



**DETERMINATION**

**Case reference:** ADA3048

**Referrer:** A member of the public

**Admission Authority:** The Academy Trust for the Royal Grammar School, High Wycombe

**Date of decision:** 6 November 2015

**Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that aspects of the admission arrangements determined by the governing body on behalf of the academy trust for the Royal Grammar School, High Wycombe, Buckinghamshire, for September 2016 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 within two months of this determination or by 28 February 2016 as specified in this determination.**

**The referral**

1. Under section 88I of the School Standards and Framework Act 1998, (the Act), the September 2016 admission arrangements, (the arrangements), for the Royal Grammar School, High Wycombe, a selective academy for boys aged 11 to 18 (the school), have been brought to the attention of the adjudicator by a member of the public. The concern raised was the priority which the school gives to sons of former pupils.

**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 governing body on behalf of the academy trust, which is the admission authority for the school, on that basis.

3. The referrer raised their concern in an email on 15 September 2015. This was after the deadline of 30 June 2015 for lodging objections to

admission arrangements for 2016. As it appeared to me that the arrangements did not or may not conform with requirements in other ways I have decided to use my power under section 88I of the Act 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 referrer's email dated 15 September 2015;
  - b. the school's response to my enquiries and supporting documents;
  - c. Buckinghamshire County Council's, the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2016;
  - d. the LA's comments on my enquiries;
  - e. a map of the area identifying relevant schools;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
  - h. a copy of the determined arrangements.

### **The Referral**

6. The referral concerned the seventh oversubscription criterion which gives priority to "*Sons of Old Boys of the School*". It suggested this might be giving priority on the basis of the educational status of parents which is prohibited by paragraph 1.9f of the Code. The referral also suggested that 'Old Boys' may be more inclined to give practical and financial support to the school and this would not comply with paragraphs 1.9e and 1.9i of the Code.

### **Other Matters**

7. In the course of considering the referral it appeared to me that the arrangements did not, or may not comply with the Code in the following ways.
  - a. There is a statement in the arrangements that 1 October 2015 is the latest date for moving into the catchment area to be included in the first round of allocation of places. The Code requires all applications to be considered no matter where the applicant lives.
  - b. The definition of previously looked after boys used in the arrangements is not the same as that used in paragraph 1.7 of the Code and its footnotes. Previously looked after boys are not given highest priority in the oversubscription criteria for the sixth form as required by the Code while for boarding places it would appear that a local authority officer is required to be involved in the application process for both looked after and previously

- looked after children.
- c. The oversubscription criterion for boys with exceptional medical or social grounds refers to the 'Local Authority Scheme'. Paragraph 1.8 of the Code requires oversubscription criteria to be clear, this may not be sufficiently clear for a parent to understand how their son might meet the criterion.
  - d. The fifth oversubscription criterion refers to boys eligible for free school meals. Paragraph 1.9f of the Code prohibits giving priority to children based on parents' financial status and eligibility for free school meals is based on parental income.
  - e. Paragraph 1.39 of the Code sets out the circumstances when it is permitted to give children of members of staff priority for places at the school. This includes a requirement for the member of staff to have been employed for two or more years at the time of application. The oversubscription criterion for sons of members of staff does not include this rider.
  - f. Paragraph 1.8 of the Code requires a tie-breaker which will differentiate between two or more applicants who cannot otherwise be separated. The arrangements rely on distance as a tie-breaker, however two or more boys meeting the same criteria could live the same distance away from the school.
  - g. The description of the waiting list given in the arrangements did not appear to meet the requirements of paragraph 2.14 of the Code.
  - h. The footnote to paragraph 1.40 in the Code defines boarding places as "*for pupils who are provided with overnight board and lodging at the school.*" It was not clear how the description of 'Day Boarder' in the arrangements complies with the Code.
  - i. Paragraph 2.4 of the Code says that forms used to process applications must only request information when it has a direct bearing on decisions about oversubscription criteria. The sixth form application form includes questions which do not appear to comply with the Code. In addition it asks for details of both parents and for a parent and the applicant to sign the form.
  - j. Paragraph 2.17 of the Code requires admission authorities to make it clear in their arrangements the process for requesting admission out of the normal age group. This does not appear to be included in the arrangements.
  - k. In response to my enquiries about when the arrangements had last been subject to consultation to comply with the Code the school's response indicated that consultation may not have taken place as required.

## **Background**

8. The school became an academy in 2011; it is oversubscribed and takes both day pupils and boarders. The published admission number (PAN) for day boys is 175 and it is 17 for boarders in Year 7. The school also admits students into its sixth form with a PAN of 25 for Year 12 which includes both day and boarding places.

9. In order to be admitted to the school boys must achieve a pre-set score

in the admission tests, or be deemed qualified by a Selection Review Panel. The tests are taken in the September when children are in Year 6 and test verbal, numerical and non-verbal ability. If the number of boys reaching the pre-set standard exceeds the number of places the following oversubscription criteria are used for day places in Year 7.

1. *“Looked after and previously looked after boys.*
2. *Boys living in the catchment area of the school.*
3. *Brothers of boys who are day pupils, on the roll of the school at the time of allocation and who will be on the roll of the school at the time of the proposed admission.*
4. *Boys who have exceptional medical or social needs which can only be met at this school as set out in the Local Authority Scheme.*
5. *Boys who are eligible for Free School Meals. The entitlement to Free School Meals would need to be established before the preference closing date of 31 October.*
6. *Sons of a member of staff who is employed at the school at the time at which the application for admission to the school is made or is recruited to fill a vacant post for which there is a demonstrable skill shortage.*
7. *Sons of Old Boys of the School.*
8. *Once the rules above have been applied, any further places will be offered in distance order, using the methodology set out in the Local Authority Scheme.*
9. *Where the school can take some, but not all, of the boys who qualify under one of these rules, we will give priority by taking account of the next rule (or rules) in the numbered list.”*

10. The school has recently appointed a new headteacher who is aware that the admission arrangements may not comply with the Code and was already working with the LA on his concerns before the arrangements were referred to the Adjudicator.

## **Consideration of Factors**

### Sons of former pupils

11. The referrer considered that giving priority to sons of former pupils might be giving priority on the basis of the educational status of parents which is prohibited by paragraph 1.9f of the Code which says admission authorities **must not** *“give priority to children according to the occupational, marital, financial or educational status of parents applying”*. The first question I must address is whether the school attended confers educational status or not.

12. Elsewhere in paragraph 1.9 of the Code it refers to *“past or current hobbies or activities”* and *“past behaviour”*. I therefore consider that paragraph 1.9f is referring to parents’ current *“occupational, marital, financial or educational status”*, rather than any previous status. While the attainment of recognised qualifications gives a continuing educational status in my view attending a specified school in itself does not. Had the Code intended to prohibit consideration of a parent’s education history it could have done so.

13. The referral also suggested that ‘Old Boys’ may be more inclined to give practical and financial support to the school and this would not comply with paragraphs 1.9e and 1.9i of the Code which say admission authorities **must not** “*give priority to children on the basis of any practical or financial support parents may give to the school*” or “*prioritise children on the basis of their own or their parents’ past or current hobbies or activities*”. The school does not ask for any such support from parents in its admission arrangements and while a former pupil may be more inclined to contribute to the school financially this is not necessarily the case.

14. Although I do not think the criterion falls foul of the parts of the Code identified by the referrer there are other parts of the Code which I must test it against. The Code does not specifically prohibit using the school attended by one of the child’s parents as an oversubscription criterion, but any oversubscription criterion must comply with paragraphs 14 and 1.8. Paragraph 14 says that “*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*” While paragraph 1.8 says “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group*”.

15. This criterion is in my view unfair as it is based on the decisions and circumstances of previous generations and not on those of the current set of applicants. The criterion could not be met by sons of first generation immigrants, or indeed by boys from other families which moved into the area.

16. Only one boy was admitted under this criterion in 2015 and the school has said it cannot see any justification for this criterion and will consider removing it. It is now required to do so under section 88K of the Act as I deem that it does not comply with the Code.

#### Inclusion in the allocation of places

17. On the first page, before any oversubscription criteria are set out, the arrangements say “*NB: The 1<sup>st</sup> October 2015 is the latest date for moving into catchment area to be included in the first round of allocation of places.*” This implies that to be considered for a place at the school all boys must live in the catchment area by the given date. Paragraph 5d of the Code says “*a parent can apply for a place for their child at any state-funded school in any area*” and paragraph 1.9a says admission arrangements **must not** “*place any conditions on any application other than those in the oversubscription criteria*”.

18. The school has agreed that this statement is confusing. The school does need to set a date for residence in the catchment area to allocate places under its second oversubscription criterion. To comply with the Code it should do so clearly and in an appropriate place in its arrangements.

### Looked after and previously looked after boys

19. Paragraph 1.7 of the Code requires “*the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.*” The Code then provides definitions of such children which reflect changes introduced by the Children and Families Act 2014. In addition for grammar schools paragraph 1.20 says “*Where admission arrangements are not based solely on highest scores in a selection test, the admission authority **must** give priority in its oversubscription criteria to all looked after children and previously looked after children who meet the pre-set standards of the ability test.*” And for boarding schools paragraph 1.41 also requires highest priority is given to looked after and previously looked after children.

20. The arrangements for Year 7 do give highest priority to looked after and previously looked after boys, but the definition given in the arrangements is not as full as that in the Code.

21. The arrangements for admission to day places in the sixth form give highest priority to “*Students in Public Care.*” But they do not mention previously looked after children as required by the Code.

22. The first oversubscription criterion for boarding places in the sixth form does include boys who have been in ‘public care’, but requires an agreement between the school and a “*designated officer acting on behalf of the Local Authority*” that a boarding place will more appropriately meet the boy’s needs.

23. Paragraph 1.40 of the Code says a boarding school may interview applicants to assess suitability for boarding and such interviews “***must** only consider whether a child presents a serious health and safety hazard to other boarders or whether they would be able to cope with and benefit from a boarding environment.*” The school does require applicants for a boarding place in the sixth form to meet with the Head of Boarding and looked after children should be treated in the same way without additional conditions being placed on them. It is clearly also inappropriate for a local authority officer to be involved in the admission of a previously looked after child.

24. The school has said it will revise the wording to comply with the Code and it will remove the reference to a local authority officer.

### Medical and social grounds

25. The fourth oversubscription criterion is “*Boys who have exceptional medical or social needs which can only be met at this school as set out in the Local Authority Scheme.*” Paragraph 1.16 of the Code says “*If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent*

*decisions based on the evidence provided.*” As quoted above paragraph 1.8 of the Code requires oversubscription criteria to be clear. It was not clear to me from the arrangements how parents would know what supporting evidence was required to be considered under this criterion.

26. In the arrangements the “*Co-ordinated Admissions Scheme for Secondary Schools in the Area of Buckinghamshire County Council Local Authority*” is defined as the “*Local Authority Scheme*”. I have looked at the scheme of co-ordination determined by Buckinghamshire County Council on 8 April 2015. This deals with the timetable and process to ensure that on the national offer day all parents receive a single offer of a school place for their child. It does not set out what evidence is needed to support an application under any oversubscription criterion.

27. The school said “*most schools use this phrase ‘LA Scheme’ as it was in the original county council admissions policies prior to academisation.*” The LA does include a criterion for medical and social needs in the arrangements for the three community secondary schools in the County. In its composite prospectus the LA clearly sets out the evidence needed and how that evidence is considered, but this is not in what has been defined as the “Local Authority Scheme” and referred to in the school’s arrangements.

28. While it may choose to use the same evidence as the LA, in order to comply with the Code the admissions authority must set out clearly in its arrangements what evidence it requires to support applications under this criterion.

### Free school meals

29. The fifth oversubscription criterion refers to boys eligible for free school meals. Paragraph 1.9f of the Code prohibits giving priority to children based on parents’ financial status. Eligibility for free school meals is based on parents’ income and therefore this criterion would not in the past have complied with the Code unless the school had derogation in its funding agreement allowing it to use this criterion.

30. The school told me that it did not have derogation in its funding agreement but it would be “*unpalatable*” for this criterion to be removed. The December 2014 revision of the Code introduced paragraph 1.39A which allows all schools to give priority in their oversubscription criteria to children eligible for the pupil premium. The pupil premium is additional funding given to state-funded schools for looked after and previously looked after children and children registered as eligible for free school meals at any point in the last six years. As looked after and previously looked after children **must** be given highest priority in oversubscription criteria this leaves children registered as eligible for free school meals at any point in the last six years as the potential beneficiaries of the permission for schools to give priority to children eligible for the pupil premium.

31. In December 2014 the Department for Education (DfE) published advice to admission authorities entitled ‘Using the Pupil Premium, Service

Premium or Early Years Premium in admission arrangements'. The Code says "*Admission authorities should clearly define in the arrangements the categories of eligible premium recipients to be prioritised.*" The advice goes further than this and on page 4 says schools can "*limit priority to specific sub-groups. For example, restrict the admissions priority to children currently in receipt of Free School Meals*" and not just those registered as eligible for free school meals at any point in the last six years

32. I have therefore concluded that this criterion is permitted by paragraph 1.39A of the Code, however as explained in the advice and to comply with the Code the arrangements should set out clearly how parents can demonstrate that they meet this criterion.

#### Sons of members of staff

33. The sixth oversubscription criterion is "*Sons of a member of staff who is employed at the school at the time at which the application for admission to the school is made or is recruited to fill a vacant post for which there is a demonstrable skill shortage.*" I have compared this to paragraph 1.39 of the Code which says "*Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances: a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.*"

34. In order to comply with the Code the school's criterion should include the requirement for the member of staff to have been employed for two or more years.

#### Tie-breaker

35. The school's tie-breaker is unusual as when oversubscription is reached in any criterion, subsequent criteria are used to determine which boy has priority for a place. The final factor is distance, although how this is measured is not clearly defined as it also uses reference to the "*Local Authority Scheme*" discussed above. Paragraph 1.13 of the Code requires the admission authority to set out how home to school will be measured.

36. Paragraph 1.8 of the Code requires oversubscription criteria to be clear and for there to be "*an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*" As it would be possible for two boys to fall in to the same criterion and to live the same distance from the school the arrangements fail to meet this requirement.

37. The school has suggested it would consider using an acceptable method of random allocation in future and if the two boys were living at the same address, it would take both.

#### Waiting lists

38. Paragraph 2.14 of the Code requires admission authorities to keep a



waiting list until at least 31 December of the admission year. It also requires any child added to the waiting list to be ranked in accordance with the published oversubscription criteria.

39. The arrangements say that such a list will be kept until 31 October, and from 1 November a different process will apply. The school has said it will change the date from 31 October to 31 December in order to comply with paragraph 2.14 of the Code.

#### Definition of boarder

40. There are two categories of boarding places available to Year 7 applicants. These are for ten weekly boarders who board during term time for five days a week from Sunday evening to Friday, and seven day boarders who board during term time from 7.30am to 9.00pm Monday to Friday. Day boarders are offered storage facilities and the opportunity to take all meals at the boarding house, they also are offered supervised out of school activities and homework sessions.

41. Footnote 34 to paragraph 1.40 of the Code says "*Boarding places are places for pupils who are provided with overnight board and lodging at the school. Day places are places for pupils who attend school on a daily basis, including pupils who participate in optional school activities outside school hours (for example breakfast club, after-school clubs, music lessons, tea and supervised homework sessions).*"

42. I do not think the description of day boarder meets the definition of a boarder used in the Code. This is because day boarders are not provided with overnight lodging. The description of being "*offered*" supervised out of school activities and homework session appears to reflect the description of optional school activities in the Code.

43. The school has said it has tried to increase day boarding and having taken legal advice considers this to be "*a very grey area indeed*". What constitutes a boarding place is a matter for the DfE and is not within my jurisdiction. However, paragraph 1.9e of the Code prohibits giving priority for places on the basis of any financial support parents may give to the school and compliance with that requirement is within my jurisdiction as is paragraph 1.9n which prohibits the request of any financial contribution as part of the admissions process.

44. Many schools offer the option of meals before and after the school day together with activities and supervision into the evening which parents can choose to send their children to and for which they will have to pay. If parents were asked to commit to and pay for these activities as part of the school's admission process it would not comply with paragraphs 1.9e and 1.9n of the Code.

45. It would appear to me that the school reserves seven day places for parents who are asked to commit to and pay for meals and optional out of school activities as part of the admission process. By calling those 'day

boarder' places it could be seen to be attempting to circumvent these paragraphs of the Code.

#### Sixth form application form

46. Paragraph 2.4 of the Code says *"In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they 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. They must not ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for:*

- a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);*
- b) the first language of parents or the child;*
- c) details about parents' or a child's disabilities, special educational needs or medical conditions;*
- d) parents to agree to support the ethos of the school in a practical way;*
- e) both parents to sign the form, or for the child to complete the form."*

47. The sixth form application form includes questions about the applicant's previous school, their interests and achievements. It also asks for details of any special access arrangements and special circumstances and therefore does not comply with the Code. In addition it asks for details of both parents and for both a parent and the applicant to sign the form which is not necessary, either a parent or the applicant can sign the form alone. The school has said it is aware of these matters and it will rectify them.

#### Admission outside the normal age group

48. The revision to the Code in December 2014 added the requirement for admission authorities to *"make clear in their admission arrangements the process for requesting admission out of the normal age group"* to paragraph 2.17 of the Code. The arrangements do not say what this process is. The school has said it will identify appropriate wording in order to comply with the Code.

#### Consultation

49. In response to my enquiry as when the arrangements had last been subject to consultation the school informed me that *"The September 2016 Admissions Policy was published on the School's website for Consultation on 25 February 2015. It was also published on the Bucks County Council website for consultation at a date to be confirmed."*

50. Paragraphs 1.42 to 1.45 of the Code set out the requirements for consultation on admission arrangements. From the information provided by the school it would not have been possible for these to have been met as paragraph 1.43 says *"consultation **must** be for a minimum of 8 weeks and*

*must be completed by 1 March 2015.*” No date has been confirmed to me for the publication on the LA’s website, whatever it was it does not relieve the school of the requirement in paragraph 1.45 to publish the proposed arrangements on its website for the duration of the consultation period. In addition publication on the website is not sufficient to meet the requirements of paragraph 1.44 which lists people and bodies which must be consulted with.

51. It did occur to me that any changes to the arrangements from 2015 might be of a nature that would be covered by paragraph 3.6 of the Code and because they were “*necessary to effect a mandatory requirement of this Code, admissions law, a determination by the Adjudicator or any misprint*” and therefore not require consultation. I would have been prepared to accept that some changes were covered by this exemption, but the introduction of day boarding places which did not appear in the 2015 arrangements, should have been fully consulted on as it affects the PAN reducing the number of places for other boarders from 17 to 10.

## **Conclusion**

52. For the reasons set out above I determine that the arrangements do not meet requirements of the Code in the ways I have set out. I have noted that the new headteacher is aware that the arrangements are in need of revision and had begun the process of reviewing them in partnership with the LA before they were brought to my attention.

53. I have considered paragraph 3.1 of the Code which says “*The admission authority must, where necessary, revise their admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.*” I have also taken into account that the date when this determination is issued is after the closing date for applications to Year 7 for September 2016.

54. I do not think it would be right for me to require all of the matters to be revised within two months at this time of year because parents will have applied for places on the basis of the published arrangements. In my view matters b, f, g and i should be revised within two months. This will give previously looked after children the priority required by the Code and would not change the basis on which other parents have already applied for places. I think it would more sensible for the remaining revisions required by this determination to be implemented alongside any other changes which the school might wish to make following its own review. I therefore set 28 February 2016 as the date that the remaining changes should be made to coincide with the review process the school has already begun.

## **Determination**

55. In accordance with section 88(5) of the School Standards and Framework Act 1998, I determine that aspects of the admission arrangements determined by the governing body on behalf of the academy trust for the

Royal Grammar School, High Wycombe, Buckinghamshire for September 2016 do not conform with the requirements relating to admission arrangements.

56. 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 this determination or by 28 February 2016 as specified in this determination.

Dated: 6 November 2015

Signed:

Schools Adjudicator: Mr Phil Whiffing