



Office of  
the Schools  
Adjudicator

## Determination

<b>Case reference:</b>	<b>ADA3577</b>
<b>Objector:</b>	<b>A member of the public</b>
<b>Admission authority:</b>	<b>The academy trust for Hayesfield Girls' School, Bath and North East Somerset</b>
<b>Date of decision:</b>	<b>8 October 2019</b>

## 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 determined by the academy trust for Hayesfield Girls' School, Bath and North East Somerset.**

**I have also considered the arrangements in accordance with section 88I(5) but do not find that there are other matters which do not conform with the requirements relating to admission arrangements.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector) about the admission arrangements (the arrangements) for Hayesfield Girls' School (the school), a non-selective academy school for girls aged 11 to 18 for September 2020. Boys are admitted to the school's sixth form. The objection is to the priority which is given to girls living outside the city of Bath for admission to a proportion of the places available at the school in Year 7.
2. The local authority (the LA) for the area in which the school is located is Bath and North East Somerset (sometimes referred to as BANES). The LA is a party to this objection. Other parties to the objection are the school and the objector.

## 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 school's governing board on behalf of the trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 9 May 2019. 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 on 7 February 2019 at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 9 May 2019, supporting documents and subsequent correspondence;
- d. the school's response to the objection, supporting documents and subsequent correspondence;
- e. the LA's comments on the objection and subsequent correspondence;
- f. the local authority's composite prospectus for admissions to secondary schools;
- g. a map of the area identifying relevant schools, and
- h. confirmation of when consultation on the arrangements last took place.

## The Objection

6. The objector complained that the final oversubscription criterion in the arrangements is "*unreasonable*". This criterion says that 20 percent of the places which remain available at that point in the allocation process will be reserved for girls who live outside the boundary of the city of Bath. The objector believes that the criterion is unreasonable because it means that girls living near to the school but who have not been allocated a place under the earlier oversubscription criteria will be denied a place in favour of girls who live much further away. The objector questions whether the purpose of this policy is to "*benefit applicants from more affluent areas outside the city boundary*". He points out that the school is the only girls-only state-funded secondary school in the area of the local authority and that an unsuccessful applicant living near the school will have to travel a considerable distance to access single-sex education elsewhere. He quotes paragraph 1.8 of the Code, which 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....”*

## Other Matters

7. When I looked at the arrangements, I was concerned that, whether or not they might fail to meet the requirements of paragraph 1.8 of the Code on the grounds of their reasonableness, they might do so by causing an unfair disadvantage to some children who were from a particular social group. I therefore informed the parties of this concern and sought from them information relevant to my consideration of it. The objector also referred to the possibility that the arrangements might lead to “*unfair discrimination*” in correspondence subsequent to his initial objection.

## Background

8. The school became an academy in 2011 under a single academy trust. As stated above, it is one of two single-sex state-funded secondary schools in the LA’s area. The nearby Beechen Cliff Boys’ School provides single-sex education for boys from the age of 11 and also has a mixed sixth form. For those wishing to have single-sex education for their daughters, places at the school are therefore at a premium, and it was heavily oversubscribed in both 2018 and 2019, with more than two applications for each of the available places in Year 7.

9. The admission arrangements can be summarised as follows:

- (i) The published admission number (PAN) is 224;
- (ii) If the school is oversubscribed, children are admitted in the following priority order:
  - a. Looked after and previously looked after children;
  - b. Siblings (as defined) of students at the school;
  - c. Children of school staff (as defined);
  - d. Up to 10 children who demonstrate an aptitude for sport, and up to 10 who demonstrate an aptitude for music;
  - e. Children living within the city of Bath (80 percent of the remaining places)
  - f. Children living elsewhere (20 percent of the remaining places)

Distance from the school to the child’s home is used as a tie-breaker, followed by random allocation.

There are five other state-funded secondary schools in Bath to which girls are admitted at Year 7. A sixth school, Bath Community Academy which closed in the summer of 2018, previously served the southwest of the city where the areas of greatest deprivation in Bath are to be found. Hayesfield Girls' School is located on the southwest side of the centre of the city, and so near to some of these areas of deprivation.

## Consideration of Case

10. The objector says that the arrangements are unreasonable. Although he referred subsequently to the possibility that they might also result in “*unfair discrimination*”, I had by that time already decided to consider the matter of potential unfair disadvantage myself, and I shall return to it below.

11. The objector responded to comments made by the LA about the objection by saying that:

*“The fact that most of the places under criterion 5 [shown as e. and f. above] are allocated by proximity does not justify the exclusion of children who live in the parts of the city that are being unfairly leapfrogged under the present policy.”* and

*“...the issue is not one of children outside Bath getting a place at a good school, but of who gets priority access to the only girls' school – those who live closer or those who live further away.”* and that

*“Given that Hayesfield is consistently over-subscribed and that some children who wish for a single-sex education will not get in, why is it more important that children/parents living elsewhere in BANES get their wish of a girls school than those who live in Bath nearer to the school?”*

These comments expand on the thrust of the objection, which is that the arrangements are unreasonable because they do not allocate all the remaining places, after the application of the earlier criteria (that is, those listed at 9 ii a – d above), on the basis of distance alone. I will consider this question in the light of what the Code does, and does not, say.

12. Paragraph 1.9 of the Code makes it clear that:

*“It is for admission authorities to formulate their admission arrangements....”*

before going on to specify 15 prohibitions which qualify that statement. Other paragraphs within the Code set out requirements which must be met by school admission arrangements, such as those in paragraph 1.8. For admission arrangements to fail to comply with the Code, they must breach either a prohibition or fail to meet a requirement which it contains. I will now set out what the Code has to say which is relevant to the objection.

13. The objector's view is that the arrangements do not meet the Code's requirement for them to be reasonable because they give priority to some girls living further away from the school than to other girls wishing to have a place there. The first thing for me to say is that

the Code contains no specific prohibition on there being such a provision within the admission arrangements of a school. It is relatively common practice for a school to define an “inner” and an “outer” catchment area and to ensure that some places are available to those living in the latter. If the practice were considered to be in and of itself unreasonable in all circumstances, the Code would prohibit it, but it does not.

14. Secondly, although the objector complains that the purpose of the policy is to “*exclude some socially deprived areas*”, the Code again does not require a school to ensure that its intake is representative of the social mix present locally – indeed, such would not be possible across schools. For this reason, the Code’s requirement concerning matters of social status is that arrangements should not cause unfair disadvantage to particular groups, which is slightly different, and I shall consider this below. Neither of the reasons which the objector gives for the arrangements being unreasonable is in itself in breach of a requirement within the Code.

15. Something would however be unreasonable if the grounds for it were irrational, and this could apply to any school’s arrangements. That is to say, applying the test of Wednesbury reasonableness which is relevant to public policy-making, the arrangements would be unreasonable if they were “*so unreasonable that no reasonable authority*” would have determined them. The school has explained that, as the sole girls-only secondary school in the area of the local authority, its rationale “*stems from a desire ..... to ensure a wide range of girls are able to access the school, and was developed with a view to avoiding what would otherwise be a tight geographic monopoly for the purposes of admissions.*” It has added that its desire has been to serve parents of girls from a rural as well as an urban background. The LA has expressed its support for this approach, and the objector has not commented directly on what the school has said, other than to say that the effect is “*at the expense of parents who live closer*” and that there is “*no transparent rationale given for ‘skipping over’ part of the city.*” However, in terms of the rationale for the policy, it is my opinion that the school has been able to provide cogent, rational reasons for what it does and therefore that its rationale does not fail to be reasonable.

16. It would also be possible for the reasons for a policy to be rational, but for it to be unreasonable in its effect. I am conscious here that the question of the effect of the school’s policy overlaps with the associated, but separate, matter to which I have already referred of whether the arrangements give rise to unfairness. I shall consider this below, and so at this point I shall limit my consideration to the reasonableness of the policy by looking at the overall effect of what the school does. The school has pointed out that its policy is limited in its effect, because only one in five of the relevant places is prioritised for girls living outside the city boundary. I agree that this is relevant to my consideration and note that it means that it is not the case, as the objector has suggested, that the policy “*skips over*” part of the city, since no geographical areas are excluded for admissions purposes. Rather, the arrangements limit, but only to the degree stated, the number of places available to those living in all of the areas closest to the school. It is also the case that even if the arrangements did not do this, there would still not be sufficient places for all the girls living inside the city boundary whose parents wish them to go to the school.

17. The school has told me that in 2018, 11 percent of all Year 7 admissions were of those given priority from outside the city and that in 2019 this figure had dropped to 9 percent. This is, I consider, very relevant to the question of whether the effect of the policy is reasonable. A policy under which, say, 50 percent of places were allocated in this way would have a proportionately greater effect, with any associated potential unreasonableness proportionately greater. The LA has said that if the 20 percent of places were allocated to girls living in Bath, given the pattern of admissions in the city, *“it is likely that more girls from socially deprived areas in Bath will gain a place”*. Nevertheless, it supports what the school does. The objector has referred to these comments by the LA and has said that *“this is still an example of a group of children being systematically discriminated against.”* As I have said, the question of unfair disadvantage to the girls not admitted to the school is slightly different, and something which I will go on to consider.

18. Returning to the reasonableness of the overall effect of the policy, given what the LA has had to say, it seems to me that question of whether the arrangements disproportionately affect girls living in socially deprived areas is very relevant to my consideration. I have looked at the most recent information available concerning the relative levels of deprivation, as indicated by free school meal entitlements (FSM) of pupils attending the seven state-funded secondary schools in Bath as shown in the January 2019 school census data. These are:

<b>School</b>	<b>Roll (relevant to FSM calculation)</b>	<b>Number of FSM eligible children (performance tables)</b>	<b>Percentage of FSM eligible children (performance tables)</b>
Hayesfield Girls' School	1033	62	6.0
St Mark's CE	207	54	20.7
Oldfield	1088	115	10.6
Bath Studio School	78	25	32.1
Ralph Allen	1056	131	12.4
St Gregory's Catholic	822	70	8.5
Beechen Cliff Boys' School	922	62	6.7

19. From these figures, I have been able to calculate that the average figure for free school meal eligibility across the seven schools, and therefore for the population whose children attend state-funded secondary schools in the city of Bath, is 9.9 per cent. I have no

reason to believe that the figure would be different for girls than for both genders taken together.

20. It is possible that the policy of prioritising places for some girls living outside the city makes the school more socially-selective in its intake, as the objector has suggested is possible. If this is so, and particularly if there is a large effect of this kind, the effect of the arrangements could be judged unreasonable. The school has told me that approximately 20 girls (out of 224) have been admitted from outside the city boundary in each of the last two years. If these admissions had instead been of 20 different girls who were entitled to free school meals (and if the 20 admitted were not so entitled) in each of the last five years, then I calculate that the FSM figure for the school would now be of the order of 15 percent, which is well above the average for the population locally. It would require something like less than half of the places in question, fewer than 10, to be filled by additional children with a free school meal entitlement for the school to match the average for the area. That is to say, under the current arrangements the school's FSM figure is not very significantly different from that which might be expected, and I note that it is very similar to the FSM entitlement figure of the other single-sex school in Bath, Beechen Cliff Boys' School. It must be part of my consideration that factors other than geography are in play which result in both schools having lower FSM figures than the other, mixed schools in Bath. If this were so, the effect of the prioritisation of a limited number of places for girls living outside the city would seem to be having little effect.

21. So it seems to me that while what the LA has had to say is correct, it does not necessarily follow that it is exclusively girls from less privileged backgrounds in the city of Bath who do not secure a place as a result of the school's policy. Figures supplied to me by the school show that of the 60 girls whose parents had expressed a first preference for the school in 2019 but who were initially not offered one, only 16 lived in areas recognised as being within the 50 percent most deprived wards nationally. Furthermore, the school has told me that it habitually admits all girls seeking a place who live in some of the city's most deprived areas and has supplied me with information which shows that in September 2019, at the end of the admissions process only five girls of the 16 girls referred to above were not ultimately offered a place. The LA and the objector have seen this information and have not challenged its accuracy.

22. The school has also been able to lay out for me the consideration given by the school governors when setting their admission policy to the availability of alternative schools in the different less affluent parts of the city, and therefore to whether their policy could result in a shortfall in local provision. I shall consider what the implications of not securing a place at the school are for those for whom this is the case in detail shortly.

23. Taking all these matters into account, it is my view that the aspect of the school's admission arrangements which the objector has complained about has resulted from a cogent rationale on the part of the school, which has also given reasoned thought to the potential effect of what it does. Having looked at the available information, I do find that the evidence suggests that the arrangements are unreasonable in their effect in the way the

objector suggests. As a result, I do not uphold the objection that the arrangements fail to be reasonable.

24. When I looked at the arrangements, it was my concern that, even if I judged that they did not have an overall effect which was unreasonable, it may nevertheless be the case that they unfairly disadvantaged the girls who were not admitted to the school. As with the question of reasonableness, I will begin by explaining by what criteria I must determine whether or not the school's arrangements satisfy the requirements of the Code in this respect.

25. Whenever a school is oversubscribed, some of the children whose parents are seeking a place will not be admitted, and these children are in consequence disadvantaged compared to those given priority by the school's oversubscription criteria. The requirement of paragraph 1.8 of the Code is that such disadvantage should not be an unfair disadvantage as far as any particular social or racial group in society is concerned. For this purpose, a social group includes those from less well off families. For this disadvantage to be an unfair, not being admitted would have to cause an actual unfairness which outweighed the benefits given to those favoured by the arrangements. This would be the case if, for example, the disadvantaged children were unable to secure an appropriate alternative school place within a reasonable distance or travel time from their home. I have therefore sought information about the girls whose parents had expressed a first preference for a place at the school in each of the last two years, but who were unsuccessful. This has been provided to me for 2018 and 2019 by the local authority, with additional information for 2019 about the final outcomes of the admissions process provided by the school, as referred to above.

26. In 2018, 69 first preferences were unsuccessful, and each girl was offered a place at an alternative school in Bath. For four of these girls the distance from their home of the school offered was just over three miles, and for all the others the distance was less than three miles. A similar pattern was repeated in 2019, with 60 unsuccessful first preferences for the school, all of which resulted in an alternative offer. For five of these girls the alternative school was over three miles from their home, but three were ultimately admitted to Hayesfield and the other two achieved their second or third preference school. Neither of these girls lived in a ward in the 50 percent most deprived wards nationally. Of the five girls living in one of the 50 percent most deprived ward nationally who did not secure a place at the school in 2019, four were admitted to their second preference school for three of whom this was less than a mile from their home. The fifth girl's third preference school was less than 2.5 miles from her home.

27. These data show that all the girls who do not secure a place at the school when the initial allocation of places is made are currently offered an alternative school within a reasonable distance from their homes. The data for admission in September 2019 quoted earlier show that those not able to gain a place at the school at the end of the admissions process were not predominantly from areas of high deprivation, and for the small number who were, each secured an appropriate local school place. The LA's projected demand for Year 7 places in Bath indicates that there will be sufficient places to meet the demand for



the foreseeable future, and so I would expect this position to broadly remain unaltered. I can see no clear unfair disadvantage to girls from a particular social group in these figures, and conclude that my concerns in this respect, and the view expressed by the objector, were unfounded.

## Summary of Findings

28. I have explained why I have come to the view that the school's arrangements are not unreasonable, and why I do not consider that they unfairly disadvantage girls from less privileged backgrounds.

## Determination

29. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Hayesfield Girls' School, Bath and North East Somerset.

30. I have also considered the arrangements in accordance with section 88I(5) but do not find that there are other matters which do not conform with the requirements relating to admission arrangements.

Dated: 8 October 2019

Signed:

Schools Adjudicator: Dr Bryan Slater