



## **DETERMINATION**

**Case reference:** ADA2978

**Objector:** Ickleford Parish Council

**Admission Authority:** The Hitchin Boys' School Academy Trust

**Date of decision:** 4 September 2015

### **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 for Hitchin Boys' School for admissions in September 2016.**

**I have also considered the arrangements in accordance with section 88I(5) of the Act and have found there are other matters which do not conform with the requirements relating to admission arrangements in the ways 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 make any remaining revisions to its admission arrangements by 18 December 2015, the end of the autumn term.**

### **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 Ickleford Parish Council (the objector) about the 2016 admission arrangements (the arrangements) for Hitchin Boys' School (the school). The objection raises issues related to the clarity of the oversubscription criteria, and the transparency and fairness of the admission process which is managed by Hertfordshire County Council (the local authority) on behalf of the school.

### **Jurisdiction**

2. The terms of the academy agreement between Hitchin Boys' School Academy Trust (the academy trust) and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the governing body on behalf of the academy trust which is the admission authority for the school on this basis.

3. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this objection. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

4. In considering these matters 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 form of objection sent by the objector on 30 June 2015 and further correspondence in the period up to 5 August 2015;
- b. a copy of the 2016 determined arrangements downloaded from the local authority's website;
- c. the local authority's response to the objection including 2015 admissions data and a map of secondary schools in the Hitchin area;
- d. the school's response of 14 July 2015;
- e. a copy of the school's funding agreement;
- f. further responses from the local authority in the period 23 July to 10 August 2015; and
- g. a copy of the revised arrangements dated 25 August 2015.

5. I arranged a meeting with the objector, and representatives of the school, Hitchin Girls' School (the subject of a similar objection) and the local authority on 13 August 2015 (the meeting). Correspondence was also submitted after the meeting as a result of my requests for further information and clarification, and this has been copied to the school, the local authority, and the objector as appropriate. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

### **The Objection**

6. The objection regards whether or not the arrangements comply with the Code, which I summarise as follows:

- i. the arrangements are not clear and it is not easy for parents to understand how places would be allocated (paragraph 14);
- ii. there is insufficient information about the allocation of places including how proportionality is calculated with respect to parish places; and
- iii. the fairness of the allocation process to parishes, particularly the use of distance rather than random allocation (paragraph 1.8).

## Other Matters

7. In reviewing the arrangements as a whole I noticed that the sixth form arrangements, maintenance of the waiting list, and the random allocation process appeared to contravene the requirements of the Code.

## Background

8. The school converted to be a state-funded, independent academy school for boys aged 11 to 18 years on 1 January 2013, replacing the predecessor school of the same name which ceased to be a maintained community school on that date. The funding agreement confirms that this non-selective school has a planned capacity of 1032 boys including 240 places in the sixth form. On its website, the school says it provides *“a comprehensive and traditional single-sex school education which is both highly academic and rooted strongly in its community. Our motto is per ardua ad alta which means striving for excellence.”*

9. The priority area for the school is based on the following towns/ parishes/ unparished areas: Baldock, Codicote, Graveley, Hexton, Hitchin, Holwell, Ickleford, King’s Walden, Knebworth, Langley, Letchworth Garden City, Lilley, Offley, Pirton, Preston, St. Ippolyts, St. Pauls Walden, Weston, Wymondley. Places are allocated to each parish/unparished area or town in proportion to the number of applications made, and this is known as proportionality.

10. The published admission number for Year 7 is 165. The arrangements explain that if there are more Year 7 applications than the 165 places available, then after children with a statement of special educational needs or an education, health and care plan that names the school have been admitted, the remaining places will be prioritised according to the oversubscription criteria summarised below:

**Rule 1** Children in public care (children looked after) and children who were looked after;

**Rule 2** Children for whom it can be demonstrated that they have a particular medical or social need to go to the school;

**Rule 3** Children who have a sibling at the school at the time of application, unless the sibling is in the last year of the normal age range of the school;

**Rule 4** Children who live in the Hitchin Parish. If, under proportionality, fewer than 80 places would be available to boys living in Hitchin, the school will allocate 80 places to children whose permanent home address is in the parish of Hitchin.

If there are more than 80 applications, places will be allocated:

- i. to boys for whom it is their nearest Hertfordshire maintained school or academy that is non-faith and non-partially selective and makes provision for children of the relevant gender;
- ii. the tiebreak will be those that live closest to the school.

If fewer than 80 places are allocated, the balance will be added to the places available to applicants from the rest of the priority area and distributed under rule 5 and 6;

**Rule 5** Children who live in the priority area by parish, on a proportional basis. Those for whom it is their nearest Hertfordshire maintained school or academy that is non-faith, non-partially selective and makes provision for children of the relevant gender, (if more children qualify under rule 5 than places, the tiebreak would be those that live closest to the school);

**Rule 6** Any remaining places available to a parish/unparished area or town. Places will be allocated on a random basis;

**Rule 7** Children who live outside the priority area. Places will be allocated on a random basis.

Places allocated on a random basis is based on the principle that every child who has expressed a preference for the school will be allocated an individual random number once their name has been entered onto the local authority's admissions database. If a final tie breaker is needed, *"this will be random."*

11. The school is one of three schools operating in a sixth form consortium. The sixth form arrangements state that the school will admit up to 30 external students with at least five GCSE passes at Grade C or above, including English and mathematics. If the school is oversubscribed, priority will be given to:

i) Children looked after or previously looked after; and then

ii) Students with the highest total GCSE points score.

### **Consideration of Factors**

12. The objector explained in the objection and clarified later in the meeting that the issues raised in the objection had been brought to the attention of Ickleford Parish Council by parents who had been concerned with the admission arrangements for 2015. As the 2016 arrangements were the same as those for the 2015 admission year, the objector decided to submit the issues as an objection to the 2016 arrangements.

13. The first matter of concern to the objector is that the admission arrangements are not clear and it is not easy to understand how places are allocated in the priority area. In its response of 14 July 2015, the school explained that *"the local authority administers the admissions process."*

14. In its response of 13 July 2015, the local authority said *"the arrangements for Hitchin Boys ... (concerning parish proportionality) have been in place since 2007. The arrangements are fundamentally the same (except for different priority areas) for... other single sex schools in the county. Whilst the arrangements are quite complex, they are no more so than the arrangements in place for many other schools that admit children from a wide area and therefore need arrangements with a greater degree of nuance than, for example, coeducational schools that prioritise pupils simply on the basis of distance."*

15. At the meeting on 13 August 2015, the objector said it was difficult to understand the arrangements, particularly how places were allocated to Hitchin, how the number of places was calculated for the other parishes in the priority area, and how unallocated parish places were redistributed. The objector said *"it is not clear*

*how the minimum of 80 places for Hitchin children in rule 4 ... affects the calculation of proportions.*" The objector referred to the 2015 admissions data provided by the local authority and questioned why more than 80 places had been allocated under rule 4 to boys living in the Hitchin parish.

16. The local authority stated in the response of 23 July 2015 that *"the published admission arrangements do not describe the parish of Hitchin as being "capped" at 80 or there being a maximum of 80 places available."* In the meeting the local authority explained further that the school is very oversubscribed and because of pressure on places a minimum of 80 places was allocated to boys living in Hitchin regardless of the number of places that would have been assigned to the area under proportionality. However, as the parish was also included in the proportionality calculations, this was why more than 80 places had been allocated to boys living in the Hitchin parish. The school and the local authority accepted that it was not clear in the arrangements that 80 places was the "minimum" allocation of places to the Hitchin parish and that extra places to Hitchin may also be allocated from the parish proportionality calculation and agreed to clarify the wording of rule 4 of the oversubscription criteria within two weeks of the meeting.

17. The Code at paragraph 1.10 states that *"It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances."* I accept that the governing body, as the admission authority, has asked the local authority to administer the admissions process, but the determination of the admissions arrangement is the responsibility of the admission authority. As such, the Code at paragraph 14 requires 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*

18. It seems to me that the arrangements are complex, and as such, it may be difficult for parents to look at the arrangements to assess the likelihood of their child being allocated a place at the school. It has also been accepted by the school and the local authority that the wording of rule 4 of the oversubscription criteria needs to be clarified. I therefore uphold the first part of the objection as the arrangements lack clarity, in breach of paragraph 14 of the Code.

19. I acknowledge that since the meeting at the school on 13 August 2015 the local authority and the school have worked together promptly to improve the clarity and transparency of the arrangements. The revised introduction now says clearly that *"if the school receives fewer applications than there are places available all applicants will be admitted."* Rule 4 has been revised and now states that *"a maximum of 80 places will be allocated under this rule and the parish of Hitchin will not benefit from any places redistributed from other parishes in the priority area."* Rule 5 has also been amended by the insertion of the statement that *"any unused places are reallocated to parishes to remain as near to the originally established proportions as possible. This is achieved by considering each place to be redistributed in turn and assigning it to the most under allocated/least over allocated parish."* The "Notes" section has also been amended to add further clarity.

20. The second part of the objection is that insufficient information is provided about the allocation of places and how parish proportionality is calculated. The objector said that *“the actual calculation of the allocation of places is not transparent. Hertfordshire County Council do not make available full information on how they have calculated places making it impossible for parents to understand how the allocation was made. In particular, it is not clear what happens when the calculated proportions result in more places in a parish than are required for offers.”* The objector also said that *“it is not clear which applications are used in the calculation of proportions. We believe that all applications are used including those where the school is not the first choice.”*

21. The school explained in its response of 14 July 2015 that *“the local authority applies the methodology that they use for all other single sex ... and provide full information to parents if requested. It is a complex calculation.”* The local authority said that it always provides the parish proportionality calculation in its composite prospectus known as the “Moving On” booklet which, for the 2016 arrangements, will be published on 1 September 2015. In the response of 13 July 2015, the local authority confirmed that all applications to the school are used in the parish proportionality calculation, not just those putting the school as first preference, as *“to do otherwise would be a breach of the Code (introducing conditionality) and, for individual admission authorities, impossible to implement because ranking information is not shared before allocations are undertaken. The explanation included in the admission booklet states ‘the total number of applicants living within each parish are counted. These are all on time applicants and include children qualifying under higher rules.’ All families in Hertfordshire have four preferences regardless of where they live. Whether those families choose to use all four preferences is a matter of individual decision making and circumstance.”*

22. The local authority included details of the parish proportionality calculation with its response of 13 July, and explained the calculation in the meeting on 13 August 2015, including when fractions of a place are rounded down or up in the calculation. The local authority suggested that it may be possible for this more detailed explanation to form part of the school’s determined arrangements in the future and resolved to consult on this matter with the governing body and with the other single sex schools in the authority’s area as soon as possible. I acknowledge the local authority’s stated commitment to work on a model calculation for the school to append to its arrangements.

23. The objector said that *“using all applications in the calculation of proportions is not fair. Some of the priority areas have three or more schools to choose from, and in these areas some parents will put Hitchin Boys’ as their third or fourth choice. This means that these areas get a higher proportion than areas with only two schools to choose from so children from these areas are more likely to get a place.”* In the meeting, the objector asked further questions about the admissions data, and about specific parish allocations. From the discussions in the meeting it became apparent that this part of the objection related to the process by which places are allocated. In the meeting I explained that my role as adjudicator is to consider whether or not the arrangements comply with the Code and the law relating to admissions, but not the detail about matters of process. Therefore further consideration of this aspect of the objection is beyond my jurisdiction.

24. The third matter of concern to the objector was the fairness of the allocation process to parishes, particularly the use of distance rather than random allocation. The objector said that the use of distance from the nearest Hertfordshire school in rule 5 is not fair as *“all children for whom this rule applies live at a distance from the schools so it would be fairer to use a random basis.”*

25. In its response of 13 July 2015, the local authority said it was understandable that some parents would dispute the “fairness” of the allocation process, usually when their child has not been allocated a place. *“However the Code states that admission arrangements must be reasonable, clear, objective and procedurally fair. The use of distance in these circumstances clearly meets the requirements of the Code.”* The local authority referred to the 2015 admissions data to explain that *“under parish the first children prioritised (in each parish as relevant) are those for whom it is their ‘nearest school’. Given that these children are prioritised because of their ‘nearness’ to the school, it would seem almost perverse to ignore that distance when allocating places.”*

26. In its response of 14 July 2015, the school said that *“in the case of rule 5, boys for whom Hitchin Boys’ is their nearest school are given priority. For those for whom it is not their nearest school, the allocation is random. The use of nearest school to prioritise applications is consistent with both the local authority criteria for coeducational school admissions and the operation of parish proportionality rules for the six other single sex schools in Hertfordshire that have adopted the county council’s arrangements.”*

27. The Code at paragraph 1.13 permits distance to be used as an oversubscription criterion provided that the arrangements clearly set out how distance will be measured, how the “home” address will be determined and the point in the school from which all distances are measured. As the arrangements clearly define distance in compliance with paragraph 1.13, the use of distance in prioritising places is lawful. The Code at paragraph 1.10 states that *“it is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”* Furthermore, I consider that parents are more likely to be able to assess the chances of their child being allocated a place based on distance rather than a random allocation process. Accordingly, I am persuaded that the use of distance in the oversubscription criteria is fair, and complies with paragraph 1.8 of the Code. I do not uphold this aspect of the objection. I acknowledge that since the meeting the school has worked promptly with the local authority to improve further the explanation of how distance will be measured.

28. The objector was also concerned about the fairness of the process itself by which places at this academy school are allocated but as explained above, matters relating to process are beyond my jurisdiction.

### **Other matters**

29. In reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my power under s88I of the Act to review the arrangements as a whole for

compliance with the Code. I raised with the school the aspects below which appeared to me to contravene the Code and could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to comply with the Code, and agreed to note the progress in my determination.

30. Rules 6 and 7 of the oversubscription criteria involve places being *“allocated on a random basis”* and the final tie breaker states *“this will be random.”* The school agreed to work with the local authority to amend the terms “random basis” and “random” to avoid giving the impression that places would be allocated “ad hoc” and to add that the random allocation process will be supervised by someone independent of the school, to comply with the Code at paragraph 1.35. I acknowledge that the revised arrangements say that *“Hertfordshire County Council will undertake the random allocation process independently on behalf of the school.”*

31. There is no mention in the arrangements of how the waiting list will be maintained. Paragraph 2.14 of the Code requires that the *“admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”* I acknowledge that there is now a section in the revised arrangements explaining how the waiting list (known as the continuing interest list) will be maintained but to comply fully with paragraph 2.14 it must be made clear that the waiting list will be maintained *“until at least **31 December** of each school year of admission.”*

32. The second oversubscription criterion in the sixth form arrangements prioritises students with the highest total GCSE points score. However, this is a form of selection by ability which is not permitted by paragraph 1.9(d) of the Code. Footnote 20 to paragraph 1.9 explains that there is a general restriction on selection by ability. Only designated grammar schools or schools with partially selective arrangements which already had such arrangements in place during the 1997/98 school year are permitted to continue to use selection by ability. The school accepted that a new, second criterion would be required and agreed work with the local authority and the other two schools in the sixth form consortium to address this matter by 18 December 2015 which is the end of the autumn term.

33. External applicants to the sixth form are required to complete an application form. However, the form does not comply with the Code as follows:

- i. The requirement for applicants to provide reasons for their choice of subjects, and to provide information about their choice of university and career does not comply with the Code at paragraph 2.4 and must be removed from the application form as this information is not required to operate the oversubscription criteria;
- ii. Similarly, the request for information about extra-curricular interests is not required to operate the oversubscription criteria and must be removed;
- iii. Either the applicant or a parent may be expected to sign the form, but both signatures must not be required.



34. At the time of writing this determination, the form available online has not yet been amended to comply with the Code.

### **Conclusion**

35. The admission arrangements are complex and some aspects required further clarification. I uphold the first part of the objection because the arrangements lack clarity and therefore contravene paragraph 14 of the Code.

36. The use of distance as an oversubscription criterion is clearly defined and complies with paragraph 1.13 of the Code. As parents are more likely to be able to assess the chances of their child being allocated a place based on distance rather than a random allocation process, the use of distance in the oversubscription criteria is fair and complies with paragraph 1.8 of the Code. I do not uphold this aspect of the objection.

37. For the reasons stated above I partially uphold the objection to the arrangements determined by the governing body for the academy trust of Hitchin Boys' School for admissions in September 2016.

38. In addition, while I was reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my power under s88I of the Act to review the arrangements as a whole for compliance with the Code. I acknowledge that the local authority and the school have worked together promptly to improve the clarity and transparency of the arrangements.

### **Determination**

39. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined for Hitchin Boys' School for admissions in September 2016.

40. I have also considered the arrangements in accordance with section 88I(5) of the Act and have found there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

41. 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 make any remaining revisions to its admission arrangements by 18 December 2015, the end of the autumn term

Dated: 4 September 2015

Signed:

Schools Adjudicator: Ms Cecilia Galloway