

DETERMINATION

Case reference: ADA 0002393 and 0002396

Objector: Headteachers of nine secondary schools

Admission Authority: The governing bodies of Chatham Grammar School for Boys and Chatham Grammar School for Girls

Date of decision: 14 December 2012

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 governing bodies of Chatham Grammar School for Girls and Chatham Grammar School for Boys.

I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 33 of this adjudication.

By virtue of section 88K (2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authorities to revise their admission arrangements as quickly as possible.

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 the headteacher of Brompton Academy on behalf of the headteachers (the objectors) of the following nine secondary schools: Strood Academy, Thomas Aveling School, Rainham School for Girls, The Robert Napier School, St John Fisher Catholic School, The Howard School, Greenacre Academy, Brompton Academy, Walderslade Girls' School. These schools are located in the area of Medway Borough Council (the council). The objection is about the admission arrangements (the arrangements) for Chatham Grammar School for Boys and Chatham Grammar School for Girls (the schools). Chatham Grammar School for Boys became an Academy on 1 April 2011 and Chatham Grammar School for Girls became an Academy on 1 September 2011, both provide education for students aged 11 – 19 years old.

2. The objection is in two parts. The first part is that the consultation about a proposed change to the admission arrangements for 2013 was not properly conducted. The second part is an objection to a change made in the

arrangements for the schools that introduces a new phase of testing in March to fill any vacant spaces after the national offer date.

Jurisdiction

3. The terms of the Academy agreement between the Academy Trusts of these two schools and the Secretary of State for Education require that the admissions policies and arrangements for the Academies are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the two Academy Trusts, which are the admission authorities for these two Academies, on that basis. The amendments to the admission arrangements and the processes involved have been the similar for both schools.

4. The objectors submitted their objection to these determined arrangements on 19 October 2012. The School Admissions Code 2012 (the Code) sets a deadline for 30 June for the submission of objections. Regulation 23 of the School Admissions Regulations 2012 requires the Adjudicator to consider objections made on or before 30 June. There is no prohibition on considering a late objection and it is therefore a matter of discretion for the adjudicator to consider a late objection. In this case, part of the objection is that the objectors state that they had not been notified of the proposed changes to the admission arrangements and so were unaware on 30 June that there was any matter about which to object. I have therefore exercised discretion and I am satisfied that 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 Code. The documents I have considered in reaching my decision include:

- a. the letter of objection dated 19 October 2012, its attachments and further comments made in subsequent submissions;
- b. the schools' responses and supporting documents to the objection and responses to matters requiring further clarification from queries from myself;
- c. the council's response to the objection and responses to further enquiries from myself;
- d. the council's composite prospectus for parents seeking admission to schools in the area in September 2013;
- e. a map of the area identifying relevant schools;
- f. a copy of the Academy funding agreements for each of the two schools;
- g. confirmation of when consultation on the arrangements last took place;
- h. copies of the minutes of the meeting at which the governing bodies of the schools determined the arrangements; and
- i. a copy of the determined arrangements for each school.

The Objection

6. In the first part of their objection, the objectors believe that the school did not consult properly about the proposal to change the arrangements. The Code provides a list in paragraph 1.44 of the parties with whom an admissions authority must consult. In particular, section 1.44 c) includes consultation with “all other admission authorities within the relevant area”. The relevant area is defined in Section 88F 4(e) of the School Standards and Framework Act 1998 as “the area of the local authority in which the school in question is situated”. The objectors state that this consultation did not take place with them and they were not subsequently notified that a change had been determined.

7. The second part of the objection concerns the changes to the arrangements. The schools are selective and all children who wish to attend the school take a test in their last year of primary school to assess their academic ability. In previous years they have taken the Medway test and from 2013 the schools’ arrangements state that they will be able to take either the Medway Test or the Kent test. The schools will then admit their students on the basis of the test results and if necessary, their oversubscription criteria. In their admission arrangements the schools state that parents may ask for a child’s test results to be reviewed if they have not reached the required result and children can be assessed by a panel to see if they have the requisite ability despite not reaching the required level in the tests. These reviews are undertaken by panels organised by the council.

8. For 2013 the schools have introduced a further option for parents. If unsuccessful in any of the processes so far outlined, they may apply to the schools in March to be tested again with tests administered by the schools. If the child is successful then he or she will be offered a place if there is one available. It is to this further selection process that the objection is being made.

Other Matters

9. In reviewing the 2013 arrangements I draw the attention of the schools to other aspects of the oversubscription criteria within the arrangements that appear to contravene the requirements of the Code. These aspects are set out in paragraph 33 below.

Background

10. Both these schools had previously been selective grammar schools as defined by the Education (Grammar School Designation) Order 1998, they became Academies during 2011. The funding agreement for the two schools with the Secretary of State sets out the admission arrangements.

11. The schools participate in the Medway Council co-ordinated arrangements where students seeking a place at a selective school must take the Medway selective test. Students who attain the top 23 per cent of the scores in the tests will be considered to be of the ability to be able to attend one of the six selective grammar schools in the council’s area.

12. The council's admission booklet for 2013 admissions provides information about the number of places allocated to the schools in the area for 2011 and 2012. For 2013 the council confirms that there will be 3306 places available in the area of which 926 will be grammar school places and the number of children in Year 6 in Medway is 2926. This leaves a surplus of places available over places allocated. The council states that it expects the cohorts to increase slightly in the next few years.

13. The council's testing scheme selects the top 23 per cent of the population and the children selected are eligible to apply for one of the available grammar school places. The council's scheme also assumes that an additional 2 per cent of the population will be eligible to apply for a grammar school place as a result of its review system bringing the total to 25 per cent of the population who may apply for a selective place.

14. Of the seven selective schools in the area (one of these is a bilateral school that offers 25 per cent of its places to children who have successfully passed the grammar school selection process), five admitted up to their published admission number (PAN) and two had vacant places. The two schools with vacant places are the two schools that are the subject of this determination.

15. In 2012 the schools decided to consult on a change to their admission arrangements and proposed that children who had been judged to be suitable for a grammar school in Kent would also be eligible for a place in the schools if they applied. They also proposed that they would offer a further test after school places had been offered for the year through the council's co-ordinated arrangements.

16. The boys' school submitted its proposals to the council on 16 December 2011 and at the same time placed the consultation documents upon its website. The consultation period was from 16 December 2011 to 24 February 2012. The school's curriculum and admissions subcommittee met on 1 March 2012 and it decided to adopt the new admissions policy proposed. The full governing body met on 12 March 2012 and adopted all the decisions made by the curriculum and admissions subcommittee. Following this meeting the determined arrangements were published on the school's website and passed to the council.

17. The girls' school decided to consult on changes to arrangements following an email circulation of governors. The proposals were submitted to the council on 14 December 2011 and placed on the school's website at the same time. The consultation period was from 14 December 2011 to 27 February 2012. The governing body met on 28 February 2012 and under matters arising noted that the proposed admissions procedure had been agreed. The headteacher sent the agreed arrangements to the council in March and the revised arrangements were published on the school's website in April 2012.

Consideration of Factors

18. The first part of this objection concerns the consultation on the proposed changes. The proposal originated with the boys' school and in November 2011 the headteacher of the boys' school invited the headteacher of the girls' school to adopt a similar proposal. The proposals were sent to the council in December 2011 and were placed on the schools' websites at that time.

19. The schools appear to have assumed that by displaying the proposal upon their websites that they had conducted a consultation exercise. It is true that the council had advertised its website in the local press but paragraph 1.44 of the Code requires admission authorities to consult with others. Whilst there is no specification about how this consultation should take place it would seem necessary to communicate directly with these specified stakeholders to ensure that they are aware that there is a proposal for change and where they can view the proposal. It could be argued that the responsibility for finding and reading at the websites rests with those being consulted; however I do not think that it is reasonable to expect this unless those being consulted have been directly informed that there is something that they need to look at.

20. The schools are clear when they consider the 8 weeks of consultation took place however, these dates were not set out clearly on any of the consultation documents. At the end of the consultation period the schools report that there were only three responses, two of which came from the council and the third was a request for information which was duly supplied. The council raised no objection to the proposals.

21. The council took a paper describing proposed changes in arrangements from all own admissions authority schools across the council to its admission forum meeting in January 2012. The paper briefly summarised the changes proposed by each school. For the boys' and girls' schools, the paper said the proposal was to "adopt the Kent test, to change oversubscription arrangements and to use other tests after 1 March". The minutes do not record any detailed discussion at the meeting about these arrangements and the only general comment made was a concern that some Medway children will have to take a lot of tests. Although the schools state that their proposals were discussed at this meeting, the minutes do not provide evidence of such a discussion. It is noted that three of the headteachers objecting to this proposal were members of the admissions forum and would have received the papers which included the brief description of the changes proposed. Whilst this may have raised their awareness of the proposals this is no substitute for informed consultation by the admission authorities concerned.

22. The boys' school then took the matter to its curriculum and admission subcommittee where the minutes state "The headteacher informed the committee that the school had revised the admissions policy in conjunction with Chatham Grammar School for Girls. The school conducted a consultation on the revised policy, both via its website and with the Local Authority. There were no responses from parents. The Local Authority

responded and congratulated the school on including the Kent test in its criteria, Mrs ... asked for clarification. The headteacher replied that pupils who fail the Medway Test but pass the Kent test would be eligible to join the school. He added that the school looked at CAT scores and SATS scores (level 5) where a pupil failed both tests. The headteacher sought approval to seek permission from the Secretary of State to adopt the new admissions policy from September 2012 rather than September 2013 as previously intended. Committee members approved the action". At a meeting of the full governing body on 27 March 2012, it was agreed to adopt all the revised policies approved by the subcommittee. The request to the Secretary of State to agree a variation to the 2012 arrangements was turned down.

23. The girls' school proceeded slightly differently and circulated proposals for change to all the governors in November 2011 but did not hold a meeting to discuss the matter. All the governors responded in support of the change and as a result the headteacher published the proposals for consultation by sending them to the council and placing them on the school's website. The headteacher took the issue to the governing body on 28 February and the minutes state that "the headteacher reported that the proposed admissions procedure had been agreed and would come into effect from 2013" The arrangements were published on the school's website and sent to the council in April 2012.

24. From the evidence supplied, neither of the schools have clearly minuted decisions that their governing bodies (as the Academy Trusts who are the admissions authorities) discussed the issues, reviewed consultation responses and then formally determined their admission arrangements for 2013. Paragraph 15(b) of the Code requires admission authorities to determine their arrangements annually.

25. The schools published the determined arrangements for 2013 on their websites as required by the Code but did not comply with paragraph 1.47 of the Code and notify the other parties described in paragraph 1.44 of the Code that changes had been made. It is not reasonable to assume that other parties are monitoring information posted on an admission authority's website. In any area there are likely to be many admission authorities, all of whom must determine their arrangements annually and must consult at least once every seven years on their arrangements. The Code requires an admission authority to notify the other parties to ensure that their attention is drawn to matters of potential interest and removing the need for interested parties to monitor the websites of all the admission authorities in their area to see if any changes are being proposed or implemented.

26. I now turn to the changes proposed in the admission arrangements. There are two parts to the discussion. The first concerns the timing of the testing. The Code deals with the timing issue in paragraph 2.20 where it requires local authorities to co-ordinate admissions through a local co-ordinated scheme and all admission authorities in the area to participate in the scheme. The admissions timeline at the end of the Code gives the national closing date of 31 October for parents to submit their preferences for secondary schools for their child on a common application form. In an area

where selective tests are used, the Code in paragraph 1.32c requires that the outcomes of tests are given to parents before the 31 October. Parents are then able to apply for schools with the knowledge of whether or not their child is eligible for a place in a selective school and set their preferences accordingly. The selection tests for the selective schools in Medway are administered on behalf of the selective admission authorities by the council. The Medway Tests are available for any child to take while in Year 6 of their primary schools to establish which children are within the top 23 per cent of the cohort and thus eligible for a grammar school place in the relevant year. The outcomes of the tests are posted to those taking them in early October by the council.

27. There is a follow up system where scores can be reviewed and where other factors can be taken into account by means of independent panels, in a typical year the council states that this system produces in the region of a further 2 per cent of the cohort who are eligible for selective places. This process is coordinated by the council and completed before the October 31 application date and those involved are informed of the outcome. These coordinated arrangements fulfil the expectation in the Code that parents and children will be informed of the outcome of tests before 31 October.

28. In the anticipation that they will have some unfilled places after the national offer day on 1 March 2013, the schools have determined as part of their changed arrangements that they will introduce a new set of tests in March and offer them to children who have been unsuccessful so far in gaining a selective place in the co-ordinated system. The timing of these tests is not compliant with the Code as described above because parents are not being given the results of the tests by 31 October to inform their application to schools. In addition, the schools' invitations to parents to offer the additional tests does not comply with paragraph 2.10 of the Code that states that schools must not contact parents about the outcome of their applications until after their offers have been received on 1 March. There may be a need to test children who move into the area after the application deadline of 31 October but this is different to retesting children who have already taken the selection tests. The co-ordinated system as set out in the Code allows all schools to plan their provision for the September in March on the basis of known pupil numbers for the following September admissions.

29. Turning to the nature of the tests, the Code at paragraph 1.31 requires admission authorities to ensure that tests are clear and objective. The governing bodies, in their role as admission authorities of the schools have given the testing process over to the council to administer on their behalf in the past. The detail of the testing is set out in the council's co-ordinated arrangements. The council's admissions booklet states that the Medway test is standardised to compensate for age and also points out that the Medway test provides a moderated review process to allow for special circumstances. The moderated review process is open to any parent who feels that there are particular circumstances relating to their child that needs to be looked at. Importantly, the review process takes place before the 31 October and is compliant with the timescales set out in the Code.

30. The adoption of the Medway test fulfils the Code's requirement for a test to be clear and objective. The schools' admission authorities have now decided to add two further tests to their arrangements. The first is the adoption of the Kent test which is managed in a similar way to the Medway test and which identifies the children in the top quartile of the cohort in Kent as suitable for selective schools. It is a clear test with objective outcomes. The second new set of tests adopted are the NFER tests, which will be administered by the schools. These tests are nationally recognised and as such are likely to fulfil the objective criterion; however, the schools have not described where the threshold will be for eligibility to the selective schools so the tests as applied are not clear. In addition to these two new tests, the schools' admission arrangements also refer to a headteacher assessment of SATS results in June as a further means of assessing whether a child is suitable for a selective place at the school. The threshold for this headteacher assessment is not clearly described and so it is impossible to judge if this is a clear and objective test.

31. Viewing the arrangements from a parent's or child's perspective I am concerned about the overall clarity and objectivity. Whilst the individual tests may be clear and objective, parents are now faced with a multi-faceted testing system. They could enter their child for the Medway Test and could follow this with a request for a review of the test if unsuccessful. They could enter their child for the Kent Test and again consider seeking a review if unsuccessful in reaching the standard. There is a new offer to take a Chatham Schools Test in March and lastly there is an option to have SATs results reviewed by the headteacher in June. I question whether this array of testing systems fulfils the Code's requirement in paragraph 1.31 for clarity and objectivity irrespective of the timing issues described above. A child could take three sets of tests and success is only required in one of them to bring eligibility to apply for a selective place at the schools. The threshold is defined in two of the tests but not in the third and in my opinion this removes the objectivity of the overall process.

32. Some children may wish to attend a school in their neighbouring authority because it is close to where they live and it is understandable that they may wish to have their eligibility within the Kent scheme applied by the schools without the requirement of taking an additional test. For this reason I can understand the schools' decision to adopt this test as a further measure of ability. The schools' should consider whether the fact that some parents will consider it advantageous to enter their child for both available tests is an unintended consequence of their decision.

33. As it appears to me that there are other aspects of the admission arrangements for these schools that appear not to comply with the requirements relating to admission arrangements, I have used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. These matters have been raised with the schools and they have promptly agreed to make the necessary changes to ensure compliance. They may make these changes immediately as a permitted variation under paragraph 3.6 of the Code:

- a. The oversubscription criteria for both schools include a criterion for children in public care. Paragraph 1.7 of the Code sets out the requirement and the schools should ensure that previously looked after children' are included in order to comply fully with the Code.
- b. Both schools include a distance criterion in their oversubscription criteria. The criterion needs to state clearly how this is measured using the guidance in paragraph 1.13 of the Code.
- c. In oversubscription criteria, the Code in paragraph 1.8 requires a tiebreaker to be included to decide between two applications that cannot otherwise be separated.
- d. Paragraph 2.6 of the Code applies to the admission arrangements for sixth form. The arrangements lack clarity and need to be drawn together in one place on the schools' websites. They should clearly show the PAN, the thresholds for admission and the oversubscription arrangements. The application forms need to be amended to ensure compliance with the Code at paragraph 1.9 and particularly sections g) and m) with removal of requirements for personal information and clarification that the schools are complying with the Code in respect of interviews and school references.

Conclusion

34. The first part of the objections concerned the consultation arrangements. Having carefully reviewed the information presented to me I have concluded that:

- the consultation did not include the notification of the parties set out in paragraph 1.44 of the Code. The information was available on the schools' and council's websites but the parties were not notified of this;
- the minutes of the meetings of two admission authorities do not show evidence that they determined their annual admission arrangements as they are required to do in paragraph 1.46 of the Code; and
- following the determination of their arrangements, the admission authorities published the new arrangements upon their websites but did not notify the appropriate bodies of the new arrangements as set out in paragraph 1.47 of the Code.

For these reasons I uphold the objection concerning the consultation arrangements.

35. The second part of the objection concerns the introduction of a new test for selection to be taken in March. The Code is clear in paragraph 1.32c about the timing of tests. Admission authorities must take all reasonable steps to inform parents of the outcome of tests before 31 October in the admission year. The plan to offer tests after 1 March in the offer year is not compliant with this aspect of the Code and for this reason I uphold this part of the objection.

36. The Code in paragraph 1.31 states that "tests for all forms of selection **must** be clear and objective and give an accurate reflection of the child's ability and aptitude irrespective of sex, race, or disability. It is for the

admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.” The admission authorities of the schools are now offering four different test methods: the Medway Test, the Kent Test, NFER tests arranged by the schools and lastly a headteacher assessment of SATS results. The offer of such a choice to parents presents an overall selection process that appears to have lost its clarity and objectivity and as a result appears not to comply with these elements of the Code. The adoption of the Kent test as an alternative to the Medway test is of benefit to children living near the edge of the council area if it can avoid the requirement for a child to take both the Medway and the Kent sets of tests.

37. Having carefully considered all the evidence provided, I uphold the objections to the consultation process and to the introduction of a new phase of testing following the national offer day in March.

Determination

38. 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 governing bodies of Chatham Grammar School for Girls and Chatham Grammar School for Boys.

39. I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 33 of this adjudication.

40. By virtue of section 88K (2) the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authorities to revise their admission arrangements as quickly as possible.

Dated: 14 December 2012

Signed:

Schools Adjudicator: David Lennard Jones