



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3905**

**Objector: Medway Council**

**Admission authority: The Kemnal Academies Trust for Rainham School for Girls, Medway**

**Date of decision: 17 May 2022**

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2023 determined by The Kemnal Academies Trust for Rainham School for Girls, 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 (Medway), about the admission arrangements (the arrangements) for Rainham School for Girls (the school), an academy school for girls aged 11-18 for September 2022/23. The objection is to the published admission number (PAN).
2. The local authority for the area in which the school is located is Medway and it is also the objector. Medway is a party to this objection. Other parties to the objection are the Kemnal Academies Trust (the multi-academy trust, the trust) which is the admission authority for the school and the school's governing board.

## Jurisdiction

3. 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 on 21 February 2022 by the trust on that basis. Medway submitted the objection to these determined arrangements on 24 March 2022. 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).

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

- a. a copy of the minutes of the meetings of the governing board and trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the form of objection from Medway dated 24 March 2022 and Medway's responses to my enquires;
- d. the response to the objection from the school on behalf of the trust and its responses to my enquires;
- e. maps of the area identifying relevant schools;
- f. information obtained from the websites of the school, Medway and the Department for Education (DfE).

## The Objection

6. Medway said that the school had consulted on a reduction in PAN for September 2023 from 270 to 240 and subsequently determined the PAN at the lower figure. During consultation the LA had opposed the proposed reduction. Medway said "The forecasted [sic] demand for secondary school places across Medway indicates that we cannot afford for Rainham School for Girls to reduce its PAN. We have attached our latest forecast which shows that with a PAN of 240, Medway will be 85 places short for September 2023 admissions."

## Other Matters

7. When I saw the arrangements, it appeared to me that they did not conform with the Code in three other ways:

- i. When I looked at the school's website on 6 April 2022, the arrangements published there were labelled as "under consultation", paragraph 1.50 of the Code requires that determined arrangements are published by 15 March each year.
- ii. The arrangements included a map of the "access area" for the school. The access area meets the definition in the Code of a catchment area and therefore the map must meet the requirement to be clear as found in paragraphs 14, 1.8 and 1.14 of the Code. In my view the map was too small and contained insufficient detail to be clear.
- iii. Paragraph 1.8 of the Code requires a clear tie-breaker to be included in the arrangements. The tie-breaker in the arrangements did not appear to me to be clear.

8. When I raised these matters the school, it acknowledged that the arrangements did not meet requirements in these respects and proposed changes to rectify these issues. I will not refer to these matters again in this determination other than to require that the arrangements are revised to address them within two months of the date of this determination.

## Background

9. The DfE database "Get Information About Schools" (GIAS) records that there are 19 secondary schools in Medway. One is a University Technical College (UTC) which admits children at the age of 14, of the other 18, six are selective grammar schools. Of the remaining 12 secondary schools, eight are coeducational and four are single sex schools, two for boys and two for girls. With the exception of one school on the Hoo peninsula, the secondary schools are all in the conurbation formed by Strood, Rochester, Chatham, Gillingham and Rainham.

10. The school as its name suggests is situated in Rainham on the eastern edge of the local authority area. Within Rainham, there is one coeducational grammar school, one other coeducational school, one boys' school and this girls' school. The other coeducational school is a free school which opened in September 2021.

11. The school's PAN has been 270 since at least 2017 and was reduced to 240 for 2023. This is the subject of this objection. The oversubscription criteria can be summarised as:

1. Looked after and previously looked after children
2. Siblings
3. Children whose health needs require that they are admitted
4. Children of members of staff

5. Children living in the access area

6. Proximity to the school.

12. The funding agreement between the trust and the Secretary of State for Education states that the planned capacity of the school is 1550 in the age range 11- 18 including a sixth form of 200 places. I was informed by the school that the number of girls in each year group on 19 April 2022 was as follows:

Year	7	8	9	10	11	Sixth form	Total
Number on roll	228	313	298	266	270	324	1699

## Consideration of Case

13. Medway did not say which paragraphs of the Code or other legislation it considered the reduced PAN would not conform with. The first relevant paragraph of the Code is 14 which says: “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective.” Reducing the PAN could lead to unfairness.

14. The next relevant paragraph is 1.3 which says: “Own admission authorities are not required to consult on their PAN where they propose either to increase or keep the same PAN. ... All admission authorities **must** consult in accordance with paragraph 1.45 below where they propose a decrease to the PAN. ... There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering any such objection.” Medway has not suggested that consultation on the proposal was flawed, but the first sentence of this paragraph has implications for my decision.

15. Paragraph 3.3 of the Code prohibits objections being made to admission arrangements “about own authority admission’s decision to increase or keep the same PAN”. The implication of this and paragraph 1.3 is that if I do not uphold the objection, the trust may keep the PAN at 240 in subsequent years without consultation and without anyone having the right to refer the PAN to the adjudicator. My decision, therefore, has implications for future years and not just 2023.

16. The minutes of the meeting of the governing board at which the decision to reduce the PAN was discussed record that the then proposed reduction was in the light of the intake for 2021 being lower than expected. This was because the new free school which had opened in Rainham that year had admitted more pupils than its PAN. I asked the school if it wished to expand on this reasoning.

17. In response the school told me that the new free school was less than two miles away and within the access area. Figures provided by Medway show that in September

2021 the number of pupils admitted to the new free school was 240, 60 more than its PAN of 180. The school said that the impact of this was “significant”.

18. At the time that places for 2021 were initially allocated the school had agreed to offer 306 places when the PAN for that year was 270. I was told that following the additional places being offered at the free school, the outcome of appeals and other changes the actual intake was 229. The school said this left it with the potential for turbulence with a “churn of casual admissions who do not always remain on roll for the duration, and the related impact on planning for staffing.” However, earlier in the same paragraph the school had said that although Medway had “assured” them the empty places would fill, “There has not been a subsequent demand for casual admissions and the number has remained fairly constant since September”.

19. The school told me that the number of first preferences for 2022 was 202 and based on the comparison of first preferences to final intake in recent years it expected “a PAN of 240 would be in line with the final number taking up places”. It told me that at the point of allocation in March 2022, 270 places were offered but just 236 of the offers had been accepted. The school said that this figure has now increased but it expects further reductions as appeals for places at the local grammar schools and the free school take place. It said these figures supported the decision to “safeguard the PAN at 240”. I emphasise at this point that the decision of the trust to reduce the PAN to 240 in the 2023 arrangements does not change the PAN for 2022 and nor will any decision I reach on this objection. If the trust wishes to reduce the PAN for 2022, it must request a variation to the arrangements from the Secretary of State for Education through the Education and Skills Funding Agency (ESFA).

20. In the response I was also told that the governors and trustees “acknowledged the position Medway outlined in their objection, and as a result agreed that should this still be the case when the applications were received and offers were being made, that they would accept the number of students that Medway deemed appropriate at initial allocation, whether that was 270 or higher, as has been agreed in the past.”

21. Medway said that the grounds for the objection were that the number of children that were expected to require places at secondary schools in its area in 2023 was greater than the number of places available even if the PAN remained at 270 and so a reduction to 240 would exacerbate the situation which it was currently considering how to address. I asked Medway for details about the place planning methodology it uses and for its forecasts and the outcomes of allocations of secondary places in recent years.

22. The methodology described to me was that used for the forecasts required for the annual school capacity survey known as SCAP. It is based on the number of children known to attend primary schools in the area and historical trends; this is a common approach in local authorities. The forecasts for the selective and non-selective schools in the area are made separately. I was told that Medway does not divide itself into separate geographical areas for school place planning purposes “due to the number of schools being

relatively low and the distance between them meaning that pupils will travel across Medway for secondary education.”

23. As part of the SCAP process the DfE assesses the accuracy of forecasts and Medway told me that for one year ahead the error in their forecasts were recorded as being 0.2 per cent, and for three years ahead 0.4 per cent. I have examined the figures myself.

24. The table below shows the intake to the non-selective schools in Medway and the forecasts of those intakes made the year before. It would appear that prior to the current year, the forecasts have underestimated the number of non-selective places required by a slightly higher amount than that recorded by the DfE. I understand that the DfE figure reflects the forecasts as a whole rather than subsets of them.

Year	2019	2020	2021	2022
Forecast	2425	2533	2568	2691
Actual	2439	2542	2625	2599*
Error in forecast	0.6%	0.4%	2.2%	3.4%

The \* indicates the number of places Medway told me had been allocated as of 9 May 2022. While this suggests an overestimate of demand in the forecasts for this year, the number of allocations is recorded at a different time in the process. It is also possible that the weighting of the most recent years used in the forecasting methodology has overcorrected for the larger than usual underestimate in 2021.

25. It is notable that the number of non-selective places being allocated in each of these years has been greater than the combined PANs of the schools until the current year.

Year	2019	2020	2021	2022
Actual	2439	2542	2625	2599*
PAN	2390	2588	2550	2720

26. This will have required some schools to have admitted above PAN in these years and this is reflected in the pattern for the school itself. The following table shows the intakes as reported by Medway and the current number on roll in those year groups as reported by the school.

Year	2019	2020	2021	2022
Intake	305	316	229	270*

Current	298	313	228	-
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27. Medway provided me with its forecast of the number of places required from 2023 onwards. In 2023 it anticipates the need for 2777 places in non-selective schools; in 2024 the figure is 2719 and the forecasts remain above this level in subsequent years peaking at 2813 in 2027. With the PAN at 270 there would be 2720 places available and with it at 240, there would be 2690 places available, neither of which would be sufficient.

28. Because the places at the school are only available to girls and three of the other non-selective schools were also single sex, I asked Medway about the balance of places for boys and girls. The figures provided are shown in the following table and include the school at the determined figure of 240.

	Boys	Girls
Selective	353	505
Non-selective	410	400
Total	763	905

29. On the assumption that the number of boys and girls living in the area are equal, it would appear to me that any shortfall in places would be more likely to affect boys rather than girls. Fewer boys can be offered selective places and so there will be greater proportion of them in the non-selective schools where the proportion of places available to each sex is approximately equal. I suspect that an analysis of the gender balance in the coeducational schools may offer insights not reflected in a forecasting methodology which does not take gender into account in an area where many places are only available to either boys or girls. However, even without that detailed analysis, it is apparent that if there are 30 fewer places for girls, then the 30 girls who might have been offered those places would be competing for places at coeducational schools reducing the availability of places for boys.

30. I also asked Medway about the other schools available to children living in Rainham if they could not be offered a place at a school in the borough. My own searches on GIAS indicted that the nearest alternative school is outside of the Medway area in Sittingbourne, over five miles away (using the school's post code as proxy for its pupils). Medway confirmed that this was the case. I consider that this is an unacceptable distance to require children to travel to school in an urban area. Excessive travelling times can adversely affect a child's education through fatigue and constrain their ability to engage in extracurricular and social activities.

31. The evidence is that Medway has until the current year slightly underestimated the number of non-selective secondary school places needed across its area as a whole. The

estimates for individual schools are, however, less accurate and any errors are amplified by the actions of admission authorities in the area when they decide to offer more places than stated in their PAN. This is permitted by paragraph 1.4 of the Code, but the intention to do so must be notified to the local authority in good time to allow it to deliver its co-ordination responsibilities effectively.

32. Until being informed by Medway that at the time of writing 2599 places had been offered at non-selective secondary schools for September 2022 against a forecast need of 2691, I was satisfied that the number of places currently planned in non-selective secondary schools (as represented by the sum of the PANs) across Medway would be insufficient to meet demand from 2023 onwards. The information about 2022, however, led me to review the figures again. I have reduced Medway’s forecasts of need for the next four years by 3.4 per cent which is the overestimate for 2022. The table shows the effect of this.

Year	2023	2024	2025	2026
Original forecast by Medway	2777	2719	2742	2773
Forecast reduced by 3.4%	2682	2626	2648	2678

33. With the PAN at 240, there will be 2690 non-selective places available in 2023. It is considered good practice in the field of school place planning to have about five per cent more places available than there are children. This gives the flexibility to meet parental preferences and, in my view, with the imbalance noted above between places for boys and girls, this flexibility is more necessary to be confident that children will not have to undertake unacceptable journeys to schools in neighbouring towns. Even if the PAN remains at 270 in 2023 onwards, the supply of places does not meet the five per cent threshold.

34. Capital funding from the DfE to local authorities to provide additional school places is called “basic need” and is provided on the basis of the forecast need and school capacities collected in the annual SCAP process. The capacity of an academy is that set in its funding formula and is not linked in any way with the PAN. The consequence of this is that if a PAN is set which would lead to a school not filling all the places available at it based on its SCAP capacity, then the local authority cannot obtain basic need funding to provide the unfilled places at another school.

35. In this case the funding agreement sets the capacity of the school at 1550 including a sixth form of 200. This leaves 1350 places for the rest of the school which would allow for five year groups of 270. The school has, however, 324 students in the sixth form and 1375 in years 7 to 11.

Year	7	8	9	10	11	Sixth form	Total
Number on roll	228	313	298	266	270	324	1699



36. The school has not argued that because it has agreed to exceed its PAN in previous years it is now operating at above its physical capacity and consequently there is not the physical space to admit 270 girls in 2023. I have, however, considered that argument and it does not hold up. The school had initially agreed to take 306 girls in September 2021, this would have led to a roll of 1777 this year which the school thought it could accommodate. Assuming the sixth form remains at a similar size and an intake of 270 in September 2022 and 2023 the roll would remain at about the current figure. Intakes in 2024 and 2025 of 270 would see the total roll fall and not reach a figure the school was planning for in 2021. This is illustrated below.

Year	7	8	9	10	11	Sixth Form	Total
2021	228	313	298	266	270	324	1699
2022	270	228	313	298	266	324	1699
2023	270	270	228	313	298	324	1703
2024	270	270	270	228	313	324	1675
2025	270	270	270	270	228	324	1632

37. The rationale for the reduction in the PAN given by the school is based on one year (2021) when a PAN of 270 was not reached. The school has argued that this leads to the possibility of “churn” in its population and uncertainty in planning staffing.

38. As explained in paragraph 1.4 of the Code “The PAN only applies to the relevant age group. This means that admission authorities may not refuse admission to other age groups on the grounds that they have already reached their PAN. They may, however, refuse admission where the admission of another child would prejudice the provision of efficient education or efficient use of resources.” I was therefore concerned when the school provided me with a document with the local authority’s logo at the top listing the number on roll in each year group and a PAN for all year groups. I will attempt to clarify this misunderstanding.

39. The relevant age group is the age group to which pupils are normally admitted. In Year 7 there are 228 girls on roll; as the PAN for that year group was 270, the school could not until the end of the school year refuse admission of any girl before the PAN was reached. If a large proportion of the 42 remaining places were taken up, this would require changes to staffing; however, the year group started with 229 pupils and as quoted above the school said: “There has not been a subsequent demand for casual admissions and the number has remained fairly constant since September”.

40. The staffing problem appears to stem from 306 places being offered and planned for initially and the intake not reaching this figure because of the actions of other bodies. The number of places offered in 2021 across the borough at 2625 was above the sum of the

PANs of 2588, a difference of 37, close to the 36 places initially offered at the school above PAN. With the nearby new free school then offering an additional 60 places, presumably to a mixture of girls and boys, this would have caused considerable “churn” at the other schools in the area. I have not seen any benefit in analysing whether this was different for boys and girls as I would hope this was a one-off year and would not happen in future. In doing this I note that in paragraph 1.4 of the Code says that admission authorities intending to admit above PAN “**must** notify the local authority in good time to allow the local authority to deliver its co-ordination responsibilities effectively.” This is a statutory requirement which may not have been met in this situation but is outside of my jurisdiction in this case and on which I make no finding.

41. For other year groups, such as Year 8 where there are 313 girls on roll, if admitting another pupil required a change in staffing, then the school could refuse admission on the grounds of prejudicing the provision of efficient education or efficient use of resources, but it would need to be able to justify this position to an independent appeal panel. The PAN of 270 in place when this year group was admitted is irrelevant to this decision.

42. I am of the view that providing no other school takes more children than its PAN, the school is likely to maintain an intake of 270 in the next few years. As illustrated in the table above, an intake of 270 in 2023 would leave the school with a similar roll and so a similar staffing requirement. The decrease in roll, even with a PAN of 270 in subsequent years, is not rapid and there is time to plan for it. It appears to me that a PAN of 240 would accelerate the need to reduce staff.

43. This determination concerns admissions in 2023 and, because of the provisions of paragraphs 1.3 and 3.3 of the Code, subsequent years. The governors and trustees “acknowledged the position Medway outlined in their objection, and as a result agreed that should this still be the case when the applications were received and offers were being made, that they would accept the number of students that Medway deemed appropriate at initial allocation, whether that was 270 or higher, as has been agreed in the past.”

44. While I note the school’s declared willingness to admit above a PAN of 240 if required to meet local needs there is no compulsion for them to admit above this figure (other than through the independent appeals process for individual children) and the provisions of paragraphs 1.3 and 3.3 of the Code mean that once the PAN is set at 240 this determination is the only opportunity for the reduction to be reversed in the sense that neither the local authority could object if the PAN was then set again at 240 or at any number above 240 for 2024.

45. The reasons put forward by the school for reducing the PAN were to prevent “churn” and to enable it to plan its staffing. The PAN only applies to the relevant year group and the school has told me that since the current Year 7 failed to fill to PAN, the number in the year group has changed by one. This may mask many comings and goings, but had the PAN been 240 it would not have prevented what “churn” there has been. Reducing the PAN would lead to the school needing to reduce staff. There would appear to be sufficient children in the area to fill the 270 places at the school in 2023 and beyond which would lead

to stable staffing requirement. The school has not suggested that it could not physically accommodate an intake of 270 in 2023, nor would such an argument hold.

46. If the PAN is reduced to 240 it is likely that children living in the area would not be able to find a school place within an acceptable distance of their homes which would not be fair to those children and so contrary to the Code. Therefore, I uphold the objection.

## **Determination**

47. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2023 determined by The Kemnal Academies Trust for Rainham School for Girls, Medway.

48. 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.

49. 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: 17 May 2022

Signed:

Schools Adjudicator: Phil Whiffing