



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3853

**Objector:** Medway Council

**Admission authority:** Thinking Schools Academy Trust, for The Rochester Grammar School

**Date of decision:** 08 September 2021

## 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 2022 determined by the multi-academy trust for the Rochester Grammar School in Medway.**

**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.**

## 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 Medway Council (the objector) about the admission arrangements (the arrangements) for September 2022 for the Rochester Grammar School (the school), an academy school within the Thinking Schools Academy Trust (the trust). The school is a single sex selective secondary school for girls aged 11-18 with a coeducational sixth form. The objection is to oversubscription criterion 4 of the arrangements which gives priority to applicants who attend one of the trust's Medway primary schools.

2. The local authority for the area in which the school is located is Medway Council (the objector).
3. The parties to this objection are the objector and the trust.

## **Jurisdiction**

4. The terms of the Academy agreement between the multi-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 trust, which is the admission authority for the school, on that basis. The objector submitted its objection to these determined arrangements on 14 May 2021.
5. 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.
6. At the time of the determination of the school's admissions arrangements and at the time the objection was made, the Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect. Since the objection and the responses to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case, but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force. The arrangements for the school as set out in this determination were determined on 3 February 2021. At that date the 2014 Code, which was then in force, provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code which came into force on 1 September 2021 extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the Secretary of State and no reason for the school to send me its varied arrangements. I have made my determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements set out above.

## **Procedure**

7. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
8. The documents I have considered in reaching my decision include:

- a. a copy of the minutes of the meeting of the trust board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 14 May 2021 and subsequent submissions and supporting documents;
- d. the legal adviser for the trust's responses to the objection dated 26 July 2021 and 3 August 2021; and
- e. a previous adjudicator determination made in relation to the school, dated 3 September 2018, reference number ADA3431.

## The Objection

9. The objection is to oversubscription criterion 4 of the arrangements which gives priority to children who attend one of the trust's Medway primary schools. The objection is raised on two grounds. First, that the criterion is unfair, contrary to paragraph 1.8 of the Code, because it could disadvantage applicants who live closer to the school but do not attend one of the trust's Medway primary schools, as compared with applicants who live further away from the school but do attend one of the trust's Medway primary schools. Second, that the selection of the feeder schools named in oversubscription criterion 4 is unreasonable, contrary to paragraph 1.15 of the Code, because it may cause the disadvantage described.

## Other Matters

10. There were a number of other matters in the determined arrangements which I was concerned did not comply with the Code. As such, I sought comments on the following elements of the arrangements:

- 10.1. The omission of a reference to the fact that the school admits only girls to Years 7-11, but girls and boys to Years 12-13 (lack of clarity – paragraph 14 of the Code);
- 10.2. The reference in page 1 of the arrangements to a “pre-set standard” without further explanation (lack of clarity – paragraph 14 of the Code);
- 10.3. Multiple descriptions of the distance criterion employed across the arrangements (lack of clarity – paragraph 14 of the Code);
- 10.4. The reference in section 3 ‘Waiting List / In-Year Applications’ to the term “rising Year 7” (lack of clarity – paragraph 14 of the Code);
- 10.5. The omission of arrangements for the admission of pupils outside of their normal age group (paragraph 2.17 of the Code); and

10.6. The placement of the definitions of ‘distance criterion’ and ‘child’s home address’ on page 5 and whether they applied to the whole of the arrangements (lack of clarity – paragraph 14 of the Code).

## Background

11. The school is a single sex selective secondary school for girls aged 11-18 with a coeducational sixth form. It is an academy school within the Thinking Schools Academy Trust (the trust). The trust is a multi-academy trust comprising six secondary schools (three of which are in Medway, namely Holcombe Grammar School, Victory Academy and the school) and ten primary schools (four of which are in Medway, namely All Faiths Children’s Academy, Cedar Children’s Academy, Gordon’s Children’s Academy and New Horizons Children’s Academy). Those trust schools outside of Medway are not relevant to the objection or to this determination because attending those schools does not afford any priority for admission to the school.

12. The school is a popular school and has a published admission number (PAN) of 205 for pupils entering Year 7 in September 2022. As a grammar school it is permitted to select applicants on the basis of their ability. The Code makes clear that grammar schools can either admit pupils on the basis of rank score in their selection tests or by setting a threshold for entry requirements and then using other oversubscription criteria such as distance or catchment area to prioritise admissions. There is, as it happens, also no prohibition on what might be termed a “mix and match” approach; such as ranking by score of applicants who live in a given catchment area. Grammar schools are also unique in that they may keep places empty if not enough applicants reach the required standard as set out in the entry requirements.

13. Previously, the arrangements for the school were such that the girls who secured Year 7 places at the school were largely those who gained the highest ranked scores in the selection test. However, in recent years the trust has made amendments to the arrangements which have had the effect of reducing the extent to which score ranking in the entry requirements test determines a child’s priority for a place. Under the arrangements for September 2022, all pupils must meet a certain standard in the selection test in order to be eligible for a place, but priority order of places is determined according to the oversubscription criteria.

14. From 2019, the oversubscription criteria were, in summary:

- i. Looked after and previously looked after children;
- ii. Children with a sibling attending the school or any other trust secondary academy in Medway;
- iii. Children who attend one of the trust’s Medway primary schools (New Horizons Children’s Academy, The Gordon’s Children’s Academy, All Faiths Children’s Academy, Cedars Children’s Academy);

- iv. Children of staff employed at the school;
  - v. Children with medical reasons which necessitate their attendance at the school;
  - vi. Children in rank order based on the scores achieved in the tests.
15. For 2022, the oversubscription criteria are, in summary:
- i. Looked after and previously looked after children;
  - ii. Children eligible for Pupil Premium funding;
  - iii. Children with a sibling attending the school;
  - iv. Children who attend one of the trust's Medway primary schools (New Horizons Children's Academy, The Gordon's Children's Academy, All Faiths Children's Academy, Cedars Children's Academy);
  - v. Children of staff employed at the school;
  - vi. Children with medical reasons which necessitate their attendance at the school;
  - vii. Children ranked according to the distance they live from the school, prioritising the shortest distance.
16. On 3 September 2018 another adjudicator made a determination relating to the school (ADA3431). The adjudicator did not uphold the part of the objection that related to the introduction of an oversubscription criterion prioritising children attending any of the trust's Medway primary schools. That criterion (see criterion iii at paragraph 13) was identical to oversubscription criterion 4 (see criterion iv at paragraph 14) but operated in a slightly different context at that point as the school was still admitting the majority of its pupils by rank order in the selection test (see criterion vi at paragraph 13 above). The adjudicator concluded that the feeder school criterion was neither unreasonable nor procedurally unfair, and thus was in compliance with the Code.

## Consideration of Case

17. The focus of this objection is on oversubscription criterion 4, which gives priority to children who attend one of the trust's Medway primary schools (New Horizons Children's Academy, The Gordon's Children's Academy, All Faiths Children's Academy, Cedars Children's Academy).

18. The first part of the objection relates to the requirement set out at paragraphs 14 and 1.8 of the Code that oversubscription criteria must be "procedurally fair". There is no definition within the Code or related legislation as to what is meant by procedurally fair in this context. In my view, one must look at whether the arrangements cause any disadvantage to an identifiable group or groups of children. If they do, then it is necessary to examine the nature and magnitude of that disadvantage. A key consideration will always

be how the arrangements impact on access to a school place within a reasonable travelling distance of a child's home.

19. The objector considers that the criterion is unfair in that it would disadvantage those eligible children who live closer to the school but do not attend one of the trust's Medway primary schools, as compared with eligible children who live further away from the school but do attend one of the trust's Medway primary schools. The objector has explained that the precise nature of the disadvantage is that eligible children living closer to the school but not attending one of the trust's Medway primary schools may miss out on a place at their nearest secondary or nearest secondary grammar school due to the operation of the criterion.

20. I asked the trust to explain the rationale for the criterion. The trust outlined that the school and the named feeder schools all teach pupils to use the same approach to their learning - a "Thinking Toolkit" including "Thinking Maps (Hyerle); Thinking Hats (de Bono); Thinking Keys (Ryan) and Habits of Mind (Costa and Kallick)". The approach is quality assured internally by the trust and externally by Exeter University. The trust explained that pupils who have been taught using this approach at primary school naturally wish to continue being taught using this approach at secondary school. The trust considers that moving such a pupil to a secondary school that uses a different approach "could damage their education" because they would no longer be able to use the learning tools mastered in primary school. The rationale for oversubscription criterion 4 was recorded in the minutes of the meeting of the trust's board on 3 February 2021 as ensuring "continuity of the Thinking Schools approach for pupils transitioning from primary to secondary school".

21. I queried how many pupils the objector considered would be disadvantaged by the criterion. The objector explained that it was difficult to predict precisely how many children this potential disadvantage could affect in future years. Furthermore, it accepted that in September 2020 and September 2021, no parental first preferences for the school in relation to eligible girls were frustrated because all such applicants were offered places. However, the objector cautioned that expected population growth in Medway (facilitated by a programme to build 28,000 new homes over the next 5 years) and the geographical location of Medway (meaning that for many children in the Kent County Council area, a Medway secondary school is their nearest), means that there will be increasing demand for school places across all schools and age groups in Medway in future years.

22. I asked for information as to the availability of secondary school places for girls living close to the school. I note that there are twelve secondary schools within a 3 mile radius of the school. Three of those are boys' schools (so not available to girls living close to the school) and one employs faith-based criteria (which may also preclude availability to some girls living close to the school). The remaining eight schools, however, are available to girls and do not employ faith-based criteria: six are co-educational non-selective schools and two are girls' selective schools (Fort Pitt Grammar School and Chatham Grammar School for Girls). The objector confirmed that "Girls places are positioned well in secondary schools", whilst pointing out that availability of places in non-selective schools in Medway in general has been "extremely" tight in recent years.

23. I asked whether there were any likely obstacles to admission into or travel to school for any eligible girls that might be unsuccessful in gaining a place at the school in future. The objector commented that "Medway has excellent travel options both within Medway and with links to the wider surrounding area. Road and rail links play an important part in demand for school places and the comprehensive local and wider bus services similarly". The objector explained that, as a result of this and the success of Medway schools (with the vast majority rated good or better by Ofsted), the area experiences great demand for school places from its own children and from those living further afield.

24. To understand whether the criterion is resulting in children being admitted to the school who live long distances from the school, I asked for the average distance from home to the school for those admitted under the criterion in recent years. For September 2019, this average distance was 3948 metres. For September 2020, it was 3489 metres. And for September 2021, it was 3149 metres. The objector noted that this indicated that the average distance appeared to be reducing over time. However, it also pointed out that, over time, those that were admitted to the school under the criterion in question would then enable siblings to be admitted under the higher ranking criterion of siblings. I note that in the last three years that average distance has always been below 4 kilometres and in 2021 was just over 3 kilometres.

25. In order to understand the magnitude of any potential disadvantage caused by the criterion, I asked for the numbers of girls admitted to the school in recent years broken down by oversubscription criteria. I received the following information:

	2019/2020	2020/2021	2021/2022
Total number of pupils admitted	175	235	204
Looked after and previously looked after children	0	3	1
Pupil Premium children	Not applicable	3	3
Siblings	34	31	29
Trust primary school	18	9	10
Child of staff member	1	0	0
Medical need	1	0	0
Test score	121	Not applicable	Not applicable

Distance	Not applicable	188	160
None		1	1

In 2019, the school admitted 175 pupils in the following priority order: 34 siblings, 18 trust primary school places, 1 child of a staff member, 1 child with a medical need, and 121 children on the basis of their test score 'in distance order'. In 2020, 235 children were admitted in the following priority order: 3 looked after children, 3 Pupil Premium children, 31 siblings, 9 trust primary school places, 188 children on distance alone, and 1 listed as 'none'. In 2021, 204 children were admitted in the following priority order: 1 looked after child, 3 Pupil Premium children, 29 siblings, 10 trust primary school places, 160 children on distance alone, and 1 listed as 'none'. Therefore, it would appear that the numbers of children admitted under the siblings criteria appears fairly stable at around 30 and the number of children admitted under the criterion in question is also fairly stable, at around 10 places per year over the past two years. The figures indicate that in the past two years (since the trust removed priority in test ranking order), the vast majority of places at the school have been allocated under the distance criterion (188 of 235, so 80 percent, in 2020 and 160 of 204, so 78 percent, in 2021). I also took note of the minutes of the trust's board dated 3 February 2021 which recorded a discussion about how the trust could maximise the opportunity for every pupil who wanted to attend the school to obtain a place. This included reference to a previous increase in the PAN for the school and the previous removal of the use of rank order scores in the selection test to prioritise places.

26. Given the information set out above, I accept that the criterion in question has the potential to confer some disadvantage on eligible girls living close to the school but not attending a trust Medway primary school, as compared with those eligible girls living further away from the school but attending a trust Medway primary school. Indeed, that is the intention of the criterion. However, to determine whether the effect of the criterion is, in fact, procedurally unfair contrary to paragraph 1.8 of the Code, I need to consider whether this potential disadvantage is causing any actual disadvantage, and if so, what the nature and magnitude of that disadvantage is.

27. The nature of the disadvantage articulated by the objector is the potential loss of the opportunity for eligible girls living close to the school to attend their nearest grammar school. However, the admission numbers, broken down by oversubscription criteria, appear to show that only a small number of girls are admitted under the relevant criterion each year – approximately 10 out of a total of 205 (so just under 5 percent). The majority of places, approximately 80 percent, are offered on the basis of proximity of home address to the school, indicating that eligible girls living close to the school have a good chance of being offered a place. In addition, the figures provided to me show that there has not yet been a year in which any eligible girl living close to the school, whose parents have expressed a first preference for the school, has been declined a place at the school. Therefore, at present, any disadvantage is theoretical only at this point and has not yet had an impact on any actual families.



28. I acknowledge the objector's explanation that there is growing demand for school places across Medway and this is likely to increase as the population grows due to a planned programme of house building and the enduring popularity of Medway schools. However, I have not been provided with any evidence that the projected increase in demand for school places across Medway would have a specific effect on demand for places at this school in September 2022. It is admissions in 2022 and that year alone with which I am concerned in this determination. Furthermore, even if there were to be an increase in demand for places at the school from those eligible girls living close to the school but not attending one of the trust's Medway primary schools, the data suggests that those children are likely to be allocated a place at the school under the distance criterion (as the vast majority of places at the school are allocated on the basis of distance).

29. Should the potential disadvantage materialise and affect real families, the eligible girls in question would need to seek out secondary school places at an alternative school. From the information provided to me, it would appear that there is a good supply of secondary school places available for girls living close to the school. This includes two other girls' grammar schools. Furthermore, I have been assured that Medway has excellent transport networks, so travel to those alternative schools appears unlikely to result in children having to make unreasonable journeys in terms of length, complexity or convenience.

30. Taking all of the above into account, I find that oversubscription criterion 4 has not caused the arrangements to be procedurally unfair. First, no eligible girl who has expressed a first preference for the school has been declined a place. Second, the evidence submitted to establish that demand for places at the school will grow such that the criterion will cause disadvantage to actual eligible girls, was too general in nature to be probative on this point. Third, for any eligible girl living close to the school who does fail to secure a place at the school, I am satisfied that there is a good supply of alternative school places within a reasonable travel distance. As such, the criterion is not unfair contrary to paragraphs 14 and 1.8 of the Code and I do not uphold this part of the objection.

31. The second part of the objection relates to the requirement set out at paragraph 1.15 of the Code that "The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds".

32. The objector considers that the criterion is unreasonable because it confers the disadvantage described above.

33. As set out above, the trust's rationale for use of the criterion was given as the importance of a continuity of its learning approach from primary to secondary school. In its response, the trust also referred to clear links between the school and feeder schools in terms of ethos and curriculum.

34. I accept that schools within the trust follow a common approach and find it plausible that significant advantages may accrue from a child receiving continuity of approach from primary through to secondary school. As such, I find that the trust's selection of feeder schools for the school, as primary schools within its own local network of primary schools all

following a common approach, is reasonable. It is not a selection that no reasonable admission authority in the given circumstances could have made.

35. There were a number of other matters in the arrangements over which I had concerns.

36. Paragraph 14 of the Code which requires that “admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective”. In particular, the Code states that “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”. There were five aspects of the arrangements where I had concerns about a lack of clarity:

- 36.1. The omission of a reference to the fact that the school admits only girls to Years 7-11, but girls and boys to Years 12-13. Both the objector and the trust agreed that the arrangements would be clearer with the inclusion of this information. The trust indicated its intention to amend the arrangements to clarify this point. I am grateful for the trust’s cooperation on this matter.
- 36.2. The reference in page 1 of the arrangements to a “pre-set standard” without further explanation. The objector explained that “the pre-set standard is a cut-off score which is not determined until after the test has taken place, as the test aims to assess 23% of the Medway cohort as grammar eligible”. The objector suggested that a reference to girls “assessed as grammar via the Medway Test” might be preferable to a “pre-set standard”. The trust explained that the “pre-set standard is determined on the grades attained by students taking the grammar school test, which is not known when the arrangements are determined. The details of the arrangements for testing and how this is calculated are set out on the Council’s website (given these apply to a number of grammar schools) which the arrangements and School website direct parents to”. I am grateful to the objector and trust for their explanations which each lead me to conclude that the relevant reference is not, in fact, to a pre-set standard. Both parties have explained that the standard is not determined until after the test has been undertaken and results assessed and compared. As such, use of reference to a ‘pre-set standard’ in the way it is currently used in the arrangements without further explanation is unclear contrary to paragraph 14 of the Code. The trust must amend its arrangements to provide a more precise reference to the result required in the Medway Council grammar school test in order for a child to meet the school’s entry requirements.
- 36.3. Multiple descriptions of the distance criterion employed across the arrangements. The objector and the trust agreed that the current inconsistency should be corrected, given that the intention is to indicate only one method of calculation, that being the method employed by the local authority. The trust has indicated its intention to make such an amendment and I am grateful to the trust for its cooperation on this matter.

36.4. The reference in section 3 'Waiting List / In-Year Applications' to the term "rising Year 7". The objector and the trust explained that this term referenced pupils due to start Year 7 in the forthcoming September. I find that "rising Year 7" is a technical term that might not be known to parents and so is unclear in this context, contrary to paragraph 14 of the Code. The trust has indicated its intention to replace the word "rising" with "prospective" to improve clarity and I am grateful to the trust for its cooperation on this matter.

36.5. The placement of the definitions of 'distance criterion' and 'child's home address' on page 5 made the arrangements unclear as to whether the definitions applied to the whole of the arrangements. The objector made no comment on this point. The trust explained that the definitions in question were intended to apply to the arrangements as a whole, but agreed that the location of the definitions within the arrangements might lead a person to believe that they only apply to the sixth form arrangements. I find that as currently drafted, the placement of the definitions is unclear contrary to paragraph 14 of the Code. The trust has indicated that it intends to move the definitions to another part of the arrangements to make their intended operation clearer and I am grateful to the trust for its cooperation on this matter.

37. Paragraph 2.17 of the Code requires that "Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group". I had a concern that such provision appeared to be missing from the school's determined arrangements. The objector and the trust agreed that this element of the arrangements was missing, contrary to the Code. The trust has indicated its intention to insert a paragraph to address the relevant aspects of its admissions arrangements and I am grateful to the trust for its cooperation on this matter.

## Summary of Findings

38. I find that oversubscription criterion 4, which gives priority to children who attend one of the trust's Medway primary schools, is not unfair contrary to paragraphs 14 and 1.8 of the Code (because even if the theoretical disadvantage to some eligible girls might materialise for applications to be admitted to the school in September 2022, there is good availability of alternative school places within a reasonable travel distance) and nor does it represent an unreasonable selection of feeder schools (because there is a clear and plausible rationale for the schools chosen). As such, I do not uphold either part of the objection.

39. I have found a lack of clarity, contrary to paragraph 14 of the Code, in respect of five elements of the arrangements. These must be corrected.

40. I have found that the arrangements do not make provision for the admission of pupils outside of their normal age group, contrary to paragraph 2.17 of the Code. This must, likewise, be corrected.

## Determination

41. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by admission authority for the Rochester Grammar School in Medway.

42. 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.

43. 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.

Dated: 08 September 2021

Signed:

Schools Adjudicator: Jane Kilgannon