



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3581

Objector: A member of the public

Admission authority: The governing board for Dover Grammar School for Boys, 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 governing board for Dover Grammar School for Boys, 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 ways 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 September 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 Dover Grammar School for Boys (the school), a selective foundation 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. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school. 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 and 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 board 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

- I. 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 test, known as the "Dover Boys Test") is because the Dover Boys 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 Dover Boys Test on a Saturday discriminates against some families, contrary to paragraph 1.8 of the Code.

Other Matters

8. The holding of the Dover Boys Test on a Saturday, if no alternative date were 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 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 (the Dover Boys 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 those with a sibling currently at the school, children with health or special access reasons and those eligible for pupil premium. The remaining places are allocated on the basis of distance from the school. In recent years, all eligible pupils for whom Dover Grammar School for Boys is their preferred choice of school have been offered a place at the school.

10. In respect of the Dover Boys 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 Dover Boys Test includes a creative writing exercise that is marked and forms part of the assessment.

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 Dover Grammar School for Boys, 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 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 in this part of the objection to Dover Grammar School for Boys.

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

The use of the Dover Boys Test

17. The objector expresses a number of concerns about the school’s use of a second test, in addition to the Kent Test. She believes her concerns 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 Dover Boys 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 Dover Boys 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 Dover Boys 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,

“There is absolutely no intended difference between the difficulty level of the questions in the Kent and Dover Tests...The Dover Test is not designed to be an easier test; it measures both cognitive ability and potential in the same way as the Kent Test. However, there is a different methodology in how the results of the Dover Test are used. Specifically, for the Kent Test there is a required pass mark for each individual section in addition to an overall pass mark but for the Dover Test there is one aggregate score with one pass mark. In addition, the piece of extended creative writing in the Kent Test is not assessed; it is only used in the case of an appeal. However, in the Dover Test it is marked and included in pupils’ overall results.”

20. The LA has provided me with data showing the outcomes of both the PESE (Kent Test and HTA) and the Dover Boys 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 Dover Grammar School for Boys for September 2019

TEST OUTCOMES	NUMBER OF PUPILS
Pupils assessed as eligible for grammar school by PESE and the Dover Boys Test	35
Pupils assessed as eligible for grammar school by PESE but assessed as not suitable for grammar school by the Dover Boys Test	0
Pupils assessed as eligible for grammar school by PESE who did not take the Dover Boys Test	1
Pupils assessed as not suitable for grammar school by PESE but assessed as eligible for grammar school by the Dover Boys Test	100
Pupils assessed as eligible for grammar school who did not take the Kent Test	1
TOTAL	137

The figures show that significant numbers of pupils (100) were assessed as eligible for grammar school as a result of the Dover Boys Test having not been assessed as suitable for grammar school by PESE. There were no pupils for whom the opposite was the case.

21. The school reports that, for admission in September 2019, 235 children took the Dover Boys Test and 197 achieved the required standard, that is, 84 per cent. For admission in September 2020, a much lower proportion achieved the required standard: 65 per cent. Of course, not all of the boys reaching the required standard will be allocated a place at Dover Grammar School for Boys, due to their parents' preferences. 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 the Dover area was lower than this. According to the school,

"Many factors contribute to this, but it is of significance that fewer students in East Kent, and particularly in coastal towns, where there is in general a higher level of socio-economic deprivation, pass the Kent Test."

22. The objector draws this conclusion,

"All these things suggest that the Dover Boys school test is very different to the Kent Test, most would look at these figures and think it is easier, and likely to be selecting a different attainment level."

According to the objector, as this difference is not made clear to parents, the school is in breach of paragraph 14 of the Code.

23. The school describes the purpose and effect of the Dover Boys Test in this way,

"DGSB introduced its own Dover Test to improve the accessibility to grammar school places, and thereby access to social mobility, for local children... Our objective is to ensure that the most able students in the local Dover area can access a grammar school place without pass marks being skewed by higher scores achieved in more affluent areas in Kent (and in West Kent in particular). We firmly believe that this approach is appropriate and successful, as in our current Year 9 cohort, for example, 27% - over 1 in 4 - of students are eligible for the Government's Pupil Premium Grant."

This statement and in the quotation in paragraph 19 above confirm to me that a key purpose of the Dover Boys 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 100 pupils assessed as eligible by the Dover Boys 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 Dover Boys 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. An information letter explains that "*Entrance to DGSB is through successful completion of either the Kent Test or our own Dover Grammar School for Boys entrance test.*" 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 information letters states that "*Further details of the testing and admissions process will be explained at our Open Evening.*" The school told me,

"We always explain the differences between the Kent and Dover Tests to all those attending the school's annual information evening for Year 5 parents in June each year. We actively encourage all parents to register students for both tests rather than choose just one. There is always a large number of parents present at this event and it is therefore extremely likely that almost all parents/carers within the local area will be aware of these differences before the deadline for registration for each test."

27. I consider that the information published 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 I do not know precisely what information is provided at the open evening and what questions may be raised 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 Dover Grammar School for Boys through their results in the Dover Boys 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, I do not find that the arrangements are in breach of the Code in this respect.

28. 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.

29. 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 Dover Grammar School for Boys. I do not uphold this aspect of the objection.

30. The third aspect of the objection to the use of two tests by the school relates to the fact that the Dover Boys 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."*

31. 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

32. In response to an enquiry I made, the school confirmed that it does not currently offer an alternative for boys unable to take the Dover Boys Test on the prescribed date (a Saturday) either due to illness or for religious reasons. I consider it unfair that, unlike the LA in respect of the Kent Test, it does not make provision for children who, for these 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.

33. The school has recognised these concerns and has indicated that it intends, when it determines its arrangements for September 2021, to make an alternative date available for applicants unable to take the Dover Boys Test on a Saturday due to illness or for religious reasons.

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 information given to parents about the two selection tests 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 Dover Boys 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 governing board for Dover Grammar School for Boys, 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 ways 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 September 2020.

Dated: 9 December 2019

Signed:

Schools Adjudicator: Peter Goringe