



## DETERMINATION

|                             |  |
|-----------------------------|--|
| <b>Case reference:</b>      | <b>ADA 2962, 2963 and 2964</b>   |
| <b>Objector:</b>            | <b>Lincolnshire County Council</b>   |
| <b>Admission Authority:</b> | <b>The David Ross Education Trust for King Edward VI Academy, Spilsby; Skegness Grammar School; and Charles Read Academy, Grantham</b> |
| <b>Date of decision:</b>    | <b>6 November 2015</b>   |

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for admission to Year 7 in September 2016 determined by the David Ross Education Trust for King Edward VI Academy, Spilsby; for Skegness Grammar School; and for Charles Read Academy, Grantham.**

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

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its arrangements within a specified timescale and in this case the revisions must be made by 28 February 2016.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), three objections have been referred to the Office of the Schools Adjudicator (OSA) by the school admissions manager for Lincolnshire County Council, (the objector), which is the local authority (LA) for the area. The objections concern the admission arrangements (the arrangements) for September 2016 for three schools (the schools) that are within the David Ross Education Trust (the trust). The schools are King Edward VI Academy, Spilsby, a partially selective academy for pupils aged 11-18; Skegness Grammar School, a selective academy for pupils aged 11-18; and Charles Read Academy, Grantham, an academy school for pupils aged 11 – 16. The objections are the same for each of the schools and concern the selection of a primary school that is within the academy trust as a feeder primary school

within the arrangements when there are other primary schools closer to the individual secondary schools that are not named as feeder schools.

### **Jurisdiction**

2. The terms of the funding agreement between the David Ross Education Trust which is the academy trust for the schools and the Secretary of State for Education require that the admissions policy and arrangements for the schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust, which is the admission authority for the schools, on the 15 April 2015 on that basis. The objector submitted the objections to these determined arrangements on 29 June 2015.

3. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to review the overall arrangements of each to the three schools.

### **Procedure**

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

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

- a. the objector's referral forms for each of the three schools and supporting documents together with follow up comments;
- b. comments from the trust in response to the objections;
- c. comments from the trust's legal advisers;
- d. the funding agreements between the Secretary of State for Education and the trust for these three schools;
- e. maps of the area identifying relevant schools;
- f. the minutes of the meeting of the trust on 15 April 2015 at which the arrangements for September 2016 were determined for these schools; and
- g. a copy of the determined arrangements for each of the three schools.

### **The Objection**

6. The objection is to the trust's use of feeder primary schools in its oversubscription criteria. The trust has decided to give priority for admissions at its secondary schools in Lincolnshire to children who attend a primary school that is also managed by the trust and located within travelling distance of the relevant school. The objection is that this is unfair because the feeder school is not the closest primary school to the secondary schools and children who live closer to the secondary schools may not be allocated a place. The

objector considers that the selection of the feeder schools does not comply with paragraph 1.15 of the Code that says “*the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.*”

## **Other Matters**

7. When I reviewed the arrangements as a whole in the course of considering the objection, I noted that there were other matters that did not comply with the Code in each of the sets of admission arrangements. I raised these matters with the trust. The trust has taken legal advice and I have been assured through the trust’s legal advisers that these matters have been noted and I was informed how the trust proposes to address each matter. I have set out the matters for each of the schools below.

### **8. King Edward VI Academy, Spilsby**

- a. The school’s website displays the admissions policy for 2014/2015. The arrangements for 2015 and 2016 are not displayed and this is not compliant with the Code as set out in paragraph 1.47. The trust has said that it will ensure that the website includes the correct admissions arrangements with appropriate dates.
- b. In the arrangements for this school there is reference to ten boarding places for students who will live in the boarding accommodation at Skegness Grammar school. This does not comply with paragraphs 14 and 1.8 of the Code that require arrangements to be “*clear*”. It is unclear whether these places are allocated before, during or after the admission process and how these places are allocated. The trust has agreed to review this element of the arrangements.
- c. The school has a sixth form but the current sixth form admission arrangements are not clear and the published admission number (PAN) for Y12 is not included. The criterion about average point scores is not clear and suggests the allocation of places could be on a selective basis. The trust proposes to clarify the arrangements and to be clear what the entry requirements are for all applicants and that the PAN is 10.
- d. The trust has agreed to include a reference to the admission of children with an education, health and care plan or a statement of special educational need where the school is named on the statement or plan and confirm that a place will be allocated to these children. The oversubscription criteria for the sixth form include one for children with statements. However, although it is correct to confirm they will be admitted, this should not be a criterion.
- e. The trust has agreed to amend the first over subscription criterion to include looked after children and previously looked after children as required by paragraph 1.7 of the Code.

- f. The trust intends to simplify the definitions used for siblings and home address and clarify how the home to school distance is measured using straight line distances and the LA's computerised software measuring system.
- g. The arrangements are unclear about the nature of the 30 selective places available and it is unclear how these are allocated and what happens if there are insufficient applicants who have reached the required standard. The trust needs to clarify this in order to comply with paragraph 1.21 of the Code.
- h. The trust recognises that it needs to include provision for admission of children outside their normal age group to comply with paragraph 2.17 of the Code within the arrangements.
- i. The trust proposes to include a statement about the right to appeal.

## **9. Skegness Grammar School**

- a. The school's website displays the admissions policy for 2014/2015. The arrangements for 2015 and 2016 are not displayed and this is not compliant with the Code in paragraph 1.47. The trust has said that it will ensure that the website includes the correct admissions arrangements with appropriate dates.
- b. The trust has agreed to insert a statement clarifying that the PAN is 132, which includes up to 50 boarding places.
- c. The trust proposes to insert a statement confirming that all pupils who have a statement of special educational need or an education, health and care plan that names the school will be admitted.
- d. The information relating to the 11+ entry procedure is unclear and the trust has agreed to clarify this.
- e. The trust proposes to amend the first oversubscription criterion to include looked after children and previously looked after children.
- f. The trust intends to clarify the definition of siblings; include an explanation of the school's designated area for free transport; clarify the tie-breaker used and clarify how the home to school distance is measured by straight line distances measured using the LA's computerised software measuring system.
- g. The trust proposes to clarify the arrangements for entry to the boarding house and how the 50 places are allocated.
- h. The trust proposes to include reference to the right of appeal and to the establishment of a waiting list for places until the end of the autumn term.

- i. The trust recognises that it now needs to include provision for admission of children outside their normal age group to comply with paragraph 2.17 of the Admissions Code.
- j. The trust has agreed to amend the sixth form admission arrangements so that they are clear and include the PAN of 25, oversubscription criteria and the entry requirements for all students.

#### **10. Charles Read Academy, Grantham**

- a. The school's website displays the admissions policy for 2014/2015. The arrangements for 2015 and 2016 are not displayed. This is not compliant with the Code in paragraph 1.47. The trust has said that it will ensure that the website includes the correct admissions arrangements with appropriate dates.
- b. The trust intends to amend the first oversubscription criterion to include looked after children and previously looked after children.
- c. The trust proposes to simplify the sibling definition and the definition of 'home address and to clarify how the home to school distance is measured using straight line distances measured using the LA's computerised software measuring system.
- d. The trust also proposes to clarify the arrangements for appeals set out in the arrangements and to ensure that the arrangements for children of UK service personnel are clear.
- e. The trust recognises that it now needs to include provision for admission of children outside their normal age group to comply with paragraph 2.17 of the Admissions Code.

#### **Background**

11. The David Ross Education Trust includes over 30 academies in seven different local authorities in the East of England. The trust is the admissions authority for the schools in the multi-academy trust and has decided that the admission arrangements for each of the schools will be determined by the academy trust rather than by the individual school governing bodies. The three schools that are the subject of the objections in this determination are located in Lincolnshire. The arrangements for the three schools were determined by the trust on 15 April 2015 and the oversubscription criteria for the schools are as follows:

#### **12. King Edward VI Academy, Spilsby**

There are 94 places available and the numbers of applicants this year are about the same number as the places available. The school is described as a bi-lateral school with 30 of these places allocated to those reaching the qualifying standard in the Lincolnshire grammar school tests. In addition the arrangements set out an understanding with Skegness Grammar School where up to ten pupils may live in the grammar school boarding facility and travel to Spilsby on a daily basis which I am informed that the school intends

to review. The following over subscription criteria will be applied if there are more applicants than places available:

1. The child is in the care of the local authority or had previously been in care
2. Those with a sibling at the academy
3. Boarders seeking accommodation at Skegness Grammar School boarding house in Wainfleet for mainstream education.
4. Those currently attending Hogsthorpe Primary Academy
5. Other children prioritised by shortest driving distance from the home to the academy.

Over subscription criteria for boarding places

Where the number of applications for boarding places exceeds ten students, the following criteria will be applied:

1. The child is in the care of the local authority or had previously been in care
2. Children of members of the UK Armed Forces who qualify for Ministry of Defence financial assistance with the cost of boarding fees;
3. Children with a 'boarding need' who are siblings of boarding children in attendance or due to attend boarding provision at Skegness Grammar School during the same year of entry.
4. Other children with a boarding need.

Sixth Form admissions

King Edward VI Academy organises sixth form education through a partnership with Havelock Academy in Grimsby which is another academy in the David Ross Educational Trust. All applicants need to meet the academy's overall academic standards for admission to the sixth form and any specific requirement for the particular subject. Students attending pre-17 at King Edward VI are regarded as internal applicants who will automatically transfer to Sixth Form, provided that they meet the academic criteria of 5 A\*-C GCSE grades, including English and Mathematics. If there are more applicants than places then applicants will be offered places in the following order:

1. The child is in the care of the local authority or had previously been in care
2. Students with a statement of special education need
3. Students who have attended King Edward VI Academy pre-17
4. The grade achieved in the relevant subject or subjects, or for those subjects not available at GCSE, a relevant subject specified in the academy's sixth form brochure
5. The average points score achieved across all GCSE subjects taken by the applicant
6. Driving distance from home to academy, with the applicant living nearer to the academy having priority.

### **13. Skegness Grammar School**

There are 132 places available and the school is typically undersubscribed. If there are more applicants than places the following oversubscription criteria are applied. The school has a boarding facility with 50 available places, ten of which are used by pupils at King Edward VI Academy, Spilsby as described above.

1. Looked after and previously looked after children if they have reached the required standard for entry.
2. Eligible children whose permanent address is within the school's designated area for free transport with priority being given to the order of their total scores in the entrance tests.
3. Eligible children who have a sibling registered at the school at the time of application.
4. Eligible children who currently attend Hogsthorpe Primary Academy.
5. Eligible children from all other areas with priority being given to the order of their total scores in the entrance tests.

### **14. Charles Read Academy**

The published admission number for Year 7 is 55 and the school is typically undersubscribed. Children with a statement of special educational needs or an education, health and care plan naming the school will be allocated a place and if required the following oversubscription criteria will be applied:

1. Looked after or previously looked after children
2. Children with a brother or sister at the academy who will still be attending when the child is due to start.
3. The child is attending Ingoldsby Academy
4. The distance from the child's home address to the academy.

15. The school's legal adviser informed me that "*the trust carried out a consultation on the changes to the admission arrangements for all 3 academies through Lincolnshire, the local authority (LA). The consultation officially took place for 8 weeks from 1 January 2015, but the proposed arrangements were placed on the admissions consultation page of the LA's website between Christmas and New Year. The LA notified all neighbouring and other close LAs of the consultation process and put out a press release.*"

16. The trust considered a paper about admissions in its schools at its meeting on 15 April 2015. The paper set out the changes proposed to the arrangements for some of the schools in the trust. The changes were agreed and in making this decision the trust believed that it was determining the arrangements for the schools under consideration here.

### **Consideration of Factors**

17. I shall deal first with the objections that have been made and then comment on the other matters that have come to my attention. There were three objections, but they deal with the same point for each of the schools and in order to avoid unnecessary repetition I have decided to write one determination that applies to the three cases rather than three separate determinations.

18. The objector is concerned that the trust has decided to name a feeder school for each of these three secondary schools. The feeder schools are the primary schools in the David Ross Education Trust that are closest to the secondary school and within a reasonable travelling distance to the school. Hogsthorpe Primary Academy is named as the feeder school for Skegness Academy and King Edward VI Academy. It is 5 miles from Skegness Grammar School and 9 miles from King Edward VI Academy. Ingoldsby Academy is named as the feeder school for Charles Read Academy, the distance between them is 3.5 miles. Both these primary schools are relatively small schools.

19. The objection is that the selection of feeder schools is unfair because the feeder school is not the closest primary school to the secondary schools and so children who live closer to the secondary schools may not be allocated a place. The objector considers that the selection of the feeder schools does not comply with paragraph 1.15 of the Code that says "*the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.*"

20. The trust's response is that it "*offers unique opportunities to all pupils at all stages of their educational development. As the Trust develops it wishes to be able to offer a full education to children from 3 to 19 in our academies where we are able to make such provision. A child who attends a trust primary school should be able to progress to a trust secondary school where geography and capacity permit, which will make the transition from primary to secondary academy smoother and open up a full range of linked opportunities.*" To pursue this aim, the trust has named the primary school in the trust with the best geographical link to the secondary schools.

21. In 2013 there were no children who transferred from Hogsthorpe Primary Academy to King Edward VI or Skegness Grammar schools. In 2014, two children transferred to King Edward VI and none transferred to Skegness Grammar and in 2015 no children transferred to either school. In 2015, two children transferred from Ingoldsby Academy to Charles Read Academy and in 2013 and 2014, one child transferred.

22. I have considered these arguments in the context of the Code. The issues concern whether or not the use of these primary schools as feeder schools is "*fair*" (paragraph 14 and 1.8 of the Code) and whether the choice of the schools is "*transparent and made on reasonable grounds*" (paragraph 1.15 of the Code). I shall first consider the issue of fairness.

23. The two primary schools concerned are small primary schools and the number of pupils transferring from one of them to one of these secondary schools has been at most two in the last three years. Two of the secondary schools have been undersubscribed and the third has about the same number of applicants as places available so there is little competition for places and the chance that a child has been treated unfairly so far is small. If all the pupils from the named feeder schools sought places at one of the secondary schools and the secondary schools were oversubscribed then it is likely there would be children who lived closer who might not be able to gain a place. However, even in this scenario I do not think that a child who cannot gain a



place is being treated unfairly since it is for the admission authority to set its admission criteria and determine the priorities in a case of oversubscription. The Code permits the selection of feeder schools and does not require that children should be able to attend their local school, however desirable that this might be. I do not consider, therefore, that the use of a feeder school is in itself unfair.

24. I now consider whether the selection of these feeder schools is transparent and made on reasonable grounds. The trust has been clear that it wishes to create a situation where children who begin their education in a school within the trust can continue in a trust secondary school if they wish. This is a transparent argument and one that in my view meets the requirement of the Code for transparency.

25. The grounds on which the feeder school in each case has been selected are that the primary school is the nearest trust primary schools to the secondary school. The trust says *“it wishes to be able to offer a full education to children from 3 to 19 in our academies where we are able to make such provision and that a child who attends a trust primary school should be able to progress to a trust secondary school where geography and capacity permit, which will make the transition from primary to secondary academy smoother and open up a full range of linked opportunities”*. I would expect to see a greater relationship with a feeder school than with other local primary schools and I do not think that what is being said demonstrates this. The trust is not describing more than would be the case for the effective transition for a primary school pupil to any secondary school. So the grounds that the primary school and the secondary schools are trust schools does not in my view make the reasonable grounds for the primary school to be a feeder school. This view is strengthened by the fact that Hogsthorpe Primary Academy is named as a feeder school for two of the secondary schools. My view might have been different if there were some additional grounds, such as linked curriculum planning, shared resources, arrangements for primary school pupils and staff to visit the secondary school to aid in transition or visits to the primary school by secondary school staff to support transition or the curriculum. On the basis of the information that has been made available and for the reasons given I do not think that the selection of the feeder schools has been made on reasonable grounds and I uphold this aspect of the objections made.

26. I now turn to other matters. The trust described the consultation process that it had carried out concerning the addition of feeder schools. It received one response for each school, which was from the LA. It said that it asked the LA to undertake the consultation on its behalf and that the consultation was placed on the LA’s consultation website. I observe that the Code in paragraph 1.42 says *“the admission authority **must** undertake consultation if change is proposed”*. If the trust asks the LA to undertake the consultation it remains the responsibility of the trust to ensure that the consultation meets the requirements of the Code. Paragraph 1.44 of the Code sets out the parties with whom an admission authority must consult. I do not consider that simply placing the proposed changes on the LA’s consultation website complies with this requirement. A press release was issued, but I think it is unreasonable to consider that parents of children aged two to eighteen or other admission

authorities in the relevant area can be expected to monitor websites to check for changes without some more direct means of drawing their attention to the consultation. There were no responses received from parents or from other admission authorities for any of these three consultations. The trust might wish to consider if one possible reason for this lack of responses was because parents and other admission authorities in particular were unaware that changes were being consulted upon.

27. Having consulted upon the changes the trust received a paper that summarised responses and made recommendations about the changes. The minutes say that the paper was discussed and agreed and in doing this the trust believed that it had determined the arrangements for the schools. I accept that this was the trust's intention however I do not consider that this process adequately met the Code's requirement in paragraph 1.46 for the admission authority to "*determine (formally agree)*" the admission arrangements. The trust did not receive a draft set of arrangements for each of the schools that it could formally agree. It is required to determine each of its school's arrangements annually.

28. There are other matters in these arrangements for each school that do not comply with the Code. I have drawn these to the attention of the trust and the trust has indicated how it intends to address these matters. I have set these matters out above in paragraphs 7 - 10.

## **Conclusion**

29. On the basis of the information that has been made available and for the reasons given above I have concluded that the selection of feeder schools has not been made on reasonable grounds and I uphold this aspect of the objections made.

30. In reviewing the arrangements as a whole, using my power under section 88I of the Act, I have drawn attention to issues concerning the processes for consultation and determination of the arrangements for the individual schools that do not comply with the Code.

I have also set out a list of other matters that do not comply with the Code for each of the school's admission arrangements. The trust has responded positively to these comments and has set out how it intends to amend the arrangements in each of the schools so that they comply with the Code.

31. Paragraph 3.1 of the Code says that "*admission authorities must, where necessary, revise their admission arrangements....within two months of the decision unless an alternative timescale is specified...*". In the responses to my enquiries from the trust's legal advisers it is clear that the trust is proposing to make some changes to its arrangements that will require consultation as specified in paragraph 1.44 of the Code. It will not therefore be possible to make all the changes required within two months and so in order to give the trust time to consult properly on those matters that require consultation; I determine that the changes must be made by 28 February 2016.

## **Determination**

32 .In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements for admission to Year 7 in September 2016 determined by the David Ross Education Trust for King Edward VI Academy, Spilsby; for Skegness Grammar School; and for Charles Read Academy, Grantham.

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

34. 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 a specified timescale and in this case the revisions must be completed by 28 February 2016.

Dated: 6 November 2015

Signed:

Schools Adjudicator: David Lennard Jones