



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3177

Objector: Wakefield Council

Admission Authority: The Governing Body of Sandal Magna Community Academy acting on behalf of the Directors of the Enhance Academy Trust, previously known as the Wakefield Diocesan Academies Trust, Wakefield.

Date of decision: 21 October 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for Sandal Magna Community Academy acting on behalf of the Directors of the Enhance Academy Trust previously known as the Wakefield Diocesan Academies Trust, Wakefield.

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 Wakefield Council (the objector), about the admission arrangements for September 2017 (the arrangements) for Sandal Magna Community Academy (the school), an academy for children aged 3 to 11. The objection is to the higher priority given in the oversubscription criteria to children who live outside the catchment area and have attended the academy's lower foundation stage (that is, its nursery) over those children who live outside the catchment area and who have brothers and sisters in attendance at the academy.

Jurisdiction

2. The terms of the academy agreement between the multi-academy trust (MAT) 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 on behalf of the academy trust, which is the admission authority for the school, on that basis.
3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:
 - a) the objector's form of objection dated 12 May 2016;
 - b) the academy trust's response to the objection and supporting documents;
 - c) the academy funding agreement;
 - d) a map of the area;
 - e) the LA's composite prospectus for parents seeking admission to the school in September 2016;
 - f) confirmation of when consultation on the arrangements last took place;
 - g) copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - h) a copy of the determined arrangements.

The Objection

4. The objection concerns the introduction of a new oversubscription criterion in the arrangements for September 2017. The new criterion gives a higher priority to *"children who have attended the academy's lower foundation stage at the time of application"* above *"children who live outside the catchment area who have brothers and sisters in attendance the academy"*. The objector states that the arrangements for admission in September 2017 contravenes paragraph 1.8 of the Code as *"it would indirectly disadvantage children from particular social groups who are unable to access nursery provision"*.
5. The objector expresses the view that the arrangements will make parents of non-catchment children who have older children already in attendance at the school feel *"duty bound"* to take their younger children to the nursery provision. The objector goes on say that if parents do not want their children to attend the nursery provision they are decreasing their chances of gaining a place at the school because children who have attended the nursery will have a higher priority. The objector thinks this will *"split"* families with established sibling links to the school whilst giving higher priority to other children with no sibling in attendance at the school.

Background

6. The school is an academy primary school for 3 to 11 year olds in Wakefield. It became part of a multi- academy trust in 2013. The trust at that time was the Wakefield Diocesan Academy Trust (WDAT) and has since changed its name to the Enhance Trust. Despite the original link with WDAT, the school does not have a religious designation. The school has a nursery provision which is described as the Lower Foundation Stage. This is an established part of the school and is run by the school. The published admission number (PAN) for reception (YR) is 30 and the nursery has 52 part time places. The school is oversubscribed for YR with 38 applications placing it as first preference in the admission process for September 2016. The number on roll at the school is 246 and it has a capacity of 236. A consultation process on the new arrangements took place between 9 November 2015 and 20 December 2015 and the governing body determined the arrangements on behalf of the trust at a meeting on 27 January 2016. The oversubscription criteria can be summarised as:
 - a. Looked after and previously looked after children.
 - b. Siblings of children who live in the catchment area.
 - c. Other children who live in the catchment area.
 - d. Other children who have attended the Academy's Lower Foundation Stage at the time of application.
 - e. Siblings of children who live outside the catchment area.
 - f. Any other children by distance.

The fourth criterion is new and was introduced by the school for September 2017.

7. In the last three years the school has been consistently oversubscribed. In each of these years children have been admitted to YR under criteria a, b and c only. This means that no out of catchment area children have been admitted to the school in the past three years.
8. In 2014 there were 42 children who were attending the nursery who were entitled to apply for a reception place by virtue of their age; of these 27 were admitted. In 2015 the figures were 34 eligible with 27 admitted and in 2016 there were 29 eligible of whom 24 were admitted.

Consideration of Case

9. In its response to the objection the trust said that it believed the addition of the new criterion did not contravene 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, or a child with a disability or special educational needs,*

and those other policies around school uniform or school trips do not discourage parents from applying for a place for their child."

10. The trust said that the change was made following a review of existing admission patterns and taking into account the views of parents from outside the catchment area who wanted their children to attend the school. The trust stated that it made the change to make the academy more inclusive and more attractive to the communities it serves. It went on to say that the new priority will strengthen links with families and help to secure a continuous and stable education for pupils as attendance at the nursery will secure attendance at the school. It suggests that the new criterion will provide reassurance for parents of pupils attending the nursery and will provide additional stability for the pupils as it allows academy staff to establish good relationship with the pupils and parents.
11. A copy of the minutes of the meeting of the governing body at which the arrangements were determined were sent to me. These show that the Headteacher explained that the new criterion had been added as it *"recognised the problems of siblings attending different schools, especially those who live outside the school's catchment area"*. This implies that there are children living outside the catchment area who attend different *"schools"* from their siblings at the school. The trust states that all children with older siblings at the school choose to attend the nursery and therefore the Headteacher's statement must refer to children who attend the nursery but whose older siblings attend a different school.
12. The Trust is adamant that it could find *"no example of an outside of catchment area pupil who had a sibling at the school who did not voluntarily attend the lower foundation stage and therefore all pupils in this category have been admitted."* This may well have been the case prior to September 2014 but for the past three years no out of area children have been admitted and this must include any children who live out of the catchment area and who have a sibling in the school. In addition, the previous oversubscription criteria provided priority for children living outside the catchment area and with a sibling in the school and there was no mention in the criteria of priority admission of nursery children. The priority for children who live outside the catchment area and have a sibling at the school has now been lowered to below that given to any child who lives outside the catchment area and attends the nursery. The school has made the decision to place attendance at the nursery as a higher priority than siblings at the school for those living outside the catchment area. The positioning of these criteria (i.e. priority for nursery children above priority for out of area siblings) means that if in 2017 there are places available once catchment area demand has been met, priority for these would be for children who have attended the nursery, making it less likely that any places would be available to out of catchment siblings.
13. The trust concludes by stating that it cannot think of an example where a younger child with an older sibling at the school has not been admitted to the school. The Trust says it is *"struggling to understand why a parent would send an older child to Sandal Magna and then choose not to send a younger child to lower foundation stage – if this was going to be the case we would*

expect the parent to be looking to find an alternative place for the older child.”

14. The Code does not explicitly prohibit using attendance at a nursery as an oversubscription criterion. It does give specific permission in paragraph 1.39B for oversubscription criteria to include such priority for a restricted group of children attending a restricted type of pre-school provision; *“Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium or the service premium who: a) are in a nursery class which is part of the school; or b) attend a nursery that is established and run by the school. The nursery **must** be named in the admission arrangements and its selection must be transparent and made on reasonable grounds.”*
15. Criterion four of the oversubscription criteria does not give preference for the categories of pupil premium pupils identified in paragraph 1.39B but covers all those children who have attended the nursery. The objector believes that the criterion contravenes paragraph 1.8 because it would indirectly disadvantage children from particular social groups who are unable to access nursery provision. I have received no evidence of this but the positioning of the criteria above the out of area siblings leads me to test the fairness of the arrangements against paragraph 14 of the Code which states that: *“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. Although it is part of the school it is important to record that the nursery does not constitute a ‘school’ as defined by the Act and therefore the priority for admission from the nursery cannot be considered on the basis of the nursery being a named feeder school as provided for in paragraph 1.15 of the Code. *“Admission authorities may wish to name a primary or middle schools as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”*)
17. I have noted above the trust’s statement that it struggles to understand *“why a parent would send an older child to Sandal Magna and then choose not to send a younger child to lower foundation stage”*. In fact, there are many reasons why a parent may choose not to send a child to a particular nursery even if an older sibling is at the school of which the nursery is part. They may have other arrangements for childcare within the family or employment or they may choose not to send their child to nursery on educational grounds; they may also not send them to nursery because of the cost of transport or uniform. In this case, the families may choose to send their pre-school children to more local provision. These would be entirely valid and reflect also the fact that nursery provision is not compulsory. A parent may have good reasons for choosing a different or no nursery and yet wish their child to attend Sandal Magna from YR. I find the trust’s statement that if a parent does not choose to send a younger child to its nursery that *“we would expect the parent to be looking to find an alternative place for the older child”* perplexing in this context. I also consider that the trust’s approach could place inappropriate pressure on families to send their children to the nursery

so that they may have an enhanced chance of gaining a place in YR. If, as in the previous three years, only catchment children are admitted this would mean that these children would not be admitted to YR even if they have attended the nursery.

18. The introduction of the new criterion reinforces the trust's stated view that all siblings of children in the school who live outside the catchment area should attend the nursery if their parents wish they should subsequently attend the school. I consider this to be unfair to those families who have an older child at the school and would like the younger sibling to join him or her but who do not, for whatever, reason wish their younger child to attend the nursery.
19. The school is currently oversubscribed and in the past three years no out of area children have been admitted. If, in the future, places are available for any out of catchment then the introduction of the new criterion means that it is likely that these places would be taken up with children from the nursery provision. In 2014, 15 children did not move from the nursery into YR, in 2015 the figure was seven and in 2016 it was five. If the historic pattern of admission continues it is unlikely that the number of available places would be sufficient to accommodate all the nursery children should they apply. The conclusion is that it is very unlikely that any out of area siblings would be admitted unless they had also attended the nursery.
20. All the children who have been admitted in the last three years have lived in the catchment area and their priority for admission is, rightly, above the new criterion. Not all children who applied and who lived in the catchment area were admitted in any of the previous three years. This determination is concerned only with criteria for out of area children who either do or do not attend the nursery and may have siblings at the school. Out of area families seeking admission to the school are dependent on places being available after all catchment children have been admitted. The introduction of the new criterion as a priority over out of area children with a sibling attending the school, prioritises children who attend the nursery and would decrease the priority for those families with younger children who do not attend the nursery but with older children who attend the school. I am therefore of the view that the introduction of the new criteria above children living outside the catchment areas but with a sibling in the school, would be unfair as it would apply pressure to these families to send their younger children to the nursery as failure to do so would decrease their chances of subsequently gaining a place for the sibling. This would inevitably lead to the younger child (who has not attended the nursery) attending a different school. The objector suggests that this would 'split families' and it would certainly mean that families would have siblings attending different schools; a situation which the Headteacher was concerned about when he spoke to the governors and which I consider unfair.
21. I have concluded that the positioning of the fourth oversubscription criterion above out of area children with a sibling in the school is unfair and contrary to paragraph 14 and I therefore uphold the objection.

Summary of Findings

22. The Code specifically permits schools to use attendance at a nursery as an oversubscription criterion in a limited range of circumstances. None of those circumstances is met in this case so I tested the criterion against the Code's requirement for fairness in paragraph 14. I have concluded that the positioning of the new criterion above children who have siblings in the school is not fair. I therefore uphold the objection.

Determination

23. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for Sandal Magna Community Academy acting on behalf of the Directors of the Enhance Academy Trust previously known as the Wakefield Diocesan Academies Trust, Wakefield.

24. 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: 21 October 2016

Signed:

Schools Adjudicator: Ann Talboys