DETERMINATION

Case reference: **ADA/002518**

Objector: **Nottinghamshire County Council**

Admission Authority: **The Academy Trust for George Spencer Academy**

Date of decision: **2 October 2013**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for George Spencer Academy, Stapleford, Nottinghamshire.

I have also considered the arrangements in accordance with section 88I(5). I determine that, in relation to the priority given to previously looked after children and to children of army personnel with a posting order for Chetwynd Barracks and for admission to Year 12, the arrangements do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Nottinghamshire County Council, the local authority (the LA) for the area, the objector, in an email referral dated 28 June 2013 about the admission arrangements (the arrangements) for George Spencer Academy (the school), an academy for 11 – 18 year old pupils for September 2014. The objection is to the use of the George Spencer Academy Information Form.

Jurisdiction

2. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector

submitted the objection to these determined arrangements on 28 June 2013. 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.

3. I am also using my powers under section 88I to consider the arrangements as a whole.

Procedure

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

5. The documents I have considered in reaching my decision include:

    a. the objector's email of objection dated 28 June 2013 and subsequent comments submitted during July, August and September 2013;

    b. the school's responses to the objection and supporting documents submitted during July, August and September 2013;

    c. Nottinghamshire County Council's composite prospectus for parents seeking admission to schools in the area in September 2013;

    d. a map of the area showing the location of the school and its three named feeder schools;

    e. confirmation of when consultation on the arrangements last took place;

    f. confirmation that the academy trust determined the arrangements (received on 6 September 2013); and

    g. a copy of the determined arrangements.

The Objection

6. The LA has objected to the school's use of an "information form" as part of its admission arrangements.

7. The form itself is a one page document which for admission in September 2014 is to be completed and returned to the school office by 31 October 2013 and which asks for:

    a. child's name, date of birth and gender

    b. child's address and a contact telephone number

    c. confirmation as to whether the child attends one of the school's feeder primary schools and, if so, which one.

8. The school's admission arrangements make clear that completion of the form is voluntary. They state that the purpose of the form is ensure that the school as well as the LA knows the names of those who have applied for places "to keep them in the information loop about relevant school matters" and say that completion of the form plays no part in the process of determining who should be allocated a place at the school.

9. The LA contends that the use of this form is unnecessary as it does not ask for any additional information that is not already included in the LA's Common Application Form (CAF) and, indeed, that the school only needs the information on the CAF in order to apply its oversubscription criteria. The LA argues that the use of the form is accordingly contrary to paragraph 2.4 of the Code which provides that admission authorities must only use a Supplementary Information Form (SIF) that requests additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by ability or aptitude.

10. For the purposes of this determination, I shall refer to the school's information form as the form.

Other Matters

11. In the course of considering the objection, I reviewed the arrangements as a whole and noted that these appeared not to meet the requirements of the law relating to admissions or the Code or both in a number of ways. These were:

    a. the definitions of looked after and previously looked after children;

    b. the element of priority in the oversubscription criteria afforded to children of army personnel with a posting order for Chetwynd Barracks; and

    c. the arrangements for admission to year 12 (Y12).

Background

12. George Spencer is a popular and oversubscribed secondary school in Stapleford, Nottinghamshire. It has a published admission number (PAN) of 224 for Year 7 (Y7). It also admits students each year into Y12. The school's admission arrangements are easy to find on its website. The school became an academy in September 2010. Prior to that, the school was a foundation school and so responsible for its own admission arrangements. The school was last inspected by Ofsted when it was a foundation school in 2010 and was judged outstanding.

13. The school's oversubscription criteria for Y7 can be summarised as follows:

    a. children in public care;

    b. children who attend the George Spencer Family of Schools: Fairfield School Stapleford, Chetwynd Primary Academy or Bispham Drive School;

    c. children who will have a sibling at George Spencer at the time of admission;

    d. children of army personnel with a posting order for Chetwynd Barracks;

    e. proximity to the school.

14. The arrangements provide that in the event of oversubscription within any of the categories proximity to the school will be used as the tie-breaker. In the event that two children who live the same distance from the school are seeking the final place, the school will admit the additional child over the PAN.

15. The PANs for the three feeder schools sum to 203. This means that even if each feeder school were full and every child leaving them sought a place at George Spencer it should still have space to admit some other children who applied for a place there as well having enough places for looked after and previously looked after children for whom a place was sought and any children with a statement of special educational needs whose statement required the school to admit them.

16. The school's admission arrangements for 2014 are different from those for 2013 and earlier years. This is because the school has removed the element of priority previously given to children with "exceptional medical circumstances".

17. Where an admission authority wishes to make changes to its admission arrangements it must consult various bodies for at least eight weeks. For changes for admissions in September 2014 those eight weeks must have fallen within the period between 1 November 2012 and 1 March 2013. The school's Admissions Committee meeting on 28 November discussed making changes to the academy's admission arrangements for September 2014. The school and the LA have both told me that the LA invited academies, voluntary aided and foundation schools to post their proposed arrangements on the LA's site for consultation for the period 3 December 2012 – 31 January 2013. The LA has also confirmed that the admission arrangements 2014-2015 for George Spencer Academy were indeed available on the LA's website for the whole of the consultation period. The consultation period lasted for more than the minimum required period of eight weeks.

18. Regulation 16 of the School Admissions (Admission Arrangements and Co-Ordination of Admission Arrangements) (England) Regulations 2013 (the regulations) requires that admission authorities when consulting on proposed changes to their admission arrangements must display the full proposed admission arrangements on their own website (in this case, the school's) for the duration of the consultation period. The school has told me in an email dated 6 September 2013 that to the best of its knowledge the proposed arrangements were on its website for that period but that because of a combination of maternity leave and substantial changes to its website part way through the year, it cannot give an absolute guarantee that this was the case.

19. I appreciate the school's candour, but it is of concern that the provisions of the regulations may not have been met and parents and others may accordingly have been deprived of the fullest opportunity to see and, if they wished to, object to the proposed arrangements. As the Code notes at paragraph 1.45, failure to consult effectively may be grounds for subsequent complaints and appeals. All that said, the possible failure to consult in accordance with the regulations does not render a subsequent determination of the arrangements invalid.

20. On 23 January2013, both the LA and Nottingham City Council, which is an adjoining LA, objected to the use of the form on the grounds that it contravened paragraph 2.4 of the Code. I asked the school and the LA if they were aware of any other objections. The LA has pointed out that it would naturally have expected any objections to go to the school. The school has not provided me with any further objections.

21. Following consultation on any proposed changes, the Act and regulations require admission authorities to determine their arrangements by 15 April each year. I have been provided with a note signed by the Chair of Governors of the school to the effect that the arrangements were determined in March 2013 and the use of the form as part of those arrangements was retained. The school was asked on 9 July to confirm the date on which the arrangements were determined. However, these were not provided until 6 September which is why it has taken until now for me to be able to make the determination.

Consideration of Factors

22. In the course of my investigation of this case, it has become clear to me that the school has considered carefully its need for the form and that the LA has considered carefully whether it needed to object to the use of the form. I have seen a good deal of correspondence between the parties.

23. The school has also sent me a detailed and, to my mind, well-argued explanation of its reasons for using the form. It is worth reporting this in some detail here. The school has explained that while it is in Nottinghamshire it is close to the border with Derbyshire and that, each

year, a number of the children who join the school from its feeder schools are Derbyshire residents. These children will, of course, apply for their secondary school places via the Derbyshire co-ordinated scheme. Information will then be exchanged between Derbyshire and Nottinghamshire local authorities and provided to admission authorities so that they can – where necessary – apply their oversubscription criteria.

24. The school states that, for the last three years, cross border applications from Derbyshire (together in one year with an application from a Kent resident) have not been included within the initial list of applications passed to the school for it to apply its oversubscription criteria. I am told that for both 2012 and 2013 the number of "missing" applications was 37. Because the school has known from its form that parents had applied to George Spencer, it has been able to check with the LA and ask them to investigate.

25. The school has provided me with a copy of an email sent by the LA to schools on 28 November reporting an IT error which meant that the information provided to schools might not have included details of Derbyshire children who had expressed a preference for Nottinghamshire schools. The school notes that were it not to offer a place to children who attended one of its feeder schools as a result of such an error, such children would be likely to win an appeal and the school would need to admit them over its PAN. In this context, I draw attention to paragraph 3.5 of the School Admissions Appeal Code which states, among other things, that an appeals panel must uphold an appeal where it finds that admission arrangements had not been correctly applied and the child would have been offered a place if the arrangements had been correctly applied.

26. The crux of the school's argument for continuing to wish to use its form is that it cannot rely on the information from the LA in order to apply its admission arrangements and that it is not confident that the same problem will not recur in the coming months as parents apply for places for September 2014.

27. The LA for its part has recognised that there has been a problem with the data transfer and this has been clear in the exchanges of correspondence between the school and LA which have been provided to me. In its letter of 13 September to the Office of the Schools Adjudicator (OSA), the LA says that it has worked to improve the processes involved in transferring data and creating pupil records and that since it has done so there have been no further issues.

28. The school has amended the form in an attempt to meet the LA's concerns. An email of 8 April from the LA to the school's Principal refers to a conversation with the Principal, thanks the school for the revised and simplified form and says: "I do understand some aspects of the rationale you put to me and we appreciate the way in which George Spencer has given us early alerts of Derbyshire admissions issues in

the past." The email concludes, however, that the LA considers that the use of the form breaches the Code. Another email of 26 March from a member of school staff to governors indicates that the school thought that the LA officer "wouldn't have a problem if we renamed the form "Information Form" rather than supplementary form or application form. We therefore suggest that the form be changed to Information Form".

29. It is clear too that the school and the LA have different understandings of the meaning of paragraph 2.4 of the Code. The LA's interpretation is that admission authorities may only use a SIF if they need information not on the CAF in order to apply their oversubscription criteria. The school's understanding, as set out in an email from a member of staff to governors, is that the Code does not rule out the use of a form such as theirs, but "it only states that any additional information requested must have a direct bearing on decisions, and as our form does not request any additional information it should be OK". I note also in this context that the note of the Admissions Committee meeting in March states their belief that the LA would be content if the form was renamed "information form" rather than "application form".

30. In its letter of 29 July to the OSA the LA raised a further concern about the arrangements and the use of the form, namely the statement in the arrangements that parents were asked to complete the form so that the school as well as the LA "know the names of those who have applied for places to keep the in the information loop about relevant matters." The LA made the point that schools would have no need to contact parents before a formal offer of a place had been made by the home LA. The LA's letter of 13 September raised further issues. These were that the form was in place before the problems with data exchange; that as completion of form was voluntary and school could not know how many people have completed it, it seemed an unreliable approach to checking the accuracy of information from the LA and that the use of the form might cause confusion or anxiety to parents. The LA thought that parents might infer that a place has been secured for their child if information is received ahead of offer day and that as completing the form is voluntary, only some parents would get the information which might be perceived as unfair. Finally, the LA suggested that some parents might not want to fill in a supplementary form but feel under pressure to do as they could perceive that the school might consider their formal application less favourably than applications from parents who do complete the form.

31. I have seen no evidence that these concerns were raised with the school before the July and September letters, copies of which will have been provided to the school by the OSA. I see the force of the LA's arguments and along with the other evidence provided to me have taken them fully into account. That said, on the assumption that this was the first time these points were put to the school, I think this is unfortunate and regrettable.

32. I have some sympathy with the school's arguments. I also understand the challenges for LAs in handling large data files and that, despite best endeavours, errors occur. In addition, I take account of the duty imposed on LAs in paragraph 3.2 to refer an objection to the adjudicator if they are of the view or suspect that determined arrangements are unlawful as is the case here.

33. I have looked at the information form drawn up by the school for use in September 2014 and I have considered it carefully against the provisions of paragraph 2.4 of the Code. Paragraph 2.4 is clear that admission authorities must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. The paragraph goes on to say that admission authorities must not ask for any of the information prohibited by paragraph 1.9 of the Code or for certain other information. For the avoidance of doubt, George Spencer's form does not ask for any of the prohibited information. Rather, it asks for some of the information that is asked for on the Nottinghamshire and Derbyshire CAFs. It is common ground between the parties that the school does not require any additional information in order to apply its oversubscription criteria.

34. Moreover, my understanding of paragraph 2.4 is the same as that of the LA's. The Code allows the use of a SIF where this is needed in order to process applications and where this requests additional information. This is not the case for George Spencer. While I recognise that the Code does not say in terms that a SIF which seeks information already available on the CAF is prohibited, I consider that this is, nonetheless, what is meant by paragraph 2.4.

35. The school's admission arrangements refer to the form on the third page under the heading "Co-ordinated Admissions Scheme" as follows:

> "All applications for places in the normal year of entry must be made on the common application form within the timeline for Nottinghamshire's co-ordinated arrangements. Parents are also requested to complete voluntarily the George Spencer Information Form so that we, as well as the Local Authority, know the names of those who have applied for places to keep them in the information loop about relevant school matters."

36. I determine that the form and this element of the admission arrangements do not conform to the requirements of paragraph 2. 4 of the Code. The Act requires the school to amend its arrangements as quickly as possible.

37. I turn now to other aspects of the arrangements.

38. Paragraph 1.7 of The Code provides that – other than in certain specific circumstances – first priority when a school is oversubscribed must be given to both looked after and previously looked after children. None of the specific circumstance applies to George Spencer: it not a boarding school, a school with a religious character or a school which selects any of its pupils.

39. The Code defines both looked after and previously looked after children. The key points in this case are that a looked after child is not the same as a previously looked after child and a previously looked after child is not a child in public care.

40. The school's first oversubscription criterion for Y7 is:

> "Children in public care who are "looked after" at the time an application for admission is made or who the local authority can conform has been looked after but has ceased to be so because they are adopted, or become subject to a residence order or special guardianship order, immediately following having been looked after. "

41. The school's first oversubscription criterion for Y12 is:

> "Students in public care who are "looked after" [please see definition below]…at the time of application who meet the academic entry criteria" The definition given is included in a general section on definitions and says: "**Looked After**: A "looked after child" or a child who was previously looked after but immediately after being looked after became subject to an adoption, residence or special guardianship order…"

42. I am in no doubt that the school's intentions are to comply fully with the Code's requirements in relation to previously looked after as well as looked after children. Unfortunately, the forms of words chosen do not quite achieve this. In relation to the Y7 arrangements, this is because a child who was looked after but is not now looked after is not a child in public care. In relation to the Y12 arrangements it is because a previously looked after child is not the same as a looked after child and, while the definition does correctly cover both looked after and previously looked after children, the criterion itself is not clear that this is the case. These are technical breaches which can easily be rectified and the Act requires the school to revise its arrangements accordingly as soon as possible.

43. The school's fourth oversubscription criterion is for children of army personnel with a posting order for Chetwynd Barracks. The school has told me that only one child has ever attended the school from an army family where the child was not previously a pupil at one of the school's feeder primary schools.

44. Paragraph 1.9 of the Code sets out a list of provisions that must not be included in oversubscription criteria. As part of this, paragraph 1.9 f states that admission authorities **must not**

> "…given priority to children according to the occupational, marital, financial or educational status of parents applying (though children of staff at the school may be prioritized in arrangements);"

45. Being "army personnel" clearly relates to a person's occupational status. Giving priority to children of army personnel is thus a breach of paragraph 1.9 f of the Code.

46. The Code does include particular provision for children of UK service personnel and crown servants in paragraph 2.18 of Section 2: Applications and Offers. This paragraph provides that admission authorities **must** treat such children who are moving to an area with families returning from service overseas as if they were already resident in the area for the purposes of applying oversubscription criteria. It also provides that admission authorities **must** ensure that arrangements in their area support the Government's commitment to removing disadvantage for service children.

47. Chetwynd Barracks is less than two miles from the school. The school gives priority to children who attend particular feeder primary schools and this is an acceptable arrangement. Children of service personnel often move at short notice and may therefore not be at a local primary school when their parents are applying for secondary places. Against this background, I can see why the school would consider the element of priority for children of army personnel included in their arrangements as helpful to army families. However, while the Code does require an application to be considered from a family moving to the barracks as if already in residence and more broadly requires admission authorities to support the Government's commitment as noted above, it does not permit an oversubscription criterion to give priority on the basis of occupational status other than in the case of children of staff. This means that the approach used by the school is not one which is allowed by the Code. The Act requires the school to revise its arrangements accordingly as soon as possible.

48. I have also considered the school's arrangements for admission to Y12.

49. The school's arrangements include a heading "Admission to George Spencer Sixth Form including the admission number for those admitted for the first time for September 2014". The first two sentences of the arrangements then read: "The maximum admission number for any cohort in the George Spencer Sixth Form will be 150. We anticipate a minimum of 15 places will be available for external students entering year 12."

50. The Act requires all admission authorities to determine an admission number for each relevant age group. A relevant age group is defined in the Act as an age group at which pupils are normally admitted to the school. George Spencer normally admits pupils at Y7 and Y12 and therefore has two relevant age groups. Admission numbers relate only to those who are joining the school for the first time and, for Y12, do not include those transferring from the school's Year 11 (Y11). As its arrangements indicate, George Spencer does not admit 150 new pupils to Y12 each year; it admits around 15. This again is a technical breach which is easy to remedy; the Act requires the school to revise its arrangements as quickly as possible to specify a number for pupils who will be admitted to the school for the first time each year to Y12.

51. I was concerned on reading the arrangements for admission to Y12 by another aspect of the arrangements for Y12. Admission authorities are permitted by paragraph 2.6 of the Code to set academic entry criteria for their sixth forms. Where they do so, the Code states that these **must be** the same for both external (that is, those being admitted to the school) and internal (that is, those moving up from Y11) places. Admission to Y12 must comply with the requirement common to all admission arrangements that the criteria used to allocate places must be objective in line with the requirements of paragraphs 14 and 1.8 of the Code.

52. The school sets minimum academic standards for its sixth form and it is entitled to do so.

53. The school's arrangements for Y12 also state that: "consideration will always be given to the circumstances of students who do not quite meet the entry criteria. Each case will be judged on individual merit without prejudice by members of the Governing Body and representatives of the Academy Leadership Team."

54. I asked the school for its comments on this provision and the response in the school's email of 18 September was that the "school deals with students who do not make the admissions criteria by allowing students to appeal to the Governors and members of the leadership team."

55. This is not an objective criterion and it is not limited to the permitted academic criteria for entry to a school's sixth form. I find that in this respect the school's arrangements do not conform to the Code and the Act accordingly requires the school to revise its arrangements as soon as possible.

Conclusion

56. For the reasons given above I uphold the objection and find that the arrangements do not conform to paragraph 2.4 of the Code.

57. I also find, for the reasons given above, that the arrangements do not conform to the requirements of the Act or the Code or both in a number

of other ways. The definitions of previously looked after children are not accurate and thus do not give full confidence that all these children will receive first priority jointly with looked after children when the school is oversubscribed. The element of priority given to children of army personnel with a posting order for Chetwynd Barracks breaches the Code by giving priority on the basis parental occupation. The arrangements for admission to Y12 do not conform to the requirements of the Act as the admission number stated is not the number the school does (or could) actually admit toY12 and the arrangements are not completely objective.

Determination

58. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for George Spencer Academy, Stapleford, Nottinghamshire.

59. I have also considered the arrangements in accordance with section 88I(5). I determine that, in relation to the priority given to previously looked after children and to children of army personnel with a posting order for Chetwynd Barracks and for admission to Year 12, the arrangements do not conform with the requirements relating to admission arrangements.

60. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 2 October 2013

Signed:

Schools Adjudicator: Shan Scott