



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3401

Objector: St Michael's C of E
Aided School, Marlborough

Admission Authority: Excalibur Academies Trust for
St John's Marlborough Academy,
Wiltshire

Date of decision: 25 October 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 Excalibur Academies Trust for St John's Marlborough Academy, Wiltshire.

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 the Chair of Governors, St Michael's C of E Aided School, on behalf of that school, (the objector), about the admission arrangements (the arrangements) for St John's Marlborough Academy (the school), an academy school for pupils between 11 and 18 for September 2019. The school is part of Excalibur Academies Trust, (the trust) which is a multi-academy trust (MAT). The objection is to oversubscription criteria relating to linked Excalibur academy primary schools, feeder schools and catchment areas.
2. The local authority for the area in which the school is located is Wiltshire County Council. The local authority is a party to this objection.

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 by the trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 10 May 2018. I am satisfied the objection has been properly referred to me in

accordance with section 88H of the Act. One point made by objector is not within my jurisdiction. This is his concern that the giving of priority to children who attend certain primary schools which are members of the same MAT as the school puts pressure on other local primary schools to join the MAT. This is not part of the admission arrangements and hence not a matter for me.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection and an attached letter to the admissions officer at the trust dated 10 May 2018 and subsequent correspondence;
 - b. the trust's response to the objection, supporting documents and subsequent correspondence;
 - c. the comments of the local authority on the objection and additional information;
 - d. correspondence from the Chair of Governors at Chilton Foliat C of E Primary School to the Office of the Schools Adjudicator;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. a copy of the minutes of the meeting at which the trust determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

6. The objection concerns the admission arrangements for year 7 (Y7) pupils in September 2019 and in particular the level of priority given to children who have attended certain primary schools which are part of the same MAT as the school compared to children who have attended certain other schools. The objector contends that the arrangements are unfair for two reasons. First, he considers that they put pressure on high performing local primary schools to join the MAT, which is not itself a matter within my jurisdiction. Second, he argues that it is unfair that children who live outside the school's catchment area but attend schools in the MAT have a higher priority for places at the school than other children who live outside the catchment area but attend local primary schools which are not in the MAT.

7. The objector did not say which provisions of the requirements relating to admissions he considers are breached by the arrangements. I have tested the arrangements against paragraph 14 of the School Admissions Code (the

Code) which sets out *“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.”* Because the objection concerns priority given on the basis of the primary schools children attend, I have also considered paragraph 1.9b which provides so far as is relevant here that *“admission authorities....must not ...take into account any previous schools attended, unless it is a named feeder school”* and paragraph 1.15 which provides that *“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds”*.

Background

8. The school became an academy in 2012 and is a secondary school for pupils aged 11-18. It has a Published Admission Number (PAN) of 263 and was rated outstanding by Ofsted in 2014.

9. The admission arrangements for 2019 are different from those which applied in earlier years. The trust consulted on its proposed changes between 15 November 2017 and 13 January 2018 and the arrangements were determined on 9 February 2018. I shall say a little more about the consultation later. In the oversubscription criteria for 2019, the arrangements give the same high level of priority to children attending one of five linked Excalibur academy primary schools and children living in the catchment area and attending one of nine feeder primary schools. In this determination, I refer to these two groups of schools as the “linked Excalibur academy primary schools” and the “feeder primary schools” respectively for ease of reference. As I shall explain later, however, I consider that both groups of schools are feeder schools for the purposes of the Code.

10. As the school changed its arrangements for September 2019, it is helpful to note the previous arrangements for September. The oversubscription criteria for 2018 can be summarised as follows:

1. Looked after and previously looked after children.
2. Vulnerable children (further defined).
3. Children attending linked Excalibur Academies:
 - a. In-area and attending a linked Excalibur Academy.
 - b. Out-of-area attending linked Excalibur Academy.
4. Children living in the catchment area of the Academy not attending a linked Excalibur Academy:
 - a. In-area with a sibling on roll of the Academy.
 - b. In-area and on roll at a feeder school.

- c. Other in-area applications.
 5. Children of Excalibur employees.
 6. Children living out-of-area not attending a linked Excalibur Academy:
 - a. Out-of-area with a sibling on roll of the Academy.
 - b. Out-of-area and on roll at a feeder school.
 - c. Any other applications.
11. The oversubscription criteria in the determined arrangements for September 2019 can be summarised as follows:
1. Looked after or previously looked after children.
 2. Children who have exceptional social or medical needs.
 3. Students attending a linked Excalibur academy primary or living in the catchment area and attending a feeder primary school.
 4. Other students living in the catchment area.
 5. Children of Excalibur employees employed at the academy (with further definition).
 6. Children living out of catchment area but attending a feeder primary school.
 7. All other applications.
- (Within criteria 3, 4, 6 and 7 priority is given to siblings.)

Consideration of Case

12. The objector considers that the admission arrangements for the school, determined by the trust, are unfair. The objection sets out “...*that there should be a distinction made between out of catchment area schools and those in the catchment area regardless of whether children attend a linked academy or not...*”. The objector said also “*there is some strength of local feeling amongst several of the local primary feeders as well as amongst the parent base more generally.*” He refers in the context of local primary schools to the Chair of Governors at Baydon St Nicholas C of E Primary School and the Chair of Governors at Chilton Foliat C of E Primary School, the latter of whom has also commented on the objection, as I shall explain later.

13. As set out above, the arrangements give the same level of priority to two different groups of children:
- a. Those who attend the linked Excalibur academy primary schools irrespective of whether the children live in or out of the school's

catchment area; and

- b. Those who both live in the school's catchment area and attend one of a number of other feeder primary schools.

14. The Code imposes certain requirements as set out above on the giving of priority to children for admission to a secondary school on the basis of attending particular primary schools. The linked Excalibur academy primaries, which are a number of named primary academies which are members of the same MAT as the school, are not called feeder schools in the arrangements. Nevertheless, I am satisfied that both they and the schools referred to as feeder schools are feeder schools for the purposes of the Code and its provisions. I note that there is no requirement in the Code to use the term feeder schools and many schools do employ other terms (just as catchment areas are sometimes referred to as priority areas). Nor is there any prohibition on the use of two separate groups of feeder schools in arrangements. However, the use of another name does not remove the need for the linked Excalibur academy primaries to meet the requirements as to feeder schools. In this case, the "linked Excalibur academy primaries" and the "feeder schools" are all named and it is my view they meet the requirement of paragraph 1.9b of the Code which provides that account cannot be taken of previous schools attended unless they are named feeder schools.

15. Paragraph 1.15 also deals with feeder schools and requires that their selection **must** be transparent and made on reasonable grounds. I have considered all the feeder schools (by which I mean here both groups of schools) against this provision.

16. The trust told me *"being part of Excalibur Academy Trust is **about** more than just the transition process between primary and secondary education. St John's Marlborough shares a special collaboration with its Excalibur partners that includes shared curriculums, staff, monitoring, moderation and improvement teams that is not possible to replicate outside of the MAT."* The school told me that all the linked Excalibur academy primary schools are in St John's catchment area or share part or all of their own catchment area with St John's. I am satisfied that the trust's grounds for selecting the linked Excalibur academy primaries as feeder schools are transparent and reasonable.

17. As far as the other feeder schools are concerned, I am told, and I accept, that they were all previously designated by the local authority as feeder schools of St John's. St Katherine's C of E Primary School was a feeder school for admissions in 2018 but became an academy in September 2017 and is now listed as a linked Excalibur academy primary. I am satisfied that the selection of these schools is transparent and made on reasonable grounds.

18. Not only must the selection of feeder schools be transparent and made on reasonable grounds but the effect of that selection must meet the requirements of paragraph 14 of the Code which requires that arrangements are fair. In this case, the local authority reported that it had expressed concerns to the school in the past about the oversubscription criteria at the

school. Prior to the changes made for admissions in 2019, the school gave a higher priority to children attending linked Excalibur academy primary schools, irrespective of where the child lived, than to children who attended other feeder schools and who lived in the school's catchment area. Thus some out of catchment children had a higher priority for a place at the school than some children living in the catchment and attending a feeder school. Given that Wiltshire is an area where catchment areas operate, it is understandable that the local authority would be concerned if children did not have a high priority for their catchment area school, especially in rural parts of the county where the next school might be some distance away. In the case of this school, the nearest secondary school is over five miles away.

19. The school's changes for entry in September 2019 gives equal parity to children living in the catchment and attending one of the feeder schools as to those attending a linked Excalibur academy primary wherever they live. The local authority supports the changes. It said *"In the past, the local authority has expressed concerns to Marlborough St John's regarding the over-subscription for the school. This was due to the fact that in area feeder schools had a lower priority than children attending Excalibur Trust Schools irrespective of where the child lived. Following discussions between the local authority and the Academy, the Academy amended the policy for 2019/20 entry as follows: 'Students **attending a linked academy or living in the catchment area and attending a feeder primary school, where necessary, priority will be given to siblings.**' The local authority responded to the consultation to confirm that we were happy with the proposed arrangements."* The trust has commented *"We believe that, under this criteria, all children living in catchment and all children attending a linked Excalibur primary academy will be offered a place at St John's Marlborough should they apply."*

20. I have looked at allocations of places for admission in September 2018, when a different set of oversubscription criteria were in place. The local authority has submitted information about preferences for entry in 2018 (including late applications), as of 21 May 2018:

Total preferences = 345

1st preferences = 304

2nd preferences = 36

3rd preferences = 5

Offers made for entry in 2018 (including late applications)
as of 21 May 2018

1st preferences offers = 263

2nd preferences offers = 0

3rd preferences offers = 0

21. The local authority told me that, since national offer day, 36 places have been offered from the waiting list or to late applicants and, as of 21 May 2018, 13 students have been refused a place at the school for entry to Y7 in September 2018. It further reports that the first person who has been refused a place lives more than seven miles from the school using a straight line.

Information from the school shows that, when places were offered on 1 March 2018, there were 69 pupils – 30 in-area and 39 out-of-area – attending linked Excalibur academy primaries. In addition, there were 185 offers made to children living in the catchment area but not attending a linked Excalibur academy primary – 63 in-area with siblings at the school, 114 in-area and on the roll of a feeder school and eight other in-area applications. Finally, three offers were made to pupils who lived out-of-area and did not attend a linked Excalibur academy primary but had siblings at the school.

22. The objector is concerned that giving a high priority to all children attending linked Excalibur academy primary schools places undue pressure on primary schools to join the MAT to give their pupils priority over pupils of schools not in the MAT. He writes *“that competition between local ‘in catchment schools’ is potentially unfairly weighted.”* The question of “competition” between schools is not a matter for me and nor is the issue of whether or not schools choose to join a particular MAT. However, I can and have explored whether these particular arrangements which give priority to children for a place at a secondary school because they attend a primary school which is a member of the same MAT comply with the requirements relating to admissions. The objector has drawn attention to the position whereby children attending the linked Excalibur primary academies have a high priority for places at the school wherever they live whereas the children attending other feeder schools have also to live within the catchment area to gain the same priority. The inference is that this also makes the linked Excalibur academy primary schools more attractive to parents as attendance at them wherever a child lives will then afford a high level of priority for St John’s.

23. The chair of governors at Chilton Foliat C of E Primary School has also written to the Office of the Schools Adjudicator to express concern that if parents wish their child to be successful at securing a place at the school, they will either have to move into the school’s catchment area or move their children to a linked Excalibur academy.

24. The changes made by the trust to arrangements for September 2019 gives all children attending linked Excalibur primary academies, regardless of where they live, the same priority as children attending feeder primary schools and living in the catchment area. In making this change, the trust has told me that it was responding to concern from the local authority about children living in the catchment area and attending feeder schools not having the same priority as those attending linked Excalibur academy primaries. The local authority has confirmed that this was its concern and that the changes made by the trust to the arrangements have addressed this concern. There are differences, as the objector notes, to the priority given to different groups of children. Children attending feeder schools need to live in the catchment area as well whereas children attending the linked Excalibur academy primaries do not in order to gain the high level of priority.

25. The objector is also concerned about what might happen in the future should other schools join the MAT. Indeed, as the objector has noted, schools may consider they are under pressure to join the MAT and he commented that one of the linked Excalibur academy primaries was clear that it became an

academy and joined the MAT so that its children would have access to places at the school. I am concerned here only with the arrangements for 2019. That said, I think it is helpful if I make clear that simply becoming a member of the MAT would and could not automatically mean that a primary school would join the list of linked Excalibur academy primary schools for the purposes of inclusion in the list of these schools in the admission arrangements for St John's. Should any further schools join the MAT and should the trust wish to designate them as linked Excalibur academy primary schools for St John's, it would need to consult on and determine new arrangements. New feeder schools – whether or not they are linked Excalibur academy primary schools – cannot be added to the school's list of feeders without consultation on changes to the arrangements. Nor can an existing feeder be moved from one category of feeder to another without consultation, as this too would constitute a change to the arrangements.

26. I have been presented with no evidence that any group of children will be unfairly disadvantaged as a result of these arrangements. It is the case that all admission arrangements and their oversubscription criteria advantage some children and not others; that is their purpose. This is an oversubscribed school and it cannot admit all who would like to go there. From the evidence before me, it appears that the school can meet all demand from within its catchment area and can also admit some but not all out of catchment area children who would like a place. It has chosen to give priority within its to children who attend primary schools in the same MAT even if they live outside the catchment. The question for me is whether any disadvantage created by these arrangements is unfair or unreasonable. In this case, the local authority is content with the arrangements. There is no suggestion that children will not be able to gain a place at the school if it is their catchment area school and they wish to go there. The objector is concerned of course with children who live outside the catchment area. Wiltshire children who live outside the school's catchment area will live in the catchment areas of other Wiltshire secondary schools for which they will have a high priority for places. Other points made by the objector to the effect that schools would feel under pressure to join the MAT are not matters for me. For these reasons, I do not uphold the objection.

27. I return to the issue of consultation, which was raised by the objector although not as part of the objection. The objector commented on the trust's consultation process. The trust sent me a detailed list of the bodies they consulted, including parents, linked academies, feeder schools, other schools, local authorities and the diocese with information on the trust's website. The trust said that it had not received any responses during the consultation from the governors of St Michael's C of E School, Baydon St Nicholas C of E School and Chilton Foliat C of E School.

28. The objector commented "*I know of no invitation to me, my Governors or our school to participate in any formal consultation over changes to admission arrangements.*" Further investigation revealed that his school, the two above and a number of other schools, received a brief email of notice from an officer of the admissions panel of Excalibur listing the schools within the trust which were consulting on changes to admission arrangements. The email was sent to the office address at each school with a request that the

email be forwarded to all parents of the schools consulted. The email included a link to the Excalibur website, which had details of the proposed changes to the Excalibur schools listed, including St John's Marlborough. The objector considers that the email should have made plainer that the consultation should be drawn to the attention of the schools' governing boards and senior management. The objector also told me that he had been in touch with the trust's Chief Executive Officer on a number of occasions over the last few years and the trust would have been aware both of his interest but also the interest of the local community. I can see that it would have been helpful if the email had said that its contents and attachments should be shown to governors and leaders. However, I do not consider that the fact it did not renders the consultation non-compliant with the Code. The trust has met the requirements of the Code in relation to consultation but it has told me that any future notices of consultation will be specifically drawn to the attention of the governing boards of the schools concerned as well as being sent to school offices.

Summary of Findings

26. I am satisfied that the arrangements conform with the requirements relating to feeder schools. The trust believes that *"with this policy in place, all children that apply for a place who live in catchment and attend a feeder school and those who attend a linked Excalibur primary school will be offered a place at St John's Marlborough"*. The local authority is content with the arrangements. I do not uphold the objection.

Determination

27. 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 Excalibur Academies Trust for St John's Marlborough Academy, Wiltshire.

Dated: 25 October 2018

Signed:

Schools Adjudicator: Lorraine Chapman