



Determination

Case reference:	ADA3582
Objector:	A member of the public
Admission authority:	The academy trust for The Folkestone School for Girls, Kent
Date of decision:	9 December 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 the academy trust for The Folkestone School for Girls, 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 Folkestone School for Girls (the school), a selective academy school for girls 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 Kent's Procedure for Entrance to Secondary Education and the school's own selection test;

- k. a determination of the Schools Adjudicator concerning Dover Grammar School for Boys (ADA3303) that was issued in August 2017; and
- l. a determination of the Schools Adjudicator concerning The Harvey Grammar School (ADA3583) that was issued in November 2019.

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, known as the "Shepway Test" or, occasionally, the "Folkestone 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 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

9. The school has a Published Admission Number (PAN) of 180. 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 (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

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

"These will test students' verbal, non-verbal and Mathematical competency and will require similar skills to those needed for Key Stage 2 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 girls locally.”

11. 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 Folkestone School for Girls, 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

12. The objector submitted identical objections to the arrangements of six grammar schools in Kent. Each objection included the objector's argument that the HTA part of the PESE does not meet the requirements relating to admissions.

13. I considered the objector's argument in detail in my determination concerning The Harvey Grammar School. I did not uphold this part of the objection. The determination was published on 12 November 2019, with the case reference ADA3583.

14. A letter was sent from the Office of the Schools Adjudicator (OSA) on 14 November 2019 to the parties to this case, drawing attention to the determination ADA3583. The letter stated,

“It appears to the adjudicator that the conclusions and the reasons given in ADA3583 apply equally to this issue as raised in the current objection.

The adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently.”

I have not received any representations from the objector, the LA or the school as to why the objection relating to the HTA ought to be considered or determined differently in this case.

15. Determinations of adjudicators do not constitute precedents and I am required to consider this objection on its own merits. I have considered whether the part of the objection relating to the HTA should be looked at differently from the way I addressed it in ADA3583. I do not consider that it should. The objection in this case is made in identical terms to a part of the PESE that applies to all grammar schools in Kent; there is no specific reference to The Folkestone School for Girls.

16. Therefore, I consider that the conclusions and the reasons given in ADA3583 apply equally to this issue as raised in relation to The Folkestone School for Girls. I do not uphold this aspect of the objection.

The use of the Shepway Test

17. 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.

18. 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.*”

19. 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 explains that,

“The introduction of the Shepway Test was a joint decision taken by both The Folkestone School for Girls and The Harvey Grammar Schools. Both schools 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 82 girls from disadvantaged backgrounds- considerably more than under the Kent Test alone.”

20. 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 One.

Table One: Pupils allocated places at The Folkestone School for Girls for September 2019

TEST OUTCOMES	NUMBER OF PUPILS
Pupils assessed as eligible for grammar school by PESE and Shepway Test	67
Pupils assessed as eligible for grammar school by PESE but assessed as not suitable for grammar school by Shepway Test	2
Pupils assessed as eligible for grammar school by PESE who did not take the Shepway Test	7
Pupils assessed as not suitable for grammar school by PESE but assessed as eligible for grammar school by Shepway Test	102
Pupils assessed as eligible for grammar school who did not take the Kent Test	2
TOTAL	180

The figures show that significant numbers of pupils (102) 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 two pupils for whom the opposite was the case.

21. The school reports that overall 376 girls took the Shepway Test and 249 were assessed as eligible for grammar school, that is, 66 per cent. Of course, not all of the girls assessed as eligible for grammar school by the Shepway Test obtained a place at The Folkestone School for Girls, 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 as the Folkestone and Hythe area had the lowest proportion of pupils deemed eligible for grammar school through the PESE.

22. 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. Of the 180 pupils allocated places at the school for September 2019, 102 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.

23. The school describes the effect of the Shepway Test in this way,

"The Folkestone School for Girls and indeed Harvey Grammar have a higher % of students in receipt of pupil premium than other selective schools nearby, which is much more reflective of our context and has gone some way to ensuring a more level playing field, allowing more disadvantaged families an opportunity to access a selective education in Folkestone and Hythe."

The reference to "*a more level playing field*" and in the quotation in paragraph 19 above to "*minimis[ing] the impact of tutoring*" 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 for whatever reason so identify. The LA believes its HTA panels 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 102 pupils assessed as eligible by the Shepway Test and not by PESE, that is, that they were not referred to the HTA panel.

24. 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. 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.

25. The school's website provides information about the admissions process. 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.

The school has provided me with a flyer that is sent to parents of girls in year 5. It states that at an open evening, “*clear guidance on the admissions procedure, including the Folkestone Test, will be given.*” I have also had sight of the slides used in the presentation made by the principal of the school at the open evening. One of the slides says that,

“*Students wanting to be considered for a place at FSG in 2020 are strongly recommended to sit **both** the Kent Test and the Shepway Test.*”

26. I consider that the information provided by the school makes clear how the selection process operates. 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 significant numbers of pupils who are not assessed as eligible for grammar school through the PESE are eligible for a place at The Folkestone School for Girls through their results in the Shepway Test. The objector believes this information should be published 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.

27. I turn now to the second aspect of the objection to the use of two tests, that is, that the process is unfair. I considered the objector’s argument in this respect in determination ADA3583. The letter from the OSA, which I referred to in paragraph 14 above, drew the attention of the parties to this case to the relevant paragraphs of ADA3583, which contain the reasons for not upholding this part of the objection. The parties were again invited to make representations as to why this issue in the current objection ought to be considered or determined differently. I have not received any such representations from the objector, the LA or the school.

28. The objection in this case is made in identical terms to the same issue, that is, the use of two tests, which was considered in ADA3583 in relation to The Harvey Grammar School. Therefore, I consider that the conclusions and the reasons given in ADA3583 apply equally to this issue as raised in relation to The Folkestone School for Girls. I do not uphold this aspect of the objection.

29. 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."*

30. 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

31. In response to an enquiry I made, the school confirmed that it does not currently make any provision for girls unable to take the Shepway Test on the prescribed date (a Saturday) either due to illness or for religious reasons. It says this is because applicants,

“already have the option to take the Kent Test as well, which is on a different date.”

32. 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.

33. 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 on 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 offering an alternative test date for those unable to take the test on a Saturday.

Summary of Findings

34. For the reasons given in determination ADA3583, I consider that the HTA part of the PESE meets the requirements of fairness and objectivity required by the Code. The school could helpfully provide more explanation about the two tests it uses to determine eligibility for places, but 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.

35. The holding of the Shepway Test on a Saturday is not of itself contrary to the Code but 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

36. 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 Folkestone School for Girls, Kent.

37. 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.

38. 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: 9 December 2019

Signed:

Schools Adjudicator: Peter Goringe