

DETERMINATION

Case reference: ADA3263

Objector: A member of the public

Admission Authority: The Academy Trust for King Edward VI Aston School, Birmingham

Date of decision: 6 July 2017

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 2018 determined by the academy trust for King Edward VI Aston School, Birmingham.

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 King Edward VI Aston School (the school), a selective secondary academy for boys aged 11 to 18 for September 2018. The objection is that the school's admission arrangements for September 2018 are unclear as the result of the school's decision to admit 35 pupils who attract the pupil premium in September 2017.
2. The local authority for the area in which the school is located is Birmingham City Council. The local authority 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 body for the academy trust, which is the admission authority for the school, on that basis. This agreement contains specific provisions which permit the school to determine admission arrangements that give priority to children attracting the pupil premium. I note that the version of the Code which was in force when the agreement was made did not

provide the general permission for this to happen which now exists.

4. The objector submitted his objection to these determined arrangements on 29 March 2017. The objector has asked to have his identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. 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.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 29 March 2017;
 - b. the school's response to the objection;
 - c. the comments of the local authority on the objection;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - g. a copy of the determined arrangements.

The Objection

7. The objector has complained that whereas the school's determined arrangements state that no more than 30 pupils who attract the pupil premium will be admitted to year 7 annually, the school admitted 35 such pupils in September 2017. The result of this, he says, is that the effect of the determined arrangements for September 2018 has become unclear. I have informed the parties that in my view the objection therefore alleges a breach of paragraphs 14 and 1.8 of the Code as these are the primary Code provisions which deal with the requirement for clarity in admission arrangements and oversubscription criteria respectively.

Background

8. The school is an academy school which is designated as a selective grammar school under section 104 of the Act. The school has told me that the governing body "agreed" the school's admission

arrangements for entry in September 2018 on 6 June 2016, subject to consultation, and that the local authority was informed on 16 February 2017 that the same arrangements were the school's determined arrangements for September 2018, there having been no response to the consultation.

9. The school's approach to determining its arrangements was somewhat unusual. In order to be confident that the governing body knew that it was determining the school's admission arrangements in June 2016, I have sought the school's assurance that the governing body was fully aware that the arrangements were those which it was determining for September 2018, unless subsequently changed in the light of the response received during the consultation period. This assurance has been provided, together with confirmation that the governors would have understood this to be the case since it had been the practice in previous years. I therefore accept in the light of these statements that the arrangements were determined on 6 June 2016.
10. As determined in June 2016, the school's admission arrangements for September 2018 state that:
 - (i) the published admission number (PAN) is 120;
 - (ii) admission is on the basis of ability as evidenced by a combined standardised score on tests of verbal, non-verbal; and numerical reasoning ability, with a minimum qualifying score;
 - (iii) where the number of qualified candidates is greater than the number of places, priority is given firstly to qualified boys who are Looked After or Previously Looked After children, followed by qualified boys attracting the pupil premium, limited to 30 places, and finally qualified boys in rank order of their combined standardised score.
11. The objector complains that the 2018 arrangements have become unclear as a result of the admissions which have been made to the school in September 2017 under effectively the same admission arrangements.
12. Paragraph 1.4 of the Code allows an admission authority "*at any time following the determination of the PAN*" to admit above this number, and to do so in-year. The school's governing body decided on 3 October 2016 to admit up to 140 boys in September 2017, rather than the determined 120. In doing so, it decided to admit an additional 5 boys who were eligible for the pupil premium and an additional 15 boys not so eligible, in line with the relative proportion of admissions in these two categories set out in the arrangements against a PAN of 120.

13. The objector complains that the school's arrangements for September 2017 do not allow for this to have happened since they explicitly state that the maximum number of admissions of boys who are to receive priority on the basis of attracting the pupil premium is to be limited to 30. As a result, he says, it is not clear how many boys will be admitted under the priority given to those eligible for the pupil premium in September 2018, since the arrangements for September 2017 also stated that this number would be 30 but this proved not to be the case. This makes the arrangements for 2018 unclear, he believes.

14. Paragraph 14 of the Code says that:

*"...admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective."*

and paragraph 1.8 that:

*"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair..."*

Consideration of Case

15. I have informed the parties that the manner in which the school applied its admission arrangements for September 2017 does not fall within my jurisdiction to consider. Nevertheless, the objector has continued in correspondence to refer me to the school's decision to admit 35 boys who attract the pupil premium in September 2017. I shall refer to this matter here only to the extent that it is relevant to my consideration of the objection. Most recently, and after the deadline for making objections of 15 May 2017, the objector referred me to the school's practice of setting a deadline for registering for its entrance tests and of not allowing late registrations. He asked me to consider whether this is permitted. I have decided not to accede to this request.

16. The matter which I have jurisdiction to consider is whether the admission arrangements for the school which have been referred to me conform with the requirements of the Code. The arrangements for September 2018 state in clear terms that 120 places will be available. The arrangements provide that following the admission of qualified candidates who are looked after or were previously looked after, up to 30 qualified boys who attract the pupil premium will be admitted and that the remaining places will be allocated to qualified boys on the basis of rank score alone. This seems to me to set out in clear terms how places will be awarded and does not cause a breach of either paragraph 14 or paragraph 1.8 of the Code.

17. The school has told me that it made a decision in October 2016 to admit above the stated PAN for admissions in 2017 by creating an additional 20 places. It says that it allocated five of these additional

places to boys attracting the pupil premium *“in keeping with the school’s policy of offering 25% of places to children who attract Pupil Premium (sic)”*. It has also informed me that it has sought and been given the approval of the Secretary of State to vary its determined admission arrangements for September 2018 so that the limit placed on such admissions is described as *“25% of available places”*. Footnote 60 to the Code explains that where an academy wishes to vary its arrangements once they have been determined, they must seek the Secretary of State’s agreement. Paragraph 1.3 of the Code states that a reason for seeking a variation to determined admission arrangements is a major change in circumstances, which would seem to be relevant here, given the school’s changed circumstances in being able to offer additional places above its stated PAN. When I looked at the school’s website on 28 April 2017, the admission arrangements for September 2018 contained this revised wording.

18. The school has explained that it has not increased its PAN for admissions in September 2018 and that this remains at 120 because it is not certain that it will be able to offer additional places above this number again. However, it recognises that if it intends to give priority for 25 per cent of places, including any places which it is able to offer above its stated PAN, to boys attracting the pupil premium, then the arrangements should state this, and as varied this is what they now do.

19. The objector has been informed of these developments and has sought to persuade me that:

“Even if the school writes 25% pupil premium in its policy (without a maximum) it does not give it the right to increase the pupil premium number in proportion if the PAN increases without consultation as the policy must go to consultation.”

He also takes the view that:

“Any percentage can only apply to the PAN specified in the policy.....One cannot offer above PAN until the PAN has been offered in accordance with the published admissions code (sic).”

He says that:

“The PAN must be awarded first and then any places above PAN from a waiting list.”

20. I have thought carefully about all the points which the objector has put to me. First, paragraph 1.4 of the Code makes it clear that admission authorities can admit above their determined PAN, provided they notify the local authority *“in good time”* of this intention. So the school was able to offer more places than the PAN stated in its arrangements in 2017 and did not have to carry out a consultation beforehand. The same would be the case if it were

able to offer places above its stated PAN in 2018.

21. Secondly, if a school's arrangements say that a proportion of the available places, as opposed to a proportion of the originally stated PAN, will be allocated to a particular group, then this is clear and does not offend any provision of the Code. Indeed, the Code makes provision for the number of admissions to be in excess of a determined PAN (in paragraphs 1.4 and 1.5) before going on in paragraphs 1.6 to 1.10 to say how "*places*" will be allocated when these places are oversubscribed. I read this to mean that the Code explicitly allows for the number of places allocated through oversubscription criteria to be a number in excess of the stated PAN.
22. Against that background, it seems to me that there is no basis for the objector's assertions about the relationship between a determined PAN and the application of oversubscription criteria and the consequential effect on waiting lists where a school has made a decision to make additional places available. The total number of places which are being made available are subject to the oversubscription criteria which have been determined, not just the number of places defined by the PAN. So a group of places defined as a percentage of the places available means just that, not a percentage of the PAN.
23. Furthermore, it was the objector's concern initially that if the school were able to offer places above its stated PAN in September 2018 that the admission arrangements as originally determined would not be clear as to how many places would then be allocated to boys attracting the pupil premium. I have already said that the arrangements as originally determined are not in themselves unclear. However, in securing a variation to them the school has recognised that in their original form the arrangements are inappropriate to a situation in which more places are made available than stated in the PAN. The school's stated intention is to give priority to boys attracting the pupil premium for the same proportion of the places at the school, whatever that number is. The variation which has been agreed makes the position clear, namely that 25 percent of the available places, whether this is the number given by the PAN or a higher number, are priority places for boys attracting the pupil premium.

Summary of Findings

24. For the reasons which I have set out above, I am of the view that the school's admission arrangements for September 2018, both as originally determined and as varied with the approval of the Secretary of State, do not fail to be clear, and I do not uphold the objection which has been made to them on these grounds.

Determination

25. 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 2018 determined by the academy trust for King Edward VI Aston School, Birmingham.

Dated: 6 July 2017

Signed:

Schools Adjudicator: Dr Bryan Slater