



Determination

Case reference:	ADA3583
Objector:	A member of the public
Admission authority:	The academy trust for The Harvey Grammar School, Folkestone, Kent
Date of decision:	12 November 2019

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2020 determined by academy trust for The Harvey Grammar School, Folkestone, Kent.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the way set out in this determination.

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 admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2020.

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 The Harvey Grammar School (the school), a selective academy school for boys aged 11-18, for September 2020. The objection is to two aspects of the process for selecting pupils as eligible for a place at the school, namely, the "Headteacher Assessment panel" part of the test operated by the local authority and the use of a second test by the school.

2. The local authority (LA) for the area in which the school is located is Kent County Council. The LA is a party to this objection. Other parties to the objection are the academy trust for the school and the objector.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust (known as the governing body), which is the admission authority for the school, on that basis. The objector submitted her objection to these determined arrangements on 14 May 2019. 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 consider the arrangements as a whole.

Procedure

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

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

- a. a copy of the minutes of the meeting of the governing body at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 14 May 2019;
- d. the school's response to the objection;
- e. the LA's response to the objection;
- f. details of the Kent Test and the Headteacher Assessment process provided by the LA;
- g. information about the selection process on the school's website;
- h. papers submitted by the objector from the National Institute Economic Review and the 'Kent Independent Education Advice' website;
- i. the LA's response to a Freedom of Information (FOI) request submitted by the objector;
- j. data relating to the results of the Kent's Procedure for Entrance to Secondary Education and the school's own selection test; and

- k. a determination of the Schools Adjudicator concerning Dover Grammar School for Boys (ADA3303) that was issued in August 2017.

The Objection

6. The objection covers two matters. First, the objector argues that the Headteacher Assessment panel part of the LA's Procedure for Entrance to Secondary Education (PESE) does not meet the requirements relating to admissions. She says that a "*quota system*" is used in different parts of the county. As a result, the process is not "*fair, clear and objective*" and parents cannot "*understand easily how places...will be allocated*", as required by paragraph 14 of the Code.

7. Second, the objector says that the school does not make clear that the reason it uses two tests for entry to the school (the PESE and the school's own procedure, the "Shepway Test") is because the Shepway Test "*is selecting lower down the attainment scale.*" She believes it is unfair that the school is using "*a more complicated admission system than is necessary*" and that holding the Shepway Test on a Saturday discriminates against some families, contrary to paragraph 1.8 of the Code.

Other Matters

8. The determined arrangements say that boys with a statement of special educational needs, who meet the entry requirements, will be admitted, but do not make a similar reference to boys whose Education, Health and Care (EHC) plan names the school, as required by legislation summarised in paragraph 1.6 of the Code.

9. The holding of the Shepway Test on a Saturday, without an alternative date offered for those who could not sit it on that day, appeared to me to be potentially unfair and contrary to equalities legislation.

Background

10. The school has a Published Admission Number (PAN) of 150. As a designated grammar school, it selects its entire intake on the basis of high academic ability, as it is permitted to do. In order to be eligible to be considered for a place at the school, applicants must have either attained "*satisfactory scoring*" in a set of tests taken at the school, which I will refer to as the "Shepway Test", or be assessed as suitable for grammar school by the LA's PESE. In the event of oversubscription, priority is given first to looked after children and previously looked after children, followed by children resident in the local authority District of Folkestone and Hythe, which was previously known as Shepway. Within these criteria, distance from the school determines priority for places.

11. In respect of the Shepway Test, the arrangements state that,

"The tests used will be Verbal and Non-Verbal Reasoning Tests and tests set to address the National Curriculum Key Stage 2 targets in English and Mathematics.

The minimum scoring for entry will be that which will reasonably predict that at the end of Year 11 the candidate will attain qualifications sufficient to embark on Sixth Form studies at the school, given the curriculum through the school with its particular spread of subjects, time allocation to them and style of delivery. It is anticipated that this level will correspond approximately with that which would be attained or exceeded by 25% of the age group nationally.”

The Shepway test includes a creative writing exercise that is marked and forms part of the assessment.

12. In common with all of the grammar schools in Kent, the school takes account of the result of the LA's PESE. Although the LA is not the admission authority for many grammar schools in the county, including the Harvey Grammar School, it co-ordinates the PESE on behalf of the schools. The PESE comprises two distinct parts:

- (i) a series of three multiple-choice tests, in reasoning, English and Maths, and a writing exercise; and
- (ii) a Headteacher Assessment panel (HTA) to which children who did not reach the required standard in the multiple-choice tests can be referred by their primary school's headteacher.

From the tests taken in 2018 for entry into secondary school in 2019, in order to be given a “*grammar school assessment*”, children needed a total score of 323 or more from the three multiple-choice tests, with no single score lower than 107. The writing exercise is not marked or taken into account in the first part of the PESE but is considered by the HTA panel. Although it appears that the term is sometimes used for the whole of the PESE, I shall refer to the three multiple-choice tests as the “Kent Test”. Children can be assessed as suitable for a grammar school either through their scores in the Kent Test or by an HTA panel. This qualifies them for consideration for a place at grammar schools in Kent but does not guarantee a place at a particular school. When there are more applications from eligible children than places available, grammar schools apply oversubscription criteria, including giving priority to children who live in a catchment area and, in some cases, giving priority to children whose score in the Kent Test exceeds a higher threshold than 323.

Consideration of Case

Headteacher Assessment panels

13. I will consider the two parts of the objection in the order in which they appear on the objection form. The first of these concerns the HTA. Although this part of the selection process is administered by the LA with no input from the school, the school relies on the outcomes in allocating places. The HTA therefore forms an integral part of the school's admission arrangements and it is accordingly within my jurisdiction to consider it in the context of an objection to the school's arrangements.

14. The objector’s reason for believing that the HTA does not comply with paragraph 14 of the Code is that,

“a quota system appears to be in operation giving children in some areas more chance of passing the test than in others.”

HTA panels meet in four areas of the county. The objector has provided information, which can be found in an article on the ‘*Kent Independent Education Advice*’ (*Kent Advice*) website that she asked me to take into account, about the numbers of HTA referrals and the proportion that were successful in each area in 2018. The figures are shown in Table One.

Table One: Headteacher assessments 2018.

Area	HTAs considered	HTAs upheld	Proportion upheld
East Kent	983	615	63%
Mid Kent	657	325	49%
North West Kent	390	251	69%
West Kent	275	112	41%
TOTAL	2305	1323	57%

The panels consider referrals from primary schools in their area. The LA explains that each panel *“takes responsibility each year for a share of referrals from outside Kent on a broadly geographical basis.”* HTA referrals from schools in Folkestone and Hythe are heard by the Mid Kent panel.

15. The objector points to the higher proportion of successful referrals in East Kent, compared to West Kent. She says, *“The same pattern occurs each year.”* In subsequent paragraphs, she makes the following assertions,

“I believe this is because the panels ‘top up’ the % passing in each area to fit need. More pupils pass through a genuine pass score in affluent West Kent than in poorer East Kent. This means the HTA panels in East Kent must find more pupils selective. This quota system means there is no ‘objective’ reassessment of ability.”

“The area-wide Kent Test, using scores is objective in its assessment, as the same child sitting a test in East Kent clearly has as much chance of passing in West Kent. However the same child getting the same narrow fail in West Kent would be less likely to pass if it happened there due to this panel quota system.”

16. The objector concludes this part of the objection in this way:

“At the very least the numbers of this process should be revealed openly, so that parents can understand how this works. Then they could see that each panel has a

greater or lesser hit rate of turning a test fail to a pass. This would fulfil the part of the code that says parents should understand the admission system.”

17. In later correspondence, the objector also alleges that there is,

“inconsistency in the way panel [sic] assess pupils based on gender (girls are passed by the HTA panel more than boys)... and disadvantage/advantage (higher proportion of disadvantaged pupils are passed, a low percentage of privately educated pupils are passed)”

These points are not developed further. It appears to me that they raise the same issues as the objection that a quota is applied in each area, that is, that the decision-making of HTA panels is not fair and objective.

18. The LA categorically denies the objector’s claim that HTA panels are asked to work to any form of *“quota system.”* In a response to a FOI request made by the objector, which she supplied to me, the LA said,

“Panels are not given “a quota of places to fill”. Through primary school referrals, the HTA process looks in finer detail at children whose scores are close to the threshold, children whose scores may not be representative and children who cannot be assessed through testing. The process considers children’s suitability for a grammar school education, irrespective of the number of grammar school places available in an area. A grammar assessment does not guarantee a grammar place.”

The LA says that panel chairs are briefed as to the proportion of pupils in each area who have been successful in the Kent Test. It explains this practice by saying that panel members *“find it helpful to put performance in an individual area, or an individual school in context.”*

19. The LA does not deny that the overall purpose of the PESE is to select around 25 per cent of the cohort of Kent children who are deemed eligible for grammar school. It says that this figure is *“the level of selection historically agreed by the County Council.”* This, in itself, is not a matter for criticism; a system of selection is intended to identify a proportion of children for whom a grammar school education is appropriate. The objector’s concern is that the LA uses the HTA to *“top up’ the % passing in each area to fit need”* and, in order to achieve this, the process does not apply the same objective standard across the county as a whole .

20. I should comment at this point that if the LA did operate an area quota system, I would not regard that of itself as contrary to the Code. It could be stated clearly that the purpose of the panels is to identify the pupils most suited to a grammar school place until, for the sake of argument, 25 per cent of the cohort had been reached in each area of the county. The LA, as stated above, makes clear that the HTA does not operate in this way.

21. Elsewhere in the *Kent Advice* article, figures can be found showing the proportions of children in the districts of Kent, who either passed the Kent Test or were deemed selective

by HTA panels. These figures, which are shown in Table Two, are not broken down by the same areas as in Table One. It should be noted that around 62 per cent of children transferring to secondary school in Kent take part in the PESE. The figures in Table Two show the proportions of all children transferring to secondary school, including those who did not take part in the PESE.

Table Two: Proportions of pupils deemed selective in districts of Kent

District	Percentage passing Kent Test	Percentage success at HTA	Total percentage deemed selective
Sevenoaks	26	4	30
Ashford	17	6	22
Canterbury	16	11	27
Dartford	22	5	27
Tonbridge & Malling	22	5	27
Tunbridge Wells	24	3	27
Maidstone	17	7	24
Ashford	17	6	22
Gravesham	16	5	21
Swale	12	9	21
Dover	14	6	20
Thanet	11	8	19
Folkestone & Hythe	13	4	16
TOTAL	19	6	25

In its response to the FOI request, the LA explains that there is not an exact match between the areas served by the HTA panels and the districts of Kent. However, broadly speaking, the East Kent panel considers referrals from primary schools in Canterbury, Dover, Swale and Thanet and the West Kent panel covers Tonbridge and Tunbridge Wells.

22. The figures in Table Two support the objector’s argument to some extent. A higher proportion of children from districts in East Kent is successful at HTA panels than in Tonbridge and Tunbridge Wells. However, the overall proportions of children deemed selective across the county still varies significantly, once the HTA assessments are taken into account, with nearly twice as many children in Sevenoaks being deemed selective, compared to Folkestone and Hythe, where Harvey Grammar School is located. It is not the case, of course, that being deemed selective will guarantee a pupil a place at a particular school, as each selective school in Kent has its own oversubscription criteria, which in some cases give priority to pupils who have achieved a higher threshold score than the “pass mark” in the Kent Test.

23. Despite the differences in the proportions of pupils that are successful at HTA panels between areas of the county, the LA makes clear in its response to the FOI request, in similar terms as it used in answering my enquiries, that,

“The process considers children’s suitability for a grammar school education, irrespective of the number of grammar school places available in an area.”

Therefore, the LA is confirming that there is a common standard that represents a pupil’s eligibility for a grammar school place, and that this is not affected by where a pupil lives.

24. The LA emphasises that the HTA panels are not undertaking a “review”; rather they form part of the initial assessment process as they take place before decisions about pupils’ eligibility to attend a grammar school are conveyed to parents. This means that, as well as meeting the requirements of paragraph 14 of the Code, the HTA process must also satisfy paragraph 1.31, which states that,

*“Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child’s ability”*

23. The objector argues, in effect, that the data on successful HTA referrals demonstrate that different standards operate in different parts of the county and thus the process is not objective. I note, however, that other explanations for the different rates of success at HTA panels in different parts of Kent may be possible, including demographic considerations and the availability and usage of out-of-school tutoring to assist in preparation for the Kent Test. In my view, it is appropriate, therefore, for me to examine the HTA process itself, in order to establish whether it meets the Code’s requirements, rather than solely considering the objector’s or any other possible explanations of the data.

24. The decision to refer a pupil who has not been successful in the Kent Test to the HTA panel is made by the headteacher of the primary school the pupil attends. It is the responsibility of the headteacher alone to make referrals. Parents are not involved in the process, as they are not aware at this stage of their child’s result in the Kent Test. The objector expresses concern about the reliance on the headteacher making a referral. She notes that a large number of referrals are regularly made by some primary schools, whilst others tend to make few or none at all. She suggests that this might reflect the lack of a common understanding amongst headteachers or even different attitudes to selective education, which compromises the objectivity of the process.

25. The LA accepts that there are differences in the proportions of pupils referred to HTA panels by headteachers but believes that this reflects the variations in the numbers of pupils for whom a referral is appropriate. The LA says that it gives headteachers clear instructions in documentation provided both at the beginning of the selection process and when the results of the Kent Test are issued to them. The LA has supplied me with extracts from these documents. In my view, they set out clearly the matters that headteachers should take into account when deciding whether or not to refer a pupil to an HTA panel.

26. Nevertheless, the decision as to whether to make a referral lies, as the LA says, with the “*professional judgement*” of headteachers. I have no doubt that many headteachers are extremely experienced and skilled in making such judgments, but I have not been made aware of any specific opportunities for training for heads or for them to compare their judgments. I asked the LA if it had considered automatically referring to HTA panels pupils who had very narrowly missed passing the Kent Test. The LA said that it had not. It believes automatic referral would “*dispense with professional judgement*” and create logistical problems, as there would be likely to be a larger number of referrals.

27. At the meeting of the panel, evidence is provided by the headteacher to support a judgment that the pupil is “*of grammar school ability*.” The referral form indicates the types of evidence that can be put forward, including results from standardised tests, work carried out at school in the past six months and any relevant medical information. The writing task that the pupil undertook as part of the Kent Test automatically forms part of the panel’s scrutiny. This has not been previously assessed, as it is not taken into account when compiling the results of the Kent Test.

28. I asked the LA if any written guidance is provided for panel members to assist them in coming to their judgment. There is not. The LA’s view is that,

“Panel members are educationalists working together, and the Council entrusts this stage of the process to their professional judgement.”

There is also no specific guidance, such as a mark scheme or exemplar material, relating to the written task, in order to guide panels as to what would represent the work of a pupil of grammar school ability. The LA argues that this would be inappropriate as the written work of pupils who have passed the Kent Test has not been assessed.

29. The LA explained to me that the HTA panels for each area of the county undertake a moderation exercise prior to making their assessments, “*to assist consistency in decision-making*.” The panel members work in sub-groups and if a group has difficulty in reaching a consensus, the chair can refer the evidence to another group. There is no planned moderation activity between the panels for different areas of the county, although it is possible that panel members may have served on different areas’ panels over time.

30. The objector believes that the HTA process does not meet the Code’s requirement for objectivity. She has submitted an academic paper that she co-authored with Professor Rebecca Allen, published in the National Institute Economic Review, that analyses the selection process in Kent. This asserts that,

“headteacher panels make these highly subjective judgements on pupils.”

The implication of paragraphs 14 and 1.31 of the Code is that subjective judgments must have no place in the practices used to decide the allocation of school places.

31. I am not in entire agreement with the paper’s assertion. The HTA process relies heavily, as the LA admits, on the “*professional judgement*” of those who can be described

as experts in these matters. I consider that it is not necessarily the case that such a judgment should be considered “*subjective*.” The Code does not define the term ‘*objective*’. In the context in which it appears in the Code, I consider that it should be given its ordinary meaning, that is, that where decisions have to be made that impinge on the allocation of school places, those decisions should not be influenced by personal opinions or feelings and it should not be the case that they might reasonably be made differently by different people. This does not mean, in my view, that a decision cannot be considered objective if it relies on an element of professional judgment, but it is vital that such judgment is exercised within a framework that ensures as high a level of consistency as possible.

32. Referrals to HTA panels are made by headteachers, who know their pupils well and have come to a judgment that they should be considered eligible for a grammar school place. The panels’ decision-making is based on prescribed evidence and is underpinned by a wealth of experience. Panel members have no vested interest in the decisions that are made. Some moderation of decision-making is built into the process. All of these factors support consistency in decision-making. I consider that it would be possible for the LA to do more in terms of the guidance it provides for panel members in interpreting the evidence and assessing it against the standard of “*grammar school ability*” that is not, and perhaps cannot be, precisely defined. Opportunities for moderation exercises between panels in different areas of the county may well be of benefit in this respect, giving increased confidence that panels in West Kent and East Kent, for example, share a common understanding of the selective standard.

33. It is impossible to prove conclusively that different standards are applied by panels in different parts of Kent. Although it appears to me that there are shortcomings in the process, I have come to the conclusion that, on balance, the use of HTA panels does meet the requirements of fairness and objectivity in paragraph 14 of the Code and that, as part of selection testing, it contributes to giving “*an accurate reflection of the child’s ability*”, as required by paragraph 1.31. Furthermore, I do not believe that parents cannot understand easily how places are allocated. Two further considerations add weight to my conclusions. First, I note that the Appeals Code in paragraph 3.12 describes a process that it terms a “*local review*.” Such a process, the Appeals Code says, is operated “*to determine whether children who have, for example, failed the entrance test ought to be deemed as being of grammar school standard*.” Paragraph 3.13 of the Appeals Code requires School Admission Appeal Panels to “*consider whether each child’s review was carried out in a fair, consistent and objective way*.” This leads me to conclude that processes such as the HTA are clearly within the contemplation of the legislature.

34. Second, the Code, in paragraph 1.16, allows the inclusion of “*social and medical need*” as an oversubscription criterion. Admission authorities must give clear details of the supporting evidence they require, which may include a letter from an appropriate professional, such as a doctor or a social worker, “*and then make consistent decisions based on the evidence provided*.” Admission authorities will, in this respect, take into account the judgment of an appropriate professional. It appears to me that this is analogous to the role played by HTA panels.

35. I do not uphold this aspect of the objection.

The use of the Shepway Test

36. The objector expresses a number of concerns about the school's use of the Shepway Test that she believes indicate that its use by the school does not comply with the Code. These can be summarised under three headings:

- the school offers the test without a “*clear explanation*” that its purpose is “*to fill all available places*” as “*not enough local children pass the county-wide Kent Test*”;
- it is not fair to use a more complicated admission system than is necessary to achieve the school's aims; and
- it is problematic that the Shepway Test is held on a Saturday, in contrast to the Kent Test that takes place during school hours.

37. I shall consider these three aspects of this part of the objection in turn. In respect of the first of the headings, the objector says,

“If parents are told the second test is likely to be easier then they can make a straightforward judgement about entry routes to the school.”

That parents are not told that the Shepway Test is “*easier*” is, she maintains, a breach of paragraph 14 of the Code, which states that,

“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

She says that it “*seems unreasonable*” that it is not explained to parents that the reason for the two tests is that “*one test is selecting a different attainment standard than the other.*”

38. Central to the objector's argument, therefore, is her assertion that the Shepway Test is “*easier*” than the Kent Test and that its aim is “*to select pupils with a slightly lower attainment level.*” The school does not accept that this is the case. It says that the objector's claim is “*without any basis of evidence*”. The Shepway Test, it believes, “*is simply a different test.*” For example, it includes a creative writing exercise, which the Kent Test does not. The school explains that,

“when the Shepway Test was devised, we worked closely with the University of Durham to devise a test that would minimise the impact of tutoring that favours more affluent families over those from more disadvantaged backgrounds. The outcome of this is that in the past three years we have admitted 73 boys from disadvantaged backgrounds, when in the last three years of entry through the Kent test procedure only it was 37. A more level playing field has allowed more disadvantaged families an opportunity to access a selective education in Folkestone and Hythe.”

The school draws attention to its OfSTED inspection report (2016), which described the additional test as “*visionary*.” The school argues, in respect of comparing the relative difficulty of the Kent and Shepway Tests,

“there is no definitive way of proving that one way or another.”

39. The LA has provided me with data showing the outcomes of both the PESE (Kent Test and HTA) and the Shepway Test for those pupils who were allocated a place at the school for September 2019, which I have summarised in Table Three.

Table Three: Pupils allocated places at Harvey Grammar School for September 2019

TEST OUTCOMES	NUMBER OF PUPILS
Pupils assessed as eligible for grammar school by PESE and Shepway Test	73*
Pupils assessed as eligible for grammar school by PESE but assessed as not suitable for grammar school by Shepway Test	10
Pupils assessed as eligible for grammar school by PESE who did not take the Shepway Test	4
Pupils assessed as not suitable for grammar school by PESE but assessed as eligible for grammar school by Shepway Test	62
Pupils assessed as eligible for grammar school who did not take the Kent Test	0
TOTAL	149

**Includes 16 pupils who were assessed as eligible for grammar school by PESE as a result of HTA.*

The figures show that a significant number of pupils (62) were assessed as eligible for grammar school as a result of the Shepway Test having not been assessed as suitable for grammar school by PESE. There were ten pupils for whom the opposite was the case.

40. The school reports that overall 356 boys took the Shepway Test and 196 were assessed as eligible for grammar school, that is, 55 per cent. Of course, not all of the boys assessed as eligible for grammar school by the Shepway Test obtained a place at Harvey Grammar School, no doubt due to either their parents’ preferences or the operation of the school’s residence and distance oversubscription criteria. By way of comparison, figures in the *Kent Advice* article indicate that around 41 per cent of pupils living in Kent who were entered for the PESE for admission in 2019 were deemed eligible for grammar school. The figure for Shepway was lower than this for, as Table Two shows, the Folkestone and Hythe area had the lowest proportion of pupils deemed eligible for grammar school through the PESE.

41. Taken together, these figures lend some weight to the objector’s contention that the Shepway Test selects some pupils “*with a slightly lower attainment level*” than the PESE

does. 62 of the 149 pupils allocated places at the school for September 2019 were not assessed as eligible for grammar school by the PESE. Overall, a higher proportion of pupils is assessed as eligible for grammar school by the Shepway Test than by the PESE. According to the objector, as this key difference is not made clear to parents, the school is in breach of paragraph 14 of the Code.

42. The school is adamant, though, that it is not the case that the Shepway Test is easier. It says that its purpose is different to the Kent Test,

“we introduced our test as a way of giving those from disadvantaged backgrounds in our local community the best chance possible of gaining access to a selective education.”

The references in the quotation in paragraph 38 above to *“minimis[ing] the effect of tutoring”* and *“A more level playing field”* confirm to me that a key purpose of the Shepway Test is to identify pupils who are suitable for grammar school education that the Kent Test does not. The LA believes its HTA panels that serve this purpose, but comments,

“As children who have qualified through other tests are less likely to be referred to Kent’s HTA panel, it is hard to take a definitive view on the efficacy of either method of scrutiny.”

These may be the circumstances of a proportion of the 62 pupils assessed as eligible by the Shepway Test and not by PESE, that is, that they were not referred to the HTA panel.

43. It is, in fact, impossible for me to confirm conclusively whether the objector’s belief that the Shepway Test selects a lower level of attainment than the LA’s procedure is well-founded. She suggests a scrutiny of pupils’ SAT results might resolve the difference of opinion but, as the school points out, the structure of the SATs is different to the selection tests. As it happens, I do not consider that it is necessary for me to reach a definitive judgment on this matter. In order to comply with the part of paragraph 14 of the Code cited by the objector, the school needs to provide sufficient information about the testing process so that parents can make informed decisions and understand easily how they relate to the allocation of places.

44. The school’s website provides information about the admissions process. An information letter explains that *“it is possible to seek a place here at The Harvey Grammar School both through our own procedure, the Shepway Test, and through that of Kent County Council.”* The admissions arrangements, which are easily found, make very clear that to be eligible for consideration for admission to the school a pupil must either attain satisfactory scoring in the school’s own test or be selected for grammar school education by the LA’s procedure. A box headed *“How to apply”* instructs parents to register for both of the tests and recommends that they attend an *“Open Evening.”* The information letter states that at the open evening or a subsequent day visit,

“we will be able to answer any questions you may have regarding our entry process.”

45. I consider that the information published by the school makes clear how the selection process operates. The implication of the instruction that parents should register their child for both tests, which is not strictly speaking necessary, is that both tests should be taken. The objector does not cite any specific evidence that parents have misunderstood how the testing or admissions system works or have been misled in any way. It seems unlikely to me that this would be the case. However, whilst, of course, I do not know what questions may be raised at the open evening and how they might be answered, there appears to be nothing published by the school that explains that a significant number of pupils who are not assessed as eligible for grammar school through the PESE are eligible for a place at The Harvey Grammar School through their results in the Shepway Test. The objector believes this information should be published in information for parents, in order for the arrangements to comply with paragraph 14 of the Code. I can certainly see that such information might be helpful to parents but, on balance, I do not consider that it is absolutely necessary for the school to publish it. A plain reading of paragraph 14 requires admission arrangements to make clear how the testing processes relate to the allocation of places in a way that parents can readily understand. In my view, the admission arrangements meet this requirement. There is no requirement to provide what might be termed contextual information about relative success rates in tests. Therefore, whilst I am inclined to agree with the objector that the school could do more to explain to parents how it believes that the Shepway Test is more tailored to local needs than the PESE, I do not find that the arrangements are in breach of the Code in this respect.

46. I turn now to the second aspect of the objection to the use of two tests, that is, that the process is unfair. The objector says that,

“If admission practices must be ‘fair, clear and objective’ then adding a second test, where it is not necessary to do so, and where there is already a test, easily accessible in every local primary school, would not seem to be fair. It is adding unnecessary complexity to the admission process.”

That admission practices must be fair is also a requirement of paragraph 14 of the Code.

47. The objector also says that the use of two tests involves additional expense for the school, diverting resources from other areas, such as *“books and staff.”* She believes that parents might also incur additional costs in preparing their children for two tests, although the school says that no preparation is necessary for the Shepway Test. She also says it will be doubly upsetting for children who *“fail tests twice”*. She concludes her objection by saying,

“I think openness is fair, and doing things in the interests of parents and pupils is fair... The fact two tests are being run with pupils likely to pass one and not the other is not very objective, even-handed or equitable.”

48. In response the school makes the point that it can choose the test it uses to select pupils. This is true, provided, of course, that the test meets the requirements of the Code. As an academy school, the academy trust determines its admission arrangements, including the procedures for testing. The school is not required to take into account the

PESE, although in common with all grammar schools in Kent, it chooses to do so. It explains,

“If we were to choose the Shepway Test as our one means of selection, the vast majority of families would be likely to continue to sit both the Kent test and our own as the Kent test would offer the opportunity to access a selective education in other local grammar schools.”

49. The objector suggests that a better alternative would be for the school to allocate places on the basis of scores achieved in the Kent Test, by setting a threshold for eligibility for a place at a lower score than the benchmark of 323 marks set by the LA. She notes that elsewhere in Kent, there are schools that set a higher threshold than 323, within their oversubscription criteria.

50. In its comments on the objection, the LA expresses concern about the objector’s suggestion:

“Certain local grammar schools have chosen to include more than one assessment process in their arrangements, which (regardless of the view of the Council) produces an outcome satisfactory to the school and to parents, as it increases the number of children deemed suitable for admission. If individual grammar schools instead chose to use Kent’s assessment process but ignored the assessment it produced, they would reasonably be open to challenge.”

I agree with the LA that there is a fundamental difference between, on the one hand, schools setting a higher threshold for priority for places than that set by the LA in the Kent Test and, on the other hand, the suggestion that some schools could set a lower threshold. In the latter case, schools would be deeming some children to be eligible for a grammar school place, based on the results of a test that said they are not. This does not appear to me to be an appropriate use of test results.

51. I recognise that the expectation that pupils sit two tests is not ideal, and it does involve extra expense for the school, but I do not consider that it should be regarded as “unfair.” In fact, the school is giving pupils two opportunities to demonstrate that they are suitable for a grammar school place. The Shepway Test, it says, is intended to give a better opportunity to disadvantaged pupils in particular. It was designed by a different test provider and includes an element that is not taken into account in the Kent Test. Even if the school did choose only to take into account the result of the Shepway Test, it is likely, as it says, that most pupils will still also take the Kent Test. The Code does not define fairness, but in this context I take it to require admission arrangements to treat applicants equally, without favouritism or giving some an unjustified advantage. I am satisfied that the arrangements for two tests meet this requirement; indeed, it could be argued that they actually seek to address disadvantage. I do not find that the Code is breached in this respect.

52. In coming to this conclusion, I note the determination of the adjudicator in ADA3303, which was cited by the LA in its response to the objection. In that case, the adjudicator

quoted from an earlier determination relating to Dover Grammar School for Boys, which also uses a two-test process. It concluded,

“The arrangements seek to assess boys fairly and to meet parents' preference for the school. The objectors may not like the arrangements and they may not be tidy in administrative terms, but these are not reasons for rejecting the arrangements.”

I should emphasise that adjudicators' determinations do not create precedents and that I have based my decision on my analysis of the arrangements at The Harvey Grammar School. Nevertheless, I am in entire agreement with this statement.

53. The third aspect of the objection to the use of two tests by the school relates to the fact that the Shepway Test takes place on a Saturday. The objector says that this is problematic:

“The operation of two tests not one will lead to some children not accessing the school when they take only the Kent Test... inevitably some unsure, less motivated, parents will agree for their child to take a test on a school day organised by the primary school, but will not take them to a Saturday test... A lone parent with other children to look after, or working on a Saturday, would prefer a test in school hours if it is at all possible.”

She cites paragraph 1.8 of the Code, which says that,

*"Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group."*

54. I understand the potential difficulties that testing on a Saturday may cause but am aware that many schools across the country schedule tests for selection on Saturdays. I agree with the objector that this may cause difficulties for some families, but I do not consider that this, of itself, constitutes a breach of paragraph 1.8 of the Code. Lone parents or parents who work on Saturdays do not, in my view, represent a “*particular social...group*” within the meaning of paragraph 1.8. Therefore, I do not uphold this aspect of the objection on the grounds put forward by the objector, but I have more to say on this matter below.

Other matters

55. The school recognised that boys who meet the entry requirements and have an EHC plan that names the school must be admitted. My attention was drawn to a link in the arrangements to the LA's website that makes this clear. I do not consider that this is sufficient. Although the LA administers the allocation of places, the admission authority for the school is the academy trust. Its own arrangements should give full details of how places are allocated. The school has agreed to make the necessary amendment.

56. In response to an enquiry I made, the school confirmed that it does not currently make any provision for boys unable to take the Shepway Test on the prescribed date (a Saturday) either due to illness or for religious reasons. It says that it has never received a request of this sort and commented that the HTA,

“would be the route we would expect to be taken if a boy was unable to take either or both of the Kent or Shepway test and had not been initially assessed as selective.”

57. The LA schedules the Kent Test for pupils who do not attend a Kent primary school on a Saturday. It makes provision for a further test date *“in exceptional circumstances,”* including children who are unable to take the test for religious reasons, confirmed by a representative of the faith. An alternative date is also possible for children who were too ill to take the test (whether on a school day or a Saturday), if medical evidence confirms this.

58. The school has emphasised how the Shepway Test is different to the Kent Test and that, in particular, it offers a special opportunity for children from less advantaged circumstances to demonstrate their suitability for a grammar school place. I consider it unfair that, unlike the LA in respect of the Kent Test, it does not make provision for children who, for medical or religious reasons, are unable to take the test on the prescribed day. The Code, in paragraph 14, requires the practices used to decide the allocation of school places to be fair. The arrangements are therefore, in this respect, in breach of the Code. In my view, the arrangements also indirectly discriminate in the grounds of religion, contrary to the Equality Act 2010, as there is no alternative to testing on a Saturday. While it is a defence against claims of indirect discrimination that the practice is a proportionate means of achieving a legitimate aim, no such justification has been advanced here and there is no reason I can see that would prevent the school’s offering an alternative test date for those unable to take the test on a Saturday.

Summary of Findings

59. I find no convincing evidence that the LA operates a “quota” system in the HTA part of the PESE. Although I consider that there are aspects that could be improved, the process of referral to the panels and their operation meets the requirements of fairness and objectivity required by the Code. Whilst the school could helpfully provide more explanation about the two tests it uses to determine eligibility for places, the information given to parents is sufficiently clear for them to understand easily how places will be allocated. The use of two tests is not unfair to parents or pupils. I do not uphold the objection.

60. Whilst the holding of the Shepway Test on a Saturday is not of itself contrary to the Code, the failure to offer an alternative date for children unable to take the test for medical or religious reasons breaches both the Code and equalities legislation.

Determination

61. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2020 determined by the academy trust for The Harvey Grammar School, Folkestone, Kent.

62. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the way set out in this determination.

63. 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 admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 28 February 2020.

Dated: 12 November 2019

Signed:

Schools Adjudicator: Peter Goringe