



**DETERMINATION**

**Case reference:** ADA2746

**Objector:** A parent

**Admission Authority:** The Academy Trust for Tiffin School

**Date of decision:** 12 September 2014

**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 determined by the academy trust for Tiffin School in Kingston-upon-Thames.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.**

**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 as quickly as possible.**

**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 a parent whose identity is known to me (the objector), about the admission arrangements (the arrangements) for Tiffin School (the school), a selective academy school for boys aged 11 – 18 in Kingston-upon-Thames for September 2015. The objection is to the priority given in the school's oversubscription criteria to boys who live in the school's catchment area (which is referred to as its priority area in the arrangements).

**Jurisdiction**

2. 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 academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 20 June

2014. 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 powers under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 20 June 2014 and subsequent emails and attachments to those emails dated 15 and 21 July 2014;
  - b. the school's responses to the objection and to further correspondence from the objector dated 14, 21 and 24 July 2014 and 21 August 2014;
  - c. the comments of the Royal Borough of Kingston-upon-Thames which is the local authority (LA) for the area on the objection dated 15 July 2014;
  - d. the Department for Education (DfE) Statistical First Release (SFR) 2014 giving details of pupil characteristics at the school;
  - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. copies of the minutes of the meeting at which the academy trust determined the arrangements; and
  - h. a copy of the determined arrangements.

### **The Objection**

5. The objector says in the objection: "*Catchment areas should not be permitted for grammar schools. Grammar schools should award places on the basis of merit alone.*" The objector argues that the school's approach breaches paragraphs 1.14 of the Code which is concerned with catchment areas; paragraph 1.8 in relation to fairness and the requirement not to disadvantage unfairly children from particular racial or social groups; paragraph 2.18 which is concerned with children of UK service personnel, and paragraph 2.19 which is concerned with children from overseas.

### **Other Matters**

6. In the course of considering the objection, I reviewed the arrangements

for Year 7 (Y7) and Year 12 (Y12). I noted that they appeared not to conform to the requirements relating to admissions in a number of ways.

7. In relation to Y12, the arrangements:
  - a. while providing for boys in their own right as required by paragraph 2.6 of the Code also require the parent's signature which would seem to negate this right;
  - b. appear to request information that is not required in order to apply the school's oversubscription criteria in contravention of paragraph 2.4 of the Code as well as for some information which is specifically prohibited by paragraph 1.9 of the Code;
  - c. seem to imply that even if they meet the specified academic criteria boys on roll in Y11 may not be able to continue at the school, in contravention of the Education (Pupil Registration) (England) Regulations 2006;
  - d. do not appear to be objective, clear or fair as required by paragraph 14 and 1.8 of the Code.
8. In relation to Y7 and Y12, the arrangements did not contain a final tie-breaker as required by paragraph 1.8 of the Code to separate two candidates who qualified equally for the final available place.

## **Background**

9. The school became an academy on 1 July 2011. Prior to that it was a voluntary-aided school and was designated as a grammar school under section 104 of the Act. The school has a published admission number (PAN) of 180 for Y7 and a PAN of 40 for Y12. The homepage of the school's website has a tab headed admissions and this gives access to the admission arrangements for both points of entry. The oversubscription criteria for 2015 were available on the website when I reviewed it in early July 2014 and are set out below.
10. Year 7: The arrangements explain that priority is given to those who live in the school's priority area. The relevant sections provide that a minimum qualifying score is set. Results are standardised and aggregated and a rank order of results produced. After the admission of pupils with a statement of special educational needs (SEN) that names the school and the giving of highest priority to looked after and previously looked after children places are allocated in the following order:
  - in rank order from among those in the priority area until 180 places are filled.
  - In the event of a tied score to fill the 180<sup>th</sup> place, a place will be offered in order of proximity to the school.

- If there are fewer than 180 applicants who qualify and live within the priority area, then in rank order from among those who live outside the priority area until 180 places are filled.
- In the event of a tied score to fill the 180<sup>th</sup> place, from outside the priority area, a place will be offered in order of proximity to the school.

11. Year 12: The arrangements explain the academic criteria required for entry to the sixth form. They provide that boys already at the school in Year 11 (Y11) who meet these academic criteria will have priority for places and then go on to set out the process for external applicants to apply. External applicants must complete the school's Y12 application form and return this by 19 December 2014 (for admission in September 2015) to the school. A copy of the student's end of Year 10 (Y10) report is to be returned with the application form. The arrangements include the following statements:

*“Based on the evidence available from the application form, information from the current school and predicted grades, applicants who are considered most likely to best satisfy the admission criteria will be invited for a meeting to discuss subject options, and may subsequently be made an offer of a place at the school.”*

*“Meetings normally take place in the spring term and it is expected that a parent/guardian will attend this meeting with the prospective student.”*

12. The oversubscription criteria for external applicants are as follows:

*“An applicant who is a looked after child or a previously looked after child... will be offered a place before other applicants”*

*For all other applicants, places will be offered on the following criteria:*

- *Assessment of predicted GCSE grades, other appropriate grades and information based on the professional judgement of staff at Tiffin School and the professional judgement of staff at the applicant's current school, to determine which applicants are most likely to best satisfy the admission criteria.*
- *The demand for places in each of the 4 subject areas the applicant chooses to study.*
- *Staffing constraints in A level subjects at Tiffin School.”*

## **Consideration of Factors**

### The inclusion of a priority area in the school's arrangements for Y7

13. The priority area was introduced by the school in its admission arrangements for 2015. Prior to this, the school gave priority on the basis of the highest scores in its selection tests. I am satisfied that in

changing its arrangements to introduce the priority area the school has complied with the requirements relating to making such changes set out in the School Admissions (Admission Arrangements and Determination of Admission Arrangements) (England) Regulations 2012 (the Regulations) and paragraphs 1.42 – 1.46 of the Code.

14. I am satisfied that the priority area is a catchment area for the purposes of paragraph 1.14 of the Code and I have accordingly considered whether it is reasonable and clearly defined as required by the Code. The arguments put by the objector about the priority area are that:

- a. It is unreasonable for a selective school to have a catchment area. Catchment areas are acceptable only for non-selective schools and not for selective schools as selective schools should allocate places solely on the basis of the highest scores achieved in selection tests and should not take account of where children live. The choice of a 14 km radius from the school for the priority area is arbitrary and has no rational basis and it is unfair that children who achieve a higher score but live further away should have less priority for a place than those who live within 14 km of the school;
- b. the use of a catchment area in a location where house prices are high unfairly disadvantages children from poor social groups and is thus in breach of paragraph 1.8 of the Code which states that “*admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular... social group*”;
- c. some other grammar schools have larger catchment areas and others do not use catchment areas;
- d. the introduction of a catchment area is not fair to families who may have one child at the school but because they live outside the priority area will have a reduced chance of a younger son’s securing a place at the school in due course.

15. I shall deal first with the objector’s argument that catchment areas are acceptable only for non-selective schools. Section 104 of the Act provides for a school to be designated as a grammar school “*if its admission arrangements make provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils of high ability*”. The Act does not define high ability and does not say that it means the highest ability of those applying. Paragraphs 1.18 to 1.20 of the Code are concerned with grammar schools. Paragraph 1.19 states that grammar schools can have arrangements which “*are wholly based on selection by reference to ability and provide for only those pupils who score highest in any selection test to be admitted*”. Paragraph 1.20 states that “*where admission arrangements are not based solely on highest scores in a selection test, the admission authority must give priority in its oversubscription criteria to all looked after children and previously*

*looked after children who meet the pre-set standards of the ability test.”* There are thus two possible approaches for grammar schools allowed by the Code. The school has moved from one approach to the other, giving priority on the basis of highest scores within its priority area after giving the required highest priority to looked after and previously looked after boys. I consider that it is entitled to do this, provided it has followed the proper process outlined in the Regulations and Code and that the catchment area itself meets the requirements of the Code. The fact that some grammar schools do not have catchment areas does not mean that it is unlawful or unreasonable or unfair for this particular school to have a catchment area. I therefore reject this part of the objector’s argument and do not uphold this aspect of the objection. I go on to consider the other aspects of the objection relating to the priority area.

16. The school has explained that it decided to consult on the introduction of a priority area in the light of its concerns about the increasing numbers of boys applying to the school from further afield. The school has informed me that it considered a number of ways of defining a priority area and settled on a 14 km radius from the school as this would have covered the great majority of those who currently attend the school and best represented what the school considered to be the area it traditionally served. The school has also stated it was concerned that boys living very long distances from the school would not be able to play a full part in the life of the school by joining in after school and weekend activities and that this would hinder the flourishing of the school and its ethos. The LA has also said that children who have long journey times may be less able to develop friendship groups within the local and school community and that this could adversely affect both their social development and community cohesion.
17. It is clear from the documents provided to me and to the objector that the school considered carefully the implications of adopting a priority area and that it considered other distances and other approaches (such as travelling time) in fixing on its priority area. The LA has provided a comprehensive set of comments which have assisted my consideration of the case. These comments substantiate the school’s argument that the number of boys gaining a place and living more than 14 km from the school has increased significantly over the past decade. Between 2003 and 2010, the highest such number in any year was six, rising to 17 in 2012 and then falling to 11 in 2013. I do not agree with the objector’s argument that the use of a distance of 14km from the school is arbitrary and has no rational basis. The distance was selected after careful consideration and the school has set out its rationale for choosing this particular distance. Since the school is a selective school it will cater only for a relatively small proportion of the population and is accordingly likely that it will serve a larger geographical area than an all ability school of the same size in the same area. It has settled on a particular distance to define its area and will need to keep this under review. The fact that different grammar schools with catchment areas have larger (or for that matter smaller) catchment areas does not make this school’s choice of its particular priority area unfair or unreasonable.

I do not uphold this aspect of the objection.

18. The objector does not accept the arguments made by the school and the LA about the importance of living reasonably close to the school in order to take part in out of school hours activities, to build friendship groups or the links to community cohesion. The objector has also argued in his email of 15 July 2014 that the introduction of a catchment “at such short notice” is unfair to families who live outside the catchment area and already have an older child at the school. Requirements as to the timing for making changes to admission arrangements is set out in the Act, Regulations and Code and the school has complied with these.
19. Having introduced a priority area, the school will need to be able to ascertain whether applicants do or do not live in that area. The school’s arrangements explain clearly what they mean by applicants’ permanent place of residence. They explain that the address taken will be the address where the boy is living on the closing date for the submission of the common application form (CAF). The school takes part in the LA wide arrangements for considering applications for schools made after the closing date which deal, among other things, with cases where families have moved into the LA area after the closing date.
20. The objector’s view is that “*parents should be permitted to move closer to a school if their child is offered a place*”. He also argues that any residency requirement in terms of living in an area or taking account of a permanent address is unfair to children of service personnel who are likely to move at short notice and to those who may be sent to work and live overseas by an employer and those who may move to care for a sick relative. The objector considers that such requirements amount to breaches of:
  - a. paragraph 2.18 of the Code which makes provision for children of UK service personnel and crown servants and requires admission authorities to allocate places in advance of the family arriving in the area when certain conditions are met; and
  - b. paragraph 2.19 of the Code which requires admission authorities to treat applications for children coming from overseas in accordance with European Union law or Home Office rules for non-European Economic Area nationals. These are provisions which ensure that children who are not UK citizens but who are entitled to a place in a state funded school in England can be considered for such a place and, conversely, that children who are not so entitled are not admitted to such a school.
21. So far as the children of UK service personnel and crown servants are concerned, the school says that they comply with the requirements of paragraph 2.18 of the Code. So far as other boys who may have to move at short notice are concerned, I also consider that the school’s arrangements, which are in line with those used across the LA as a whole, are clear and are fair. I do not uphold the aspects of the

objection relating to paragraphs 2.18 and 2.19 of the Code.

22. The objector has also argued that the introduction of the catchment area means that some children will have no access to a grammar school; that the school is interfering in where people might live or how far they might be prepared to travel to school. The objector notes the provision in paragraph 1.32 of the Code that parents should be given the results of selective tests before the deadline for applications. The objector believes this provision is designed to enable the parents of a child who achieves a high score in the tests to decide which school they would like to apply for and then – if they wish – move to live closer to the school or, indeed, to travel to that school even if it is far from their home. My view is that the intention of this provision is as stated; so that parents know whether to put selective or non-selective schools or a mix of both on their common application form and thus do not “waste” preferences on schools which their child would not qualify for. There is nothing to suggest that it is related to catchment areas. It is the case that selective schools are not spread evenly across the country and that in some parts of the country children have access to grammar schools and in others they do not..
23. I turn now to the objector’s assertion that the school’s use of its priority area means that the arrangements discriminate against pupils from “low socio-economic groups who cannot afford to live close to the school.” In the email of 15 July 2014, the objector queried whether the introduction of a priority area might serve to discriminate against children from Asian backgrounds. The objector has not provided any evidence to substantiate these arguments. The school has provided a map showing the priority area, noting that it includes boys from all racial and social groups. The priority area includes some very affluent areas and it includes others which are much less affluent. The school has also stated that it has over 30 ethnic groups in its Y7 – Y11 and that the three largest three are Indian, Asian and White British. I have checked this against the school’s entry in the Department for Education’s Statistical First Release which confirms that 22 per cent of the school’s intake is Indian, 19 per cent is other Asian together with smaller percentages of boys from Pakistani and Bangladeshi backgrounds and 29 percent is boys from White British backgrounds. Given that the great majority of the school’s existing intake comes from within the new priority area, it is not credible that its introduction would significantly affect the ethnic mix in the school and I do not uphold this aspect of the objection.
24. In his email of 15 July 2015, the objector says: *“Ask a high scoring child if it is fair he cannot gain entry as he lives too far [sic], or if he were stated he would gain admissions [sic] or on FSM, he would gain admission. None of the reasons for introducing a catchment area can be deemed fair.”* I have already set out my conclusions on the objection. I have included this statement from the objector so that I can put on record in this determination that a boy with a statement of special educational needs whose statement names this school is required to be admitted to the school by virtue of section 324 of the

Education Act 1996. The school quite properly makes clear in its arrangements that this is the case. So far as boys entitled to free school meals are concerned, the school does not give any such priority so I have not considered this matter further.

### Other matters

25. Year 12: The school sets academic requirements for entry to Year 12 and, as required by paragraph 2.6 of the Code, these requirements are the same for internal and external applicants. The school also has an application form for external candidates which it needs as the LA does not co-ordinate admissions to Y12 and there is therefore no CAF. I want to deal first with the form and some of the questions it poses. The form seeks the necessary information about the applicant's name and address and contact details, details of the applicant's current school, subjects being taken at GCSE and any other qualifications and proposed A level subjects to be studied. I consider that this information is all reasonable and necessary for the school to consider the application. The school needs to be able to contact the applicant's current school to find out the candidate's predicted GCSE and any other qualification grades. The school needs to know the subjects the applicant wishes to study in order to make an assessment of whether it will be able to accommodate applicants on their preferred courses. All this is permitted by the Code.

26. The form also seeks, however, a significant amount of other information which is either unnecessary to apply its oversubscription criteria or is specifically prohibited by paragraph 1.9 or 2.4 of the Code or both. The form asks for details of both parents which could give information about marital status in contravention of paragraph 2.4. The form asks for details of interests out of school, positions of responsibility held in school, any awards received or qualifications gained; possible higher education and career plans and for any other information the applicant wishes the school to be aware of. When I read the form, I could not see that this information was necessary for the school to apply its oversubscription criteria and raised this with the school. The school has given me a helpful and full response, in which it explains that in Y11 their students will have had meetings with a careers guidance officer and a member of the school's senior management team and that these meetings use a form similar to that for the external candidates. The school says that "*the form and process used with external candidates replicates this process of a discussion with the Head of Sixth Form or the Headteacher.*" The school has also told me that the report it seeks from each applicant's current school is the closest they can get to a consistent set of predicted results for each student and "*it is on this basis only, not on attendance or behaviour, that a list based on expected academic performance is built up*".

27. I understand the school's intentions. However, the school's oversubscription criteria are based on academic criteria and it seems to me that significant amounts of the information covered in the form have only very tenuous or no links with likely GCSE or other examination

results. While some students who hold positions of responsibility or have won awards may do very well at GCSE, other students will also do well. Moreover, paragraph 1.9i of the Code prohibits the taking account in admission arrangements of past or current hobbies or activities. This provision applies to admission to Y12 as it does to other points of admission and means that the school is not allowed to ask its question about “*interests in and out of school (eg involvement with clubs/teams/groups/drama, music, sport, etc as well as individual interests)*”. So far as the question about possible higher education and careers intention is concerned, this is not relevant to the question of likely academic achievement in GCSE and other examinations and cannot be used. Paragraph 1.9 g of the Code provides that schools **must not** take account of reports from previous schools about children’s past behaviour, attendance, attitude or achievement. The school is also asking applicants themselves to provide information which will be highly revealing of behaviour and attitude. I do not think that this is fair and I consider that it is contrary to paragraphs 1.4 and 1.8 of the Code. I also consider that it is unnecessary in order to establish the applicants’ likely academic achievement. In addition, the school also asks for a copy of applicants’ Year 10 (Y10) reports. These reports will include information which covers behaviour and attitude and achievement (and the latter is likely to include but not be limited to likely examination and other qualifications). While the school has said that it takes into account only the elements which are relevant to whether an applicant is likely to reach its academic entry criteria, I consider that asking for a copy of the Y10 report breaches paragraph 1.9g. The arrangements do not conform with the Code and the school is required to revise them as soon as possible.

28. Paragraph 2.6 of the Code provides that children have the right to apply for places in Y12 themselves. The school’s arrangements state clearly that this is the case, which is helpful. However, the application form where it seeks the applicant’s details does so under a heading “*Son’s details*” and end with a declaration to be signed by the parent/guardian. There is no provision for the form to be signed by the applicant himself. The school has explained that it has never had a case where the parent was not supportive of a boy who was applying for a place and that if this did happen the application would be considered on the same basis as others. The school also makes the valid point that they would want to understand the background in such cases so that they could provide effective support to the student. Of course, schools do need to be aware when their students face particular challenges or have particular needs, but this needs to be handled separately from the admissions process. I am also concerned that a boy who wished to apply to the school but who did not have parental support might be put off from doing so having seen the form. The form does not conform with the requirements of the Code. The school has said that it will happily change the wording of the form in order to make it compliant and I welcome this.

29. I turn now to the meeting referred to in the arrangements Paragraphs 1.9m and 2.6 of the Code states that schools must not interview

children or parents and that while meetings may be held to discuss options and academic entry requirements for particular courses in a school's sixth form, such meetings cannot form part of the decision making process on whether to offer a place. In the school's case, it takes account of the information available from the application form and report from the current school as well as predicted grades in order to decide who to invite to the meeting. The arrangements state that those invited to a meeting "*may subsequently be made an offer of a place..*". In its letter of 21 August 2014, the school said that: "*All those who are invited to the meeting to discuss their subject choices with us are offered a place at the school; providing they meet the entry requirements, we are able to offer them the courses they request following the discussion, and that they can confirm that they are eligible for state education.*"

30. The decision as to who to invite to the meeting takes account of matters which are prohibited by the Code. The meeting itself forms part of the decision making process on whether to offer a place as an applicant must be invited to and attend a meeting in order to be offered a place. The arrangements accordingly breach paragraphs 1.9g, 1.9i and 1.9m of the Code. In addition, the arrangements also state that it is expected that the parent or guardian will attend the meeting with the applicant, which is a further barrier for boys who lack parental support which I consider unfair and a contravention of paragraphs 1.4 and 1.8 of the Code.

31. I consider also that the arrangements are unclear in relation to the oversubscription criteria. The arrangements provide that first priority will be given to looked after and previously looked after children. Thereafter, as noted above:

*"places will be offered depending of the following criteria:*

- *Assessment of predicted GCSE grades, other appropriate grades and information based on the professional judgement of staff at Tiffin School and the professional judgement of staff at the applicant's current school, to determine which applicants are most likely to best satisfy the admission criteria...*

32. This does not seem to be entirely consistent with the school's account of its processes set out in its letter of 21 August 2014 to the OSA from which I have quoted above. I am more concerned, however, by the phrase "*are most likely to best satisfy the admission criteria.*" The school's academic criteria are absolute; an applicant either will or will not achieve the grades required for entry to the school and to take particular courses. If more applicants achieve those grades, the school will, naturally, need to find some means of differentiating between them. The school has explained to me that it receives around 300 applications each year for the 40 or so places available in Y12 for external candidates and that it wishes to be fair to all. It cannot, however, differentiate between its external candidates by imposing higher academic requirements than it does for internal candidates

(which is what “best satisfy” suggests). This is because to do so would breach paragraph 2.6 of the Code which requires that academic entry criteria must be the same for both internal and external applicants and the requirements in paragraph 14 that criteria must be clear and that parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated. If the academic criteria which actually count for admission are not those which are set out in the arrangements then the arrangements are not clear. Finally, the use of the professional judgement of the staff of the school and the staff of the current school attended by applicants is not objective and is prohibited by paragraph 14 and 1.8 of the Code. It is for the school to determine its arrangements for Y12 but in doing so it must comply with the requirements relating to admissions and its current arrangements fall short of this. The school is required to amend its arrangements as quickly as possible.

33. When I reviewed the Y12 arrangements, I noted a section which is concerned with boys who are already pupils at the school. The arrangements state that: “*all boys in the current Tiffin Year 11 who meet the admission criteria will have a priority for Sixth form places*”. This description does not accurately reflect the legal position. Boys in Y11 at the school and who meet the academic admission criteria will remain registered pupils unless they leave. They do not “apply” to join Y12 in the way that external candidates do and cannot be “admitted” to the school as they are already registered pupils. The arrangements are not clear as they are not accurate and do not conform with the Code. This is a technical breach which can easily be rectified.
34. Tie-break for Y7 and Y12 : When I first reviewed the arrangements, I noted that there appeared to be no final tie-break as required by paragraph 1.8 of the Code to be used in the – admittedly rare – even that two candidates for the final available place lived the same distance from the school. The OSA raised this matter with the school which undertook in its letter of 21 August 2014 to amend its arrangements to introduce random selection for this purpose. The school’s letter said that this would be done in the presence of the headteacher and two governors. Paragraph 1.35 of the Code requires that such random allocation **must** be supervised by someone independent of the school. The school’s arrangements do not currently meet that last requirement and must be amended accordingly.

## Conclusion

35. I have not upheld any aspect of the objection and have found that bar the technical breach relating to the final tie-breaker the school’s arrangements for admission to Y7 conform with the legislation, the Regulations and the Code. In relation to admission to Y12, I have determined that there are a number of breaches of the requirements relating to admissions as set out in this determination. The school is required by the Code to revise its arrangements as quickly as possible.

## **Determination**

36. 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 academy trust for Tiffin School in Kingston-upon-Thames.
37. 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 academy trust for Tiffin School in Kingston-upon-Thames.
38. 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 as quickly as possible

Dated: 12 September 2014

Signed:

Schools Adjudicator: Shan Scott