



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference: REF3342**

**Referrer: A member of the public**

**Admission Authority: Castle School Education Trust for Downend School, South Gloucestershire**

**Date of decision: 29 September 2017**

### **Determination**

**I have considered the admission arrangements for September 2018 for Downend School, South Gloucestershire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that there are matters which do 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.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the referrer), about the admission arrangements (the arrangements) for Downend School (the school) an academy school for children aged 11 to 18 in Bristol. The date of the objection was 4 July 2017. The School Admissions Code (the Code) requires objections to admission arrangements for 2018 to be made to the Schools Adjudicator by 15 May 2017. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to the attention of the Office of the Schools Adjudicator (OSA), I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements. I am therefore treating the objection as a referral. The referral relates to the school's catchment area and the priority given to siblings who do not live in it.
2. The local authority for the area in which the school is located is South

Gloucestershire. The local authority is a party to this objection. Other parties to the objection are Castle School Education Trust (the trust) which is a multi-academy trust (MAT) and the governing body of the school.

### **Jurisdiction**

3. The terms of the academy agreement between the 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 on 18 July 2016 by the trust, which is the admission authority for the school, on that basis.
4. Because it is unusual for admission arrangements for 2018 to be determined as early as July 2016, I have considered whether the date of determining these arrangements complies with The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations). Regulation 17 requires that *“every admission authority must ... determine their admission arrangements on or before 28 February in the determination year.”* The determination year is defined in the Regulations and for September 2018, the determination year is from September 2016 to August 2017. These arrangements were therefore determined before the start of the determination year. I have formed the view that the wording of the Regulations does not require determination to be made in the determination year, simply before 28 February of that year.
5. When I considered the arrangements it appeared to me that they did not, or may not comply with requirements relating to admission arrangements and I have used my power under section 88I(5) of the Act to consider the arrangements as a whole.

### **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. the objector’s form of objection dated 4 July 2017;
  - b. the trust’s response to the matter raised in the referral and to my further enquiries and supporting documents;
  - c. the comments of the local authority on the referral and supporting documents;
  - d. the local authority’s composite prospectus for parents seeking admission to schools in the area in September 2017;
  - e. maps of the area identifying relevant schools;

- f. copies of the minutes of the meeting at which the trust determined the arrangements; and
  - g. a copy of the determined arrangements.
8. I have also taken account of information received during and subsequent to a meeting (the meeting) I convened on 18 September 2017 at the school. This meeting was attended by representatives of the trust, the school and the local authority.

### The Referral

9. The referrer asked me to “*consider the use and boundary of the ‘Area of Prime Responsibility’ (APR) in relation to the definition of a ‘local sibling and whether the practice of excluding applicants from a neighbouring local authority is reasonable, fair and legally compliant.’*” The ‘Area of Prime Responsibility’ is a local term which, as confirmed at the meeting, corresponds to ‘catchment area’ which is used in the Code.
10. The referrer provided me with an example of a child who had a sibling attending the school who lived a distance from the school of 2.033 kilometres, but outside of the APR having lower priority for a place than another child with a sibling at the school who lived 4.213 kilometres from the school but inside the APR. The referrer considered this to be unfair.
11. Because part of the APR boundary is concurrent with part of the local authority boundary, the referrer suggested that I should take into account *R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469* (the Greenwich judgement). This held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated.
12. The Code sets out the requirements for catchment areas in paragraph 1.14: “*Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.*” The Code also requires in paragraph 14 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*”

### Other Matters

13. When I considered the arrangements as a whole I noted the following matters which did not, or may not, comply with the Code:
- a. the arrangements refer to a published admission number (PAN) but

do not say what it is. Paragraph 1.2 of the Code requires a PAN to be set;

- b. the second oversubscription criterion refers to local siblings “*who have named the school as a preference.*” This phrase, not used for any of the other oversubscription criteria, appears to be superfluous as if the school had not been named as a preference, the child would not be considered against the oversubscription criteria. Paragraph 1.8 of the Code requires that oversubscription criteria are clear;
- c. in the definition of previously looked after children reference is made to residence orders. Residence orders were replaced by child arrangements orders following the Children and Families Act 2014;
- d. Note 3a in the arrangements includes a reference to “*Area of First Responsibility*” when elsewhere in the arrangements the term “*Area of Prime Responsibility*” is used. This could make that note unclear;
- e. paragraph 2.14 of the Code says “*Each admission authority **must** maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.*” The statement in the arrangements about the waiting list did not fully reflect this requirement; and
- f. the trust did not appear to meet the requirement found in paragraph 2.17 of the Code to “*make clear in their admission arrangements the process for requesting admission out of the normal age group.*”

## **Background**

- 14. The school is situated on the eastern side of Bristol, it serves both rural and urban areas. It became an academy on 1 March 2013 and is supported by a MAT. The admission arrangements are determined annually by the trust and apply to all schools within the MAT.
- 15. The school has a PAN of 210; however, in 2016 and 2017 it offered 240 places to meet increased demand for places in the area. The school is oversubscribed and the oversubscription criteria are:
  - “1. *Children in public care or previously in public care.*
  - 2. *Local siblings (those living within a school’s Area of Prime responsibility and who have named the school as a preference).*
  - 3a. *Geographical considerations (those living within a school’s Area of Prime Responsibility).*
  - 3b. *Geographical considerations (those living outside a school’s Area of Prime Responsibility).*

4. *Tie breaker: Where it does not prove possible to resolve allocations to an oversubscribed school by the application of criteria 1-3, any remaining places will be allocated by drawing lots.*
16. Children in public care or previously in public care and “*Local siblings*” are defined in notes which follow the oversubscription criteria. There is also a note on “*Geographical considerations*” which reads:
- “3a. Geographical considerations (for those living within a school’s Area of Prime Responsibility): Priority will be given to those children who live within the Area of Prime Responsibility for the school. Where a school also has an Area of First Responsibility, children living in this area will be given the highest priority.*
- If in any year there are more children living within the Area of Prime Responsibility than the number of places available at the school, priority will be given to those children who live closest [sic] to the school. Distances from home to school are measured in a straight line between the address point of the child’s home and a central point within the main school building using South Gloucestershire Council’s computerised mapping system.*
- 3b. Geographical considerations (for those living outside a school’s Area of Prime Responsibility): After places have been allocated from within the Area of Prime Responsibility, any remaining places will be allocated to those children who live closest to the school. Distances from home to school are measured in a straight line between the address point of the child’s home and a central point within the main school building using South Gloucestershire Council’s computerised mapping system. All applications will be considered at the same time and the published over-subscription criteria applied.*
- Area of Prime Responsibility: An indicative map showing details of the Area of Prime Responsibility can be found in this booklet.”*
17. The APR is shared with three other secondary schools and is shown in the local authority’s composite prospectus.

## **Consideration of Case**

### The Referral

18. In paragraph 1.14 quoted above the Code requires that catchment areas are “*reasonable and clearly defined*”. The arrangements which I looked at on the school website on 6 July 2017 did not, although they said they did, contain a map, or other definition of the APR. In response to my enquiries the trust provided me with a map of the APR. This map appeared to be part of a map of the APR found in the local authority’s composite prospectus. In my view, the scale and level of detail of both maps would not allow a parent living near the border of the APR to ascertain whether or not they lived in the APR. There were also

undefined dotted green lines on the map.

19. At the meeting it was confirmed that the APR is the entire area shown in the local authority's composite prospectus. It was also explained that the dotted green lines delineated areas referred to in the admission arrangements for other schools. Following discussion of the map at the meeting I am satisfied that the trust and the local authority both know precisely where the boundary of the APR is. I am also confident that, although the arrangements do not offer the service, if a parent were to contact the school they would be told whether or not their address fell into the APR. The Code, however, requires that catchment areas are clearly defined; in my view the APR is not sufficiently well defined in the arrangements to meet this requirement. Catchment areas, where they are used, are key parts of admission arrangements and must accordingly be set out clearly in those admission arrangements. This was not the case here.
20. As well as being clearly defined the catchment areas must be reasonable. At the meeting the trust explained that it wants to work collaboratively with the local authority and other schools to ensure that there are sufficient school places for local children and that by using the APR parents can have some confidence that there will be a place for their child at a local school.
21. The APR is served by four secondary schools. Figures provided by the local authority show that the number of places available in those four schools in September 2018 are a just below the number of children living in the APR. As noted above, additional places have been made available at the school in 2016 and 2017 to meet increased demand from within the APR and no children living outside the APR have been offered places since 2015.
22. The shape of the APR resembles a boot with the school situated just above the heel. The toe of the boot extends approximately nine kilometres to the east of the school and the leg of the boot extends about six kilometres to the north of it. The western boundary of the APR is about one kilometre from the school and the southern boundary is about three kilometres away. Areas to the east and north are predominantly rural, while those to the south and west are urban. The trust explained that although the part of the APR to the east of the school is much smaller, it provides as many students as that to the west.
23. Part of the APR boundary is formed by major roads such as the M4, M32 and A420, elsewhere the boundary goes around villages and at one point, between the A420 and the M32, it follows the boundary between the local authorities of South Gloucestershire and Bristol. I was told at the meeting that a boundary line was needed in this area and the local authority boundary was known and understood locally whereas another line chosen by the trust would have been an arbitrary choice.

24. I am satisfied that the APR does not breach the Greenwich judgement because children are not discriminated against in relation to admission to the school simply because they reside outside the local authority area. Children living in the Bristol local authority have the same level of priority for admission as those children living in South Gloucestershire, but outside the APR. Using the local authority boundary for part of the APR boundary because it is known and understood is a reasonable thing to do in this case.
25. In considering the reasonableness of the APR I have noted that the Department for Education's database of schools shows there are 15 secondary schools located within three miles of the referrer's post code. Children living in some rural parts of the APR have no schools within three miles of their homes. I am therefore satisfied that it not unfair that children living in the rural parts of the APR have greater priority for places at the school than children who live nearer the school in urban areas with many other secondary schools near to their homes.
26. At the meeting I asked the trust why it gave priority in the arrangements to siblings who lived in the APR over other children who lived in the APR. The trust explained that they considered it was more convenient for parents to have all their children at the same school. I then asked the trust why the same principle did not apply if there were places available for children who lived outside the APR. In response the trust said that, in the unlikely event in 2018 there were any places available for children who lived outside the APR, it considered it to be more important to offer those places to children who lived nearest the school, than to siblings from farther away who had several other schools nearer their homes.
27. While the different treatment of siblings living inside and outside of the APR could be considered inconsistent, the trust has presented a rationale for it. I will now consider whether the arrangements comply with the Code which also requires that the arrangements are fair. In considering if this aspect of the arrangements is fair I have taken into account two factors. The first is the length of time these arrangements have been unchanged and the second is the availability of alternative schools for siblings living outside of the APR.
28. The arrangements have been unchanged since the school became an academy in 2013. This means that any child now attending the school will have been admitted under these arrangements. Parents would therefore have known when accepting a place for an older sibling that the priority for younger members of the family was based on distance rather than the family connection.
29. Given that few children from outside the APR have been admitted in recent years, those admitted will have been those living closest, in urban areas to the east and south of the school. I have already noted that there are 15 secondary schools within three miles of the referrer's

post code. A sibling living outside of the APR in urban areas has a wide range of alternative schools within a short distance of their home and would not experience any significant disadvantage if they could not attend the same school as their elder siblings.

30. Although the treatment of siblings living outside the APR is different from that of siblings living within the APR, I cannot identify any unfairness arising from it which would lead me to conclude that this aspect of the arrangements did not comply with the Code.

### Other Matters

31. The arrangements which I found on the school's website and those sent to me did not say what the PAN was. It is a requirement of paragraph 1.2 of the Code to set out the PAN in the arrangements.
32. Paragraph 1.8 of the Code requires that oversubscription criteria are clear. The second oversubscription criterion refers to local siblings "*who have named the school as a preference.*" This phrase appears to be superfluous and makes the criterion unclear because, if the school had not been named as a preference, the child would not be considered against the oversubscription criteria.
33. In the definition of previously looked after children the arrangements refer to residence orders. Residence orders were replaced by child arrangements orders following the Children and Families Act 2014. To be clear, and to meet the requirements of paragraph 14 of the Code, this definition needs to reflect current legislation which it does not.
34. The arrangements include a reference in Note 3a, quoted above, to "*Area of First Responsibility*" when elsewhere in the arrangements the term "*Area of Prime Responsibility*" is used. The local authority uses both terms in the arrangements for some local schools and they have different meanings. At the meeting it was confirmed that the school does not have an "*Area of First Responsibility*". I find that the inclusion of this term makes the arrangements unclear and therefore not compliant with paragraph 14 of the Code.
35. Paragraph 2.14 of the Code requires that admission authorities state in their arrangements "*that each added child will require the list to be ranked again in line with the published oversubscription criteria*". This requirement was not met in the part of the arrangements on waiting lists.
36. Paragraph 2.17 of the Code says "*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*" The arrangements made no reference to this matter.
37. In correspondence and at the meeting I discussed these matters with

the trust. I am pleased to note that the trust has agreed to revise these aspects of its arrangements.

### **Summary of Findings**

38. For the reasons set out above I find that the arrangements do not meet the requirements of paragraph 1.14 of the Code because the APR is not clearly defined in them. The arrangements are therefore unclear and do not comply with paragraph 14 of the Code.
39. I have considered the reasonableness of the APR and find there is a rationale for its boundaries which does not generate any unfairness to children living outside of it and does not fall foul of the Greenwich judgement.
40. I have also found that while there is an inconsistency in the treatment of siblings living inside and outside the APR, parents should have been aware of this when accepting places for older children and it does not lead to a level of disadvantage which would render the arrangements unfair.
41. I have identified other ways in which the arrangements do not comply with the Code as set out above.

### **Determination**

42. I have considered the admission arrangements for September 2018 for Downend School, South Gloucestershire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
43. 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.

Dated: 29 September 2017

Signed:

Schools Adjudicator: Phil Whiffing