

## DETERMINATION

**Case references:** ADA/001775-87, 1793-98, 1800-12, 1817-1834, 1836-44, 1850-65, 1885-95, 1915-54, 1965-66, 2035-77, 2119-26

**Objector:** eligible parents, school Governing Bodies, Kent County Council

**Admission Authorities:** the governing bodies of The Skinners School, Tunbridge Wells; The Judd School, Tonbridge; Tonbridge Grammar School, Tonbridge

**Date of decision:** 18 October 2010

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections made to the admission arrangements determined by the governors of Tonbridge Grammar School. I do not uphold the objections made to the admission arrangements of The Skinners or The Judd Schools.**

**In addition to considering the objection, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998. I am using the powers available to me to make changes to the admission arrangements of Tonbridge Grammar School and The Skinners School.**

**I determine that for admissions in September 2011 the arrangements for Tonbridge Grammar School and The Skinners School should be as set out in the annex to this determination.**

### **The referral**

1. Objections have been referred to the Adjudicator by eligible parents, by the governing bodies of schools and by the local education authority about the admission arrangements for The Skinners School, a Voluntary Aided Grammar School for boys ("Skinners"), The Judd School, a Voluntary Aided Grammar School for boys ("Judd") and Tonbridge Grammar School, a Foundation School for girls ("TOGS") (the three Schools) for September 2011.

2. The objectors allege that the admission arrangements of the three Schools result in places there being taken up by pupils who live at some distance, at the expense of more local pupils who have been deemed "selective" (suitable for a place at a selective school) under the Kent 11+ assessment procedures. Many objectors say that this effect is socially divisive, does not have sufficient regard for the consequential travel involved, and that the Schools have failed to consult adequately on their arrangements.

## **Jurisdiction**

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing bodies of the three schools, which are the admissions authorities for the schools. The parents and other objectors submitted their objections to these determined arrangements between 28 June and 31 August 2010. I am satisfied these objections have been properly referred to me in accordance with section 88H of the Act and that they fall within my jurisdiction.

## **Procedure**

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

The documents I have considered in reaching my decision include:

- the parental and other letters of objection;
- the schools' responses to the objections;
- the Council's booklet for parents seeking admission to schools in the area in September 2010;
- the determined admission arrangements for the three schools for September 2011;
- maps of the area identifying relevant schools;
- data supplied by the local authority at my request.

5. I have also taken account of information received during a meeting I convened on 15 September at Tonbridge Grammar School for the three schools, the local authority and objecting schools, and at a public meeting on the same day at Tunbridge Wells Grammar School for boys which was attended by in excess of 250 people.

6. In addition to investigating the matters raised by the objector(s) I have also reviewed the admissions arrangements as a whole and considered whether I should use my power under section 88J(2)(b) of the Act. I am using my powers under the Act to make further changes to the arrangements.

## **The Objections**

7. A total of 179 objections have been made, the vast majority from eligible parents objecting to the selection arrangements of the three Schools without alleging any specific breach of the School Admissions Code (as permitted under the School Admission Regulations 2008). There were a total of 101 such objections, a high proportion of which consisted of letters written to a standard format. The complaint made in these cases was that the admission arrangements of one or more of the three Schools, each of which gives

priority, either to the whole admission cohort or to part of it to children ranked according to their aggregate score in the Kent selection tests, result in the denial of places there to qualified local children.

8. The next largest group of objections (51) alleged specific breaches of the Code by virtue of a socially divisive effect of the arrangements and a failure to consult adequately on the part of the school governors before determining them. 13 objections cited the socially divisive effect alone, 5 consultation alone. 2 objections cited social division and a failure to take the effects of travel into account and 2 more cited all three matters as their grounds for objection. 2 objections claimed that the arrangements denied children fair access to an appropriate education (one of which included inadequate consultation as a ground) and one objection stated that the admission arrangements were unfair to candidates who did not live in Kent. The substance of one objection was unclear to me.

9. The governing body of Amherst primary school in Sevenoaks has objected to the admission arrangements at The Judd School. It contends that

(i) the arrangements do not allow equity and fair access (Code 1.71) since coaching for the selection test is rife and cannot be afforded by poorer families, unfairly disadvantage the better off (who can) and therefore fail to promote equity (Code 1.72) and constitute an activity which unfairly disadvantages certain social groups (Code 1.73);

(ii) the arrangements result in places at the school being given to pupils from outside the West Kent area, thereby denying places to more local children who "have been offered places at distant Grammar schools in east Kent". Because well-off families can mitigate this effect (see above) there is a resultant negative effect on community cohesion, which the governors are therefore failing in their duty to promote (Code 1.13);

(iii) the school has failed in its duty to consult local parents and interest groups (Code 1.25-1.33 and 2.11);

(iv) the arrangements fail to take into account the time taken to travel to school (Code 2.36 and 2.39);

(v) the school fails in its duty to take steps to ensure that its admission policies do not unfairly disadvantage one group of children compared to another (Code 1.101 and 1.102);

10. The School has also listed a number of complaints, for instance about the Judd's lack of compliance with previous determinations of the Schools Adjudicator, but I do not read these as specific additional objections about its admission arrangements for 2011 in terms of a lack of compliance with the Code. It also states its view that the admission arrangements of the Judd should be changed to give priority to children deemed selective who live in the area, and that the absence of some form of catchment area for the Judd on the grounds of the Greenwich judgement can no longer be justified.

11. An objection to the admission arrangements of all three Grammar schools has also been made by the Governors of Kemsing primary school, which is situated to the north of Sevenoaks. This objection gives considerable detail of what the Governors see as the negative effects of the policies of the three Schools, and in terms of the Code complains that there has been a failure to carry out an adequate consultation by the Judd, and that there is a lack of clarity in the wording associated with the allocation of Governors' places at TOGs. The Governors' letter makes clear that the underlying source of discontent is the fact that while children leaving the school and deemed selective have over the years gone to Grammar schools in Tonbridge or Tunbridge Wells, in recent years some have initially been offered Grammar places further afield or places at non-selective schools. It also states that "invariably such children are then offered grammar schools in Tonbridge or Tunbridge Wells, but it seems never any of the above three schools".

12. The local authority, with the support of the local Admissions Forum, has objected to the admission arrangements of each of the three schools, in terms which are essentially identical in each case. (The objection about TOGs however takes account of its different arrangements and the fact that it has not previously been the subject of an objection and determination.) The objections make clear at the outset that the local authority takes the view that there is nothing unlawful in any of the published arrangements, but that they may be unfair. It articulates two major areas of concern, firstly that the arrangements make it harder for local children to obtain places there and, secondly that they undermine measures in its own administration of the selection procedure which are designed to support children with special educational needs, or children who for one reason or another have not been able to perform to their normal level in the tests. These measures employ a Headteacher Assessment panel which examines such cases using examples of work and other records and has the power to deem a child as suitable for grammar school. The use of aggregate scores alone negates this approach, making it impossible for such children to be awarded a place, in its view.

13. A very high proportion of those who have objected have also suggested that the concerns they have would be remedied by the introduction of a geographical limitation into the arrangements of the three schools – particularly so in the case of Skinners and the Judd, who currently have no such element within their criteria for admission.

## **Background**

14. The objections are concerned with a part of Kent known there as West Kent. Within the Kent local authority, for the purposes of providing education, this area is what is known as a "scheme of education". Across Kent, the admission arrangements of some schools give preference based on residence within the local scheme and some do not. Some areas have comprehensive secondary schools, some grammar schools and all ability schools. Transfer is at age 11, except in the case of one grammar school which takes children from the age of 13.

15. Parents wishing to apply for a place at a grammar school place at 11 enter their children for the Council's 11+ assessment tests. These consist of mathematics, verbal and non-verbal reasoning tests, together with a non-assessed writing exercise which is available to the Headteacher Assessment Panel which considers borderline cases referred to them by primary school headteachers. The tests are taken over two days. Children who live outside Kent or attend schools there are commonly called to testing centres and take the tests in a single day.

16. In West Kent (Sevenoaks, Tonbridge and Tunbridge Wells) there are six grammar schools; the three named in these objections and Tunbridge Wells Grammar School for Boys, Tunbridge Wells Girls' Grammar and Weald of Kent Grammar School. These latter three grammar schools have admission arrangements in which priority is given on a geographical basis to children deemed "selective" in the Kent assessment tests. There are also all-ability schools, some of which are Voluntary Aided schools which give priority in admissions on the basis of faith criteria and admit from a wide geographical area.

17. The three Schools which are the subject of the objections are their own admission authorities, and have set their own admission arrangements. The Skinners' school gives preference to boys according to their combined scores in Kent's assessment tests (with distance to the school acting as any necessary tie-break), The Judd School does the same and Tonbridge Grammar School offers a minimum of 35 places to girls who have been assessed "selective" in the Kent tests and who live outside Kent's scheme of education (meaning, outside the parts of Kent where there are grammar schools. Ranking is by combined test scores with distance as the tie-break), and a maximum of 105 places to girls who live within the scheme, on the same basis.

18. The town of Sevenoaks has no grammar school situated there – all are in either Tonbridge or Tunbridge Wells to the south, and some are closer to the County's boundary than they are to Sevenoaks. The combination of these factors of geography and the admission arrangements for the different grammar schools has led to a recurring situation year-on-year in which the number of grammar school places across the six schools which can be made available to children who are deemed "selective" and who in the West Kent scheme of education is, on the national offer day, fewer than the number of children concerned. A significant number of initial offers are therefore of places in grammar schools further afield or at non-selective schools for such children, while the three grammars named in the objection are able to make initial offers at the same time to children living outside the local authority area. Perhaps not surprisingly, there have been previous objections to the Adjudicator. In 2009 a parent objected to the admission arrangements of The Skinners School and the Judd School on grounds very similar to those now raised by a much greater number.

## **The responses of the schools**

19. Each of the three Schools has strongly defended its current practice, in writing, in the meeting I held with the interested parties, and in public.

### A. Skinners

A1. Skinner's was sufficiently mindful of the local concern in recent years to publish an explanatory statement when it determined its arrangements for 2011. It summarised its reasons for retaining "academic merit with no geographical limitation" as the principle behind its arrangements as

- (i) academic merit is the fairest of the means available for selection
- (ii) the school has never limited the area from which it accepts boys, and to introduce a geographical limitation might solve one problem but create others
- (iii) the school regards itself as a regional rather than a Kent school.

A2. In direct response to the early objections received by the Adjudicator, it points out that the Adjudication of 2009 found the School's arrangements compliant with the Code, and that in May 2009 the Council had also written saying that its criteria were "within the tolerances of the Code". Writing at more length in response to the Council's own objection, the School asserts that the Council's strategic responsibilities (under the Education and Inspections Act 2006) are not made more difficult by the School's admission arrangements and that even if they were, this would not breach the Code. It quotes the Code, paragraph 2.73, which states that "meeting the academic requirements for entry to a grammar school is not, in itself, a guarantee of a grammar school place." The School rejects the charge that it fails to promote community cohesion, pointing out that its practice of admitting some children from nearby villages in East Sussex is more conducive to community cohesion for the town of Tunbridge Wells than excluding them to favour children who live further away in Kent. It comments on the accusation that its policy encourages a culture in which children are coached to perform well in the test by saying that this is not referred to in the Code and in any case is not a new phenomenon. It also rejects the charge that selection by rank order impedes the Council in fulfilling its duty to ensure that testing arrangements are accessible to those with special educational needs, pointing to the appeals process and the cohort of boys with special educational need who have been successful in applying to the school.

A3. The School goes on to make its own assertions, that:

- (i) those wishing to prevent children from East Sussex from applying for a place do so in the face of paragraph 2.73 of the Code concerning the expression of parental preference;
- (ii) the Adjudicator is not able to consider objections to the principle that a grammar school selects its pupils on the basis of high academic ability, by virtue of paragraph 4.21 of the Code;

(iii) paragraph 2.73 of the Code allows selective schools to “apply any fair and objective means of assessing ability they consider appropriate” and that paragraph 2.74 refers to the practice of using rank order of performance.

(iv) upholding the objection would reduce the access of able children of all social groups to an appropriate education.

## B. The Judd

B1. In its initial response, the School makes the points that

(i) the 2009 objection made against its admission arrangements was not upheld;

(ii) the school has set its arrangements, and they are in themselves, in accordance with the requirements of the Code;

(iii) Sevenoaks town centre is further away from the school (7 miles) than the nearest point of Kent which has no grammar schools (1 mile) or the nearest point in East Sussex (5 miles), and that while using rank order does not favour Sevenoaks neither does it disfavour it, being purely meritocratic in nature;

(iv) the school has repeatedly been assured by the Council that there are enough places at West Kent grammar schools (at least for boys);

(v) the perception that it is harder to obtain a grammar place than hitherto has to some extent been created by the longer time between initial offers and final allocations under the system of coordinated offers, and also because previously more parents were satisfied at the outset because of the system of “over-offering” which is no longer permitted.

B2. In the light of further objections which had been received by that date, and of the deliberations of the School’s Admissions Committee on 9 September, the School wrote again, making additional observations:

(i) altering the admission arrangements would alter the character of the school, and diminish the very factors that those seeking it admire; it might also prove counterproductive since some parents living further away would not get the place for their child that the current system provides;

(ii) it accepts the potential for a minor problem in securing appropriate arrangements for the testing of some special needs pupils, but calls upon the Council as the body responsible for the testing to make such additional arrangements as might be necessary so that all pupils can demonstrate their ability.

(iii) it raises procedural and other problems associated with the meeting of the local admissions forum which led to the latter’s support for the Council’s objection;

(iv) it provides data on the balance of admission offers on “offer day” for the six West Kent grammars and for other grammar schools elsewhere in Kent showing the relative numbers of places offered to non-Kent residents;

(v) that there is a strong body of opinion which is favour of the present arrangements) (supported by a file of 75 e-mails);

(vi) that contrary to the assertions of some objectors, the School has always admitted students from a distance (current place of residence of all pupils in the school summarised).

B3. In a final note at the end of September, the School gave its own understanding of what lay behind remarks that had been made in the meetings earlier that month concerning what was widely described as a “lowering of the passmark” in 2009 (and thereby, allegedly, a worsened problem of finding grammar school places in West Kent).

### C. Tonbridge Grammar School

C1. In its initial response to objections, the School stated that its policy of admitting 75% of its intake from the Kent Scheme (the selective area) and 25% from outside was clear, unambiguous and compliant with the Code. It further believes that it is fair in that some of those in the second category live within 3-4 miles of the school.

C2. It goes on to say that the claim of some objectors that the school in some way favours children coming from the independent sector is not substantiated by any evidence. Its own figures show that over 2/3 of the entry in 2009 came from the state sector.

C3. It points out that even if pupils deemed selective are denied grammar school places, this is no more than is made clear as a possibility both in the Code and in Kent’s brochure for parents. However, the school and the other grammar schools were concerned about the situation which arose in 2009 and have held high level meetings with the local authority in an attempt to find a way forward. It provides details of the locations of the homes of the 35 girls admitted via Governor places in 2010, 13 of whom live in Kent, 12 in East Sussex, 7 in Bromley and 2 in Surrey.

C4. It also provides details of the consultations which were carried out in relation to the 2011 admission arrangements, and also how the outcome of these consultations was reported to and deliberated upon by the Governors before the admission arrangements were determined.

C5. Finally at this stage, the School states its belief that if a geographical (i.e. proximity) restriction were substituted for rank order prioritisation, the result would be an increase in the price of houses closest to the school, a shrinking area from which girls were admitted and a decreased likelihood of admissions coming from Sevenoaks.

C6. In its second response, the School addresses the objection made by the LA. In relation to the principal concerns expressed by the LA the School reasserts its position of having entirely lawful arrangements whether or not these result in places being denied to local children, and secondly, in relation to testing arrangements that it is for the LA to make arrangements to ensure that its tests are accessible and that if it believe some categories of candidate

may not be able through the tests to demonstrate their true abilities, to make arrangements which would compensate.

C7. It further comments that, due to an historical anomaly, the school is resourced to take 150 pupils and therefore cannot argue prejudice until that number is reached. It would be willing to increase its admission number accordingly.

C8. In a final submission, in addition to its earlier responses, the School adds that it is the view of Governors that admitting according to rank order enables the socially or financially disadvantaged to access the school, and to counter the accusation that coaching or attendance at an independent primary school favours applicants, gives data showing no appreciable change in the proportion of those drawn from the independent sector who enter the school compared to the proportion who express a preference for it. It also points to the growing strategic issue of an imbalance between demand for grammar school places, as shown by the proportion of children being deemed selective, in different parts of Kent and the supply of grammar places in those areas. West Kent is part of this changing picture which, it argues, is an issue for the local authority to deal with. Finally, alternative wording to help clarify part of its admission arrangements is supplied.

### **Consideration of Factors**

20. The meetings held on 15 September have provided me with a fuller understanding of the issues involved, and the context of the present objections. Both are complex.

21. Many parents, together with other contributors, spoke at the public meeting – some in favour of change, but many also in support of the present arrangements. There was a strong undercurrent of sentiment evident to me that in view of what has been perceived as an orchestrated campaign against the three schools' admission arrangements from one of the primary schools in Sevenoaks, there was a need for the Schools to redress this imbalance by ensuring that a strong body of opinion opposing the objections was seen to exist.

22. Whether or not they had submitted objections that made more specific criticisms in terms of the Code, those speaking in favour of the objections essentially took the position that the arrangements at the three schools meant that many children in the area who were deemed "selective" had to wait for a considerable period of time before they knew that they had secured a place at one of the local grammar schools, and that this was wrong as it caused children considerable distress. Some spoke movingly to this point. For the objectors, the remedy was some form of geographical restriction on admissions, and an end to the use of admission by rank performance, although there were many variants as to how this might happen during the course of the evening. Their principal objective in common was that "selective" children from within the scheme of education known as West Kent should be allocated places at local Kent grammar schools before these schools were allowed to give places to other children.

23. A significant number also spoke in favour of the present arrangements. Although the effect referred to above was generally acknowledged and frequently described as regrettable, nevertheless for this group the present arrangements had the advantage of being meritocratic and open. The view was also frequently expressed that the community served by the Schools extended well beyond the borders of Kent because of the closeness of Tunbridge Wells to the county boundary, and to have a catchment area which gave preference to those living within the county would be to deny that relevant relationship. It was also commonly voiced that if the objectors got their way, house price inflation in the area around the schools would rapidly result in an increasingly small area for admissions inhabited only by the most well-off, with the consequent effects on fairness and community cohesion.

24. The desire to ensure that the voice of support for the status-quo was heard was reflected also in the post-meeting submissions which I allowed for a brief period, and comments to the effect that this “consultation” had not been adequately advertised, and that there were large numbers of people living in East Sussex and nearby London Boroughs who would “want to have their say”. The feeling that I had at the outset as a result of the very large numbers of objections that were received which were clearly not entirely independently made, namely that this has been brought forward and treated as a campaign that relied on weight rather than quality of argument, has therefore never entirely left me.

25. A total of 203 further submissions were received, 128 of which supported the status quo, 19 were in favour of some change but not necessarily that advocated by the majority of objectors, and 56 supported the objectors’ position, but only 8 of which again made reference to specific aspects of the Code. Comments came overwhelmingly from eligible parents, but many were also from people who would not be eligible objectors – local councillors, grandparents and Headteachers for example. Many of the submissions were lengthy, thoughtful and analytical. Some of the points I noted particularly are:

- There is social housing close to both Skinners and the Judd, so catchments/geographical arrangements may not advantage the well-off
- Why not introduce a small catchment area for selective Kent children, with some places then left for higher achievers from any distance?
- Dartford Grammar schools has far more out-county pupils than the three grammar schools here
- Some children from more rural areas of Kent can only have a chance of a grammar school under the present system
- coaching for the higher levels of attainment is harder than for the “selective/non-selective” borderline, so is less likely to affect admissions under the present system
- Bromley also has super-selective grammar schools and many Kent children attend these, denying places to local children

- The system works fairly well: it is years since I heard of a local child who did not actually get a place at a West Kent Grammar after reallocation and appeal.
- “by its very nature...the system is itself evidently unfair, and nothing will make it “fair”, no matter how one defines the selection criteria. There cannot be a solution that pleases everybody.”

26. Against this complex back ground, in order to try to secure some firm basis in fact, at least about the current situation concerning the three schools, the other grammar schools in West Kent and the children who are deemed selective within the area, I have tried to get a clear picture based on information about pupil admissions in recent years. Many objectors quoted identical figures about the offer of places to pupils in the six West Kent Grammar schools in 2009, using them in support of their case that local children were being denied places in local grammar schools. These figures appear to show for example that while 705 in-area children were deemed selective, only 541 were being offered a place in one of the local grammar schools and 118 were being offered places at grammar schools elsewhere in Kent. I have tried to reconcile the figures so quoted with equivalent data obtained from posing specific questions to the LA, and have found this extremely difficult. The reason for this is that the figures in any year change continuously over time between the initial offers and 1 September, there are different definitions of “in-area”, and so on. The LA told me that the figures used by the objectors resulted from a Freedom of Information Request to the LA and therefore captured the data a given point in time.

27. The LA has been clear in statements to me and in those made at public meetings that, firstly, there are enough places in the six West Kent Grammar schools for the number of pupils in the primary schools in the area who are deemed selective. However, of course, the admission arrangements at the three Schools result in some children taking up places there who are not from the West Kent primary schools, and therefore on national offer day many children from the area cannot be offered places at one of these schools. This is the situation which the objectors find unacceptable. As some parents drop out of the system – for example sending their children to Independent schools – more places become available at the grammar schools. Some parents are successful at appeal, and some of the grammar schools in the area admit over their admission numbers to the point where, by September those parents in the area still seeking a place for their eligible child will have secured a place at one of the grammar schools. This, I am assured, by the LA has been the situation for some years, and no contrary evidence has been given to me. In this current year, 2010, the position is broadly that against the 850 places and 850 offers made initially, about two forms of entry were taken up, principally across the three Schools, by pupils from outside Kent. By September, the figure of out-of-county places had fallen below 50, and these had been broadly matched in number by above admission number admissions across the grammar schools.

28. I have been given a further set of data by the LA in response to my request for year-on-year information which I could use for direct comparison purposes. This shows the data held by the LA at the same point (when the threshold is set) over 10 years, for pupils who have taken the selection tests and who are likely to feed into the grammars in the area from a fixed list of schools. It shows the proportion who have been selected and the number of children involved. This shows for 2011 admissions a return to a percentage pass rate more typical of 5 years ago and a total number of “selective” children reduced by about 70 compared with the same point last year.

29. The objections which have been made need to be considered against this background picture of what has been happening. I shall consider first the specific allegations of breaches of aspects of the Code.

30. I have no doubt that there is, as many have told me, a “culture of coaching” associated with entry to the three Schools. Such a culture however exists, I am equally sure, in relation to other grammar schools both in Kent and elsewhere. It is not a feature of the Schools’ admission arrangements themselves, but of the competitive nature of the process, which is a selective one. I agree with those who say that an alternative process based on geography is very likely to lead to disadvantage to those unable to afford what would inevitably be the higher cost of housing in the area given priority for admissions. I have noted that there is social housing in the vicinity of two of the Schools, but believe that the effect on house prices generally that has been predicted by many would materialise, and that this would directly disadvantage less affluent groups, without putting an end to coaching. Some have claimed that it is harder to coach for the higher levels of achievement required for the three Schools compared to that for the pass/fail borderline itself, and this may well be true. It is certainly unlikely to be easier, and it may be that this means of selection is less likely overall to cause disadvantage than its alternative. The selection tests are commissioned by the Council, and if it believes that there is a systematic disadvantage to any social group in the way that these operate, it would be possible for it to consider how to change them for the better. Other authorities have selection tests which rely only on verbal and numerical reasoning abilities, and it may be that consideration should be given in Kent, either as a whole, or by the three Schools themselves, to dispensing with the test of mathematical ability which is likely in my view to be inherently more amenable to “coaching”, for example.

31. I have obtained from the Council free school meal eligibility and School Deprivation Indicator data for all Kent secondary schools, and these do indeed show that the three Schools have much lower numbers of pupils entitled to free meals, and much lower numbers of children who live in wards with high levels of deprivation than the Kent average. However, their figures are very comparable indeed to those of the three other grammar schools which serve this (in itself, relatively affluent) part of Kent, and I am unable to distinguish in this data any apparent effect which might be assigned to the different admission arrangements of the three Schools.

32. It is alleged that by admitting some children from outside Kent, with the result that some local children are initially assigned to more distant schools, there is a negative effect on community cohesion. Given that all local children do eventually achieve a local place, that the numbers of children admitted to the three schools from outside Kent is less than 10% of their intake, and that many of these children live relatively close to the Schools and within what might be considered parts of the local community on some definitions (whose inclusion might be seen to have a positive effect), this is a difficult claim to substantiate. No doubt there is an unsettling effect, which for the individuals concerned is very real, but I am less than convinced given the scale and other factors involved that this is sufficient across the community to substantiate a claim that the Governors are failing in their duty to promote community cohesion.

33. Tonbridge Grammar School is the only one of the three Schools that has made any change in its admission arrangements since these were consulted on and set for 2010-11. Paragraph 1.26 of the Code allows admission authorities which have made no change between these years not to have to consult on their arrangements for 2011-12, or 2012-13 in these circumstances. Tonbridge Grammar School did carry out a statutory consultation, the details of which have been supplied to me, and I am of the view that all three schools have met the relevant statutory requirements. I have confirmed with the local authority that it too is satisfied. The widespread belief that there has not been an appropriate consultation by the three schools is therefore somewhat mystifying, and it may be that, as is often the case, those whose wishes are not being fulfilled misinterpret the meaning of "consultation". Certainly in this case they seem not to have understood the relevant requirements, for example that admission authorities are only required to consult with specified persons.

34. The fact that some children are admitted from distance does not necessarily amount to breaches of the Code's requirements concerning travel arrangements. Paragraphs 1.8 and 2.36 do not impose mandatory requirements and paragraph 2.39 refers to a different situation to that which pertains here – namely where distance is the oversubscription criterion, not rank score. I am satisfied that the Governors of the three Schools are mindful of travel issues in relation to admissions and that they have nonetheless determined their arrangements as at present. There is of course no requirement as to distance involved with a rank score priority system; the rank score itself is independent of distance. I have been given many examples of children who, for example, live in East Sussex, but nevertheless nearer to one of the three Schools than many children who live in Kent. In other words, the policy of using rank scores does not of itself only ever imply that children will have to travel from a greater distance to go to one of the Schools. It makes it more likely that some children will be admitted from a greater distance, of course. So the Code's general requirement that steps be taken not to disadvantage one group over another (in paragraph 2.39 and elsewhere) applies, in this case meaning that the cost of travel might disadvantage some children compared to others. The question is therefore whether Governors have taken steps to ensure that those for whom the cost of travel would otherwise be a deterrent are supported in applying. In the absence of their applications, it is very difficult to know whether this is the case.

However, if the Governors have not already done so, this is a contingent aspect of their arrangements which they should bear in mind, and have good reasons for their approach, as required by the Code.

35. The question of fair access to an appropriate education has been cited in objections. I have however been given no evidence that children have not ultimately been allocated a place at a school which is suitable to their needs as a result of the admission arrangements at the three Schools. Parents are warned that being deemed “selective” is no guarantee of a place at a grammar school, and more able children can and do receive an appropriate education at other secondary schools. It is also worth pointing out that “fair” in the sense which it is used in the Code does not in any case necessarily mean “equal” (to somebody else) but rather “fair and reasonable” (to the individual) in the context of the school admission system as a whole. While what is happening through the process of finding school places is causing lengthy uncertainty for a large number of pupils, which may clearly be seen by some as unfair to them, none as far as I can see are denied fair access in the sense of the Code.

36. I have referred elsewhere to aspects of the testing arrangements used by Kent County Council. One objector raised the issue of the arrangements for outside candidates which are employed (see paragraph 8 above). I have considered this objection in the light of the nature of the tests and the logistical problems that undoubtedly attend the making of appropriate arrangements for such candidates. The Council is clearly aware that sitting the tests on a single day is arduous, and provides a separate familiarisation day for candidates which will go a long way to reducing some of the negative effects for children that might otherwise be present. I would expect such arrangements generally to allow children to demonstrate their normal abilities adequately well. Under the circumstances, I find it difficult to be persuaded that the arrangements overall are so unreasonable as to result in actual unfairness, but the Council will no doubt monitor this aspect and keep it under review to ensure that this remains the case.

37. The objection about a lack of clarity in the arrangements for the allocation of Governors’ places at TOGS was raised with them. The effect of the uncertainty was that one reading of the arrangements left doubt as to the number of such places that would be allocated in practice. As stated above (paragraph 19), the Governors have supplied me with revised wording and I believe that this will ensure that this aspect is clear in future. I am content to leave the Governors to make the necessary changes, as they have offered to do.

38. Before I consider finally the objections to the admission arrangements which refer to their overall effect rather than to specific aspects in the light of the Code, there remains the complaint of the local authority that the use of rank scores mitigates against the arrangements which it makes for candidates who might for a variety of reasons be unable to demonstrate their true abilities in the tests. For those grammar schools for which entry is based on a designation of “selective” ability followed by other oversubscription criteria such as distance, the use of the Headteacher panel to determine the issue of selective ability using other evidence clearly provides a useful and thorough

safeguard. It can also not be used to provide substitute aggregate scores for those schools which employ them. This does not mean in my view however that the Schools themselves are acting negligently by choosing to use rank scores. The tests are the province of the local authority, which is aware of the use made of the information which they produce, and it must be for the LA to take such steps as might be necessary in individual cases to enable appropriate performance to be demonstrated, since it is evidently not the case that the Headteacher panel approach, which is clearly designed for and appropriate to a particular use of the test results but not others, is the only means of doing so.

39. I have not found it possible to agree with any of the objections which have been made on specific grounds, and I note that from the outset the local authority has been clear in its acceptance that the Schools' arrangements contain "nothing unlawful". The objectors are unhappy about what they see as the effects of the arrangements – that by admitting some children from further afield, including from outside the county, the three Schools are causing some local children to face a long period of uncertainty before their place at a local grammar school can be secured. I have been left in no doubt that this takes place, and about the distress that it causes. However, I am also in no doubt that the three Schools have the right to set the admission arrangements that they have (subject to the matters which I raise below).

40. As a number of thoughtful contributors to the debate have said, the present arrangements with their inherent drawbacks can be set alongside the alternative of prioritising admissions based on some geographical criterion, which might use a defined catchment area or a combination of this and distance from the school for example. Such a system would also have its drawbacks, principally deriving from the economic and social effects of admissions to these popular schools being more certain from localities nearer the Schools than at present, but also from the restricted likelihood of children of very high ability from elsewhere ever securing a place.

41. While schools are in many cases free to set their own arrangements, as they are here, it is right that they do so within a framework which makes it possible for there to be a system across all schools which is capable of serving all children, even if imperfectly. The role of the Adjudicator is primarily to consider whether schools, or local authorities, if challenged, are staying within that framework, in order to ensure a fair admissions system. It is also right, particularly in a situation which as complex as the one described above, that a local body is responsible for taking all these matters into consideration and for ensuring that the best possible system results. I do not envy the local authority in this task, but I believe that it falls principally to it, and not to the Schools Adjudicator, particularly where a longer-term approach is needed against an evolving set of circumstance, and where a longitudinal process of engaging strategically with partners in the educational process in seeking better outcomes is needed.

42. A previous adjudication came to the conclusion that any imposed change in admission arrangements of the sort being sought by the objectors would be dangerously exposed to the risk of unforeseen and unwelcome consequences. I agree. It also concluded that it would be best for progress to

be sought through local discussion. I also agree. At the same time, I have given some indications as to how aspects of the arrangements might be improved. I believe that issues such as the tests themselves and the testing arrangements, the admission numbers of schools and support for disadvantaged potential applicants might all be worth pursuing. While I am hopeful that the situation for 2011 admissions might be considerably eased given the information referred to in paragraph 28, I am also mindful of the need to minimise the number of children who cannot be allocated a place at local grammar school initially and the length of time for which this is the case, as a consequences of the present “package“ which exists in West Kent. I am sure that the needs of these children will be uppermost in the minds of all concerned in taking this matter forward as it should be, locally.

### **Other Matters**

43. I wrote to the Governors of the three schools on 11 October 2010 informing them that I was minded to use the powers available to me to make changes to the School’s arrangements where these are currently not compliant with the School Admissions Code, as follows:

#### Skinner’s

The existing reference to the admission of children with statements of ‘special educational need’ which name the school should be removed from the section listing over-subscription criteria, and should also have the phrase “who has been assessed as being of selective ability” removed. See Code paragraph 2.8.

#### The Judd and Tonbridge Grammar School

A statement that children with a statement of special educational need which names the school will be admitted is required. This must be in accordance with paragraphs 1.56, 2.8 and 1.23 of the Code in particular.

#### All

In relation to sixth form admissions, the admission of Looked after Children should be the first priority in oversubscription arrangements (Code, paragraph 1.44).

44. The Judd School has supplied me with the wording it proposes to use to make the necessary changes itself, and I am happy for it to do so. TOGS are content for me to make necessary changes and these are therefore set out in the annex to this determination. At the time of writing, having consulted the Governors of The Skinner’s School, I have had no reply and am therefore using my powers as indicated. The changes I am making are also set out in the annex.

## **Conclusion**

45. For the reasons which I have set out in paragraphs 30-42 above, I do not uphold the objections which have been made about the admission arrangements of the three Schools, save in respect of the objection concerning the clarity of the wording of one aspect of the criteria for Tonbridge Grammar School (see paragraph 37).

## **Determination**

46. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections made to the admission arrangements determined by the governors of Tonbridge Grammar School. I do not uphold the objections made to the admission arrangements of The Skinners or The Judd Schools.

47. In addition to considering the objection, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998. I am using the powers available to me to make changes to the admission arrangements of Tonbridge Grammar School and The Skinners School.

48. I determine that for admissions in September 2011 the arrangements for Tonbridge Grammar School and The Skinners School should be as set out in the annex to this determination.

Dated: 18 October 2010

Signed:

Schools Adjudicator: Dr Bryan Slater

The Skinners School

The existing reference to the admission of children with statements of special educational need which name the school should be removed from the section listing over-subscription criteria, as should also the phrase “who has been assessed as being of selective ability” removed.

Third paragraph, add: First priority will be given to Looked after Children.

Tonbridge Grammar School

In addition to the changes proposed by the Governors to the wording of 2.2,

Add the following:

1.3 Girls who have a statement of special educational need which names the school will be admitted. The number of available places will be reduced accordingly.

5.2 Add: First priority will be given Looked after Children.