

DETERMINATION

Case reference: ADA/002421 and ADA/002440

Objectors: A parent and the National Secular Society

Admission Authority: The directors of Tudor Grange Academies Trust, Solihull

Date of decision: 28 August 2013

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 directors of Tudor Grange Academies Trust for admissions in September 2014.

I have also considered the arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 42 of this adjudication.

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 make any remaining revisions to 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 (the first objector) and also the National Secular Society (the second objector), together the objectors, about the 2014 admission arrangements (the arrangements) for Tudor Grange Academy (the school). The objection by the parent also relates to the consultation process before the arrangements were determined.

Jurisdiction

2. The terms of the academy agreement between Tudor Grange Academies Trust (the Company) and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the directors of Tudor Grange Academies Trust which is the admission authority for the school.

3. The objectors submitted their objections to these determined arrangements on 2 May 2013 and 23 May 2013. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider these objections.

Procedure

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

The documents I have considered in reaching my decision include:

- a. the first objector's form of objection dated 2 May 2013;
- b. further information including the consultation document dated December 2012, media coverage and associated documents in an email dated 06 May 2013 and further email correspondence from the first objector;
- c. the school's written response to the first objection dated 15 May 2013, including an article from Academy Magazine Summer 2013;
- d. the 2014 arrangements accessed from the school's website by me on 5 May and 27 June 2013;
- e. the Summary Report on Admissions Determination accessed from the school's website on 2 May 2013;
- f. the response of Solihull Metropolitan Borough Council (the council) to the objection in an email dated 17 May 2013, together with a report entitled Consultation on Academy Admission Arrangements dated 11 February 2013 and a map showing the catchment area of the school;
- g. further comments by the first objector dated 21 May 2013, and 3 and 10 June 2013;
- h. the second objection dated 23 May 2013 and further comments dated 7 June 2013;
- i. an additional catchment area map for the school showing the location of primary schools, as supplied by the council on 18 June 2013 in response to my request;
- j. a copy of the outcome of the consultation on the 2014 admission arrangements accessed by me from the Tudor Grange Academy St James' website on 17 June 2013; and
- k. emails from the school dated 28 June and 10, 16, 18 and 24 July 2013 in response to my requests for further information.

The Objections

5. The first objection was made by a parent stated to be on behalf of about 350 members of a Facebook group and 1400 people who signed an on-line petition opposed to the proposed admission arrangements during the period of consultation. Rather than overwhelm the adjudicator with lots of separate complaints, the parent helpfully collected the large number of issues into one comprehensive and extensive objection which I consider falls essentially into three parts:

- Concerns relating to the consultation about the proposed 2014 admission arrangements not being properly conducted including:
 - inadequate publication of the proposals and impact analysis;
 - issues with the length and timing of the consultation period and the notification of stakeholders;
 - lack of reasons for changes between the proposed and determined arrangements including the introduction of a new criterion;
 - failure to highlight the complaints process;
 - lack of engagement and response by the school;
 - failure to declare and manage conflicts of interests;
 - lack of meaningful feedback on consultation responses including omissions from the list of issues raised;
 - decision-making basis incompatible with the purpose of admissions arrangements;
 - lack of consideration for the degree of opposition to the determined arrangements and lack of any compromise within the final position;
 - not consulting with an open mind; and
 - failure to comply with requirements of the Public Sector Equality Duty in the way that the school formed and consulted on the initial proposals.
- The feeder school nomination is not reasonable and involves a misuse of the admissions system.
- The risk of indirect religious discrimination because the 2014 determined arrangements for Tudor Grange Academy, which is not a faith school, will prioritise children transferring from the named feeder school, a faith school, above catchment area children.

6. The second objection from the National Secular Society also relates to indirect religious discrimination, asserting that inclusion of the named feeder school Tudor Grange Academy St James (TGA St James), formerly known as St James Church of England Junior School, which prioritises pupils on the basis of faith through its own admissions arrangements, would indirectly disadvantage children from non-churchgoing families wishing to attend the school, in breach of the Code at paragraphs 1.8 and 1.9(i) and be unlawful under the Equality Act 2010.

Background

7. The school is a state-funded co-educational academy secondary school in Solihull for pupils aged 11 to 18 years, with a published admission number of 250. The school has been regularly over-subscribed for a number of years, converted to Academy status on 1 October 2010, and in January 2013 itself became the academy sponsor of TGA St James.

8. The oversubscription criteria that had been operating in most Solihull secondary schools were largely based on the catchment system with an emphasis on children accessing their local school and siblings attending the same school. In the report dated 11 February 2013, the council states that the system of catchment areas provides a safety net that ensures that all children have a high priority to attend their local catchment school.

9. However, in December 2012, the school proposed changes to the long-established oversubscription criteria by adding a new priority above catchment area children for children transferring from two named feeder primary schools. Given the strength of local feeling, which included a parents' Facebook campaign, significant media interest and a petition with nearly 1400 signatures, it seems to me that it is this proposed change, the ensuing consultation and the decision that are the crux of this objection.

Consideration of Factors

10. In the report dated 11 February 2013, the council suggests that by unilaterally introducing the feeder school arrangement ahead of children living within the catchment area, the school could destabilise the present arrangements, and could ultimately result in some children in the future being unable to secure a place in a local school. The 2014 oversubscription criteria proposed for consultation were:

Priority 1 Children looked after by a Local Authority (in line with section 22 of the Children Act) and previously looked after children who are now adopted.

Children whose exceptional circumstances can only be met by that particular school

Priority 2 Children in Year 6 at Tudor Grange Primary Academy St James' and St Alphege Junior School

Priority 3 Children who normally live in the catchment area of the academy

Priority 4 Children who have an older brother or sister at the academy at the same time

Priority 5 Children closest to the academy, measured in a straight line from child's home.

The consultation process

11. When changes to admission arrangements are proposed, consultation should be a key part of the process, but the first objection details a number of issues with the consultation process including problems with the length of the consultation period; inadequate notification of stakeholders; lack of prominence or complete absence of key information on the school's website; lack of engagement and response by the school during the consultation period; lack of consideration for the degree of opposition to the changes and lack of compromise within the final position; failure to highlight the complaints process; and conflict of interests not declared or managed appropriately.

12. The introduction to the Code at paragraph 15(b) explains that the consultation process should enable parents, the local community and other interested parties to understand the changes being proposed and then to have time to be able to raise any concerns they might have about the proposed changes. The Code indicates when the consultation should be conducted and for how long: paragraph 1.42 states that '*the admission authority **must** consult by **1 March** if changes to the arrangements are being proposed*' and paragraph 1.43 elaborates further that the minimum consultation period is for '*eight weeks which **must** take place between **1 November** and **1 March** in the determination year.*' Although there is debate about the precise date when the consultation process started, the school has supplied

copies of consultation documentation dated December 2012 and the Summary Report on Admissions Determination available on the school's website states that the consultation period was 18 December 2012 to 28 February 2013. However, the objector has provided a screen save from the school's website showing the Proposed Admission Policy dated 8 January 2013 suggesting a consultation period that may have been shorter than the eight weeks required by the Code.

13. The Code at paragraph 1.44 also identifies who should be consulted about any proposed changes and the school has provided evidence that stakeholders were notified as follows:

- details of the consultation were placed on the school's and also the council's websites on 18 December 2012;
- letters were posted to all primary schools within the local area, to all the secondary schools within Solihull, and to all neighbouring local authorities by 3 January 2013;
- Tudor Grange parents had notice of the proposed changes by the normal method of an alert on the school's website on 18 December 2012, together with a copy of a letter or download;
- copies of the consultation letter for parents were hand delivered to all feeder schools in the period 10 - 18 January 2013; and
- adverts were placed in two local newspapers on 17 and 31 January 2013

I note that the Code does not prescribe where or how consultation information should be published. Although it may also have been helpful for the school to have provided copies of the consultation documents to be made available in doctors' surgeries, libraries and supermarkets in the local area, I am of the opinion that the distribution of consultation documentation was sufficient to inform stakeholders. It is also evident that the school did inform the local primary schools early in the consultation period, and then provided copies of the consultation letter for feeder school parents at a later date. I am satisfied that the parents of the potential applicants most likely to be initially affected by the proposed changes, namely the parents of primary school children in Year 5, were informed, albeit some little time after the consultation period had started.

14. The first objector asserted that the proposed changes were not published on the school's website with sufficient prominence and as evidence provided screen saves of the school's website taken on 24 and 29 January 2013 from which I agree that the proposal under consultation was not given due prominence on those dates. I accept that the school cannot publish every important new document in a prominent place on its website, but I am of the opinion that there should at least have been an alert in a prominent place on the homepage so that interested parties would have their attention drawn to the existence of the consultation document.

15. The school accepted that there was a very short period when the consultation document was taken off the school website because of small inaccuracies which could have led to confusion, but it was quickly replaced. The school argues that this action was entirely right and proper as the amendment improved the consultation process rather than detracted from it. The school asserts that from the number and range of responses to this consultation and the widespread publicity it received both

in the press and on social networks, it was difficult to see how the consultation was not effective.

16. The first objector says that the public notice placed in the newspaper on 17 January 2013 was some time after the consultation period should have started if it was to have finished by 28 February 2013. The objector also commented that the council's demographic modelling completed before the start of the consultation period was not displayed on the school's website until 29 January 2013, lacked sufficient detail, was by that stage too late for any parties who had already responded to the consultation, and that if the analysis is correct then a considerable degree of parental anxiety and anger could have been prevented. The school did, however, post the following notice on the website: *"We are concerned that recent press articles have alarmed parents who wish their children to enter the Academy over the coming years. This alarm centres on an incorrect impression that proposed admission changes would mean that children who live in the catchment area could be denied a place as a result of the changes"*. I agree that the information could have been published earlier in the consultation period. However I am also conscious that the Code is not prescriptive about *what* needs to be in the information published as part of a consultation, nor indeed, *where* or *how* that information should be published.

17. In its response to the objection dated 15 May 2013, the school maintains that the local authority handled the mechanics of the consultation on its behalf and in an email dated 17 May 2013, the council confirmed *'that Tudor Grange Academy made every effort to undertake an extensive, open and fair consultation on their proposed arrangements, and that the arrangements as determined are reasonable and compliant with the Admissions Code. Consequently we will not be making an objection'*. Nevertheless, paragraphs 1.42 to 1.45 of the Code make clear that it is for the admissions authority, in this case the school and not the council, to assure the effectiveness of the consultation process and it is unfortunate that the school appears not to have carried out the consultation process as carefully as it could have done.

18. Lack of engagement and response by the school during the consultation period was also stated to be an issue. For example, the school did not respond to many of the telephone calls and emails asking for clarification or further information except for a generic response at the very end of the consultation period but on this I am of the opinion that the school may have underestimated the local interest that would be generated by their proposal and had therefore not set up appropriate provision to handle the influx of enquiries. The first objector also commented that the school did not arrange a public meeting to explain the proposed changes, but two public meetings did take place; the first organised by the local Member of Parliament in response to parental concerns, and the second organised by the council to report and then review their recommendation. Despite the significant media interest and the concerns raised by parents and the local community, the school was not represented at either of the meetings and may therefore have missed opportunities to alleviate the parental concerns that were evidenced by the comments in the press and social networks. It is the case that a school must take account of the views expressed as a result of the consultation process but it would be unusual for any school to respond partway through the process when only some of the views would be available. In the

circumstances, for the school to have made any response during the process may have been seen as seeking to influence the views yet to be submitted and so I do not agree that the lack of interim responses was any lack of engagement on the part of the school.

19. The first objector informed that the Facebook group had submitted a list of questions before a meeting with school leaders, but said these questions were not dealt with in that meeting. However, the school wrote to the parents afterwards to say that, following legal and professional advice, the questions would only be considered immediately before making the final determination so as not to prejudge the decision. In addition, the school advised that the number of questions and their complexity would require a significant use of resources and therefore an inappropriate use of tax payer funds. The school also advised that it would be inappropriate to answer some of the questions which were potentially mischievous and/or vexatious.

20. The first objector expressed surprise that, given the level of opposition to the proposals, which included a parents' Facebook campaign, significant media interest and a petition with nearly 1400 signatures, there was *'no element of compromise within the determined arrangements'*. The school has confirmed there were 458 responses to the consultation and of these 283 opposed the changes and 175 responses were in favour. It is the case that the school must take account of the views expressed during the consultation before determining the arrangements, but it must form its own view as to how best to proceed. That the school came to a different decision from the objectors does not mean that their views were ignored or regarded as irrelevant. The school confirmed there *'were a great number of responses with a large number in favour of the proposals with a large number against the proposals. However at a number of fundamental levels the governors did not accept the points put forward as being sufficient to maintain the previous admission arrangements'*.

21. I am unclear about the concern expressed by the first objector about a failure to highlight the complaints process. Inspection of the school's website on 2 May 2013 showed that the consultation document did include details of the person to whom views should be submitted. The website also gave appropriate advice for any parents wishing to appeal against the school's decision to refuse their child a place. If, however, the concern relates to whom complaints about the admissions arrangements should be addressed, then the Code at paragraph 1.49 explains it is for the local authority (not the school) to publish on the council's website the information on how to refer objections to the Schools Adjudicator.

22. In the period between the end of the consultation and the publication of the determined arrangements, the wording of the sibling criterion at priority 4 changed from *'Children who have an older brother or sister at the academy at the same time'* to *'Siblings - the older sibling must be on the current academy roll and this criterion will only apply to an existing pupil who was admitted prior to the 2nd September 2014. (This only applies to siblings who have attended the academy years 7-11)'*. It is entirely reasonable for the wording of priority 4 to have been revised in the light of consultation responses, and clarifies for families living outside the catchment area, that the priority for siblings will phase out over the next few years. It is to be expected

that when a catchment area system is in place, any application for a place at an oversubscribed school outside the applicant's catchment area runs the risk of being unsuccessful.

23. It appears that the school first published the determined arrangements on its website on 12 April 2013, including the new criterion giving priority for attendance at the named feeder school and a tie breaker suggesting that distance would be measured using the Addresspoint system rather than the council's Local Land and Property Gazetteer. However, these two features had been removed from the second version of the determined arrangements published on 15 April 2013 (the deadline for determining arrangements identified in the Code at paragraph 1.46). By 25 April 2013, a third version of the arrangements was published within the document "Governors Summary Report on Admissions Determination³" where the two earlier features had been reinstated. Paragraph 3.6 of the Code makes clear that once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. It is the case that the school did return to the version published on 15 April 2013, and published an apology for the error caused by technical issues, but the publication of so many versions of the arrangements may have caused confusion, uncertainty and unnecessary anxiety for parents. Accordingly, I strongly advise that the school consider strengthening its quality assurance procedures so that the information published on the website is always accurate.

24. The first objector expressed concern that there had been a breach of the Public Sector Equality Duty in the way that the school formed and consulted on the initial proposals. No specific information was provided to me in support of this assertion, and I have seen nothing from which I can conclude that there was a breach of this duty. In general terms, the consultation does seem to me to have been effective. I recognise that the school appears not to have carried out the consultation process quite as carefully as it could have done as the start date is arguable, and the website information was, for a time, insufficiently prominent and lacking in detail, but the Code is not prescriptive about *what* needs to be in the information published as part of a consultation, nor indeed, *where* or *how* that information should be published. There also appear to have been errors in the website information but the school took steps quickly to rectify the problems as soon as they were noticed and published an apology. I also note that the council confirmed that the school had made '*every effort to undertake an extensive, open and fair consultation on their proposed arrangements, and that the arrangements as determined are reasonable and compliant with the Admissions Code*'. Thus I am satisfied that the consultation was effective because all the relevant stakeholders were notified and that parents, the local community and other interested parties were able to, and did, comment on the proposed changes before the 2014 arrangements were determined.

25. The first objector alluded to undeclared links between two directors of the Company and the Diocese of Birmingham Educational Trust, which may be a conflict of interest contrary to the school's funding agreement. However, this issue is beyond the scope of this determination, as it is the responsibility of the Education Funding Agency (EFA) to handle complaints about a breach of the funding agreement.

The nomination of the feeder school and misuse of the admissions system

26. The first objector said that the reasoning given for nominating the feeder school is not appropriate nor reasonable and the concerns included that the feeder school is far away from the school; the displacement of local children; the safety, traffic, environmental and health issues associated with increased travel; the destabilisation of the admissions arrangements across the borough; uncertainty for parents as the feeder primary school is subject to a further consultation; the irrational exclusion of other primary schools; the lack of demonstrable benefits for children and the setting of a multi-academy trust precedent .

27. In the proposed arrangements presented for consultation, two local primary schools were originally named as feeder schools, TGA St James and St Alphege Junior School (St Alphege). The Code at paragraph 1.9 explains that it is for admission authorities to formulate their admission arrangements, but they **must not** take into account any previous school attended unless it is a named feeder. The Code at paragraph 1.15 explains that the selection of a feeder school **must be** transparent and made on reasonable grounds. After the consultation, the school explained that St Alphege had been removed to minimise the risk of catchment area children being unable to gain a place at the school but TGA St James remained as a named feeder school.

28. The minutes of the local governing body for the school, dated 14 March 2013, indicate that several options for the 2014 arrangements were discussed and that Option B was unanimously approved as the 2014 admission arrangements. It is reasonable to conclude that "Option B" was removed from the heading for the 2014 admission arrangements which became the determined arrangements published on the school's website. The oversubscription criteria in those determined arrangements are:

Priority 1: All looked after children in the care of a local authority (e.g. foster care) or previously looked after children who are now adopted, or children whose exceptional circumstances can only be met by this particular school;

Priority 2: Pupils in year 6 attending Tudor Grange Primary Academy St James;

Priority 3: Pupils living in the catchment area of Tudor Grange Academy Solihull;

Priority 4: Siblings - the older sibling must be on the current academy roll and this criterion will only apply to an existing pupil who was admitted prior to the 2nd September 2014. (This only applies to siblings who have attended the academy years 7-11);

Priority 5: Children who live closest to the academy measured in a straight-line from the child's home to the academy.

29. The school explained that TGA St James was named as a feeder school so as to demonstrate a long-term commitment to the sponsored school as part of the multi-academy trust. Parents who chose that school would have the clear opportunity of continuity of provision within the culture and ethos of the Tudor Grange Multi Academy Trust if they chose to do so. The school explained that TGA St James was selected as a feeder school because an above average proportion of students are entitled to free school meals and the prior attainment of students leaving that school

is significantly lower than the average in both national terms and local terms, which is consistent with a converter academy's responsibility to assist schools in need of support. In the response dated 15 May 2013, the school explained further that sponsorship and academy status with its linked responsibilities was a logical extension of its long track record and commitment to supporting school improvement in the system. Although there may be considerable local opinion against (as well as support for) the decision to nominate TGA St James as the named feeder school, I am satisfied that the basis for the decision is transparent and made on reasonable grounds and therefore does not contravene paragraph 1.15 of the Code. By the same reasoning, as the school does not have a similar sponsorship relationship with other primary schools, I do not agree with the first objector that they were "*irrationally excluded*".

30. I have noted the concerns about safety, traffic, environmental and health issues associated with increased travel from the feeder school. It is clear from the map supplied by the council on 18 June 2013, TGA St James is just outside the western boundary of the school's catchment area, less than two miles from the school, and part of the community of south Solihull where the school is located. As it has been confirmed that there are other parts of the catchment area up to 4.6 miles from the school, I am not persuaded that any safety, traffic, environmental and health issues associated with the feeder school are likely to be so significant as to be insurmountable. I have also noted the objector's concern about the setting of a multi-academy precedent but that is beyond the scope of this determination regarding the 2014 arrangements for Tudor Grange Academy.

31. It was suggested that the inclusion of TGA St James as a named feeder school in the consultation has left parents with the impression that the school did not consult with an open mind. The school acknowledged that the proposals have been controversial and that there were many who disagreed with them, but also many who agreed. It is inevitable that when any school consults on a change in its admission arrangements it is because of one or more changes that it wishes to make, and that some will support the changes whilst others will want the status quo. However, the consideration for me is whether the school took into account the responses to the consultation and is justified in the decision it made. I am satisfied that the results of the consultation were considered by the governing body and note that the determined arrangements do take account of the responses received. I am content that the consultation overall met the requirements of the Code.

32. I have also noted that admission arrangements at the named feeder school have also been the subject of consultation, and that the changes proposed for 2014 include halving the published admission number (PAN) from 60 to 30. In addition, the faith criterion has been removed from the 2014 determined arrangements for Year 3, the current relevant age group at which pupils are normally admitted to the school. The feeder school will continue to provide a school with a Christian ethos that serves its direct community, but will now use distance from the school as the main oversubscription criterion. Given the school's considerable responsibilities as sponsor for securing school improvement, the nomination of TGA St James as a feeder school was a logical and reasonable step. Contrary to the expressed view of the first objector, I am of the opinion that the removal of St Alphege as the second named feeder school, the removal of the faith criterion from the 2014 arrangements

for TGS St James and the efforts being made to halve its PAN do represent a significant change in the school's position in response to the consultation.

33. It was also suggested that the nomination of TGA St James as the named feeder school was unreasonable on account of the displacement of local children. It is the case that in the oversubscription criteria, Tudor Grange Academy has prioritised children transferring from the feeder school above catchment area children. However the school maintains that places will be available to all catchment children who apply in the next few years. I have taken note of the statement on the school's website which asserts that data provided by council shows that the present admission quota of 250 is not filled from the catchment area by a large margin, a margin that is predicted to widen up to and including 2019, which is the last year for which reliable demographic data exists. I have also taken note of the figures supplied by the parent objector which show how the places for each criterion have been allocated at the school for the period 2008 to 2012. It appears that the intake from the catchment area has decreased from 196 to 160 in that period, with a resultant increase in out-of-catchment siblings and other children. As the PAN for the feeder school is currently 60, then even if 60 children were to transfer, I believe it is likely that places would still be available at the school for all the catchment area children who apply.

34. The council also confirms in the document 'Consultation on Academy Admission Arrangements' dated 11 February 2013, at paragraph 3.23, that based on September 2012 figures, the PAN of 250 for Tudor Grange Academy significantly exceeded the number of children living in the catchment area for whom the school was their preference, and that 90 of the 250 pupils in the cohort lived outside of the catchment. Furthermore, as the feeder school has been undersubscribed for several years, with less than half the number of children of the admission number in each current year group, it seems to me that there are likely to be a number of places available at Tudor Grange Academy for out-of-catchment siblings and possibly other children for the next few years. In an email dated 17 May, the council confirmed its earlier reservations about the addition of feeder primary schools, above the priority given to catchment children. This reservation arose because of the potential risk to children in catchment being unable to access a place at Tudor Grange Academy in the future, but the council stated it was pleased that Tudor Grange had reviewed the proposal and would now have just one feeder school which would reduce the risk of children in catchment being unable to access a place at the school. Consequently the council decided not to make an objection about the 2014 arrangements.

35. I have also noted the assertion that the admissions policy has been misused by the school to bolster attendance at the undersubscribed feeder school by *'offering a guaranteed place at a top rated, heavily oversubscribed secondary school'* and that it is nothing to do with fair admissions. It is the case that the named feeder school has been undersubscribed for a number of years but, contrary to the expressed view, I am of the opinion that the effort being made to halve the feeder school's PAN does not indicate an attempt to bolster attendance there. In addition, the school insists that use of the oversubscription criteria demonstrates an entirely proper long term commitment to a school that has faced and is facing many challenges, and *'is nothing to do with inducement'*. The school explains further that, as a converter academy, it is *'expected to get actively involved in supporting schools*

that are in need of support..... to serve the needs of the students and the parents of the feeder school while at the same time respecting existing stakeholders and particularly the families that live in the Tudor Grange catchment area. The Code explains at paragraph 1.10 that there is no definitive list of acceptable oversubscription criteria as it is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances. Accordingly, I am satisfied that there has been no misuse of the admissions system.

Indirect religious discrimination

36. The school is not designated as having religious character and itself has no criterion concerning faith or absence of faith. However, both objectors have identified the risk of indirect religious discrimination as a result of the inclusion in the 2014 determined arrangements of the named feeder school (which is designated as having religious character) because children transferring from the feeder school will be prioritised above pupils living in catchment, the siblings of existing pupils and other children whose places are determined on the basis of the distance from their home to the school. Specifically, the second objector asserts that because the feeder school prioritises pupils on the basis of faith through its own admissions arrangements, then children from non-churchgoing families would be indirectly disadvantaged which would be unlawful under the Equality Act 2010.

37. In addition, the second objector cited a breach of part of paragraph 1.9(i) of the Code and said that *'naming a school that does take account of religious activities as a feeder school, Tudor Grange Academy will be indirectly advantaging children on the basis of their parents' religious beliefs and activities'*. In addition, the objector contends further that part of paragraph 1.8 will also be breached, stating that *'the oversubscription criteria set out in the TGA St James admission arrangements unfairly, and without justification, disadvantage children from non-churchgoing backgrounds and therefore fail to comply with equality legislation'*. I deal below with these paragraphs.

38. It is the case that schools must not discriminate against any child on the basis of religion, but paragraph 5 of Schedule 11 to the Equality Act 2010 permits schools that are formally designated as having a religious character to give priority for admission to pupils on grounds of faith, so TGA is entitled to give priority on such grounds. The Code at paragraph 1.9(l) prohibits the naming of fee-paying independent schools as feeder schools, but there is nothing in the Code that prohibits a school that is not designated as having religious character from naming a school that has such designation, and so Tudor Grange Academy is entitled to name the faith school, TGA St James, as a feeder school, provided the decision is made on transparent and reasonable grounds, which I have dealt with above, and is otherwise in accordance with the law and the Code.

39. It is clear from TGA St James' 2013 admission arrangements that if there had been more applications for the school than places available, oversubscription criterion 2 would prioritise children who regularly worship at St James Church or another Church above siblings (priority 3) and other children (priority 4). However, from the introduction to the Code at paragraph 15(d) it is clearly stated that if *'a school is undersubscribed, any parent that applies **must be offered a place**'*.

Furthermore, in paragraph 1.36 relating to faith-based oversubscription criteria in schools with a religious character '*these schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available*'. However, TGA St James has been undersubscribed for several years, and the numbers in each year group (shown in the table below) are well below the PAN of 60.

Year Group	3	4	5	6
Number of pupils	13	13	29	13

TGA St James as of March 2013

As a consequence of being undersubscribed, every child who has applied has been admitted, so the faith criterion has never needed to be applied to anyone in the school. As the feeder school has been undersubscribed for a number of years, every child currently in the feeder school has been admitted whether of the faith, another faith or no faith.

40. If there were to be children at the feeder school who had been prioritised on the basis of the faith criterion, and if these children were then to be prioritised over catchment area children for admission to Tudor Grange Academy, this might appear to be indirect discrimination, but it would not be unlawful under equalities legislation if the school could show that the criterion is objectively justified as a proportionate means of achieving a legitimate aim. In my view, there is a legitimate aim in naming the feeder school which is lawful and non-discriminatory – Tudor Grange Academy is the sponsor of the feeder school with the aim to ensure that the feeder school will improve so that the quality of education provided and the standards achieved by the pupils will improve. I consider the naming of the feeder school to be a proportionate means of achieving this aim, which is appropriate and entirely consistent with Tudor Grange Academy's responsibilities as sponsor. Even if it were to be asserted that the inclusion of a "faith" feeder school was, of itself, indirect discrimination, I would remain of the view that this could be objectively justified in this case. In any event, I have been assured by the council and by the school that there are more than enough places in Tudor Grange Academy to accommodate, for the foreseeable future, all the children who might transfer from the feeder school as well as all the catchment area children, with some places left for other children. Consequently, with respect to the 2014 arrangements for Tudor Grange Academy which are the subject of this determination, I do not agree that, in this case, prioritising children who attended the named feeder school will result in indirect religious discrimination. Applying the same principles, I also reject the objector's assertion that the Code will be breached at paragraphs 1.9(i) and 1.8 as they hinge on the same arguments. If the objectors are asserting that the arrangements will prioritise children on the basis of their parents' "activities" (1.9(i)) then I disagree, because priority is to be given on the basis of attendance at a named feeder school, not on the basis of parental activities. If the objectors are asserting that the arrangements are not "fair" then I also disagree on the basis that, even if the complete cohort of 60 children from TGA St James were to apply for a place at the school, then the remaining 190 of the 250 places available would be accessible for all the catchment area children who might apply. As it is, the feeder school is undersubscribed, and so most year groups contain far less than the published admission number.

41. The first objector also expressed concerns about the lack of a defined catchment area for the feeder school and also the lack of certainty because of the

proposals for change to the admission arrangements subject to recent consultation, but these matters are beyond the scope of this determination.

Other Matters

42. In reviewing the 2014 admission arrangements I noticed that there were other aspects of the admission arrangements that appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. I therefore raised with the school several points which appeared to me to contravene the Code, as these points could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to the arrangements to comply with the Code, and agreed to note their progress in my determination. I raised the following points:

- As there was no explanatory note, the adjudicator asked for clarification of the second part of priority 1 '*or children whose exceptional circumstances can only be met by this particular school*'. As of 24 July 2013, the school has included an appropriate explanatory note in the published arrangements;
- The sixth form arrangements were spread over a number of sections on the website but there was no PAN, nor any oversubscription criteria. The school has now published a sixth form admissions policy but I am of the opinion that to have sufficient prominence, the sixth form arrangements should be published in the sixth form section of the website as the relevant place for such information, for the ease of access of potential applicants. The PAN of 30, and the academic requirements are clearly shown in the policy but the oversubscription criteria will need to be clearly prioritised or ranked so that a potential applicant might be in a position to decide whether there is a realistic chance of gaining a place at the school. There will still need to be an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. However, late application cannot be used as an oversubscription criterion as there should be a published mechanism for considering applications received after the published deadline of 1 March but before the start of the new academic year. Any application received after the start of the academic year should be considered as an in-year application;
- The sixth form admissions policy states that appeals for sixth form places will be heard within 40 days of the appeal being lodged, but should also explain the parent or student must also be informed of how to lodge the appeal, by setting out their grounds for appeal in writing;
- The sixth form application forms (for internal and external candidates) required amendment to comply with the Code at paragraph 1.9 by the removal of questions related to personal information such as positions of responsibility, skills and attributes, wider contributions and future aspirations, because of the general risk that such information could be used as a form of selection such as by behaviour or attitude. For the same reason, an applicant should not be required to include a copy of their most recent school report as the school is able to contact the applicant's previous school in order to obtain

GCSE predictions, but must not ask for any other information. The school has now simplified both application forms;

- As applications for a sixth form place may be submitted by the student or the parent, there should be no requirement for both parent and prospective sixth form student to sign; it may be signed by the parent or student;
- It is unfortunate that the school still notes the signature as implying acceptance of the school's policies and expectations of students. The signature should only be a declaration that the information given on the application form is correct. Instead, the hope or expectation that the student or parent will support the ethos, policies and expectations of the school may be included as a statement in the introductory paragraphs of the sixth form admissions policy.

Conclusion

43. It is unfortunate that the school appears not to have carried out the consultation process as carefully as it could have done but that, of itself, does not invalidate the arrangements, and as soon as the school noticed errors in the information posted on the website, the school took steps to rectify the problems. Additionally, from the number and range of responses received by the school, and from the widespread publicity through the media and social networks, I believe it is likely that local people with an interest in the admission arrangements would have been aware of the changes proposed by the school. The Code is explicit about when the consultation should happen, for how long, and about who should be consulted. However, the Code is not prescriptive about what information needs to be included in the consultation documentation, nor indeed, where or how the information should be published, and so I conclude these are matters for the school to decide. Accordingly, I do not uphold this part of the objection about the consultation process.

44. The school may have underestimated the depth of opposition to the proposed changes but the school did adjust its position in response to the consultation by retaining only the sponsored primary, TGA St James, as the named feeder school. TGA St James was selected because an above average proportion of its students are entitled to free school meals and the prior attainment of students leaving that school is significantly lower than the average in both national terms and local terms, which is consistent with a converter academy's responsibility to assist schools in need of support. In addition, the school has been working with the feeder school for some time. From the data available, it appears that even if all the children in the feeder school were to transfer to Tudor Grange Academy, there would be enough places at the school for all the catchment area children and possibly out-of-catchment siblings and other children for the next few years. Accordingly, I am satisfied that the decision to nominate the named feeder school is transparent and made on reasonable grounds and therefore I do not uphold this part of the objection.

45. There has been no challenge to any part of the school's determined arrangements other than the higher priority for children transferring from the feeder school than catchment area children. The feeder school is designated as having a religious character and so is permitted to give priority for admission to pupils on

grounds of faith. However, Tudor Grange Academy itself has no criterion requiring faith or absence of faith. In addition, as the feeder school has been undersubscribed for a number of years, every child who has applied has been admitted, whether of the faith, another faith or no faith. So I conclude there has not been indirect religious discrimination, and in any event, any indirect discrimination that might result from giving priority to feeder school children is capable of objective justification based on the arguments presented by the school in support of its decision. I also conclude there has not been a breach of the Code at paragraph 1.9(i) as the school will not be advantaging indirectly children from the feeder school on the basis of their parents' activities, nor a breach of paragraph 1.8 because the vast majority of places in the admission year are available for children who have not attended the feeder school, and even if up to 60 children were to transfer from the feeder school, there are more than enough places available for catchment area children. Accordingly I do not uphold this part of the objection.

46. My jurisdiction is to consider the 2014 determined arrangements for Tudor Grange Academy and so I am not adjudicating on a number of other concerns which have been raised as they are not matters for this determination, such as:

- whether or not the local authority met the requirements of the Code to publish information on how to refer objections to the Schools Adjudicator as this is not a matter for which the school can be held accountable;
- the lack of a defined catchment area for the feeder school and uncertainty generated by the consultation related to changes proposed at the feeder school, as these are not concerns about this school; and
- whether or not conflicts of interest went undeclared during the consultation process, which would be a matter for the Education Funding Agency

Determination

47. 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 directors of Tudor Grange Academies Trust for admissions in September 2014.

48. I have also considered the arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 42 of this adjudication.

49. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make any remaining revisions to their admission arrangements as quickly as possible.

Dated: 28 August 2013

Signed:

Schools Adjudicator: Cecilia Galloway