



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3946

Objector: Lincolnshire County Council

Admission authority: The Governing Board of King Edward VI Grammar School, Louth.

Date of decision: 02 August 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by the governing board for King Edward VI Grammar School, Louth, Lincolnshire.

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 30 September 2022.

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 Lincolnshire County Council (the objector), about the admission arrangements (the arrangements) for King Edward VI Grammar School (the school), an 11 to 18 selective academy school for September 2023. The objection is to a number of elements in the admission arrangements as outlined in this determination.

2. The local authority for the area in which the school is located is Lincolnshire County Council. The local authority is a party to this objection. The other party to this objection is the school.

Jurisdiction

3. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board, which is the admission authority for the school, on that basis. The objector submitted its objection to these determined arrangements on 6 May 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 meeting of the governing board on 9 March 2022 at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 6 May 2022 and subsequent correspondence;
- d. the school's response to the objection and subsequent correspondence; and
- e. the local authority's composite prospectus for admissions to secondary schools.

The Objection

6. The objector raises seven issues;

- a) The oversubscription criteria prioritise twins who have both passed the test for the same year of entry. The objector considers this to be non-compliant with paragraph 1.8 of the Code. The objector also thinks this priority is unfair as it places twins above any other child who does not have a sibling in the school. The objector suggests that the child would be considered even if the twin had not applied. The objector says that there is no tie breaker for this criterion and that, if the criterion is deemed to be compliant then 'multiple births' should be considered as an alternative to twins.
- b) The objector considers the section in the admission arrangements on how places are offered is unclear and contrary to paragraph 14 of the Code.

- c) The objector says that the position of students with special educational needs in the arrangements does not conform with paragraph 1.6 of the Code.
- d) The objector says that the distance measurement is not clearly outlined and therefore does not conform to paragraph 14 of the Code.
- e) The objector says that there should be a date specified in the arrangements on which a pupil should be on roll at a feeder school before being considered for admission.
- f) The objector says that there are no standard lottery arrangements in the local authority, and this provision in the arrangements for use as a tie breaker cannot therefore be applied.
- g) The objector considers a distance tiebreaker for siblings and a score order for other children may make the arrangements unfair and unreasonable.

7. The relevant paragraphs from the Code are as follows;

Paragraph 1.8 'Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation including equalities legislation. Admission arrangements **must** include an effective clear and fair tie breaker to decide between two applications that cannot otherwise be separated.'

Paragraph 14 '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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.'

Paragraph 1.6 'The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied. All children whose Education, Health and Care Plan names the school **must** be offered a place (with the exception of designated grammar schools...).'

Paragraph 1.13 'Admission authorities **must** clearly set out how distance from home to school will be measured.'

Paragraph 1.15 'Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school to schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.'

Paragraph 2.15 'Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission'.

Paragraph 1.2 'As part of determining their admission arrangements all admission authorities **must** set an admission number for each 'relevant age group'.'

Paragraph 1.14 'Catchment areas **must** be designed so that they are reasonable and clearly defined'

Other Matters

8. I have studied the arrangements as a whole and have identified five further elements of the arrangements which may not conform with the Code and the law relating to admissions. These are as follows:

- The waiting list section of the arrangements states that the list will be kept until 'at least the end of the autumn term in Y7.'
- The sixth form arrangements suggest that internal and external candidates will all be prioritised using the same list of oversubscription criteria with a joint PAN.
- The arrangements fail to make clear that, as is the case for year 7, students applying for sixth form admission who have an education, health and care plan (EHCP) which names the school are to be admitted without recourse to oversubscription criteria.
- The notes section of the admission arrangements is unclear and contrary to paragraph 14 of the Code. There are details of residency requirements, but these are not specified in the oversubscription criteria. The arrangements state that 2.18 of the Code refers to service personnel when in fact it is 2.21 of the Code.
- The notes include a catchment area which is not clearly defined.

Background

9. The school is an oversubscribed single academy trust selective school in Louth in Lincolnshire. The governing board determined the arrangements for September 2023 at a meeting on 9 March 2022. The school is a grammar school and only admits pupils who have 'passed' the entrance examination. As a grammar school it is permitted to keep places empty if not enough applicants reach the required standard for admission. The school is in a consortium with other local schools and they agree that a standardised score of 220 or better is required for a student to be in the top 25 per cent of the ability range and thus eligible for a place at a Lincolnshire Grammar School. The school therefore only admits pupils who have achieved at least a score of 220 in the tests. The arrangements describe this as 'passing the 11+ test'.

10. The published admission number (PAN) for year 7 admission in September 2023 is 145.

11. The arrangements state that places will be offered in the following order to those who have reached the required standard;

- Students with special educational needs

- Looked after and previously looked after children
 - Rank order of the total 11+ score.
12. Under a separate heading of 'Oversubscription Criteria' the school then lists the following;
- Looked after and previously looked after children
 - Students with Special Education Needs
 - Siblings
 - Twins who have both passed the test in the same year of entry
 - Eligible children who are in year 6 and live within the traditional catchment area or are attending one of the named primary schools
 - Remaining candidates will be ranked according to their test scores.
13. Under the next heading of 'Tie break arrangements' the arrangements state
- Parents can use the nearest school tool on Lincolnshire County Council's Admissions page to find their nearest school.
 - In the event of tie break for the final place between two individuals then the Lincolnshire County Council's school admission team will apply their nearest home address test procedures.
 - If more than two children are tied for the last place, then the Lincolnshire County Council's school admission team's independent lottery arrangements will apply.

Consideration of Case

14. A paper outlining the objection and the other matters was sent to the parties on 15 June 2022 requesting additional information and any comments by 22 June 2022. The local authority responded on the 22 June 2022. Following three reminders, the school responded on 19 July 2022 and this has delayed the completion of the determination. I will consider each of the elements of the objection separately.

a) Oversubscription criterion 4 is for twins who have both passed the test for the same year of entry. The objector considers this to be non-compliant with paragraph 1.8 of the Code. The objector also thinks the priority at criterion 4 is unfair as it places twins above any other child who does not have a sibling in the school. The objector suggests that the child would be considered even if the twin had not applied. The objector says that there is no tie breaker for this criterion and that, if the criterion is deemed to be compliant then 'multiple births' should be considered as an alternative to twins.

In the school's response the headteacher explained that the policy was written from a family friendly and rural community perspective to ensure that the difficulties which living in a wide rural location with poor transport present to parents when choosing schools are recognised and to prevent the possibility of siblings who have applied for admission and have passed the test being sent to different schools. The school says it knows the difficulties associated with rural education in the area and it is the view of the governing body that splitting twins up would impose significant emotional and logistical challenges on a family and on the twins.

The Code does not provide an exhaustive list of all oversubscription criteria but requires, at paragraph 1.8 that the criteria must be reasonable, clear, objective and procedurally fair. The school only admits pupils who have applied for a place and have passed the entrance test; this applies to twins in the same way that it applies to other applicants. The governing board have made the decision to admit both twins if they have both passed the test and applied in the same year of entry on the reasonable grounds that to not do so would cause considerable hardship to families. The Code does not require that pupils are admitted in rank order of test score. This is a decision for the governing board and is not contrary to the Code even though it may mean that the twin who scored the lower score may well be admitted as a priority before other pupils who have passed the test but have scored higher scores. It is open to grammar schools to use a range of approaches, many of which mean that places will not be awarded solely on the basis of highest score in the test. I do not therefore uphold this element of the objection. The local authority has suggested that 'multiple births' rather than 'twins' should be considered and this is a matter for the governing board to decide. The school has indicated that it is content to amend this phrase.

b) The objector considers the section in the admission arrangements on how places are offered is unclear and contrary to paragraph 14 of the Code.

The school explains that the section on 'how places are offered' sets out three bullet points about how places are offered if the school is not oversubscribed. They say that they are always oversubscribed and therefore apply the oversubscription criteria. The school goes on to say that prospective parents engage effectively with the school at each stage of the admission process and rarely express concern at this part of the arrangements.

I agree with the objector that the section on 'how places are offered' is unclear and made more complicated by the position of information concerning children with EHCPs in the two sections. I see no need for the first section and I believe that it could be replaced with a simple statement which states that if there are fewer qualifying applicants than places then all applicants will be admitted. This would render this part of the arrangements clear. I therefore uphold this element of the objection.

c) The objector cites oversubscription criterion 2 - students with Special Educational Needs as not conforming to paragraph 1.6 of the Code. The school responded that they do prioritise students with EHCPs and says that the precise objection is not clear.

The Code is clear that children with EHCPs which name the school must be admitted before the oversubscription criteria are applied to other children and this should be clear in

the arrangements. In the current arrangements this group of pupils is listed as the second priority in the oversubscription criteria after looked after and previously looked after children and this does not conform with the Code. A statement concerning the admission of children with an EHCP which names the school should be in the arrangements and be separate from and before the oversubscription criteria. I uphold this element of the objection.

d) The objector says that the distance measurement in the arrangements is not clearly outlined because the local authority uses measurements to three decimal places. The school suggests that they have incorporated the local authority's requirements into the policy but would be happy to be further advised.

The arrangements use distance from the home to the school only when a tie breaker situation is needed; i.e. when, within a particular oversubscription criterion, there are two or more applicants who have scored the same test score. In the last three years this would be needed only in oversubscription criterion 6 – 'remaining candidates will be ranked according to their test scores.' The arrangements say that in these circumstances the local authority admission team will apply their nearest home address test procedures. In the notes there is a definition of a child's address and an explanation that the measurement of distance is by straight line distance from home to school. The objector says that the arrangements should state that the local authority measures this distance to three decimal points. The Code does not prescribe how distance is to be measured from home to school, although paragraph 1.13 does state that arrangements must clearly set out how distance will be measured. I am of the view that the arrangements are clear on this point and conform to the Code and I therefore do not uphold this element of the objection

e) The objector says that there should be a date in the arrangements on which someone should be on roll at a feeder school before being considered for admission. The school responded that this issue has previously been discussed with the feeder primary schools and a decision was made not to incorporate a specific date as to do so might create unintended consequences. The school's response states that; ' firstly, a set date for being on roll would mean that children who arrive after this date would not be eligible for a place at the school under this criterion e.g. parents relocating into the area or having to move their child to a new school would find themselves unable to apply to the school due to an arbitrary date and instead would be forced to make perverse choices and send their children to a different secondary school: this would undermine parental choice. Secondly, primaries advised that by adding such a date this could cause unintended consequences for them and create churn amongst parents seeking to move their children into a feeder primary by a specific date for administrative rather than educational reasons.'

The Code does not require arrangements to set a specific date on which children should be on roll in a feeder primary school it requires the feeders to be named and the choice of feeder schools to be transparent and made on reasonable grounds. As there is no requirement for a date to be identified the arrangements conform to the Code in this respect and I do not uphold this element of the objection.

f) The objector says that there are no standard lottery arrangements in the local authority and these cannot therefore be applied for use as a tie break. The arrangements state that 'if more than two children are tied for the last place then the local authority admission team's independent lottery arrangements will apply.' The school's response suggests that this was included in the arrangements in line with suggestions from the local authority. A trawl through the documents on the local authority website concerning admission to primary and secondary schools includes the following statement; 'If the distance criterion is not sufficient to distinguish between two or more applicants for the last remaining place, then a lottery will be drawn by an independent person, not employed by the school or working in the Local Authority Children's Service Directorate.' I believe that this is the 'independent lottery arrangement' to which the school's arrangements refer and I am therefore of the view that this is a misunderstanding between the school and the local authority and in fact they agree that a final tie breaker should be undertaken by lottery and drawn by an independent person not employed by the school or working in the local authority children's services directorate. This is in line with paragraph 1.8 of the Code and I do not therefore uphold this element of the objection. I should note however that the school's arrangements should read 'If two or more children are tied' and not 'if more than two children are tied' which literally means three or more tied applications. I am sure that this was not the intention of the school and is a misprint. This requires amendment.

g) The objector considers a distance tiebreaker for siblings and a score order for other children may make the arrangements unfair and unreasonable. The arrangements state three bullet points under the title 'tie break arrangements. The first is a signpost for parents to find their nearest school and is not relevant to a tie break situation. The second states that distance will be used if there is a tie break situation. This would occur if the applicants have the same score in the test. A final tie breaker which uses the lottery arrangements is explained above. The school says that the objector is incorrect and that there is no separate tie break rule for siblings in the policy. I agree with the school and can find no alternative tie breaker stated in the arrangements. I therefore do not uphold this element of the objection.

Other Matters

15. I have studied the arrangements as a whole and have identified elements of the arrangements which may not conform with the Code and the law.

- The waiting list section of the arrangements states that the list will be kept until 'at least the end of the autumn term in Y7.' The Code requires that the waiting list be kept until at least 31 December of each school year. This requires amendment.
- The sixth form arrangements suggest that internal and external candidates will all be prioritised using the same list of oversubscription criteria. The school states that this section was incorporated into the arrangements as advised by the local authority. The arrangements state that there is total of 125 places available for entry into Y12. The Code is clear at paragraph 1.2 that the PAN for admission to year 12 should only be for external pupils and should not include those pupils who are

staying on in the sixth form from Y11 at the school. This does not affect the entry requirements. The school is required to amend the arrangements to include a PAN for year 12 for external pupils only.

- As is the case for year 7, students applying for sixth form admission who have an EHCP which names the school should be admitted without recourse to oversubscription criteria. The school accepts this and will amend the arrangements.
- There are five main notes in the arrangements;
 - 1). Definitions of looked after and previously looked after children. This was added in response to a request from the local authority and complies with the Code.
 - 2). Definition of home address which refers to the tie break situation and complies with the Code.
 - 3). Definition of sibling which refers to oversubscription criterion 3 and complies with the Code.
 - 4). An explanation of admission of service personnel in line with the Code. This note uses the incorrect reference to the Code – it should read paragraph 2.21 and not 2.18. Also, it refers to ‘the residency test’ which I take to mean the ‘nearest home address test’ referred to in note 2. This could be confusing to parents and contrary to paragraph 14 of the Code. This requires clarification.
 - 5). Feeder schools and catchment area notes. The feeder schools are named and an explanation of the catchment area in line with the bus routes is provided. This would be clearer for parents if a map of the catchment area or a list of postcodes or addresses was included. This would then comply with the Code’s requirement for a ‘clearly defined catchment area’ as required in paragraph 1.14 of the Code. In addition, reference to ‘point 3 of the oversubscription criteria’ in this section is incorrect. The school has stated that they are content to remove this reference.

Summary of Findings

16. I have tabulated the findings of this determination in the table below with a column summarising action which is required by the school.

ISSUE	IDENTIFIED BY	UPHELD/NOT UPHELD	ACTION REQUIRED
Priority for twins	Objector	Not upheld	
Section on ‘places offered’	Objector	Upheld	Revise section

SEN/EHCP priority for Y7	Objector	Upheld	Amend
Distance measurements	Objector	Not upheld	
Date of pupils on roll in feeder schools	Objector	Not upheld	
Lottery arrangements	Objector	Not upheld	
Two different tie breakers	Objector	Not upheld	
Waiting list date	Adjudicator		Revise
PAN for 6 th form	Adjudicator		Revise
EHCP priority for 6 th form	Adjudicator		Revise
Ref to 2.18 rather than 2.12	Adjudicator		Revise
Use of the term 'residency order' in note only	Adjudicator		Revise
Catchment map	Adjudicator		Revise
Reference to previous section in catchment notes	Adjudicator		Revise

Determination

17. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by the governing board for King Edward VI Grammar School, Louth, Lincolnshire.

18. 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.

19. 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 30 September 2022.

Dated: 02 August 2022

Signed:

Schools Adjudicator: Ann Talboys