



DETERMINATION

Case reference: ADA2739

Objector: The Medway Council

Admission Authority: The Bishop of Rochester Academy Trust

Date of decision: 19 September 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for The Bishop of Rochester Academy determined by the governing body of the school as the directors of the academy trust.

I have also considered the arrangements in accordance with section 88I(5). I determine that they 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 the Medway Council, the local authority (the LA), in an email dated 26 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for the Bishop of Rochester Academy (the school). The objection is to the reduction in the school's published admission number (PAN).

Jurisdiction

2. The terms of the academy agreement between the Bishop of Rochester Academy Trust and the Secretary of State for Education require that the admission policy and arrangements for each academy school are in accordance with admissions law as it applies to maintained schools. As one of the 'traditional sponsored' academies, the PAN for the school is published in the admissions annex of the funding agreement, with a requirement for the Secretary of State for Education's approval should there be a request to change the PAN. Following discussions with the school, the Education Funding Agency (EFA) contacted the Office of the Schools Adjudicator (OSA) regarding this requirement and asked to be informed of the adjudicator's decision, having in the meantime advised the school to publish the reduced

PAN with the caveat that this was subject to approval by the Secretary of State. The objector submitted the objection to these determined arrangements on 26 June 2014. I am satisfied that 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

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 objection, dated 26 June 2014, with supporting papers;
 - b. the LA's composite prospectus for 2015, 'Admission to secondary school' and map of schools;
 - c. the school's determined arrangements for 2015/16;
 - d. the lead sponsor's response to the objection, dated 09 July 2014;
 - e. the LA's response to (d) above, dated 17 July 2014;
 - f. emails exchanged between the (EFA and the OSA, dated 18 and 28 July 2014;
 - g. the school's response to (e) above, dated 5 August 2014;
 - h. notes of a meeting held by the adjudicator with the parties to the case on 10 September 2014; and
 - i. the school's website.

The Objection

5. The LA has objected to the school's reduction of the PAN in its arrangements for entry in September 2015, from 240 to 180 and the same reduction for years 8 to 11. The objector contends that the proposed reduction "*would prevent the local authority from meeting its statutory duty to offer a school place to every child that applies for one*" in contravention of paragraph 2.11 of the Code. The objection refers also to paragraph 1.2 of the Code, which states that "*as part of determining their admission arrangements, all admission authorities **must** set an admission number for each 'relevant age group'*" and to paragraph 3.6 which sets out the process to be followed for requesting an in year variation to a determined admission number. The objection states, "*Medway Council believes that Bishop of Rochester Academy has failed to follow the correct processes, as it has determined reduced PANs for all year groups as part of the determination of admission arrangements.*"

Other matters

6. In the course of considering the objection I reviewed the arrangements as a whole and noted that there are several matters that are non-compliant with the Code. The reference to priority admission for children with a statement of special educational need that names the school includes a limiting condition. The oversubscription criteria omit mention of previously looked after children and give insufficient detail for applicants to understand what might be meant by “siblings”. There is no final tie-breaker. Information about waiting lists is incomplete. Information concerning the allocation of ‘foundation’ and ‘open’ places is not sufficiently clear as regards priority. The sixth form arrangements do not make clear how to apply for a place, and imply that an interview, and enquiries about an applicant’s previous attitude and achievement, may play a part in the allocation of places; and there is no final tie-breaker.

Background

7. The school opened in September 2010 as a co-educational academy for pupils aged 11-18 and is designated as having a Church of England religious character. There are currently about 850 pupils on roll, of whom about 150 are in the sixth form. The lead sponsor for the school is the Diocese of Rochester, and the LA is a co-sponsor together with Canterbury Christ Church University. As noted above, because the school is a ‘traditional sponsored’ academy, there is a requirement for approval from the Secretary of State should the admission authority wish to change the PAN.

8. The first monitoring visit to the school by Ofsted in September 2011 raised serious concerns, but the school was judged to have made satisfactory progress during a return visit some seven months later. A full inspection in June 2013 judged to school to require improvement in all aspects but a monitoring visit in October 2013 found that senior leaders, governors and sponsors were taking effective action to tackle the areas requiring improvement. An inspection by the National Society Statutory Inspection of Anglican and Methodist Schools (SIAMS), also in October 2013, found the school to be satisfactory in all areas and stated that the principal *“is energetic in bringing about improvements. She is fully supported in this by the chair of governors.”* This inspection report noted that the school *“had a challenging beginning, with no less than four principals and a high proportion of students from disadvantaged backgrounds.”*

9. The arrangements for 2015 were determined on 27 March 2014 by the governing body which, as the directors of the company constituted under the memorandum and articles of the academy trust, is the admission authority for the school.

10. The determined arrangements for 2015/16 publish a PAN of 180 for all year groups. The arrangements provide that children with a statement of special educational need in which the school is named will be admitted if *“agreed to”* and if the school is *“in a position to meet the needs outlined in the statement”*. Oversubscription criteria are then, in full:

1. Looked after children (as defined in the Medway co-ordinated admission scheme)
2. Siblings (pupils living as brothers and sister, etc.)
3. Child's health reasons. Medical evidence must be provided which demonstrates a specific health reason which requires the child to attend the preferred school.
4. Those living nearest the Academy based on the measured distance using Medway Council's GIS system and procedure
5. Children of a member of staff working in the Academy for 2 or more years at the time of application for admission or appointed to a skill shortage subject

11. The school has never allocated places up to the PAN of 240 that is set in its funding agreement. The table below shows numbers admitted to year 7 and the total roll in each September since the academy was opened.

School year	No. of September Admissions to year 7	Total September roll of academy
2010/11	227	1216
2011/12	161	1006
2012/13	111	951
2013/14	112	905
2014/15	138	842

12. The figures show that the academy is not yet established as a popular school in its own right since replacing two previously underperforming schools and that it is currently operating at only about 55 per cent capacity in a building designed for 1500 pupils. Moreover, the in-year trend has been for there to be generally more movement out of pupils than movement in, so that the total roll of the school in the summer term of each year has declined from the September figure, with one exception, as shown below.

School year	Total roll – September	Total roll – summer (change from September)
2010/11	1216	1153 (-63)
2011/12	1006	996 (-10)
2012/13	951	968 (+17)
2013/14	905	878 (-27)

13. At present, year groups in the main school vary in size considerably, from 102 in year 9 to 178 in year 11. The two largest year groups are in years 10 and 11, the two smallest in years 8 and 9. Although the number of year 7 pupils admitted in September 2014 shows a small increase over the previous two years, it remains considerably below the designated PAN of 240.

14. Following local discussions at the time when its establishment was proposed, the PAN for the new academy was set at 240, based on previous admissions to the predecessor schools and LA forecasts of the need for places. The projected pupil numbers have not, as yet, proved to be an accurate forecast for the number of applications to the academy.

Consideration of Factors

15. The LA's objection includes forecast numbers for children of secondary age requiring non-selective places within its schools and seeks to illustrate that the school's proposed reduction in PAN "*would cause a significant risk of pressure*" on the number of places needed, referring also to "*historical trends of inward migration*". The LA further argues that, if upheld, the school's reduction in PAN "*would leave significant levels of vacant and unused space within the buildings*", which were designed to cater for a PAN of 240 in each year group. Finally, the LA states that the reduction in the PAN is "*contrary to the funding agreement for the school.*"

16. The LA's conclusion is that concerns raised during the consultation process were not given due consideration; however, within the local context, it could accept a compromise in the reduction of the PAN to 210 for applications for year 7, while still arguing that the school should not be permitted to reduce the PAN for all other year groups "*without having applied to the Office of the School Adjudicator for an in-year variation and proven a significant change of circumstances.*"

17. There are thus two distinct aspects to the objection. The first concerns the LA's ability to provide sufficient school places for future year 7 applications. The LA submits that good practice requires the flexibility of at least five per cent spare capacity in its schools in order both to satisfy parental preferences at a reasonable level and to cater for in-year admissions caused by inward migration, which has put increasing pressure on school places in recent years. The LA's contention is that "*limiting the PAN would ... impact on the proportion of families able to be allocated one of their preferred schools, and will impact on the ability of the local authority to place children who arrive in-year as casual admissions.*" Data first produced by the LA suggest that, were the school to reduce its PAN by 60 places then, irrespective of any changes to PANs in other local schools, there would be only some 80 spare places for year 7 applicants in September 2015, a 'buffer' of only 3.4 per cent of the 2320 places that would then be available in total across the LA. This spare capacity would increase marginally to 4.7 per cent in September 2016, with about 110 places available, but in subsequent years, with forecasts up to September 2020, would lead to a shortfall in available places of more than 135, that is, a 'negative capacity' of almost six per cent.

18. In considering this first aspect of the objection, it is clear that the LA has genuine concerns about the future availability of places in its non-selective schools, of which this is one. The data it uses are based on school census returns, birth data from the local health authority, and information about the scope and nature of planned new housing developments. The situation is complicated by the unpredictable inward movement of families; the LA comments, *“Levels of migration into Medway have fluctuated significantly in recent years, and this element may be over or underestimated in our forecasts.”* By their very nature, forecasts of pupil numbers cannot be entirely accurate, but the LA contends that its predicted total number of places required have been accurate to within three per cent in the last three years and have underestimated, rather than overestimated, demand. For September 2014 admissions to year 7, the LA initially forecast the need for 2192 places; in fact, 2249 were offered on account of additional and unexpected inward movement of families.

19. Of course, the overall figure can mask anomalies between schools. While some schools within the LA are oversubscribed others, including this school, have places available. The LA argues, nevertheless, that as pupil numbers rise, surplus places in some schools will inevitably reduce and, indeed, will eventually disappear. Forecast data for individual schools, based on previous patterns of application and applicants’ places of residence, show that even when the number of places required is at its peak and above the total number of places available across the LA, the projected intake for this school would not rise above 220, while some other schools would be significantly oversubscribed. All parties acknowledge that forecasts for individual schools are inevitably less robust than overall totals. I regard the shortfall of some 100 places projected against the school’s PAN of 240 as far ahead as the admissions round in 2020/21 as a significant factor in determining this objection, but one that must be seen in the overall LA context of the demand for places.

20. The school and the lead sponsor responded to this first aspect of the objection in several ways. They expressed disappointment that an objection was made to the adjudicator, given that they believed a senior officer of the authority had agreed to the reduction in PAN and had stated that the LA would not object to it. This understanding is referenced in minutes of the governors’ improvement committee meeting held on 1 May 2014 and in the minutes of a full governing body meeting held on 15 May 2014. I have not been provided with any written record of the meeting at which the LA officer is alleged to have given this undertaking, but from conversations at my meeting with the parties to this objection I am minded to accept that the school acted in good faith in believing there would be no objection from the LA and that it was willing to accept the reduced PAN, at least in the short term.

21. It is clear to me that communication between the school and the LA has not been as effective as it should have been, particularly in respect of the difficulties the school has encountered in obtaining data on pupil numbers when consulting on its proposal. In his response to the objection, the diocesan director of education, writing on behalf of the Rochester Diocesan

Board of Education, the lead sponsor for the academy, stated that the LA's undertaking not to object to the reduction in the PAN was made *"on the understanding that early discussions would be held to review the PAN to accommodate the pressure on places claimed by the LEA. No request for such discussions has yet been received from Medway, nor has the data concerning projected pupil numbers been received for consideration."* That letter was sent for the adjudicator's consideration on 9 July 2014; detailed LA data concerning forecasts for year 7 places between 2014 and 2020 was subsequently supplied in a paper dated 8 July 2014 but circulated on 17 July and more accurate, up to date figures for projected applications in year 7 for September 2015, to which I refer below, were presented at the meeting. The school reports having requested such data regularly since June 2013. I find it difficult to understand why it took so long for the LA to respond to the school's request for data, even after a meeting between representatives of the school and the LA in mid-May of 2014. In its correspondence with the LA, and in the meeting I held to consider these matters, the school was adamant that it *"has no intention of preventing the LEA from fulfilling its statutory duty of finding places for all pupils"* but reiterated its frustration at the difficulties it had faced in obtaining relevant data to inform its proposal.

22. Further to this apparent lack of communication, the objection document refers to a compromise PAN of 210, that is, a reduction of 30 rather than 60 places, being acceptable in the short term to the LA. The diocesan director of education writes that *"this offer has never been made to Bishop of Rochester Academy and if it had been, we would have welcomed the opportunity to do so."* I find it regrettable that, when the diocese and the LA are co-sponsors of the academy, it seems to have been so difficult for timely and constructive conversations, which might have avoided the need for an objection, to have been agreed.

23. In further support of its argument that there is no foreseeable shortage of places in the LA, the school refers to the opening in September 2014 of the Medway University Technical College (UTC), which will provide up to 600 places for students aged 14 to 19. The LA dismisses this as an irrelevant factor given the lack of direct impact on year 7 admissions, but the school believes that the UTC may well pose a threat to retention rates in key stage 4 and post-16. However, this is speculation and is clearly not germane to the issue of year 7 applications in September 2015.

24. In its final submission at the meeting, the LA quoted January 2014 school census returns which show that the actual pupil numbers in Medway in year 5, that is, those who will be applying for year 7 places for September 2015, was 3079. It may be assumed that 25 per cent of those pupils will be offered grammar school places, leaving 2309 to be placed in non-selective schools, a figure that is higher than that previously quoted, which was based on earlier data. Retaining previous non-selective school PANs provides a total of 2380 places and so the 'buffer' of some 80 available places to which I referred previously is in fact closer to 50. A reduction of 60 places in this school's PAN would therefore leave the LA in a precarious overall situation, especially when the effects of inward and outward migration in the meantime are not known. Although several local schools have admitted above PAN in

recent years, it cannot be assumed that they will agree, or be able, to continue to do so in the future, not least as there may not be available space in these schools.

25. The school presents a reasonable case in arguing that a PAN way above actual and projected numbers of pupils is a burden with regard to strategic planning, as it necessitates annual 'claw backs' of funds that occupy much time in negotiation and implementation that would be better dedicated to continuing to improve provision and outcomes in the school and thus to increase its popularity. The school is clear that it would be more than happy to be full but believes, with some justification given its recent history of underachievement and frequent changes in leadership, that it needs to stabilise from a realistic base and predictable income streams in order to make good progress. This strategy, it argues, would be for the long term benefit of the LA and its need to place pupils, by making the school attractive to applicants on the basis of improved achievement. In requesting greater engagement from, and dialogue with, the LA I believe the school demonstrates its willingness to play a full part in assisting the LA to fulfil its statutory duties and to realise its strategic aims in respect of school places. The school has several times reiterated its willingness to revisit the PAN and to respond to local needs where they are clearly and reliably identified; for example, in a joint letter from the principal and chair of governors to the LA which states, *"The Academy re-affirms its commitment to reducing its PAN but also confirming early consultations about raising the PAN, as demand for places across Medway increases."*

26. I have no reason to doubt the genuineness of this offer nor unfortunately, I repeat, do I doubt the lack of timely and positive communication between the parties that might have avoided the necessity for this objection. At the meeting, the school was adamant that it would not accept a compromise as offered by the LA, but apparently not formally received by the school. The school clearly felt bitter about what it saw as a 'U-turn' by the LA, but it must be accepted that, whatever an individual officer may have said on one occasion, that does not preclude the LA, having considered the situation in greater detail and with more up to date data, making an objection to a proposed reduction in the school's PAN if this were felt to threaten its statutory obligation to provide sufficient school places. I accept the difficulties presented to the school by the financial 'claw back' necessitated by current levels of undersubscription, but I would argue that the school is aware that this will happen, and while it may be a distraction, it is neither unexpected nor something of which account cannot be taken when planning. The positive remarks in the most recent communication from Ofsted about senior leadership within the school would support my confidence in its ability to manage effectively the situation.

27. I therefore uphold that part of the objection which relates the school's proposal to reduce its PAN to 180 for September 2015 admissions to year 7

28. The second aspect of the objection concerns the school's proposal for a simultaneous reduction of its PAN by 60 places across all year groups in the main school. The LA argues that in order to take this action the school must

follow the requirements of the Code concerning variations to previously determined arrangements. Paragraph 3.6, which references variations to previously determined arrangements, states that “*Such proposals **must** be referred to the Schools adjudicator for approval ...*”.

29. However, I do not believe this aspect of the objection is within my jurisdiction. Paragraph 1.2 of the Code states that “*As part of determining their admission arrangements, all admission authorities **must** set an admission number for each ‘relevant age group’*”. A footnote indicates that the “relevant age group” for a secondary school is year 7, and year 12 would also be “relevant” in the case, as here, of a school with a sixth form. If there are pupils who apply for a place at the school in years 8 to 11, the decision is taken on the grounds of capacity, in-year arrangements, local fair access protocols or, as a last resort, direction by the Secretary of State as the school is an academy.

30. I conclude, therefore, that since there can be no PAN for years 8 to 11 as they are not “relevant age groups”, the school cannot propose a reduction of the PAN for these year groups and there can be no objection. Admissions to these years must be in accordance with in-year admission arrangements. Furthermore, if there were a PAN for these years it is the EFA that must consider a variation. As there cannot be an objection I have no jurisdiction to make a judgement about the admission of children to years 8 to 11.

Other matters

31. I turn now to the other matters mentioned above. The reference to priority admission for children with a statement of special educational need that names the school contains a limiting condition, in contravention of paragraph 1.6. The arrangements state that a child with a statement that names the school will be admitted “*where the Academy is named and agreed to be an appropriate placement*” and that “*The Academy must be in a position to meet the needs outlined in the statement. Each case will be considered on an individual basis.*” This is not permitted; paragraph 1.6 of the Code is quite clear in requiring that “*All children whose statement of special educational needs (SEN) names the school must be admitted.*” While the suitability of the school and the provision it could make for individual children with SEN is clearly an important issue, I would expect these discussions to have taken place before the statement is issued, at which point the school has no choice over admitting the child if it is named as the school in that statement.

32. The oversubscription criteria are very brief, so that I am of the opinion that, as a whole, they do not meet the requirements of paragraph 14 of the Introduction to the Code, which states that “*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” Specifically, criterion 1 omits mention of previously looked after children, which does not meet the requirements of paragraph 1.7 in the Code. Although there is a reference to the Medway Council co-ordinated scheme, which defines looked after and previously looked after children, the school’s own criterion should make it clear that both categories are given priority when allocating places. Similarly, the school’s criterion 2 gives insufficient detail for

applicants to understand what might be meant by “siblings”, as required by paragraph 1.11; again, this term is defined adequately in the LA’s prospectus, but the school arrangements make no cross-reference to it on this occasion. There is no final tie-breaker to decide between two applications that cannot otherwise be separated, as required by paragraph 1.8 in the Code.

33. As the school has not been oversubscribed, it has not had to take into account the provision in its arrangements of foundation and open places and the naming of three primary schools as giving children attending those schools priority for admission. As currently drafted, the arrangements need to be made more clear in respect of how the different categories would be prioritised in the allocation of places.

34. The ‘Waiting Lists’ section of the school’s arrangements does not comply with paragraph 2.14 of the Code which requires that admission authorities *“must maintain a clear, fair and objective waiting list for at least the first term of the academic 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 school’s arrangements neither state the length of time a waiting list will be maintained, nor explain what will happen when names are added and a re-ranking of applicants may occur. I appreciate that, given the numbers on roll at the school and projected future numbers of applicants, waiting lists are unlikely to be needed; nevertheless, this is a mandatory requirement of the Code and the arrangements need to take account of it.

35. The sixth form arrangements do not make clear how to apply for a place, and imply that an interview, and enquiries about an applicant’s previous behaviour, will play a part in the allocation of places, in stating *“Borderline cases may be considered in exceptional circumstances and will be offered a meeting with a senior member of staff and will be considered on an individual basis”* and *“The governors may, in exceptional circumstances, refuse admission to any individual student if, in their view, to admit that student would prejudice the fulfilment of the Academy aims or seriously disrupt the provision of the effective education of other students.”* These statements contravene paragraphs 1.9g), 1.9m) and 2.6 of the Code, which stipulate that admission authorities *“must not ... take account of reports from previous schools about children’s past behaviour, attendance, attitude or achievement ... interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.”* As in the arrangements for entry to year 7, there is no tie-breaker in the sixth form arrangements, as required by paragraph 1.8 of the Code.

36. The issue mentioned above in respect of clarifying the position regarding ‘foundation’ and ‘open’ places and the naming of feeder schools was not discussed at the meeting, as this was an aspect of the arrangements that I considered on a further reading. All other matters were raised with the school at the meeting to discuss the objection; it was agreed that the arrangements would be amended forthwith in order to comply fully with the requirements of the Code.

Conclusion

37. The objection first detailed the LA's concern about the school's proposal to reduce its PAN for September 2015 by 60 places. This, the LA felt, would seriously compromise its statutory duty to provide places for all year 7 children in the 2015 admissions round. The LA also objected to the simultaneous reduction, by the same number, of the PANs for years 8 to 11, which it saw as a contravention of the Code by failing to seek permission for a variation from the OSA. It further pointed out that the school's funding agreement requires consent for a change to its PAN from the Secretary of State.

38. The school argued persuasively that a PAN of 240 had never been reached and, according to data supplied by the LA, would not be reached in the foreseeable future in this school despite increasing pupil numbers across the LA. A realistic PAN would enable more efficient strategic and financial planning for a school, which is attempting to improve its provision, outcomes and popularity, having been established to replace two underperforming predecessor schools. The school committed to a continuing dialogue with the LA, and to raise the PAN again should there be an identified need.

39. However, the LA has data that shows there is likely to be severe pressure on available places in September 2015 across the area as a whole, and that the flexibility afforded by the availability of places at the school would be necessary then, and in the future, to enable it to meet its statutory duty. The LA would have offered a compromise of reducing the PAN to 210, but the school would not accept this.

40. For those reasons, I uphold the part of the objection that is within my jurisdiction.

41. With respect to the second part of the objection, I have ruled that it is not within my jurisdiction since a PAN only applies to "relevant age groups" in a school and furthermore a request for a variation, if one could be made, would have to be referred to the EFA.

42. In considering the arrangements as a whole, I found that they do not meet the requirements of the Code in a number of ways. There are conditions set on the admission of children with a statement of special educational need; there is some lack of clarity and some inconsistency in the detail of the oversubscription criteria and regarding the operation of waiting lists; sixth form arrangements suggest that procedures not allowed by the Code might be used in allocating places. There is no tie-breaker in the arrangements for entry to the main school or the sixth form. The school has accepted these points and has undertaken to amend the arrangements accordingly. I subsequently found some lack of clarity regarding the priority afforded the different categories of places offered by the school.

43. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible. The

school has accepted these points and intends to amend the arrangements forthwith as required.

Determination

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for The Bishop of Rochester Academy determined by the governing body of the school as directors of the academy trust.

45. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

46. 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: 19 September 2014

Signed:

Schools Adjudicator: Andrew Bennett