



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3867

Objector: An Individual

Admission authority: Consilium Academies (a multi-academy trust) for Ellesmere Park High School

Date of decision: 23 September 2021

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 for September 2022 determined by Consilium Academies (a multi-academy trust) for Ellesmere Park High School, Salford.

I have also considered the arrangements in accordance with section 88I(5) and find there is another matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 21 October 2021.

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 an individual (the objector), about the admission arrangements for Ellesmere Park High School (EPHS), a non-selective academy secondary school for pupils aged 11-16 for September 2022. The objection is to the introduction of a catchment area and random selection in the oversubscription criteria for EPHS.

2. The local authority (LA) for the area in which the school is located is Salford City Council. The LA is a party to this objection. Other parties to the objection are Consilium Academies (Consilium), which is the admission authority, and the objector.

Jurisdiction

3. The terms of the Academy agreement between Consilium and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with the School Admissions Code (the Code) and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. These admission arrangements were determined by Consilium, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 14 May 2021. The objector has asked to have his/her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his/her name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

4. At the time of the determination of the school's admissions arrangements and at the time the objection was made, the Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect. The objection and the responses to it were framed in terms of the 2014 Code. Save for the matters referred to in the following paragraph, the provisions of the Code referred to in this determination are materially the same in both the 2014 Code and the 2021 Code and so references to provisions in the Code apply equally to the 2014 Code and the 2021 Code. If necessary, I will indicate if the new Code differs in any respect. It is of course the 2021 version of the Code which is now in force.

5. The arrangements for the school were determined on 24 February 2021. At that time the 2014 Code, which was then in force, provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code which came into force on 1 September 2021 extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the adjudicator and no reason for the school to send me its varied arrangements.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. a copy of the minutes of the meeting of Consilium's board at which the arrangements were determined;
 - b. a copy of the determined arrangements;
 - c. the objector's form of objection dated 14 May 2021;
 - d. the LA's response to the objection and further information provided;
 - e. the school's response to the objection and further information provided; and
 - f. a map of the area identifying relevant schools.

The Objection

8. The objection questions whether the oversubscription criteria determined for 2022 admissions, which introduce a catchment area together with random allocation, are compliant with the provisions of the Code and the law relating to admissions. The objector has raised a number of points relating to this which will be considered in detail below.

Other Matters

9. Whether always to take the address of the person claiming child benefit to be the address of the main carer complies with the requirement for admission arrangements to be "fair, clear and objective" (paragraph 14 of the Code) or the requirement for oversubscription criteria to be "reasonable, clear [and] objective" (paragraph 1.8 of the Code).

Background

10. EPHS is a secondary school for boys and girls aged 11 to 16 in Eccles in the greater Manchester area and within the administrative area of Salford City Council. EPHS converted to academy status in 2017. The current pupil admission number is 150. The school carried out a consultation on proposed changes to its admission arrangements for 2022 from December 2020 to January 2021. Consilium's board then determined the admission arrangements which form the basis of this objection. A shortened version of the oversubscription criteria found in those arrangements is set out here:

1. Looked after children and previously looked after children.
2. Children adopted from outside of England.

3. Children in need.
4. Brother or sister of a child at EPHS.
5. Children living within the catchment area. Where oversubscription occurs within this criterion, places will be offered on a random basis. This will be supervised by an independent person.
6. Children living nearest to the school.

11. The admission arrangements for 2021 (and previous years), in a shortened version, are as follows:

1. Looked after children and previously looked after children.
2. Children adopted from outside of England.
3. Children in need.
4. Brother or sister of a child at EPHS.
5. Children living nearest to the school.

Consideration of Case

12. Regarding the introduction of a catchment area and random selection, the school state: “the purpose of the change was to address the current detriment being suffered by some of the most disadvantaged children in Salford who are currently unable to access a place within their local community”.

13. The LA support the change. Their response to me states:

“The local authority has supported the introduction of a catchment area for Ellesmere Park High School (EPHS). There is increased demand for school places in the Eccles area, with rising numbers in primary now moving into secondary, and a requirement to provide additional capacity to meet that demand. The LA is currently in discussion with EPHS to increase their PAN for the Sept 2022 intake to help meet this need (another local school, Salford City Academy, has already increased its PAN and the other local school, St Patrick’s RC High School, does not have physical capacity to do so).

If EPHS were not to implement a catchment area, the increase in PAN would not meet the demand in the Eccles area, but rather would draw pupils from the Irlams O’ the Height area, served by Buile Hill Academy and All Hallows RC High School. This is due to the geographical positioning of EPHS within Eccles and the use of the distance criterion. In order to ensure that any increase in capacity meets the demand in the Eccles area, it is necessary to use catchment area as an admission criterion to ensure Eccles pupils are prioritised for places. Without this pupils from the deprived

communities in central Eccles and the Winton estate would be expected to travel further distances to a school with a place available, i.e Buile Hill Academy or Irlam and Cadishead Academy (both of which would be in excess of 3 miles travel for many of these pupils). This would be unfair as it would disproportionately affect deprived communities”.

14. At the time of writing the issue of an increase to the PAN of 150 determined for EPHS for 2022 remains under discussion. The school wish to see their PAN increase from 150 to 180 and an increase is supported by the LA. The school lies to the northeast of the catchment area. The Winton Estate lies to the far northwest, and central Eccles lies to the south, of the catchment area. Large parts of both of these areas fall within areas classified as amongst the ten per cent most deprived neighbourhoods in the country, according to the Indices of Deprivation 2015 (<http://dclgapps.communities.gov.uk/imd/idmap-la.html>)

15. Further detail on the catchment area has been provided by the LA and the school. The LA state:

“I have indicated the Winton estate area on the attached map, which is the area in the North West of the catchment. This is a known area of deprivation that has previously been served by Ellesmere Park High School. As demand for places in the area has increased families in this area have found themselves unable to secure places at either Ellesmere Park or Salford City Academy (St Patricks has been full with all RC children for a number of years so this is not an option) as families to the east of the catchment area who are closer to Ellesmere Park have secured places ahead of them, even though these families have other schools close to them as well.

We have considered the Winton area, and looking at an address central to that area, the distance travelled to both schools (Ellesmere and Salford City) is the same. On this basis it should be possible for children from that area to gain a place at one of these schools, but this has not been the recent experience. The alternative offered to them has been Buile Hill Academy (next nearest school). Whilst this does not appear too far away, we are talking about urban areas where traffic can be very difficult at school times. Additionally, there are community based issues in Salford that mean placing children from one area into another area can be extremely disruptive both for the school and the child. The ideal would be to secure places for these children within the Eccles area. The catchment hopes to address this issue and give these pupils priority for a place ahead of pupils from other areas.

Consilium Academies are very aware of the need not to incorporate areas for where Salford City Academy is the closer school but rather for these pupils to be shared equitably. The 2 schools have good working relationships and want to provide for the children of Eccles. Salford City Academy has recently expanded from a PAN of 150 – 180 to assist with some of these issues, however, there are still local children unable to gain a local school place. The LA understand that Consilium Academies

have carefully considered the location of the catchment to be inclusive for pupils that are currently facing disadvantage”.

16. As paragraph 1.9 of the Code states “It is for admission authorities to formulate their admission arrangements...” provided those admission arrangements are compliant with the provisions of the Code and admissions law. Catchment areas are explicitly allowed by the Code. Paragraph 1.14 reads: “Catchment areas **must** be designed so that they are reasonable and clearly defined”. Paragraph 14 of the Code requires all admission arrangements to be “fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”. Paragraph 1.8 requires oversubscription criteria to be “reasonable, clear [and] objective”. With regard to random allocation the Code states “Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after children and previously looked after children are prioritised”. The objector has raised a series of specific points in relation to the catchment area and the use of random selection, which I will address below:

17. The objector makes the following points:

“the inclusion of the proposed catchment area is not clear, fair and objective. If there is to be a catchment area for the school the area proposed is far too large to be clear, fair and objective”;

“The catchment area proposed is very large and in fact would allow some children to have the chance of obtaining a place at EPHS whilst still retaining another “good” school choice at a closer distance to their home; as an, in effect, guaranteed second place school. Conversely, the children who live closest to EPHS have the same chances of obtaining a place at EPHS as those children, but do not have any second choice schools within their area and in all likelihood will be offered places at schools assessed as requiring improvement that are outside Eccles”; and

“It is quite clear that introducing a catchment area and picking names “out of a hat” for one school in an area creates a substantial disadvantage to any child who lives closest to that one school, as opposed to children who live closer to all other schools in the area where distance to the school is used as the main criteria for first/only children in the family. A random selection can only be a fair criterion if all schools in the area use the same random selection. A child making an application to this one school in Salford is unable to make any real assessment as to whether they will obtain a place, which is clearly unfair”.

18. The catchment area is clearly defined by a map and by a detailed description of each boundary road or feature. There is no stipulation in the Code as to the size of a catchment area although size may be a factor in considering whether it is reasonable or fair. EPHS lies in a largely built up area. There are a number of schools within five miles of EPHS, as there would be within five miles of any school set within a large built up area. Parents in England can express a preference for at least three schools and some will live in a location which

allows them to choose to express their first preference for one out of two or more schools with the likelihood that they would obtain an offer for whichever school they choose to put first. An example would be a family who live roughly halfway between EPHS and Buile Hill Academy (Buile Hill). Prior to the introduction of the catchment area if Buile Hill (which is undersubscribed) was put as the first preference an offer would follow. If, in the alternative, EPHS was put as a first preference they would probably live close enough to the school for an offer to follow for that school.

19. With the introduction of the catchment area that family, living outside the catchment area, would still be assured of a place at Buile Hill but, being outside the catchment area for EPHS, would have a much reduced chance of obtaining a place at that school.

20. On the other hand, a family who, prior to the introduction of the catchment area, lived on the Winton Estate or in central Eccles, roughly the same distance from EPHS and Salford Academy (both of which are oversubscribed), might not obtain a place at either school and would then have to travel a significant distance to, for example, Buile Hill. With the introduction of the catchment area the children of those families would have an increased chance of obtaining a place at EPHS as they are living in the catchment area and pupils living nearer to Buile Hill and other schools to the west of EPHS are not.

21. As the objector points out, the introduction of a catchment area, coupled not with distance of home address from the school but with random allocation, will mean that some families living close to EPHS (and within the catchment area) will have a lesser chance of obtaining a place than before. Depending on exactly where they live those families may also be at a disadvantage with regards to gaining admission to other schools which operate a distance criterion. However, as EPHS is fairly close to Buile Hill, where there would be places for those children, they would still have the opportunity to attend a school reasonably nearby. Any such disadvantage has to be balanced against the current disadvantage for families living in, for example, the Winton Estate.

22. The objector refers to schools that are “good” and to schools “assessed as requiring improvement” which I take to be categories derived from the outcome of Ofsted inspections. Such categories are given following inspections and may change when a school is next inspected, or indeed no longer provide an accurate picture of a school’s functioning some years later. There is no principle in the Code or elsewhere that pupils will only attend schools that are at least “good”, although that may be a worthy aspiration.

23. The objector is right that using random allocation to decide between applications from within the catchment area will mean that those living closest to the school will not have an advantage over those, still within the catchment area, living further away. Although distance is commonly used in oversubscription criteria there is again no principle that a child should attend his or her nearest school, nor that those living nearer to a school should always have an advantage over those living a little further away. It is clear how places at the school will be allocated. It is true that random allocation will mean that no applicant will know in advance the outcome of that process. However, there are always variables in any application of oversubscription criteria for an oversubscribed school. Where distance is

used there will be those at the periphery whose chances of gaining a place will depend on the set of addresses for that particular group of applicants in that particular year and again the outcome cannot be known in advance.

24. The objector made the following further points:

“The change to the admission criteria must be considered in the context of the admission policies of all other schools in the Salford area. No other non-faith school uses a catchment area within their admission criteria”; and

“The decision to introduce a catchment area is said to have been made with a view to reducing the number of children who are not able to attend school in Eccles (a town in Salford). This theory is clearly flawed. The amount of places at the school is fixed; if some children who live further away from the school obtain places then those who live closer will not. So, then they will have to attend schools outside of Eccles. Further, the decision suggests that attending school within Eccles is in some way disadvantageous to children, when in reality Salford is a sprawling urban area where one town merges seamlessly into another. Many children attend schools outside of their area without even being aware of the fact”

25. There is no principle that a catchment area cannot stand alone. Many schools are now academy schools and within an area such as Salford there will be many admission authorities, each responsible for setting its own admission arrangements. No single authority has the power to co-ordinate these disparate arrangements and consequently co-ordination of arrangements will be achieved to a greater or lesser degree, depending on the will of the various admission authorities involved. Moreover, there are cases where local authorities as admission authority for all community schools in their areas adopt different arrangements for different schools in order to take account of the different circumstances prevailing in different parts of the authority. I have set out above why I consider the catchment area to be compliant with the provisions of the Code. I do not find that it is unreasonable or unfair simply because no other non-faith school has a catchment area.

26. It is correct that if the school is oversubscribed with applicants living within the catchment area, then the application of random selection will leave some, who may live in, for example, central Eccles without a place at EPHS. To some extent this may be addressed by the proposed increase in the school’s PAN, should that come to fruition. Nevertheless, the effect of the introduction of the catchment area will be that more children from, say, central Eccles will gain a place at EPHS than would have done under the criteria used in preceding years. So, the problem will be addressed, albeit not completely. It is also correct that some pupils will be displaced but I am satisfied that those living close to EPHS will gain places at other schools reasonably nearby.

27. Where a school is oversubscribed the oversubscription criteria will be used to decide who does or does not gain a place. Different criteria will lead to different outcomes and any change to the criteria will benefit some and disadvantage others. The case made by the school and the local authority is that changes over time, particularly an increase in the numbers of pupils seeking places at EPHS, has led to the existing oversubscription criteria

no longer being fair to families living in certain areas. In order to address this the school has introduced the catchment area and random allocation. I accept that the changes mean that some children who would have been offered a place at EPHS under the previous admission arrangements will not gain a place there. However, there are other schools to the east of the catchment area in which those children can be accommodated.

28. I find, on balance, that the introduction of the catchment area and random selection is reasonable and fair in order to address the problem identified by the school and the LA. Consequently, the objection is not upheld.

Other matters

29. In the Jurisdiction and Further Information Paper sent to the parties I identified an issue with the provisions relating to home address, as follows:

1. “Note f to the oversubscription criteria “The child’s home address”, reads: “If parents are separated and the child spends time at each parents’ address, the address which will be used for admission to schools is that of the main carer. The main carer is determined as the parent who is in receipt of child benefit”.
2. In order for someone qualify for child benefit the child must either live with them **or** they must contribute (above a given amount) to the cost of supporting the child. Hence more than one person can qualify for child benefit, but only one person can claim the benefit. In many cases that person may be the main carer, but not necessarily. For example, a parent living some distance from the child’s home address, where the child is living with his or her main carer, may claim if he or she contributes to the cost of supporting the child. It follows that being in receipt of child benefit for a child is not necessarily evidence that you are the child’s main carer.
3. In addition Child Benefit is in effect a means tested benefit and some of those entitled do not apply.
4. Consequently, always to take the address of the person claiming child benefit to be the address of the main carer may not comply with the requirement for admission arrangements to be “fair, clear and objective” (paragraph 14 of the Code) or the requirement for oversubscription criteria to be “reasonable, clear [and] objective” (paragraph 1.8 of the Code).”

30. The LA responded to this point as follows:

“the LA understands the points raised by the Adjudicator. It has considered alternatives, but notes that most LAs across the country use Child benefit as a determiner for home address without any further requirements. The LA has considered a small number of LAs that use alternative determiners. It would propose to move away from using child benefit, and instead move to determine home address, in shared parenting with equal care, as where the

child sleeps the majority of the school nights (Sun-Thurs) during the week in term time. With the use of the GP registration address as a further determiner where care is still split equally based on nights slept. The LA will look to consult on this for 2023 intake and advise other own admission authority schools in its area of the Adjudicator's concerns over the use of child benefit".

31. The school responded:

"The Trust agrees with the comments made by the Local Authority and will follow any changes that they propose in order to remain consistent with other schools in the local area".

32. I note the comments made by the LA. For the reasons set out in the Jurisdiction and Further Information Paper I find that this provision is not compliant with the provisions of the Code. I acknowledge that it is commonly adopted by admission authorities but that does not make it compliant with the provisions of the Code. I also note that the issues with child benefit were addressed in the Annual Report of the Chief Adjudicator for 2019/20. It is outside my remit to advise on proposed alternative arrangements regarding home address. I also note the LA's proposal to consult on changing the provision in the arrangements for the schools for which it is the admission authority. There is no requirement to consult on changes which are necessary in order to comply with a mandatory provision of the Code. I do not think it is right to allow a provision which is not compliant and which is capable of being changed quite easily, to continue until arrangements are determined next year for admissions in 2023. I accordingly require EPHS's arrangements to be varied in order to comply with my finding by 21 October 2021. The LA's arrangements are not part of this case but I hope that the LA too will revise its own arrangements swiftly.

Summary of Findings

33. I find that:

1. The objection is not upheld; and
2. The provision relating to receipt of child benefit as a determiner of main carer and so home address is not compliant with the provisions of the Code.

Determination

34. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by Consilium Academies (a multi-academy trust) for Ellesmere Park High School, Salford.

35. I have also considered the arrangements in accordance with section 88I(5) and find there is another matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

36. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 21 October 2021.

Dated: 23 September 2021

Signed:

Schools Adjudicator: Tom Brooke