

## **DETERMINATION**

**Case reference:** ADA/002196 & ADA/002197

**Objectors:** Mr and Mrs R, two eligible parents

**Admission Authority:** The Governing Body of Tomlinscote School and Sixth Form College

**Date of decision:** 12th August 2011

### **Determination**

**In accordance with section 88 H (4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements determined by the Governors of Tomlinscote School and Sixth Form College.**

**However, I am using my power under section 88J(2)(b) of the Act to require the School to include a clear statement in its admission arrangements for 2012 on how distance from home to school will be measured.**

### **The referral**

1. Two objections have been referred to the Adjudicator by Mr and Mrs R, two eligible parents, about the admission arrangements for Tomlinscote School and Sixth Form College ("the School"), a foundation secondary school, for September 2012. The first objection is based on the view that the School's catchment area (known as the Admissions Priority Area ("APA")) is designed to exclude people from disadvantaged backgrounds and minority ethnic groups. The second objection is to the way the School measures distance from home to School.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing body, which is the admissions authority for the School. The objections from Mr and Mrs R, dated 3<sup>rd</sup> July 2011, were received by the Office of the Schools Adjudicator shortly after. I am satisfied these objections have been properly referred to me in accordance with section 88H of the Act and that they fall within my jurisdiction.

3 In addition to investigating the matters raised by the objectors I have also reviewed the admissions arrangements as a whole and considered whether I should use my power under section 88J(2)(b) of the Act. I am using my powers under the Act to make the change to the arrangements described in paragraph 24 below.

### **Procedure**

4 In coming to my conclusions, I have had full regard to all relevant legislation and guidance.

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

- Mr and Mrs R's letter of objection dated 3<sup>rd</sup> July 2011 and related maps and other data;
- further email correspondence from Mr and Mrs R;
- the School's response to the objection dated 21<sup>st</sup> July 2011;
- the Council's response to the objection dated 3<sup>rd</sup> August 2011 and related documents;
- the School's agreed admission arrangements for 2012;
- the most recent Ofsted inspection report on the work of the School.

### **The Objections**

6 The first objection is based on the view that the School's catchment area (known as the Admissions Priority Area ("APA")) is designed to exclude people from disadvantaged backgrounds and minority ethnic groups. If this were so, it would be in breach of paragraph 2.40 of the Code. Discrimination against ethnic minority groups would be unlawful under the Equality Act 2010. The objectors believe that the use of county and administrative boundaries should not be used in drawing up an APA as this "*disadvantages certain social groups and estates*" and that the definition of the APA "*is strong in terms of discrimination*".

7 The second objection is that "*using distance alone as a primary graduated decider*" is in breach of the Code. Whilst no reference is made to any particular paragraph of the Code, the relevant requirements are set out in paragraphs 2.36-2.39.

8 The objectors also believe that Surrey County Council, in whose administrative area the School is located, "*failed in their statutory duty*" to object to the School's APA.

### **Background**

9 The School is a larger than average co-educational foundation secondary school serving pupils aged 11-19 in Frimley, Surrey. It is oversubscribed. The School's fourth over-subscription criterion, after looked

after children, exceptional circumstances and siblings, is residence within the APA. The School is federated with the nearby Kings International School.

10 Mr and Mrs R wish their son to attend the School but failed to obtain a place during the September 2011 admission round. They appealed against this decision but were unsuccessful. Since then, they have kept their son on the School's waiting list. They believe that appeals to admission appeals panels, against the decision of an admission authority not to offer a place to a particular child, should be allowed on the grounds of an "illegal" APA. Such factors are not within the remit of an admission appeal panel whose role is to consider the circumstances of individual children, not the overall admission arrangements themselves. Mr and Mrs R have therefore decided to pursue their case through a referral to the Adjudicator. On 21<sup>st</sup> July 2011, Mr and Mrs R's son was 12<sup>th</sup> on the waiting list for a place in year 7. The School states this is "*predominately a reflection on how far the R household is from Tomlinscote, outside the APA*". Mr and Mrs R live outside the APA.

11 The Council states that at the time Tomlinscote's APA was drawn up "*Surrey County Council worked closely with the School to ensure it reflected historic patterns of admission whilst also taking into consideration the location and catchment of neighbouring schools.*" The School believes that the APA "*represents the historical catchment of the School*" and that its definition was the "*subject of extensive prior consultation*" as recently as 2009.

12 Paragraph 4.6 of the Code reminds local authorities of their duty under the Education and Inspections Act (2006) to ensure fair access to educational opportunity and their key role in ensuring that school admission arrangements are lawful and comply with the mandatory provisions of the Code.

## **Consideration**

### **(i) *The first objection***

13 The objectors live in an area, Surrey Heath, which is close to the boundaries of Bracknell Forest, Hampshire and Surrey local authorities. There are five secondary schools within 3000m of their home, each with different admission arrangements. The nearest school, Kings International College, uses straight line distance to allocate places. It is not over-subscribed. Until July 2011, Kings was judged by Ofsted to require special measures.

14 The objectors refer to three "*main areas of deprivation*" in the local area – Old Dean, St Michael's and James Road as examples of relatively deprived areas which lie close to the School but outside of the APA, whilst other, more affluent, areas are further from the School but within the APA.

15 The Council states that the shape of the School's APA is influenced, in part, by the location of other secondary schools. For example, the Old Dean area, whilst being relatively close to the School, lies within the APA of

Collingwood College, a school designated as an academy and which is regarded by Ofsted as being a good school. Similarly, although Kings International College (which is federated with the School) was until very recently in special measures, it is a suitable school nearer to the areas referenced by the objectors than is the School. When the location of other schools in the area is taken into account, the shape of the School's APA makes sense, even if it covers a relatively affluent area.

16 The School also believes that the shape of its APA, whilst being elongated to the east, meets the requirements of the Code. They make the same point as the Council, that it takes into account the location of other schools to the north and west, plus the additional point that the APA also responds to physical features such as woodland and parkland. They also refer to the fact that, in 2009, the shape of the APA was fully consulted on with both the Council and the wider community.

17 The objectors believe that "*administrative boundaries should not be used in drawing up admissions areas as they disadvantage certain groups and estates.*" However, the Code does not prohibit the use of such boundaries, which are often helpful as they are locally well known, recognised, and defined.

18 Paragraph 2.40 of the Code refers to the need to ensure that, in drawing up catchment areas, particular housing estates or social groups must not be disadvantaged. Any APA will include some areas rather than others. Although the School's APA certainly covers a relatively prosperous area, this can be explained by the consideration given to the location of other local schools, the features of the local landscape, the ease of access to the School from the area of the APA to the west, and the wish to maintain stability for the parent community who have been historically served by the School. I also note that the school has recently consulted on the shape of its APA and that, as the School states, "*the current APA was a product of that consultative process.*" This is confirmed by the Council who state "*Surrey County Council worked closely with the School to ensure it (the APA) reflected historic patterns of admissions whilst also taking into consideration the location and catchment of neighbouring schools.*"

19 I conclude that the APA of the School meets the requirements of paragraph 2.40 of the Code.

20 The objectors also believe that the APA discriminates against ethnic minority groups although the mapped data they provide does not obviously support such a conclusion. I also note that the local admissions forum, which includes a representative of local ethnic minority communities, has not raised any such concerns. Lastly, I note Ofsted's findings that "*discrimination is challenged robustly*" in the School which "*is successful in promoting community cohesion.*" I can find no evidence to support the objector's assertion that the School's APA discriminates against ethnic minority groups.

21 All admission authorities are required to ensure that their admissions arrangements are fair and do not unfairly disadvantage particular groups of children (see code paragraph 1.72). Given the issues raised by this objection, any recent changes to the demographics of the area, the current pattern of provision in the area, and any changes that have been made to the admission arrangements of nearby schools, it would be desirable for the School to regularly review its APA to ensure that it continues to meet all legal requirements.

**(ii) The second objection**

22 The second objection is that “*using distance alone as a primary graduated decider*” is in breach of the Code. Whilst no reference is made to any particular paragraph of the Code, the relevant requirements are set out in paragraphs 2.36-2.39. The objectors believe that the distance measurements used by the School “*do not take into account natural barriers and walkable routes.*”

23 The School’s admission arrangements do not explicitly state how distance from home to school will be measured. A letter from the School dated 21<sup>st</sup> July 2011 states this is done by measuring the shortest walking distance from home to whichever of the two school entrances is the closest, but this is not explicitly stated in the arrangements themselves. This lack of an explicit statement on how distance from home to school will be measured is likely to have influenced Mr and Mrs R’s second objection. The measurement of distance in the way described in the letter referred to above meets the requirements of the Code. However, paragraph 2.37 of the Code requires admissions authorities to “*Explain clearly how distance from home to school will be measured*”. Currently they do not do this and the arrangements should be revised to ensure they do.

24 I therefore conclude that, whilst I do not uphold the objection, the School must, as required by the Code, revise its admission arrangements for 2012 to include a clear statement on how distance from home to School will be measured.

25 The objectors also believe that Surrey County Council, in whose administrative area the School is located, “*failed in their statutory duty*” to object to the School’s APA. I have noted that the Council worked with the School on the exact definition of its APA as recently as 2009. The Council has not objected to the APA because it believes the APA meets statutory requirements. I agree with their view and therefore conclude that the Council has not failed in its statutory duty as the objectors suggest.

**Conclusion**

26 I believe that there is no evidence that the School’s APA discriminates against social or ethnic minority groups and therefore do not uphold this

objection. I also believe that, in practice, the way the School measures home to School distance meets the requirements of the Code although the fact the methodology used is not explicitly stated does not. I therefore do not uphold this objection but have determined that the School must clearly state, in the admissions arrangements for 2012 themselves, how such distances will be measured.

27 For the reasons set out in paragraph 25, I do not believe the Council is in breach of its statutory duties in relation to the School's APA.

28 For the reasons set out in paragraph 21 above, I believe the School should regularly review its APA to ensure it continues to meet all statutory requirements, as well as the objectives important to the School itself.

### **Determination**

29 In accordance with section 88 H (4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements determined by the Governors of Tomlinscote School and Sixth Form College.

30 However, I am using my power under section 88J(2)(b) of the Act to require the School to include a clear statement in its admission arrangements for 2012 on how distance from home to school will be measured

Dated: 12th August 2011

Signed:

Schools Adjudicator: John Simpson