



DETERMINATION

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| Case reference: | ADA3413 |
| Objector: | A local councillor |
| Admission Authority: | Beechen Cliff School for Beechen Cliff School, Bath |
| Date of decision: | 10 September 2018 |

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 2019 determined by Beechen Cliff School for Beechen Cliff School, Bath.

I have also considered the arrangements in accordance with section 88I(5) and find 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 local councillor, (the objector), about the admission arrangements for September 2019 (the arrangements) for Beechen Cliff School (the school), an academy school for boys aged 11 to 18 with a mixed sixth form. The objection is to the proportion of places allocated to different parts of Bath.**
- 2. The local authority for the area in which the school is located is Bath and North East Somerset Council (the local authority). The local authority is a party to this objection. Other parties to the objection are the objector, the school's academy trust which is also called Beechen Cliff School (the trust) and the governing board. The objector is a local**

councillor, and has made the objection in that capacity not on behalf of the local authority.

Jurisdiction

3. 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 board on behalf of the trust, which is the admission authority for the school, on that basis.
4. The objector submitted his objection to the school's published arrangements on 29 March 2018. At that time the trust had not determined the arrangements as it is required to do by section 88C of the Act. However, the governing board, on behalf of the trust, subsequently determined the arrangements on 3 May 2018.
5. 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.

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 29 March 2018 and subsequent emails;
 - b. the admission authority's response to the objection and to my subsequent enquiries together with supporting documents;
 - c. the comments of the local authority on the objection and supporting documents;
 - d. maps of the area identifying relevant schools;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting at which the governing board of the school determined the arrangements; and
 - g. a copy of the determined arrangements.
8. I have also taken account of information received during and after a meeting I convened on 6 July 2018 at the school. The meeting was attended by the objector, representatives of the school and representatives of the local authority. After the meeting I investigated

routes across Bath to the other secondary schools on foot and by public transport.

The Objection

9. The objector considered that the arrangements contravened paragraph 1.8 of the Code because the practice of having equal proportions of places available to boys living north and south of the River Avon unfairly disadvantaged boys who lived south of the Avon where the areas of greatest deprivation in Bath are found in the south-west of the city.

Other Matters

10. When I examined the arrangements as a whole it appeared to me that they did not, or may not, comply with the Code in the following ways:
 - a) the published admission number (PAN) for Year 7 boarding places was not clear and may not meet the requirements of paragraph 1.2 of the Code;
 - b) the process for requesting admission out of the normal age group did not appear to have been made clear in their admission arrangements as required by paragraph 2.17 of the Code;
 - c) there was no reference to Education Health and Care Plans (EHCPs) in the arrangements so the arrangements may not be clear as required by paragraph 14 of the Code;
 - d) the statements about waiting lists in the arrangements did not appear to meet the requirements of paragraph 2.14 of the Code;
 - e) the oversubscription criteria for looked after and previously looked after children did not appear to reflect recent legislation and so may be unclear;
 - f) the oversubscription criteria concerning children of members of staff did not appear to meet the requirements of paragraph 1.39 of the Code;
 - g) the school offers places on the basis of "sporting excellence" while the Code, in paragraph 1.24, only allows priority on the basis of "*aptitude*" for sport;
 - h) the arrangements do not include any map showing the boundary of the City of Bath and therefore could be considered unclear as the City boundary is a factor taken into account in allocating places;

- i) in the event that there are insufficient numbers of boys applying who live in areas covered by oversubscription criteria 5 or 6, the arrangements do not say how places will be allocated;
- j) statements in the arrangements concerning multiple births may not comply with paragraph 1.7 of the Code;
- k) the arrangements do not appear to meet the requirements of paragraph 1.13 of the Code in making provision for when a child lives at more than one address;
- l) the requirements of paragraph 1.8 of the Code concerning a tie-breaker did not appear to have been met;
- m) the requirement of paragraph 1.47 to publish the arrangements did not appear to have been met; and
- n) the arrangements run to 17 pages, oversubscription criteria for the majority of applicants cannot be found until page 11, this may make them unclear in contravention of paragraph 14 of the Code.

Background

11. The school became an academy in 2011 under a single academy trust. It is situated in the City of Bath about one kilometre due south of the roman baths and on the other side of the Avon from the historical centre of the City.
12. The school admits boys into Year 7 as both day pupils and as boarders. It also admits both boys and girls into the sixth form which is mixed. The PAN for day places in Year 7 is 162; the school received 308 first preferences for day places for September 2018. The oversubscription criteria for day places are summarised below:
 - 1 Looked after and previously looked after children
 - 2a Brothers of children who will be attending the school at the time of application
 - 2b Brothers of children who will be attending Hayesfield Girls School at the time of application
 - 3 Sons of members of staff
 - 4 Up to 12 places on the basis of sporting excellence
 - 5 Within the Bath City boundary 40 per cent of the remaining places to boys living north and 40 per cent to boys living south of the River Avon
 - 6 Boys living outside of the City boundary.

13. Within criteria 5 and 6 priority is given to boys living closest to the midpoint between the school and Hayesfield Girls School. Before 2018 the measurement was taken from the school itself. The new point is less than 500 metres north west of the school.

Consideration of Case

14. The objector said *“I believe that Beechen Cliff School’s Admissions Policy contravenes the Admissions Code Section 1 Part 1.8; specifically that the oversubscription criteria at the school do indirectly and unfairly disadvantage children from a particular social group.”* He said that this was caused by the fifth oversubscription criterion which gives priority for an equal number of places to boys living north and south of the River Avon. He continued *“Since the school is located to the south of the River Avon, this admissions arrangement unfairly gives a greater chance for admission to the school for boys living north of the River Avon, and excludes the areas of greatest deprivation in the City of Bath, which are located in the south west of the city.”* The objector provided maps showing the areas north and south of the Avon from which boys had been offered places in each year since 2014 overlaid with data about the levels of child poverty in different parts of the city. He said *“I believe that there is a desire on the part of the school to promote a particular social mix, to both raise money and to maintain the assumption among people that Beechen Cliff is an exclusive, fee-paying school.”*
15. Paragraph 1.8 of the Code 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, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child.”* I also consider that paragraph 14 of the Code is relevant to my considerations. It says: *“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.”*

16. In responding to the objection, the school did not dispute the data provided by the objector or the accuracy of the maps. It said that the current arrangements giving an equal number of places to boys living north and south of the Avon has been in place for more than twenty years. It continued to say *“Given that there are two Secondary Schools in BA1 [north of the Avon] and four in BA2 [south of the Avon] (to become three in September 2018) it was always felt that the criteria allowed for parents of boys who wanted single sex education for their sons would have an opportunity to apply for a place.”* The school said that the increasing popularity of the school had led to the distance between homes from which boys have been allocated places at the school and the school reducing in recent years.
17. The school said it refuted the assertion that a specific area of the city was intentionally excluded by the school. It said *“The map presented by the complainant actually indicates that boys from a number of postcodes are now finding it increasingly difficult to gain entry in the first round of the application process. Many of these areas would be considered relatively “advantaged” in terms of socio-economic situation.”* The school pointed out that it is the only single-sex boys’ school in the region and this meant it appealed to a particular type of applicant. The admission arrangements, it said, attempted to give a *“wide range of boys access— from within and beyond the city boundaries.”*
18. The local authority commented on the objection as follows *“Based on the numbers of pupils living in the two halves of the city, we agree that the admissions arrangements for Beechen Cliff appear to disadvantage boys living in the area of the city South of the river and we would welcome their criteria being reviewed/ revised to take account of that issue and to ensure they are compliant with the school admission code.”*

Level of deprivation

19. I will begin by considering the proportion of children from disadvantaged backgrounds that are admitted to the school. The Department for Education Database called ‘Get Information About Schools’ (GIAS) lists eight state-funded secondary schools in Bath and includes data about the number of students on roll at each school and the proportion of them who are eligible for free school meals (FSM) at one point in time, in this case January 2017. Eligibility for FSM is a common proxy for the level of disadvantage in a school. This information is tabulated below.

Table 1

| School | North or South of Avon | Pupils eligible for FSM | Roll |
|--------------|------------------------|-------------------------|------|
| St Mark’s CE | N | 22.3% | 192 |

| School | North or South of Avon | Pupils eligible for FSM | Roll |
|-------------------------|------------------------|-------------------------|------|
| Oldfield | N | 5.6% | 1036 |
| Bath Community Academy* | S | 29.4% | 239 |
| Bath Studio School | S | 22% | 124 |
| Ralph Allen | S | 9.9% | 1150 |
| Hayesfield Girls | S | 5.8% | 1172 |
| St Gregory's Catholic | S | 5.7% | 915 |
| Beechen Cliff Boys | S | 3.9% | 1293 |

*This school closed at the end of July 2018

20. From this table the average proportion of children eligible for FSM across the eight schools can be calculated to be 7.9%. The local authority and school confirmed that these are the relevant schools to consider. The school drew my attention to there being several private schools in the City, in my view these are not particularly relevant to my consideration as few children attending them will be eligible for FSM.

21. The school said that its current level of FSM was 4.25% and the relatively low rate was influenced by its large sixth form and that many parents do not apply for or wish to claim FSM. The school did not make any argument as to why this second point should have a greater effect on it than other schools in Bath. The local authority told me that 90 per cent of boys at the school in Years 7 to 11 live in band G of The Income Deprivation Affecting Children Index (IDACI). This is the band for the least income deprived area. In Bath, 81 per cent of children on roll in Years 7 to 11 in state-funded secondary schools live in areas rated as band G.

22. From these figures it is clear that Bath is relatively affluent compared with the majority of England. However, the maps provided by the objector which are based on data from the local authority show some pockets of deprivation. Against this background, it is undeniable that the school has a less deprived intake than the other state-funded schools in the city. It has a slightly less deprived intake than three other schools, about half the level of deprivation of one and a much lower level than three. One of those three has just closed and one is a studio school which admits children at Year 10 rather than Year 7.

The pattern of admission across Bath

23. I asked the local authority for information about the number of children due to transfer to secondary schools in September 2019 and the number of places available for them. The data provided by the local authority is tabulated below.

Table 2

| | Children | Places |
|-------|-----------|-----------|
| North | 361 (42%) | 282 (28%) |
| South | 500 (58%) | 726 (72%) |
| Total | 861 | 1008 |

24. There are clearly sufficient places across the City but the places are not distributed in proportion to the number of children living each side of the river. It will be necessary for some children to cross the river from north to south to get to a secondary school. At the meeting it was suggested to me that there are many river crossings so the river was not a barrier to movement around the city. When I investigated routes around the city I was particularly careful to investigate the river crossings as it had been suggested to me in the meeting that some may be unsuitable for home to school routes.

25. I found that there are many bridges across the river for both pedestrians and vehicles. One of the pedestrian crossings I investigated took me through an industrial estate and there was no lighting for part of this route, another took me through a construction site. While these two routes may not be suitable for unaccompanied children to walk or cycle along on a dark evening, there were alternatives close by which appeared to me to be safe.

26. Bath is well served by public transport, with bus routes radiating out from the bus station and with some routes running from north to south and east to west. While travelling on some of these routes I observed children wearing different school uniforms travelling in different directions across the city on their way home at the end of the afternoon.

27. I have formed the conclusion that the river is not a barrier to movement around the city and this is borne out by maps provided by the local authority showing where children allocated places at each school for September 2018 live. I will describe the patterns seen in these maps below.

28. Of the eight schools listed above, one is a studio school and so does not admit children to Year 7 and one, Bath Community Academy, in the south-west of the City closed at the end of July 2018. There is a Catholic school, St Gregory's, located in the south of the city, it is usually oversubscribed before places can be offered to children who

are not Catholics or do not have siblings at the school. The girls' school, Hayesfield, is not an option for boys.

29. In order to describe the pattern of admission to the other four schools it is helpful to consider the city divided into four quarters, north-east, south-east, south-west and north-west.
30. Ralph Allen School in the south-east of the city made few offers to children in the north-west, but offered places to children living across the other three sectors although few from the south-west, the area of concern to the objector.
31. Oldfield School in the north-west of the city offered few places to children living in the two eastern sectors, with most places offered to children in the two western sectors and some to children living as far away as Bristol.
32. St. Mark's is a coeducational Church of England school in the north-east of the city. The pattern of admission for this school is telling. With a few exceptions all offers were made to children living in either the north-east, where the school is, or the south-west quarter, the other side of the city from it. The local authority's maps also show whether the child was placed at a first, second, third or fourth preference school, or at a school which was not a preference at all. With a very few exceptions the children offered places at St. Mark's who lived in the south-west of Bath had not included it as one of their preferences.
33. The map for Beechen Cliff which is in the middle of the city shows relatively few boys being admitted from the south-west of the city compared to the other three sectors.
34. It would appear that children living in any part of Bath except the south-west were able to be offered one of the schools which their parents expressed a preference for. I will consider the reasons for this and the implications of it for these children below.

Beechen Cliff arrangements

35. I will begin by considering the equal allocation of places for boys living either side of the river Avon. My own exploration and the maps showing where children travel to school from show that the river is not a sufficient barrier to movement around the city to require different treatment of children who live either side of it. Even if it was, Table 1 shows that the actual distribution of children across the city is more like 60:40 between south and north of the river Avon than 50:50. The school has stated that its aim is to provide opportunity for boys from across the city (with some places for boys from beyond the city) to have access to the only single sex boys' school. This is a reasonable basis from which to construct its admission arrangements and not unlawful or at odds with the Code. However, the arrangements adopted have not delivered equality of opportunity for the north and south of the river for the simple reason that the population is not equal north and

south of the river.

36. The effect of the equal allocation of places to boys living either side of the Avon is that boys living to the north of the river have a better chance of being offered a place at the school than boys living to the south. I find that this is not reasonable as it is not rational to fail to take account of the population pattern in the city and it is not fair to boys living in the south of the city whose chances are lower than those in the north and no reason is provided to justify this. I therefore find that this criterion is not reasonable and so does not conform with paragraph 1.8 of the Code and that it is unfair to boys living to the south of the Avon, not just those identified by the objector, and so does not conform with paragraph 14 of the Code.

37. When looking at the data provided by the objector there appeared to be a reduction over time in the radii of the circles covering both the north and south of the river from which boys were admitted with a large decrease in 2018. This is shown in the table below together with the number of places offered to boys from within the city on the basis of distance and the number of siblings offered places.

Table 3

| Year | Siblings offered places | Places offered within City | Maximum distance North (miles) | Maximum distance South (miles) |
|------|-------------------------|----------------------------|--------------------------------|--------------------------------|
| 2014 | 44 | 106 | 2.893 | 1.213 |
| 2015 | 38 | 96 | 2.592 | 1.106 |
| 2016 | 46 | 92 | 2.191 | 1.053 |
| 2017 | 35 | 96 | 2.639 | 0.754 |
| 2018 | 81 | 56 | 1.628 | 0.577 |

38. It is apparent that a significantly greater number of siblings were offered places in 2018 than in previous years. It was in 2018 that sibling priority was first given to boys who had a sister at Hayesfield School.

39. When I asked the school to comment on this pattern it said that the number of siblings at the school itself was “*very high*” at 45 and there were 36 siblings of girls at Hayesfield, nine of whom would have been admitted on the basis of distance leaving a net effect of 27. I note that in 2014 and 2016 44 and 46 siblings respectively were admitted and there were 106 and 92 children admitted from the City compared with 56 in 2018, or 65, if the nine boys identified by the school who would have been offered places on distance if not as siblings are allowed for.

40. Hayesfield has a PAN of 224, almost 40 per cent more than the PAN for Beechen Cliff. It also does not differentiate between girls living north and south of the Avon, consequently the area from which it admits pupils is larger than the area that Beechen Cliff admits from. This explains why offering places to siblings of girls at Hayesfield has reduced the number of places available for boys who might be offered a place under criterion 5 and thereby reducing the area of the city from within which boys can be offered places under this criterion. Of course, this is slightly offset by the fact that boys who have gained priority on the basis of having a sister at Hayesfield may live further from the school including in the south-west of the city.
41. As it happens, at the meeting it became clear that the effect of the cross sibling priority had become a concern for the school. The school told me that it had not modelled the possible impact before introducing this criterion. While there are a small number of joint extracurricular activities between the schools, the only curricular links are in the sixth form. The school explained that giving priority for brothers to attend the same school meant that it was more convenient for parents to take them to school but was not able to identify any benefit to families from extending the sibling link to the girls' school. Taking a decision to send a daughter to a girls' school necessarily means that any brother will have to go to another school. The schools are about twenty minutes apart by foot which undermines any arguments about convenience for parents taking children to the same place.
42. The introduction of priority for siblings of girls at Hayesfield School has significantly reduced the number of places that can be offered to boys on the basis of where they live and reduced the area of Bath within which boys can be offered a place on that basis. The two schools are not co-located and there are no curricular links before the sixth form. Families who choose to send a daughter to a girls' school must accept that any younger brother will have to attend a different school. Any benefit which families in this situation may gain from this criterion is outweighed by the reduction in the number of places available for allocation under lower criteria and the associated reduction in the areas of Bath from which boys without sisters at Hayesfield can be offered places; I consider this unfair and not to comply with paragraph 14 of the Code.

43. Unless a boy was looked after, previously looked after, had a parent working at the school, had a sibling at the school, or was offered a place for sport, he has little chance of being offered a place at the school unless he lives in two parts of the city - the southern part of the city nearest the mid point between the school and Hayesfield and the part of the city north of the river nearest that point. Both of these areas are reducing in size every year. This is because of the use of distance between home and the point near the school within the arrangements. The current level of parental preference for the school means that boys living south of the river and more than a very short distance from the school or north of the river and in the outskirts of the city, whether in areas of deprivation or not, have little chance of attending the school.
44. The arrangements do not, therefore, appear to be giving a “*wide range of boys access – from within and beyond the city boundaries*” which is the governing board’s aim. Other ways of allocating places within the city such as random allocation would give boys an equal chance of a place no matter where they lived in the city.

Children living in the south-west of Bath

45. The objector was concerned for boys living in the south-west of Bath which includes some of the more deprived areas such as Twerton. I have picked a road in Twerton, Shaws Way, to illustrate the implications for boys living there which arise from the pattern of admissions described above.
46. Following the closure of Bath Community Academy at the end of July 2018, the nearest schools to Shaws Way which boys can attend are Beechen Cliff and Oldfield, both are about 40 minutes away by foot. By way of contrast, the journey from Shaws Way to St. Mark’s (which is where these boys are likely to be offered a place if they do not gain one at Beechen Cliff or Oldfield) takes at least 70 minutes on foot or about 45 minutes using two buses. In my view this is an excessive travelling time in an urban area and is potentially unfair on these boys as it will add to the length of their school day, possibly making them tired and less able to benefit from lessons and could compromise their ability to take part in after-school activities.
47. I must, however, decide if the reason these boys have to travel to the far side of Bath is due solely to the admission arrangements of Beechen Cliff. There is another factor which I think is relevant to my deliberations.
48. The local authority makes it possible for parents to express five preferences on the common application form (CAF). However, not all parents use all five preferences. If a parent only expresses a preference for, say, two schools and cannot be offered a place for their child at either, then their child cannot be offered a place at another school ahead of children whose parents have expressed a preference for that school. These children can only be offered a place at a school which has not filled on the basis of any expressed parental

preferences.

49. I have looked at the admission arrangements for Oldfield. After giving priority for looked after and previously looked after children, children of members of staff and siblings of children at the school, priority for a place at Oldfield is based on home to school distance. For September 2018 children living over four miles from Oldfield were offered places at that school on the basis of home to school distance. This included children living in the south-west of Bath. This means that, if it had been one of their parents' preferred schools, children living in the south-west of Bath would have had greater priority for a place than many children who were in fact offered places there. This implies to me that the children from the south-west of Bath who could not be offered a place at their preferred school did not apply for Oldfield and so could not be offered a place there as it filled with children whose parents did express a preference for it. This conclusion has been confirmed by the local authority.
50. Ralph Allen School in the south-east of Bath is about a 90 minute walk from my exemplar address, Shaws Way, but could be easily accessed by a 25 minute bus ride. Shaws Way falls outside of the radius from within which places were offered at the school in 2018, other than to siblings, children of staff or on the basis of sporting aptitude.
51. I think that the disadvantage that these children experience in terms of the distance they must travel to school is due to a number of factors, the closure of Bath Community College being one of them. Another is parents not understanding the implications of not making use of all the preferences on the CAF, coupled with the fact that the only remaining places after all expressed preferences had been met were at St Mark's which is the furthest school from the south-west of Bath.

Conclusion

52. The objection was that the arrangements contravene paragraph 1.8 of the Code in that they "*indirectly and unfairly disadvantage children from a particular social group.*" The group which the objector said was disadvantaged was boys from areas of greatest deprivation in the south west of Bath.
53. I have found that the oversubscription criterion allocating places to boys living either side of the Avon is unreasonable and so does not comply with a different part of paragraph 1.8 of the Code. I have also found this to be unfair to all boys living south of the river and that the priority given to boys with a sister at Hayesfield makes the arrangements unfair to boys in general and so they do not conform with paragraph 14 of the Code.
54. Following the closure of Bath Community Academy, many boys from the south west of the city are being allocated places at St. Mark's in the north-east which was not one of their parents' preferred schools and requires two bus journeys to reach. I would consider this to be unfair if

it were not for the fact that other children from the area are offered places at another school, Oldfield, which fills with children from a very wide radius. The journey to this school from the south-west of Bath is acceptable. The reason that many boys from the south-west of Bath will now have to travel so far to school is how their parents completed the CAF, not because of the admission arrangements for Beechen Cliff.

55. Although I found that the aspects of the arrangements drawn to my attention by the objector are unreasonable and unfair, these affect a wider group than the one he identified and contravene different parts of the Code. Therefore, I do not uphold the objection.

Other Matters

Published admission number (PAN)

56. Paragraph 1.2 of the Code says "*As part of determining their admission arrangements, all admission authorities **must** set an admission number for each 'relevant age group'*" and paragraph 1.40 says "*Maintained boarding schools can set separate admission numbers for day places and boarding places*". Paragraph 14 of the Code, quoted above, says that arrangements must be clear.

57. The PAN for Year 7 day places is clear, however the arrangements say "*up to 6-8 places may be taken by boarders*". It is not clear whether there will be 6, 7 or 8 places available for boarders in Year 7. When I raised this matter with the school it undertook to make it clear that the PAN for boarding places is 7.

Applications outside of age range

58. 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.*" On the third page of the arrangements is a section headed "*Applications from Over and Under age applicants*". The process of requesting admission for under or over age applicants was not set out in the arrangements in this section or elsewhere.

59. When I raised this matter with the school it replied "*This will be made clear in the next published admission statement*". The law requires that the admission authority revise the arrangements in accordance with the timescale set in this determination.

Education, Health and Care Plans (EHCPs)

60. On the fourth page of the arrangements reference is made to statements of special educational need. The Children and Families Act 2014 required that statements were replaced with EHCPs by April 2018. Continued reference to statements and no reference to EHCPs makes the arrangements unclear and so they do not comply with the Code. This is another matter which the school said it would address in the "*next published criteria*". It must be addressed in the time scale set

in this determination.

Waiting lists

61. Also on the fourth page of the arrangements there is a statement about waiting lists for both day and boarding places. 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.*” Neither of the statements on this page of the arrangements meet this requirement.
62. On the ninth page of the arrangements there is another statement about waiting lists for boarding places. This statement does meet the requirement to say, for boarders that “*each added child will require the list to be ranked again in line with the published oversubscription criteria*” but is located where it may not be found easily and does not address the issue for day pupils. A further statement about waiting lists on page 12 of the arrangements does not appear to address this issue either.
63. When I raised this matter with the school it undertook to clarify the length of time a waiting list is maintained. I find that it is also required to state that “*each added child will require the list to be ranked again in line with the published oversubscription criteria*” as required by the Code.

Looked after and previously looked after children

64. On page 11 in the third appendix to the arrangements, the definition of looked after and previously looked after children in the first oversubscription criterion refers to “*residence orders*”. The Children and Families Act 2014 replaced residence orders with child arrangements orders. Continuing to use obsolete terms and not referring to child arrangements orders makes this criterion unclear. Paragraph 1.8 of the Code requires that oversubscription criteria are clear. The school has undertaken to clarify this matter.

Children of staff at the school

65. The third oversubscription criterion is “*Sons of members of staff who have been employed by Beechen Cliff School or Hayesfield School for 2 years. (A member of staff is defined as full time and part time, teaching and non-teaching staff employed and paid through the Academy Trust’s payroll)*”. Paragraph 1.9f of the Code prohibits admission authorities from giving “*priority to children according to the occupational, marital, financial or educational status of parents applying. The exceptions to this are children of staff at the school and those eligible for the early years pupil premium, the pupil premium and the service premium who may be prioritised in the arrangements in accordance with paragraphs 1.39 – 1.39B*”.

66. Paragraph 1.39 of the Code 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.*”
67. The Code does not allow priority to be given to members of staff who work at other schools even if they are in the same academy trust. Beechen Cliff and Hayesfield Schools are in separate academy trusts. The Code also sets the two year period of employment as being “*at the time at which the application for admission to the school is made*” and this qualification is not reflected in the third oversubscription criterion.
68. On page 14 in the fifth appendix the oversubscription criteria for boarding places are set out. The fourth of these is “*Sons of members of staff who are required to be resident on the School site for the better performance of their duties.*” This does not comply with paragraph 1.39.
69. When I raised these matters with the school it undertook to remove the priority for members of staff at Hayesfield School. It is also necessary to address the other ways in which the arrangements do not comply with the Code regarding the priority they give to children of members of staff.

Sporting excellence

70. The fourth criterion reads “*Up to 12 places to be allocated on the basis of sporting excellence*”. Paragraph 1.24 of the Code allows priority to be given on the basis of “*aptitude*” for sport, not excellence in sport. When I raised this matter with the school it said it would “*ensure that the arrangements for 2020 admission change references of ‘sporting excellence’ to ‘sporting aptitude’ if that is felt to meet the expectations of the Code.*” This is not an expectation of the Code, it is a requirement of the Code and the underlying legislation and must be revised in the timescale set by this determination for admission in 2019.
71. On page 11 of the arrangements there is reference to a “*Sporting Excellence form*”. Admission arrangements are defined in footnote 4 of the Code “*Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*” Paragraph 1.47 of the Code says “*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and must publish a copy of the determined arrangements on their website displaying them for the whole offer year*”. The “*Sporting Excellence form*” is therefore part of the arrangements and should be published at the same time as the arrangements. A copy of the “*Sporting Excellence form*” was not included in the arrangements sent to me or published on the school’s website. When I asked the school

for a copy of the form for 2019 it provided me with a form which included dates relevant to admission in 2018. I find that the requirement to publish the arrangements has not been met.

72. The form for 2018 asked for a supporting reference. Paragraph 2.4 of the Code prohibits admission authorities using supplementary forms which ask for any information prohibited by paragraph 1.9 of the Code. Part (g) of paragraph 1.9 prohibits taking into account reports from previous schools and part (i) prohibits taking into account children's hobbies. This form must be revised for applications for September 2019.

Final oversubscription criterion

73. Although it may be unlikely, if there were not enough applicants from the north of the city to take up the proportion of places available for them, or similarly from the south or outside of the city, the arrangements do not say how any remaining places will be filled. This makes the arrangements unclear.

Map of City of Bath

74. On page 12 in the arrangements it says "*The Local Authority do not hold a map showing the Bath City Boundary, but this is available for parents to view at the school.*" The city of Bath is used as a geographical area for the prioritisation of admissions and so falls into the definition of admission arrangements set out above. A map of the city of Bath should therefore appear in the arrangements, parents should not be required to visit the school to view a map. When this matter was raised with the school it undertook to provide a map with the arrangements.

Multiple births

75. Also on page 12 the arrangements say "*Multiple births - In the event of one place remaining for offer, the school would admit over the admission number to ensure that the siblings were able to be educated at the same school. If a place would be available for a sibling in Hayesfield (multiple births only), then a place would be offered over the number to ensure that the siblings were educated at schools conveniently situated.*"
76. If the last place to be allocated under oversubscription criteria is from a multiple birth, then, assuming all children from that birth live at the same address, the school could use its tie-breaker to decide which child was offered the last place, or choose to admit all children from that birth. Both approaches could comply with the Code. The above statement says that if a boy and girl were twins and the girl could be offered a place at Hayesfield Girls' School, then a place would be offered to the male twin at the school above PAN.

77. The definition of sibling used in the arrangements requires the sibling to be on roll at the time of application, children of multiple births cannot be considered under the sibling criterion as neither would be on roll at the time of application. Paragraph 1.7 of the Code requires that *“Oversubscription criteria **must** then be applied ... in the order set out in the arrangements.”* Unless the male twin in the example above would have the very next place over PAN, when ranked according to the oversubscription criteria, the Code would prohibit him being offered a place ahead of other boys with a higher rank in the oversubscription criteria.

78. When I first raised this matter with the school it suggested that my understanding was not accurate. In further discussion at the meeting the representatives of the school accepted that this part of the arrangements did not comply with the Code.

Home address

79. Paragraph 1.13 of the Code says *“Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.”*

80. The paragraph on page 12 of the arrangements did not *“include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.”* When I raised this matter with the school it said it would make sure this was included in new admission arrangements.

Tie breaker

81. Paragraph 1.8 of the Code says *“Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”* The arrangements do not say what will happen if two boys live the same distance from the set point in oversubscription criteria 5 and 6. When I raised this point with the school it said that governors would decide a tie-break approach which was fair and reasonable and publish it in the new arrangements.

Publication of arrangements

82. As noted above, paragraph 1.47 of the Code says *“Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year.”* The arrangements for 2019 were not determined until 3 May 2018, nine weeks after the law required them to be. On 16 May the arrangements had not been published on the school’s website.

They were published on the website between 16 and 30 May, this is after the date of 15 May by when any objections to those arrangements must be made, this makes it very difficult for parents or others to lodge an objection to them by the deadline set by law.

Clarity of the arrangements

83. Paragraph 14 of the Code says “*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.*” The arrangements run to 17 pages, most boys will be admitted as day pupils and it is not until the eleventh page, in Appendix 3 that the oversubscription criteria for day pupils can be found after several pages setting out details about the admission of a small number of boarders.

84. Sometimes schools do need to have complex arrangements, however, the Code requires that they are clear. I am of the view that the organisation of the arrangements makes them unclear and parents could not look at them and understand easily how places for the school will be allocated.

Timing of changes to the arrangements

85. Paragraph 3.1 of the Code 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. An Adjudicator’s determination is binding and enforceable.*”

86. Because it is now less than two months before applications for 2019 have to be made I have considered allowing up to 28 February 2019 for these arrangements to be revised, this would allow the consultation process set out in paragraphs 1.42 to 1.46 in the Code to be followed and for the trust to set new arrangements for 2020. However, I have taken into account the termination warning notice issued to the trust in July which could lead to a different trust having responsibility for the school and its admission arrangements at some point in the future. I think this leads to a risk to the process of consulting on and determining new arrangements which could delay the implementation of revised arrangements until 2021. I do not consider that acceptable and therefore I require these arrangements to be revised within two months of the date of this determination.

Summary of Findings

87. I have found that the oversubscription criterion allocating an equal number of places to boys living either side of the Avon is unreasonable and is unfair to boys living south of the river. It therefore does not conform with paragraphs 1.8 and 14 of the Code. However, because this unfairness is not confined to the particular social group identified by

the objector and conflicts with a different part of the Code I cannot uphold the objection. For the avoidance of doubt, the school is still required to revise the arrangements to address this and the other matters identified in this determination.

88. I also find that giving priority to brothers of girls who attend Hayesfield School is unfair because it is of little practical benefit to those families, or educational benefit to the children and it reduces the number of places available for other boys who do not have a sister attending Hayesfield.

89. I have found that the arrangements do not comply with the Code in the 14 other ways set out above.

Determination

90. 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 2019 determined by Beechen Cliff School for Beechen Cliff School, Bath and North East Somerset.

91. I have also considered the arrangements in accordance with section 88I(5) and find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

92. 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: 10 September 2018

Signed:

Schools Adjudicator: Phil Whiffing