



Case reference: REF4095

Admission authority: Rainham Mark Educational Trust, for Rainham Mark Grammar School, Medway

Date of decision: 14 September 2022

Determination

We have considered the admission arrangements for September 2023 for Rainham Mark Grammar School, Medway, in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that there are matters which do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) the adjudicators' 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 was referred to the Office of Schools Adjudicator (OSA) by a member of the public (the objector) about the admission arrangements for September 2023 (the arrangements) for Rainham Mark Grammar School (the school). We (Jane Kilgannon and Phil Whiffing) were appointed as joint adjudicators for the objection as permitted by the Education (References to the Adjudicator) Regulations 1999. Jane Kilgannon has acted as lead adjudicator. The objection was submitted on 5 May 2022 but later withdrawn, on 28 July 2022.

2. When the arrangements were brought to our attention by the objector, we noted that a number of matters did not, or might not, conform with the requirements for admission arrangements. These related to: the priority afforded to looked after and previously looked after children; which address is treated as the child's home if they live at two addresses; the waiting list process; the absence of provision for requesting admission outside of the normal age group; the information requested in the Supplementary Information Form (SIF); a lack of clarity about how to register for the selection tests; and the meaning of the term "selective child" used in the arrangements.

3. Following the withdrawal of the objection, and on the basis that we had identified matters in the arrangements that did not, or might not, conform with the requirements relating to admission arrangements, we decided to exercise our power under section 88I(5) of the Act to consider the arrangements as a whole.

4. The parties to the case are Rainham Mark Education Trust (the admission authority) and Medway Council (the local authority).

Jurisdiction

5. The terms of the academy agreement between the multi-academy trust (Rainham Mark Education Trust, the admission authority) 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 under section 88C of the Act by the governing board of the school, on behalf of the admission authority, on 6 October 2021 on that basis. As stated above, when the arrangements were brought to our attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. We therefore decided to use our power under section 88I(5) of the Act to consider them as a whole.

Procedure

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

7. The documents we have considered in reaching our decision include:

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements, including the SIF;
- c. comments from the admission authority on the matters raised; and
- d. comments from the local authority on the matters raised.

Matters under consideration

8. There are seven aspects of the arrangements that we considered may not conform with the requirements of the Code.

9. First, we noted that oversubscription criterion (i) prioritises “Children in Public Care, as defined in the Medway Co-ordinated Admissions Scheme to include children who are adopted and were previously looked after”. The Code requires in paragraph 14 that arrangements are clear and the children who must be given highest priority in admission arrangements are as set out in paragraph 1.7 of the Code. We were concerned that this aspect of the arrangements was not clear and so may not conform with the Code

10. Second, paragraph 1.13 of the Code requires that admission authorities must clearly set out how distance from home to the school will be measured. The Code states “This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent”. We were concerned that the arrangements may not meet this requirement because they do not appear to make such provision.

11. Third, the requirements for waiting lists are set out at paragraph 2.15 of the Code and paragraph 14 of the Code requires that arrangements are clear. The arrangements refer to one waiting list held by the local authority until 31 December and one held by the school from 1 September. We were concerned that it was not clear how the two waiting lists operate and interact and so the arrangements may not confirm with paragraphs 14 and 2.15 of the Code.

12. Fourth, paragraph 2.18 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. We were concerned that this appeared to be missing from the arrangements.

13. Fifth, paragraph 2.4 of the Code states that admission authorities “must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability.” The school’s SIF asks for the child’s previous address (if moved within the last 12 months) and the name of the child’s current primary school. We were concerned that the inclusion of these information requests on the SIF may not conform with paragraph 2.4 of the Code.

14. Sixth, we were concerned that the arrangements did not set out the process for selection including how to register, the location of the test and the date of the test. As this information was missing, the arrangements appeared to be unclear. Paragraph 14 of the Code requires that admission arrangements are clear, and paragraph 1.17 of the Code specifically requires that the process of selection must be published.

15. Seventh, paragraph 14 requires clarity. We were concerned that the arrangements may not meet this requirement in that the meaning of “selective child” was unclear.

Background

16. The school is situated in Gillingham, Medway, and has a Published Admission Number (PAN) of 235.

17. The school is designated as a selective grammar school and the arrangements refer to testing carried out by the local authority in relation to “selective and non-selective decisions”.

18. In the event of oversubscription among children who meet the academic requirements for the school, priority for places is determined by the application for the following criteria (in summary):

- a. 'Children in public care';
- b. Children in receipt of Free School Meals;
- c. Children with a sibling at the school;
- d. Children with health reasons to attend the school;
- e. Children with a parent who is a member of staff at the school; and
- f. Proximity of the child's home address to the school.

Consideration of Case

'Children in Public Care'

19. We noted that oversubscription criterion (i) prioritises "Children in Public Care, as defined in the Medway Co-ordinated Admissions Scheme to include children who are adopted and were previously looked after". We were concerned that it is not clear which children meet this criterion and so this aspect of the arrangements may not comply with the requirements of paragraphs 1.7 and 14 of the Code because the definition of children who are given the highest priority for admission may not be clear. The admission authority did not respond to this concern. The local authority acknowledged that "it may be clearer to include the definition from Medway Council's scheme within the academy's own admission arrangements" rather than cross-referring to it. We noted that no copy of the Medway Co-ordinated Admissions Scheme was provided alongside the arrangements, nor was any website address or link provided to it. Locating a scheme of co-ordination on the local authority's website was not simple.

20. Paragraph 1.7 of the Code requires that "the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children, including those 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. Previously looked after children are children who were looked after but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order). All references to previously looked after children in this Code mean such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after and those 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."

21. It is for the admission authority for the school, to ensure that the arrangements are clear. This makes it the responsibility of the governing board in this case to define the

children who meet the first oversubscription criterion in the arrangements and to ensure that the definition used is consistent with that in the Code. The required definition of previously looked after children changed in the revised version of the Code which came into force on 1 September 2021. At that time the Department for Education wrote to all admission authorities to explain the action which should have been taken.

22. We find that it is not clear in the arrangements which children are given the highest priority within the oversubscription criteria because the arrangements rely on a definition in another document which is not in the control of the admission authority and is not easily found.

Home to school distance where parents do not live together and the child lives part of the week with each parent

23. Paragraph 1.13 of the Code requires that admission authorities must set out clearly how distance from home to the school will be measured. The Code states “This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent”. We were concerned that the arrangements may not meet this requirement because they do not appear to make such provision. The admission authority did not respond to this concern. The local authority responded, explaining that “The arrangements define how distances are calculated at the end of section two. Medway Council’s scheme explains this further but if the OSA determines the existing definition in the academy’s admissions arrangements are not clear, the academy could elaborate using the wording set out in the scheme”. This is not the point of our concern.

24. The following definition was provided at the end of section two of the arrangements: “Distance will be measured by the shortest available safe walking route between home and school as measured by Medway Council’s GIS. Those living closer to the school will receive the highest priority. Medway Council’s GIS measures the start point, end point and distance of each route”. This does not provide any detail to indicate which address will be considered to be the child’s home address if the child lives at more than one address during the week, or how that will be determined. The Code requires the admission authority to set out how it will do this. We find that this aspect of the arrangements does not conform to the requirement at paragraph 1.13 of the Code.

Waiting Lists

25. The requirements for waiting lists are set out at paragraph 2.15 of the Code which says, “Each admission authority must maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.” The arrangements say “(i) For rising Year 7, as set out in the coordinated scheme, the Local Authority will be responsible for holding a waiting list for parents who request their child’s name be added and where that parent has ranked Rainham Mark Grammar School higher on the SCAF than the school they have been

offered. The waiting list will operate until the end of Term 2 (31 December) of the new academic year when the new Year 7 cohort is admitted. (ii) The school will maintain a waiting list for Year 7 for one academic year from 1 September using the oversubscription criteria described in section 2 of this policy.”

26. We were concerned that it was not clear how the two waiting lists operate and interact, and so the arrangements may not conform with paragraphs 14 and 2.15 of the Code. Statements required by paragraph 2.15 do not appear in the arrangements. The admission authority accepted that this aspect of the arrangements was unclear and explained that there was an error in the arrangements. The waiting list held by the school is from 1 January, and not 1 September. The local authority confirmed that it holds waiting lists until 31 December. It also appears to us that the operation of each waiting list is a separate process and that there is no overlap or interaction between the waiting lists. This information is not made clear in the arrangements and therefore we find that this aspect of the arrangements does not conform to the requirement of clarity in paragraph 14 of the Code and does not conform with paragraph 2.14.

Admission outside of normal age group

27. Paragraph 2.18 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. We were concerned that this appeared to be missing from the arrangements. The admission authority and local authority each acknowledged that this information was missing from the arrangements. We find that the relevant information is missing and therefore the arrangements do not conform with paragraph 2.18 of the Code.

Information requested on the Supplementary Information Form (SIF)

28. Paragraph 2.4 of the Code states that admission authorities “must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability.” The school’s SIF asks for the child’s previous address (if moved within the last 12 months) and the name of the child’s current primary school. We were concerned that the inclusion of these information requests would not conform with paragraph 2.4 of the Code. The admission authority accepted this concern and agreed that neither piece of information is required for the purpose of making decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. The local authority said that the SIF is used to determine eligibility for oversubscription criterion (ii) – Children in receipt of Free School Meals. It explained that eligibility can be checked either through the child’s home local authority or through their primary school, depending upon which organisation manages free school meal eligibility for the individual child. It further said that “details such as the child’s address would be required”.

29. The school gives priority in its oversubscription criteria to children eligible for free school meals. It does not set a different academic threshold for such children. It is, therefore, not necessary to know whether a child is eligible when the test is taken. It will,

however, be necessary to know whether a child is eligible to rank applications received on the common application (CAF) used by the local authority or the neighbouring local authority. If the CAFs used locally do not ask if a child is eligible, then the SIF may do so. The DfE guidance on using pupil premium eligibility in admission arrangements published in 2014 suggests “Schools should discuss with their local authority arrangements for using the Department’s FSM Eligibility Checking Service (ECS). This service is normally used by local authorities for handling FSM applications from parents.”

30. If information beyond what is collected on the CAF is needed to enable the admission authority to identify and then correctly rank children eligible for free school meals, or this information is not available from other sources, then the SIF may be used to identify such children. Applicants who are applying for priority on the basis of eligibility for free school meals may be asked to provide details of their previous address and the name of their current primary school provided the SIF makes clear the purpose of requiring this information. However, asking all applicants for details of a previous address or the current school is unnecessary and so does not conform with paragraph 2.4 of the Code.

Clarity of arrangements regarding testing for ability

31. Paragraph 14 of the Code requires clarity and paragraph 1.17 requires that “admission authorities for all selective schools **must** publish the entry requirements for a selective place and the process for such selection in their admission arrangements”. We were concerned that the arrangements may not meet these requirements in that how to register for the test, the location of the test and the date of the test are not made clear in the arrangements. The admission authority did not respond to this concern. The local authority explained that “The admissions arrangements directs [sic] parents to Medway Council’s secondary admissions guide which includes the information [...]”. We note that although section 1 of the arrangements states “The arrangements for coordinated admissions in Medway will be set out in detail in the Medway Local Authority (LA) booklet for parents ‘Admission to Secondary School’, a copy of which will be available from the primary school or the Admissions Team at Medway Local Authority”, no copy of the document is provided, nor any website address or link in the arrangements.

32. It is the responsibility of the admission authority to set these important dates before 28 February and to publish this information in its admission arrangements before 15 March by when the arrangements must be published on the school’s website each year. If it relies on another body to publish these dates, it must ensure that they are published accurately and by the 15 March with a direct link to them from within the arrangements. Arrangements must also be available to people without access to the internet and the dates must be included in any hard copy.

33. The local authority is not required to publish its composite prospectus for 2023, which we understand to be the document referred to by the local authority to be, until 12 September each year and so it is possible for parents not to be able to find out in time to take these dates into consideration when planning family events. For these reasons, we consider that insufficient information is provided in the arrangements for parents to easily

understand the process for registering and undertaking the selection test. We find that this aspect of the arrangements does not conform with paragraphs 14 and 1.17 of the Code.

34. Paragraph 14 of the Code requires clarity. We were concerned that the arrangements may not meet this requirement in that the meaning of the term “selective child” in the arrangements was not defined. The admission authority did not respond to this concern. The local authority explained that “Whilst not specified in the arrangements, a “selective child” is one who has been assessed as grammar through the Medway Test procedures”. We consider that the absence of this definition, and a clear explanation that only a child that is assessed as a “selective child” will be eligible for consideration for a place at the school, renders the arrangements unclear and in breach of paragraph 14 of the Code.

Summary of Findings

35. We find that, in the ways set out above, the arrangements are unclear, are missing required information, and that the SIF does not conform with requirements.

Determination

36. We have considered the admission arrangements for September 2020 for School, Local Authority in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

37. By virtue of section 88K(2) the adjudicators’ 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: 14 September 2022

Signed:

Schools Adjudicator: Jane Kilgannon

Phil Whiffing