the objection that refers to the criterion giving priority to girls with a sibling in another trust school. I did not find that the possible reasons for this criterion justified the displacement of an eligible girl who would otherwise have gained a place on the distance criteria.
40. The third part of the objection concerned the priority given to children of staff. The Code refers to “children of staff at the school” and I have upheld this element of the objection.
41. I considered the arrangements as a whole and found two points where I do not consider that the arrangements comply with the Code. These are referred to in the other matters above and the arrangements must be revised to address these points.
42. The Code requires the school to make necessary changes within a period of two months from the date of publication of this determination.

Determination

43. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for Fort Pitt Grammar School in Medway for admissions in September 2019.
44. I have also considered the arrangements for 2019 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.
45. 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 timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised within two months.

Dated: 6 September 2018

Signed:

Schools Adjudicator: David Lennard Jones