



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3507

Objector: A parent

Admission authority: The Albany Learning Trust for Albany Academy,
Chorley, Lancashire

Date of decision: 25 July 2019

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the Albany Learning Trust for Albany Academy, Chorley, Lancashire.

I have also considered the arrangements in accordance with section 88I(5) and find there is another matter which does not conform with the requirements relating to admission arrangements in the way 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 parent (the objector) about the admission arrangements (the arrangements) for Albany Academy, Chorley (the school), an academy school for children aged 11 to 16 for September 2020. The objection is to the fairness of the arrangements for children living in rural locations within the school's catchment area and to the extent to which consultations carried out by the school prior to the determination of its arrangements for admissions in September 2014 and September 2019 met the requirements of the School Admissions Code (the Code). The objector has also complained that an oversubscription criterion which gives priority to children who

have an exceptional medical, social or welfare need to attend the school lacks objectivity and as a consequence fails to meet the requirements of the Code.

2. The local authority (LA) for the area in which the school is located is Lancashire County Council. The LA is a party to this objection.

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 admission authority for the school (the Albany Learning Trust) (the Trust), on that basis. The objector submitted his objection to these determined arrangements on 13 March 2019. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that part of 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

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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 15 March 2019 and supporting documents, and subsequent correspondence;
- d. the school's response to the objection and supporting documents, and subsequent correspondence;
- e. the local authority's comments on the objection and information provided by it concerning the recent pattern of admissions to secondary school of children living in the school's catchment area;
- f. a map of the area identifying relevant schools;
- g. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it.

The Objection

6. The objector's form of objection contained the following objections concerning the school's admission arrangements:

- (i) that the consultation carried out by the admission authority in 2012 and 2013 prior to its determination of the admission arrangements for admissions in 2014 did not conform with the requirements of the School Admissions Code;
- (ii) that the consultation carried out by the admission authority in 2017 and 2018 prior to its determination of the admission arrangements for admissions in 2019 did not conform with the requirements of the School Admissions Code; and
- (iii) that the admission arrangements for September 2020, which contain the changes made in 2014 and 2018, are unfair to children living in rural areas of the borough of Chorley because of the distance from their home of their allocated alternative schools.

7. Paragraphs 1.42 to 1.45 of the Code summarise the requirements concerning the consultation which must be carried out in relation to school admission arrangements.

8. The objector did not say which aspect of the Code is engaged in respect of (iii) but I informed the parties that I considered that the relevant provision is paragraph 14 which states that ...*"admission authorities **must** ensure that the criteria used to decide the allocation of school places are fair....."*

9. In subsequent correspondence, the objector stated that he also believed that the oversubscription criterion contained within the arrangements which gives priority to those with a social, medical or welfare need to attend the school did not meet the requirements of the Code. This further element of the objection was submitted on 29 April 2019, and so before the deadline of 15 May 2019 for such objections to be made. I informed the parties that I would consider this as part of the objection, and that although the objector did not state which aspect of the Code was engaged, that I considered this to be paragraph 1.16, which states that:

*"If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided."*

Other Matter

10. In reviewing the arrangements I noted that the oversubscription criterion "*Children of serving members of staff*" is not qualified in the notes which form part of the arrangements and that it may therefore fail to conform with the provisions of paragraph 1.39 of the Code. This states that :

"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.*

Background

11. Prior to 1 August 2012, the school was a community school, known as Albany Science College. The local authority remained the admission authority for the 2013/2014 admission round, and the Trust became the admission authority from September 2014 onwards. At that time the trust extended the school's catchment area, known locally as a Geographical Priority Area, to include three parishes which are outside the geographical area of the local authority, in the area of the neighbouring Bolton Metropolitan Borough Council. It made a further change for admissions in September 2019, adding an oversubscription criterion which gives some priority to children of members of staff at the school.

12. As will become clear, the school is not always able to admit all the children who live in its catchment area who would like a place. When he applied for a place for his son at the school for September 2018, the objector lived just over 4 miles from the school, in the part of its catchment area which was the original catchment area covering part of Lancashire. His application was unsuccessful, and a copy of the letter following his appeal against this decision which he has supplied to me shows that the furthest distance from which a child was admitted to the school at that time was just over 3.6 miles. The objector's initial objection to the school's admission arrangements was submitted to the adjudicator in June 2018, which was after the deadline of 15 May 2018 for objections to be made to school admission arrangements for September 2019. The objection submitted by him in March 2019 concerns the school's admission arrangements for September 2020.

13. The school's admission arrangements for Year 7 for September 2020 can be summarised as follows:

The published admission number (PAN) is 135.

Oversubscription criteria are set out which give priority, should there be more than this number of applicants, in the following order:

- (i) Looked after and previously looked after children (as defined)
- (ii) Children with an exceptional medical, social or welfare reason for attending the school (as explained)
- (iii) Children of serving members of staff
- (iv) Children living in the school's geographical priority area (the GPA) who have a sibling at the school (as defined)
- (v) Children living in the GPA
- (vi) Children living outside the GPA with a sibling at the school
- (vii) Children living outside the GPA.

A note states that distance from the school will be used as the tie-breaker between children in the oversubscription criterion for which not all children can be offered a place, followed by random allocation if needed.

14. I have been provided by the objector with information concerning complaints he has made to the Education and Schools Funding Agency and to the Information Commissioner in connection with his dissatisfaction with the school's admission arrangements, and this has inevitably resulted in associated correspondence between the parties. The objector has acknowledged that such matters do not fall within my jurisdiction, and I refer to them here only to make clear that my concern is solely whether the school's admission arrangements for September 2020 comply with the Code and the requirements of legislation. I have therefore given my attention to the evidence which has been presented to me which has a bearing on that matter.

15. The school is located at the southern end of the town of Chorley. There are four other secondary schools in the town. The school has told me that, at the request of the local authority, it has admitted 150 children to Year 7 each year since 2017. It has also said that the local authority expects the need for Year 7 places in Chorley to peak in 2022, but that currently one of the other secondary schools is not oversubscribed. The local authority has had the opportunity to comment on these statements but has not done so.

Consideration of Case

16. The objector has complained that the school did not meet the requirements concerning consultation prior to making changes to its admission arrangements in 2014 and 2019, as described above. In summary, his complaint is that parents were not made aware of the school's consultation on either of these occasions, and so were not able to express their views to the admission authority concerning the changes which were being proposed. The objector has referred to paragraph 1.44a) of the Code which requires admission authorities to consult "*parents between the ages of two and eighteen*", and has complained that:

"No contact was made directly, or indirectly, through the primary schools, County or District Councillors, or even village notice boards."

He expressed the view in his objection that in such a case the admission arrangements which have resulted, including those for 2020, would not be lawful.

17. The consultations carried out in respect of the admission arrangements for 2014 and 2019 are not those that apply to the admission arrangements for 2020, because they relate to admission arrangements for different years. No consultation was needed prior to the determination of the arrangements for 2020 because no change was made to them from the arrangements for 2019.

18. The objections concerning the consultation which took place in these earlier years fall outside my jurisdiction, which concerns the admission arrangement for 2020. They cannot therefore touch upon the lawfulness of the arrangements for 2020, and it may not

have been the case that even a relevant consultation which was defective would have had that consequence, in spite of what the objector believes. Nevertheless, it is clear that the consultations about which the objector has complained were instrumental in informing the arrangements for 2020 and I am therefore going to set out my view concerning them.

19. The local authority has assured me that, in respect of both consultations referred to above, it published notices in the local press referring to the consultations being carried out at the time by own admission authorities, which would have had the effect of bringing the school's consultations to the notice of parents, at least to some degree.

20. The school has told me that when it consulted on its proposed admission arrangements, it consulted parents through material on its website, through displays put up in the school and through the local authority. It says that it consulted parents through the contact made with schools by the local authority, which itself has told me that "*schools are our gateway to parents*". The local authority says that it provides leaflets and posters to schools to aid the process of informing parents about school admissions consultations and I have seen an example of a recent public notice published by the local authority which refers to the consultations being carried out by own admission authorities, and a screenshot from the local authority website which show that the school's consultations in each of the years which the objector has complained about were specifically referred to there.

21. The objector has also seen this material but remains unsatisfied, pointing out that many rural addresses do not receive the free newspapers where public notices appear, and saying that generic posters do not guarantee a meaningful consultation. He is adamant that no direct contact was made with himself in the relevant years to alert him to the proposed changes to the school's admission arrangements.

22. The local authority's guidance to schools which are their own admission authorities clearly states that they should send proposed arrangements to the local authority to allow consultation with parents through its (the local authority's) website. However, for a consultation to be meaningful, a genuine effort must be made to alert consultees to its existence. Placing material on a website does not constitute such in my view, and I have not seen any material which shows that, for example, primary schools were asked to draw the school's consultation to the attention of parents when contacted by the local authority. That would have been a meaningful attempt to reach parents.

23. The local authority had clearly made other attempts to reach parents, as mentioned above, through the publication of notices in the local press. Whether or not this met the requirements of the Code at paragraph 1.44 a) because of gaps in press coverage as stated by the objector, I cannot be clear from the evidence to hand. However, as I have said, I am not required to come to a view on this point. What is clear is that there was consultation and that the objector's assertion that there was "*no consultation*" is not supported by the evidence which I have seen.

24. I shall go on to consider the arrangements themselves below.

25. The objector has told me that when his son was not allocated a place at the school in September 2018, the alternative school to which he was admitted was over 7 miles from where they lived at that time. He has asserted that families living in rural as opposed to urban areas around Chorley are disadvantaged because, while those living in the town “*have their pick of five secondary schools*” the rural residents are “*being left without a school at a suitable distance*”. He says that, as a result, the arrangements fail to be fair.

26. When any school is oversubscribed, the Code provides for admission arrangements to set out oversubscription criteria which give a higher priority to some children than to others, and so to treat children unequally. For admission arrangements to be unfair, they would need to cause an unfairness to particular children. Such an unfairness would be evident, for example, if children could not access a school place which was within a reasonable distance or travelling time from their home.

27. In order to consider the objector’s complaint that the arrangements are unfair, I have reviewed the available evidence concerning recent admissions to the school and their effect locally.

28. For admissions in September 2019, a total of 609 preferences were expressed for the school of which 158 were first preferences for the 150 available places. There were insufficient places to accommodate all those living within the school’s catchment area who had expressed a first preference for the school but who did not have a sibling already there. The following table uses information supplied by the school and by the local authority which the objector has seen and not queried. It shows, for the last three years, the number of children living in the school’s catchment area whose parents had expressed a first preference for a place at the school, but who were unsuccessful in securing a place, broken down by those resident in the original “Lancashire” catchment area and those living in the areas added in 2014 (“Bolton” residents). It also gives the number of the latter who were given a place.

YEAR	“Lancashire” catchment area residents expressing a first preference not admitted	“Bolton” catchment area residents expressing a first preference not admitted/ admitted
2019	1	22/11
2018	11	37/11
2017	5	16/12

29. I have asked the local authority to provide me with information about the “Lancashire” residents in the above table. It has provided me, for each of the children concerned, with the distance from their home to the school and with the distance to the school to which they were admitted, having failed to secure a place at Albany Academy.

Again, this data has been seen by the objector who has not challenged its accuracy. It shows the following:

YEAR	Number of children	Alternative school nearer than Albany	Alternative school further than Albany
2019	1	Not applicable as attending independent school	
2018	11	3	8 (3 by preference)
2017	5	3	2

30. The local authority has not commented on the statement made to me by the school that it (the local authority) has projected that the demand for year 7 places locally will peak in 2022. However, I can draw a number of conclusions from the information above. Firstly there currently remain local places such that children who might have been admitted to the school had the catchment area not been expanded in 2014 are not being left without a school. Secondly it is not the case that these children as a group are having to travel unacceptable distances. The greatest distance travelled to an alternative school which was not a parental preference in each of the last three years has been:

2019 – n/a 2018 – 4.9 miles 2017 - 6.4 miles

It does not seem to me that this picture is evidence that the arrangements are the cause of unfairness, and therefore I do not uphold this aspect of the objection.

31. The final part of the objection concerns the priority given to children who have a medical, social or welfare need to attend the school. The number of children admitted under this oversubscription criterion in the last three years has been:

2019 - 4 2018 – 11 2017 – 2

The school has told me that children whose Education, Health and Care plan (EHC plan) names the school are categorised by it as having been given priority under this oversubscription criterion, and that in 2018 this was the majority of the eleven children. However, paragraph 1.6 of the Code is clear that:

*“All children whose statement of special educational needs or Education, Health and Care names the school **must** be admitted.”*

32. This statement is repeated in the school’s arrangements. It means that the admission of children whose EHC plan names the school is not subject to an oversubscription criterion, since their admission is mandatory. Because the school has mischaracterised the basis of the admission of children with plans, it could appear that more children are being

admitted under the medical and social need criterion than is the case. It is correct that the admission of children with EHC plans naming the school reduces the number of available places for other children, and it is good practice for admission arrangements to make this clear.

33. The objector's assertion is that the admission of children on medical, social or welfare grounds "*is wholly subjective and lacking in clarity*" and that it therefore fails to meet the requirements of the Code. I have explained that fewer children have been admitted on this basis than might have appeared to be the case, and as I have stated above, the Code at paragraph 1.16 specifically sanctions the admission of children on medical and social grounds making the requirement that arrangements which do this define the need and set out the supporting evidence required. Although the school has told me that the local authority common application form provides parents with the opportunity to give evidence from relevant professionals relating to medical, social or welfare needs in support of an application for a school place, this is not the same as this being stated in the arrangements themselves, which is what is required by the Code. I uphold this part of the objection.

34. The school has told me that it accepts that the wording of the oversubscription criterion which gives preference to children of members of staff does not include the conditions placed on such admissions in paragraph 1.39 of the Code, as set out above. It has also said that it will amend its arrangements in order that they do so, but as determined they were defective in this respect.

Summary of Findings

35. I have explained above why I have:

- (i) not made a determination concerning the objection made to the arrangements on the grounds of defective consultations,
- (ii) not upheld the objection that the arrangements are unfair,
- (iii) upheld the objection that the arrangements fail to comply with paragraph 1.16 of the Code because they do not set out what is required there in relation to the priority given to children with a medical, social or welfare need to attend the school and
- (iv) found that the arrangements do not comply with paragraph 1.39 of the Code concerning the priority given to children of members of staff.

Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the Albany Learning Trust for Albany Academy, Chorley, Lancashire.

37. I have also considered the arrangements in accordance with section 88I(5) and find there is another matter which does not conform with the requirements relating to admission arrangements in the way set out in this determination.

38. 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: 25 July 2019

Signed:

Schools Adjudicator: Dr Bryan Slater