



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3852

Objector: Medway Council

Admission authority: Skills for Life Trust, for Greenacre Academy

Date of decision: 02 November 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 Greenacre Academy 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 Greenacre Academy, an academy school within the Skills for Life Trust (the Trust). The school is a single sex secondary school for boys aged 11 to 18. The objection is to oversubscription criterion 5 which gives priority to applicants who attend one of the Trust's primary schools.
2. The local authority (LA) for the area in which the school is located is Medway Council (the objector).
3. The parties to this case 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. 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.

5. At the time of the determination of the school's admission arrangements and at the time the objection was made, the School Admissions Code 2014 (the 2014 Code) was in force. A revised School Admissions Code came into force on 1 September 2021 (the Code), 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. At the time when the arrangements were determined 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

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

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

- a. a copy of the determined arrangements, downloaded from the school website on 6 September 2021;
- b. the objector's form of objection dated 14 May 2021, and further comments and documentation provided on 15 September 2021; and
- c. the Trust's response to the objection, dated 29 September 2021.

The Objection

8. The objection is to oversubscription criterion 5 which gives priority to children who attend one of the two (named) Trust primary schools. The objection is raised on two grounds. First that the criterion is unfair, contrary to paragraphs 14 and 1.8 of the Code, because it could disadvantage pupils who live closer to Greenacre Academy but do not attend one of the named feeder schools, as compared with children who live further away but do attend one of the named feeder schools. Second, that the selection of the feeder schools is unreasonable, contrary to paragraph 1.15 of the Code, because it may cause the disadvantage described.

Other Matters

9. 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:

- a. The omission of a reference to the fact that the school admits only boys (lack of clarity – paragraph 14 of the Code);
- b. The reference to “school nights” without an explanation as to which nights these are considered to be (lack of clarity – paragraph 14 of the Code);
- c. Reference in oversubscription criterion 8 to “Residence in the Greenacre Academy’s access area” without any explanation as to what this is or where a parent can find out whether they reside in the area (lack of clarity – paragraphs 14, 1.8 and a potential breach of the provision in paragraph 1.14 of the Code that catchment areas must be clearly defined);
- d. Reference in oversubscription criterion 9 to “Nearness of children’s homes and ease of access to schools” without any explanation as to what this means and how it is calculated (lack of clarity – paragraphs 14 and 1.8 of the Code);
- e. Inclusion of the following statement without explanation as to which organisation this refers to and how a parent is to understand what their home to school distance is: “Distances and routes calculated will represent the shortest route to school from the child’s home address using roads and paths that are known to the graphical information software (GIS) utilised by School Admissions & Transport” (lack of clarity – paragraphs 14, 1.8 and 1.13 of the Code);
- f. The use of random allocation for tie breakers without an explanation as to which independent person will supervise the process (potential breach of paragraph 1.35 of the Code);

- g. The omission of a provision to determine priority where distance is being used as a tie breaker within an oversubscription criterion and two children live an equal distance from the school (lack of clarity – paragraph 1.8 of the Code);
- h. The omission of provision for the admission of a child outside of their normal age group (potential breach of paragraph 2.18 of the Code (paragraph 2.17 of the 2014 Code));
- i. The use of the term “in-year casual admission”, without explanation as to what is meant by casual in this context (lack of clarity – paragraph 14 of the Code); and
- j. The use of a different admission process for in-year applications where the applicant has moved house as compared to the process for in-year applications where the applicant has not moved house. In particular, the use of a meeting with the headteacher and additional checks with the child’s current school (potentially in breach of paragraphs 14 and 1.9(m) of the Code).

Background

10. The school is a single sex secondary school for boys aged 11 to 18. It is an academy school within the Skills for Life Trust (the Trust). The Trust is a multi-academy trust comprising four schools in Medway: two primary schools (Hilltop Primary Academy and Warren Wood Primary Academy) and two secondary schools (Greenacre Academy, which is a boys’ school, and Walderslade Girls’ School, which is a girls’ school).

11. The school has a published admission number (PAN) of 160 for pupils entering Year 7 in September 2022.

12. The oversubscription criteria are, in summary:

- a. Looked after children and previously looked after children (including those previously looked after outside of England);
- b. Children with a sibling attending the school;
- c. Children of staff;
- d. Attendance in Year 6 at a Skills for Life Trust Primary School in Medway (i.e. Warren Wood Primary or Hilltop Primary);
- e. Children with an older sibling who attended the school but has now left within the past 5 years;
- f. Health reasons;
- g. Residence in the Greenacre Academy access area; and

h. Nearness of children's homes and ease of access to schools.

13. When the objector's form of objection was circulated to the parties, and comments sought from the parties both on the objection and other matters of concern to the adjudicator, the Trust misunderstood the situation. The Trust mistakenly thought that the adjudicator had upheld the objection and directed the Trust to amend the arrangements in various ways. The Trust then held a meeting of its governing body on 15 June 2021 and purported to make changes to the arrangements. Once arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of the Code, admissions law, a determination of an adjudicator or to correct a misprint. This is set out clearly at paragraph 3.6 of the Code and regulation 19 of the School Admissions Regulations 2012. However, it does not appear to me that any such circumstances pertained as at the date of that governing body meeting.

14. I have taken note of the changes that the Trust proposed to make on that occasion and acknowledge the copy of the amended arrangements as an indication from the Trust of changes that it intends to make if required to revise the arrangements as a result of this determination.

Consideration of Case

15. The focus of this objection is on oversubscription criterion 5, which gives priority to children who attend one of the Trust's Medway primary schools (Warren Wood Primary or Hilltop Primary).

Fairness

16. The first part of the objection relates to the requirement set out at paragraphs 14 and 1.8 of the Code that the procedures used to determine the allocation of places and oversubscription criteria must be fair. There is no definition within the Code or related legislation as to what is meant by 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. Clearly, what is a reasonable travelling distance in this context is not fixed; what might reasonably be expected in an urban area with many schools will be different from what would be expected in a rural area.

17. The objector considers that the criterion is unfair in that it would disadvantage those children who live closer to the school but do not attend one of the Trust's Medway primary schools, as compared with children who live further away from the school but do attend one of the Trust's Medway primary schools. The objector explained that those disadvantaged will have to travel much further to the next available school.

18. The objector pointed out that the two (co-educational) feeder schools each have PANs of 60, meaning that – assuming 50 per cent of the intake in each feeder school is boys – there would be approximately 60 pupils eligible for allocation of a place at the school under oversubscription criterion 5. As the school's PAN is 160, that amounts to approximately 38 per cent of the Year 7 places at the school.

19. I asked the objector how places had been allocated at the school in the last three years, broken down by oversubscription criteria. I was provided with the following information:

Admission allocation	2019/2020	2020/2021	2021/2022
Looked after child	1	1	3
Sibling	45	48	50
Attends Trust School	2	2	2
Historical Sibling	1	4	1
Health/Medical reasons	0	0	1
Access Area	36	42	47
Distance/Nearness	50	47	49
Grand Total	135	144	153

20. I note that these figures indicate that the school is under-subscribed, not filling all of its Year 7 places in any of the previous three years. I also note that the number of children admitted under the sibling and historic sibling criteria appears to be relatively stable over time (45/48/50 for siblings and 1/4/1 for historic siblings).

21. In relation to the oversubscription criterion in question (Attends Trust School), I note that two children were admitted in each of the previous three years. This represents a very small proportion (approximately 1 per cent) of the places available.

22. I asked the objector, for the children that were admitted to the school under oversubscription criterion 5 in the last three years, what was the nearest secondary school to their home address at the time of the application. Although the objector had reported that six children in total had been admitted to the school under the relevant oversubscription criterion in the last three years (2 in 2019, 2 in 2020 and 2 in 2021) (see the table at paragraph 19), they referred to eight children in their answer to this question: for three children Greenacre Academy was their closest school; for two children St John Fisher Catholic Comprehensive School was their closest school; for one child the Strood Academy was their closest school; and for two children the Thomas Aveling School was their closest school. Due to the discrepancy in these numbers I did not consider it appropriate to take them into account in my consideration of the case and so I set these to one side.

23. I asked the objector how many boys whose parents had expressed a first preference for the school were not admitted to the school in the last three years. They reported that no child fell into that category in 2019 or 2020. However, one child fell into that category in

2021. That child lived approximately eight kilometres from the school and was offered a place at an alternative school, the Howard School which was approximately 11 kilometres from the child's home. Given that the school was under-subscribed in 2021 (admitting 153 children in relation to a PAN of 160), it was not clear to me why this child who had expressed a first preference for the school had been declined a place at the school.

24. I asked for information so that I could compare the home to school distance for children admitted under the various oversubscription criteria. In 2021, the average home to school distance for the two children who gained a place at the school under oversubscription criterion 5 (Attends Trust School) was 2361 metres. The average home to school distance for the 47 children who gained a place at the school under oversubscription criterion 8 (Residence in the Greenacre Academy access area) was 1837 metres. And the average home to school distance for the 49 children who gained a place at the school under oversubscription criterion 9 (Distance / Nearness) was 2092 metres. These figures indicate that those gaining a place at the school under oversubscription criterion 5 live a similar, but slightly longer, average distance from the school as compared to those admitted under the later oversubscription criteria. Having said that, because the school is under-subscribed, it is clear that the children being admitted under oversubscription criterion 5 have not been displacing any other children who wish to gain a place at the school.

25. I asked the objector about the availability of secondary school places for boys living in the area and whether there were any important obstacles to accessing places at those schools (in terms of admissions criteria and in terms of transport options). The objector explained that "in the non-selective sector, there is little availability of places for boys" and that places in Years 7, 8 and 9 are "extremely tight". They further explained that "We are expecting this to be a similar situation for the Year 7 September 2022 cohort even with a new co-educational school having opened in 2021 and an additional one expected to be open in 2022". The objector described the transport network in Medway as reasonably good, referring to the bus and rail services. No particular obstacles were identified in terms of travel routes for local children to alternative schools.

26. Given the information that I have been provided with, I accept that oversubscription criterion 5 has the potential to confer some disadvantage on boys living close to the school but not attending a Trust Medway primary school, as compared with those boys living further away from the school but attending a Trust Medway primary school. However, to determine whether the effect of the criterion is, in fact, unfair contrary to paragraphs 14 and 1.8 of the Code I need to consider whether this potential disadvantage is causing or is likely to cause any actual disadvantage in the year for which I have jurisdiction (that is 2022 admissions), 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 boys living close to the school to attend their nearest school. However, the admission numbers, broken down by oversubscription criteria, appear to show that only a small number of boys are admitted under the relevant criterion each year – two out of a total of 160 available places (approximately 1 per cent). Places allocated under the criteria relating to where the child lives (the oversubscription criteria on access area and

distance/nearness) show that children living up to eight kilometres from the school were successful in obtaining a place at the school in 2021. This figure was even higher in previous years (26 kilometres in 2020 and 36 kilometres in 2019). Therefore, it would appear that boys living close to the school have a good chance of being offered a place if they apply. In addition, I note that the school is under-subscribed and no children whose parents have expressed a first preference for the school have actually been declined a place at the school (acknowledging the anomalous position of the one child who appears to have been declined a place in 2021 despite space being available). This means that at the moment, any disadvantage is theoretical only and has not had an actual impact on families.

28. I acknowledge the objector's explanation that availability of secondary school places across the local area is tight. However, I have not been provided with any evidence to suggest that places at this particular school are under pressure for entry in September 2022. It is admissions in 2022 and that year alone with which I am concerned in this determination.

29. Should the potential disadvantage materialise and affect real families, the boys would need to seek out secondary school places at an alternative school. Despite the objector's description of the situation as "extremely tight", from the information provided to me, it would appear that there is a reasonable supply of secondary school places for boys locally. Indeed, the school with which we are concerned is under-subscribed and there are 7 other secondary schools that admit boys within a three mile radius of the school (two selective, five non-selective). Furthermore, I note that there are reasonably good transport networks in Medway, 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 5 is not unfair and does not operate to cause an unfair disadvantage to any identifiable group. First, only one boy who has expressed a first preference for the school has been declined a place in the past three years and it is not clear why that happened given that the school was under-subscribed. On that basis, it would appear that no boy has suffered an actual disadvantage because of oversubscription criterion 5. Second, there is no evidence to indicate that demand for places at the school is likely to outstrip the number of places available at the school in September 2022. Third, for any boy living close to the school who does fail to secure a place at the school, I am satisfied that there is a reasonable supply of alternative 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.

Reasonableness

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. There is no issue in terms of transparency. The feeder schools are expressly named in the arrangements.
33. The objector considers that this oversubscription criterion is unreasonable because it confers the disadvantage described above.
34. I asked the Trust to explain the rationale for the criterion. None was provided and there was an indication that the Trust intended to remove the criterion if so directed.
35. I note that the feeder schools selected are the two primary schools within the Trust that the school belongs to. I note that those feeder schools are both located within Medway, one approximately two miles from the school and the other approximately four miles from the school.
36. I find the approach of selecting feeder schools as the primary schools from within the same Trust as the school to be logical and reasonable. Further, the feeder schools are not located a long distance from the school such that their location could be said to throw doubt upon the reasonableness of the selection. The selection of these feeder schools is not a selection that no reasonable admission authority in the circumstances could have made.
37. As such, I find the selection of feeder schools in oversubscription criterion 5 is not unreasonable contrary to paragraph 1.15 of the Code and I do not uphold this part of the objection.

Other Matters

38. There were a number of other matters in the arrangements over which I had concerns.
39. Paragraph 14 of the Code 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”. In addition, paragraph 1.8 of the Code requires clarity in oversubscription criteria. There were seven aspects of the arrangements where I had concerns about a lack of clarity:
- a. The omission of a reference to the fact that the school admits only boys. The Trust appeared to agree that this would be a helpful clarification and indicated its willingness to amend the arrangements to clarify this point. I am grateful for the Trust’s cooperation on this matter.
 - b. The reference to “school nights” without an explanation as to which nights these are considered to be. The objector explained its understanding of the term “school nights” to refer to any night before a school day – ie Sunday, Monday, Tuesday, Wednesday and Thursdays. The Trust also explained that it had a similar understanding and indicated its willingness to amend the

arrangements to clarify this point. I am grateful for the Trust's cooperation on this matter.

- c. Reference in oversubscription criterion 8 to "Residence in the Greenacre Academy access area" without any explanation as to what this is or where a parent can find out whether they reside in the area. The objector has provided a map of the "access area" and explained that if a child who lives within the access area applies to the school, they are given priority under oversubscription criterion 8 for a place at the school. The Trust has provided a map of the "access area" and explained that it can be attached to the arrangements. It has further explained that the document is also available from the LA website. The Trust must amend its arrangements to include the relevant map or a clear explanation of how easily to access the map.
- d. Reference in oversubscription criterion 9 to "Nearness of children's homes and ease of access to schools" without any explanation as to what this means and how it is calculated. This must concern boys who live outside the school's "access area" as those living within it will have priority under criterion 8 or a higher criterion, but nothing is said about how "nearness" is calculated or how it is to be considered as against "ease of access to schools" or which such schools this means. It is in my view self-evident that parents would not be able to read this and understand how it applied to their son. The objector has explained that information on how distances are calculated is available in the LA's coordinated admission scheme and has acknowledged that it would be helpful for the arrangements to be clearer in this respect. The Trust has indicated that 'Nearness' is set by the LA and had provided their definition. The Trust has indicated its willingness to amend the arrangements to provide greater clarity on this point. I am grateful for the Trust's cooperation on this matter.
- e. Inclusion of the following statement without explanation as to which organisation this refers to and how a parent is to understand what their home to school distance is: "Distances and routes calculated will represent the shortest route to school from the child's home address using roads and paths that are known to the graphical information software (GIS) utilised by School Admissions & Transport". The objector has explained that information on how distances are calculated is available in the LA's coordinated admission scheme and has acknowledged that it would be helpful for the arrangements to be clearer in this respect. The Trust has indicated that distances are calculated by the LA on its behalf. The Trust has indicated its willingness to amend the arrangements to provide greater clarity on this point. I am grateful for the Trust's cooperation on this matter.
- f. The omission of a provision to determine priority where distance is being used as a tie breaker within an oversubscription criterion and two children live an equal distance from the school. The Trust has indicated that in such a

situation, it will use random allocation overseen by an independent person. The Trust has indicated its willingness to amend the arrangements to provide greater clarity on this point. I am grateful for the Trust's cooperation on this matter. The arrangements will of course need to specify who the independent person will be, and the person must have no connection with the school or the Trust.

- g. The use of the term "in-year casual admission", without explanation as to what is meant by casual in this context. The Trust has explained that it was simply following the terminology used by the LA. The Trust has indicated its willingness to amend the arrangements to remove this superfluous word in order to provide greater clarity. I am grateful for the Trust's cooperation on this matter.

40. The use of a different admissions process for in-year applications where the applicant has moved house as compared to the process for in-year applications where the applicant has not moved house. In particular, the use of a meeting with the headteacher and additional checks with the child's current school. The Trust has explained that "A meeting is arranged to determine what academic level the child is, to outline the expectation of the school and ascertain why they are moving from their local school. This is a formal greeting and to ensure the new student settles as they would not be in receipt of a transition period like a student moving from a primary to secondary setting would be". Given this explanation, I am not satisfied that a good reason has been given as to why different admission processes are used for in-year applications where the applicant has moved house as compared to the process for in-year applications where the applicant has not moved house. For example, the Trust has not explained why a child who has not moved house is any more in need of this 'formal greeting' than a child who has moved house. In the absence of a good reason for the disparity in approach, I am concerned that the arrangements operate unfairly for those applicants that have not moved house and are therefore contrary to paragraph 14 of the Code. The Trust must amend its arrangements so that it treats in-year applicants who have moved house and in-year applicants who have not moved house in the same way.

41. Paragraph 1.35 of the Code requires that where random allocation is used, the process must be overseen by someone "independent of the school". I was concerned that the arrangements employed the use of random allocation for tie breakers without an explanation as to which independent person will supervise the process. The Trust has explained that it intends to use one of the school governors as the independent person for this process. This is insufficient for compliance with the Code because a governor at the school is not independent of the school. The Trust must amend its arrangements to ensure that any use of random allocation is overseen by some who is independent of the school.

42. Paragraph 2.18 of the Code (equivalent to paragraph 2.17 of the 2014 Code) requires that admission authorities must make clear in their arrangements the process for requesting admission out of the normal age group. This was missing in the schools arrangements. The Trust has accepted that this was not included and indicated its

willingness to amend the arrangements to ensure this information is included. I am grateful for the Trust's cooperation on this matter.

Summary of Findings

43. I find that oversubscription criterion 5, which gives priority to children who attend one of the Trust's Medway primary schools, is:

- a. not unfair contrary to paragraphs 14 and/or 1.8 of the Code (because there is no evidence that it has caused any disadvantage and, even if the theoretical disadvantage to some local boys were to materialise for applications to be admitted to the school in September 2022, there is reasonable availability of alternative school places within a reasonable travel distance); and
- b. does not represent an unreasonable selection of feeder schools (because naming local primary schools within the same Trust as the school is not obviously irrational).

As such, I do not uphold either part of the objection.

44. I find a lack of clarity, contrary to paragraph 14 of the Code, in respect of seven elements of the arrangements. These must be revised in order to make them sufficiently clear to parents.

45. I find the use of different admission processes for in-year applications where the applicant has moved house as compared to the process for in-year applications where the applicant has not moved house to be illogical and unfair contrary to paragraph 14 of the Code. The Trust has not provided any credible rationale for this difference in treatment, therefore the arrangements must be revised to remove this provision.

46. I find the use of random allocation without the oversight of a person independent of the school to be contrary to paragraph 1.35 of the Code. This practice must be revised.

47. I find the absence of a provision for requesting admission out of the normal age group to be contrary to paragraph 2.18 of the Code. The arrangements must be revised to include such a provision, and the Trust will need to ensure that any procedure introduced is compliant with the requirements of paragraph 2.19 and 2.20 of the Code.

Determination

48. 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 the Skills for Life Trust for Greenacre Academy in Medway.

49. 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.

50. 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: 02 November 2021

Signed:

Schools Adjudicator: Jane Kilgannon