

DETERMINATION

Case reference: ADA 2404, 2405 and 2411

Referrer: The Independent Schools Council (ADA 2404), Westbourne School (Sheffield) (ADA 2405) and two parents (ADA2411).

Admission Authorities:

In respect of admissions in September 2013: Sheffield City Council for High Storrs School, King Ecgbert School, King Edward VII School and Silverdale School; and the governing bodies of All Saints Catholic High School, Forge Valley Community School, Notre Dame Catholic High School, Sheffield Park Academy, Sheffield Springs Academy, and Tapton School.

In respect of admissions in September 2014: Sheffield City Council for High Storrs School and King Edward VII School; and the governing bodies of All Saints Catholic High School, Forge Valley Community School, King Ecgbert School, Notre Dame Catholic High School, Sheffield Park Academy, Sheffield Springs Academy, Silverdale School and Tapton School.

Date of decision: 18 June 2013

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for sixth forms at maintained and academy schools in Sheffield for September 2013 and September 2014. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) of the Act the adjudicator's decision is binding on each of the admission authorities. The School Admissions Code requires the admission authorities to revise their admission arrangements as quickly as possible.

The referral

1. The admission arrangements for the sixth forms of maintained schools and academy schools in Sheffield for September 2013 (the arrangements) have been brought to the attention of the Schools Adjudicator as a result of the submission of objection forms by The Independent Schools Council on 1 March 2013, by Westbourne School on 11 March 2013 and by two parents on 12 April 2013. These forms raised an objection to the sixth form admission arrangements of Sheffield community schools, which are said by Sheffield City Council (the local authority, the LA) to be the arrangements which apply to ten secondary schools in the city. The status of these schools at the time when the arrangements should have been determined was: four were

community schools - High Storrs School, King Ecgbert School, King Edward VII School and Silverdale School; one was a foundation school - Forge Valley Community School; three were academy schools - Sheffield Springs Academy Sheffield Park Academy and Tapton School; and two were voluntary aided schools – All Saints Catholic High School and Notre Dame Catholic High School. The status of some of these schools when the arrangements for September 2014 should have been determined had changed. All Saints Catholic High School, King Ecgbert School, Notre Dame Catholic High School and Silverdale School had become academy schools. The relevance of the changes in relation to determining admission arrangements is explained below.

2. All three referrals are to the preference given in the arrangements to students who at the time of their application for a place in one of the sixth forms attend a Sheffield community, voluntary aided, foundation, trust school or academy. Those bringing the arrangements to the attention of the adjudicator say that the preference given to these students breaches the requirements of paragraph 1.9b of the School Admissions Code (the Code) which prohibits admission authorities from taking into account any previously attended school, unless it is a named feeder school. The parents also refer to the clarity of the way the arrangements explain how “equal preference” is given to applications for places.

3. As the referrals have brought the admission arrangements of the above schools to the attention of the Schools Adjudicator I have looked at the admission arrangements overall for admissions to the sixth form of each of these schools.

4. Having looked at the arrangements for 2013 I considered that there may be matters that do not comply with the Code and I have therefore also considered the arrangements for September 2014.

Jurisdiction

5. The LA determined arrangements for the admission of students to sixth forms in schools in Sheffield for which it is the admission authority, under section 88C of the School Standards and Framework Act 1998 (the Act). These arrangements were referred to the adjudicator on the dates given above.

6. The governing bodies of those schools which were maintained schools and their own admission authority when the arrangements for 2013 were determined, and which determined arrangements themselves, also did so under section 88C of the Act.

7. The terms of the academy agreement between the proprietors and the Secretary of State for Education require that the admissions policy and arrangements for each of the schools that are academy schools are in accordance with admissions law as it applies to maintained schools. Where the arrangements were determined by the proprietor as the admission authority for these schools, this was on that basis.

8. An objection to admission arrangements for admissions in September 2013 should have been made by 30 June 2012. I am therefore not considering the matters raised by the three referrers as objections under section 88H of the Act. However, as the arrangements have been brought to the attention of the adjudicator I am using my power under section 88I of the Act to consider the admission arrangements for September 2013. I am satisfied the arrangements have properly come to my attention in accordance with section 88I of the Act and that it is within my jurisdiction to consider them. I am also using my powers under section 88I to consider the arrangements as a whole and the arrangements for 2014 for admission to state-funded sixth form provision in all Sheffield secondary schools. For the sake of simplicity I am using “referrers” to describe those who brought the arrangements to my attention and “referrals” to describe the specific matters of concern.

Procedure

9. In considering these matters I have had regard to all relevant legislation and the Code.

10. The documents I have considered in reaching my decision include:

- a. the referrers’ emails and forms dated 1 March, 11 March and 12 April 2013;
- b. the LA’s response to the referral, supporting documents and subsequent correspondence;
- c. correspondence with each of the schools whose status meant that it was its own admission authority for admissions in September 2013, or which has acquired such status subsequently;
- d. information available from the websites of the LA and of each of these schools;
- e. confirmation of when the admission arrangements for each of the schools were determined;
- f. the wording of the funding agreements between the proprietors of academy schools and the Secretary of State for Education;
- g. copies of the minutes of the meetings at which the LA determined the arrangements, and at which those schools that were their own admission authority for admissions in 2013 delegated this function to the LA, or at which they determined the arrangements themselves; and
- h. a copy of the determined arrangements that were the subject of the initial referral and of those which apply for each of the schools for admissions in September 2013 and in September 2014.

The Referrals

11. The referral made by the Independent Schools Council on 1 March 2013 set out the oversubscription criteria which the LA adopted for admissions to the sixth forms of Sheffield Community Schools for September 2013 in a document attached to the referral entitled "Sixth Form Admission Arrangements for Sheffield Community for the 2013/14 Academic Year".

12. The referral drew attention to the priority given under these oversubscription criteria to:

"Students who are predicted to meet the general minimum entry requirements, and subject grades where applicable, and who attend a Sheffield Community, Voluntary Aided, Foundation, Trust School or Academy."

13. In the arrangements, this group of students is given the highest priority for places after looked after or previously looked after children. The referral points out that the Code, paragraph 1.9b, specifically prohibits admission authorities from taking into account a previously attended school, unless this is a named feeder school, and that the arrangements do not name feeder schools but instead give blanket priority to students who attend one type of school (i.e. those funded by the State). The referrer says that the Code's requirements are therefore being breached by the arrangements.

14. The second referral was made on 11 March 2013 by Westbourne School, a co-educational independent school for pupils aged 4 to 16 whose pupils transfer to sixth forms in other schools in the Sheffield area. The referral repeated the complaint that the determined arrangements give a higher preference to students attending a Sheffield community, voluntary aided, foundation, trust school or academy than to those attending any other school, and stated the view of the referrer that this was in breach of the requirements of paragraph 1.9b of the Code. The second referrer attached a copy of the same document describing the arrangements as the first referrer.

15. This same document was also forwarded by the parents when they referred the arrangements to the Adjudicator on 12 April 2013, saying that it had been obtained "from the internet". They too point out that the arrangements as seen in this document do not list named feeder schools. They also cite paragraph 1.9b of the Code and say that the arrangements are in breach of its requirements. They further state that the policy unfairly disadvantages children applying from the independent sector and that this breaches the requirement of the Code (paragraph 1.8) that arrangements should not disadvantage "a child from a particular social or racial group".

16. The parents believe in addition that the arrangements are unclear because they appear to conflict with the content of the document given by the LA to prospective sixth form students. This document fails to mention the oversubscription criterion about which they have complained, and so they say this renders the arrangements unclear.

17. The parents also provided me with a document, obtained directly from the authority, which is entitled "Proposed Sixth Form Admission Arrangements for

Sheffield Community for the 2013/14 Academic Year”. This is identical in content to the document described above, except that it adds a list of designated feeder schools in its section entitled “Draft Admission Oversubscription Criteria”. This list is absent from the section headed “Admission Oversubscription Criteria” in the first document, that was forwarded by all three referrers as the LA’s determined arrangements.

Other Matters

18. The admission arrangements for the sixth forms in all maintained and academy schools must comply with the requirements of the law and the Code. In addition to the requirements which apply to admissions for any age group at which pupils are normally admitted to a school, admission authorities can set academic entry criteria for their sixth forms, and if they do so these must be the same for children already on the roll of the school and for those applying for any places offered to external students (Code, paragraph 2.6).

19. I shall set out in the relevant sections below those matters not raised in the referrals concerning which I consider that the arrangements determined by the LA, or by the individual admission authorities, do not conform to these or other requirements of the Code.

Background and consideration of factors

20. The diverse pattern of types of school to which I have needed to give my attention was alluded to in the description of the referrals given above.

21. The LA’s document “A Guide for Parents – transfer to secondary schools 2013/14” lists 14 secondary schools which do not have sixth forms and eleven which do. The status of one of this latter group, Meadowhead School, is that it is an 11-16 academy school which has a partnership arrangement with a Further Education College. The school has been granted 11-18 status for September 2013, but will not admit external students to its sixth form until September 2014. Longley Park Sixth Form College, which is to be found on some lists of schools on the LA website, is not a school and its admission arrangements are not covered by the Code. Information on Longley Park’s website lists seven of the schools without a sixth form as its partner schools.

22. Of the ten schools admitting students to their sixth form in September 2013, four were community schools, two were voluntary aided schools, one was a foundation school and three were academy schools prior to 15 April 2012, when the arrangements should have been determined. By 15 April 2013, when the arrangements for admissions in September 2014 should have been determined, two schools had community status, seven were academies, and one was a foundation school.

23. Each of the referrers has stated that their objection is to the determined arrangements for the “sixth forms of all Sheffield community schools”. The document which the first referrer forwarded to me as the determined arrangements for September 2013/14 contains the following phrases:

“A minimum entry criterion of 5 A-C passes has been agreed by all seven schools”, and*

“The Local Authority in consultation with the five community schools.....”

24. On visiting the LA’s website, I found a statement that there were six community schools, two voluntary aided schools and two academy schools named for which the LA coordinated sixth form admissions. However, I could find no statement there of the admission arrangements themselves, and have been unable to do so despite repeated attempts.

25. My first concern in giving consideration to the referrals has therefore been to ascertain from the LA those schools for which it believed it had determined the sixth form admission arrangements for September 2013, and what those arrangements were. I wrote to the LA on 10 March 2013 outlining the referral and seeking responses on these issues. Consultation on the admission arrangements for sixth forms for September 2013 had taken place during the autumn term 2011. I was provided with a copy of a public notice issued at that time inviting comments on “determined” arrangements (for all age-groups) which could be accessed electronically. This notice stated, correctly, that the LA was the admission authority in respect of community and voluntary controlled schools, and that voluntary aided, academy, trust and foundation schools were their own admission authorities.

26. Nevertheless, when the LA replied on 19 March 2013, attaching a copy of the determined arrangements and the minute of the meeting of the Cabinet on 21 March 2012 at which they were determined, it stated that the arrangements applied to all ten schools (which were individually named). My request to the LA had been that it should provide me with a list of the schools to which the determined arrangements apply, including any schools which are their own admission authority if the LA believed that these had “delegated” admissions to the local authority. My understanding is therefore that the LA has operated on the basis that all those schools which are their own admission authorities (of which there were six for admissions in September 2013 – see above) had “delegated” to it the determination of their sixth form admission arrangements.

27. In view of what I had found on the LA’s website, I wrote at the same time to the six own admission authority schools for admissions in September 2013 asking them whether the determination of sixth form admission arrangements had been “delegated” and, if so, for written evidence to that effect. My letters also raised individual issues arising from the information given on the websites of these schools concerning admissions and I wrote for the same reason to schools for which the LA was the admission authority. I shall deal with the substantive points which arose from this correspondence below.

28. Of the six own admission authority schools, three confirmed that they believe that they had “delegated” the determination of their sixth form admission arrangements to the LA. All Saints Catholic High School and Tapton School have written evidence of this in the form of the minutes of governing body meetings. The third school, Sheffield Park Academy has been unable to locate this evidence. Three of the six schools told me that they have not delegated the determining of their admission arrangements to the LA

(Notre Dame Catholic High School, Sheffield Springs Academy and Forge Valley Community School).

29. Since there is evidently no shared understanding between the LA and the schools concerning the question of the “delegation” of admission arrangements between them, and since this matter is material to this determination, I have given my consideration to the effect of such a “delegation” where it is said to have taken place. Section 88(1)(a) of the Act states that the effect of an LA delegating responsibility for admissions to the governing body of a community or voluntary controlled school is that this body becomes the admission authority. The Act also states in the same section that the admission authority for a foundation or voluntary aided school is the governing body, and that for an academy school it is the proprietor of the academy. There is no provision in legislation which establishes a means for a school which is its own admission authority to cease to be such in law and for the LA to become the school’s admission authority in its place. I have examined the funding agreements of each of the schools in Sheffield which was an academy school for the purpose of determining admission arrangements for September 2013 and September 2014, and have found no statement for any of the schools which changes that position.

30. Consequently, for a school which is its own admission authority, any such “delegation” does not have the effect of making the LA the admission authority for the school. Although the LA may have agreed to act in this capacity on behalf of the school, and can consult on the arrangements on behalf of the school, the responsibility for determining admission arrangements, and for their content, lies with the body that is the admission authority in law. So, if the relevant body has not determined any arrangements, it is my view that the school does not have any lawful admission arrangements as they have not been properly determined.

31. As a result of the referrals and of the correspondence described above, I am aware of the admission arrangements for September 2013 that have been determined by the LA for those schools for which it was the admission authority, of those which have been determined by schools that were their own admission authority, and of those which the own admission authority schools which “delegated” to the LA believed to be in place. I have concluded that there are determined arrangements for admissions in September 2013 for the four community schools, namely, High Storrs School, King Ecgbert School, King Edward VII School and Silverdale School. These were determined by the LA. There are also arrangements for Notre Dame Catholic High School determined by the relevant body. The arrangements that are believed to apply for All Saints Catholic High School, Forge Valley Community School, Sheffield Park Academy, Sheffield Springs Academy and Tipton School have not been properly determined by the admission authority for the school and therefore these five schools do not have lawful arrangements for admissions in September 2013.

32. Finally, I wished to understand what arrangements had been determined, and by whom, for admissions in September 2014. I had already been told by some own admission schools that their “delegation” to the LA was on-going in nature (All Saints Catholic High School and Tipton School). I therefore wrote

to the LA, to the schools which had become their own admission authority between 15 April 2012 and 15 April 2013 (King Egbert School and Silverdale School) and to the remaining own admission authority schools (Notre Dame Catholic High School, Sheffield Park Academy, Sheffield Springs Academy, and Forge Valley Community School) asking to be provided with this information.

33. As a result of this correspondence, I have concluded, as I shall set out below, that there are determined arrangements for September 2014 for Notre Dame Catholic High School. The arrangements that are believed to apply for each of the remaining schools have not been properly determined by the admission authority for the school, which in the case of High Storrs School and King Edward VII School is the LA, and therefore none of them have lawful arrangements for admissions in September 2014.

34. I shall now consider the points raised in the referrals, starting with the complaint common to each of them concerning the priority afforded to students attending state-funded schools. I shall then discuss those substantive matters concerning the compliance of determined arrangements for September 2013 that have come to my attention, starting with the question of admission numbers. I shall then consider the implications of these matters for the arrangements which have been determined for admissions in September 2014.

A. Matters raised in the referrals

(i) the priority given to students attending certain schools

35. In its letter of 19 March 2013, the LA said that the arrangements as determined (and as set out in the copy of these which it attached to its letter) contained a list of designated feeder schools. I have referred above to the versions of the arrangements forwarded by the three referrers and to the fact that these appeared to differ in this respect. It is unfortunate that it has not been possible for me to verify independently the content of the determined arrangements, since I have been unable to find them on the LA's website that deals with admissions. However, the report received by Cabinet when it determined the arrangements, which is available from the Sheffield City Council website, contains the list of designated feeder schools. The LA has said that the version it sent to the first referrer did contain this list.

36. Both the referrers and the LA consider the existence or otherwise of a list of named feeder schools of great importance. The LA has accepted that the Code (paragraph 1.9b) forbids priority to be given to students on the basis of the previous school attended, unless such schools are designated as named feeder schools. It believes that the fact that it has listed named feeder schools (25 in total) which correspond to the community, voluntary aided, foundation, trust and academy schools in the city "is a crucial point" which means that it is operating within the requirements of the Code. I am satisfied that the arrangements as determined by the LA did contain this list. I cannot be certain however whether the list was ever made available on its website concerning admissions or in documents provided for interested parties.

37. If an admission authority gives priority for attending a feeder school or schools within its admission arrangements, the naming of the school or schools must meet the terms set out in paragraph 1.15 of the Code which states that “the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds”. It is evident to me that the list of feeder schools designated in the arrangements as included in the list approved by the Cabinet is transparent as it simply lists all the state-funded secondary schools in Sheffield City Council’s area. I must also therefore consider whether it is a selection which is made on reasonable grounds.

38. The covering report to the LA’s Cabinet on 21 March 2012 (when the arrangements were determined) quoted a response made during the consultation on the arrangements, which had raised the unfairness of the proposed priority. An explanation was provided that the oversubscription criterion had been introduced for the first time into the arrangements for 2011/12 in response to concerns expressed by parents in the city that students from outside Sheffield, or from independent schools in the city, were taking up places in sixth forms “at the expense of students attending Sheffield state schools”. The covering report stated that while the Greenwich judgement prohibited the LA from “discriminating against students who do not live in Sheffield”, that it could however give priority to those attending “a Sheffield community, voluntary aided, trust, foundation or academy”.

39. My reading of these statements is that the LA intends by the use of the priority given to students attending the listed feeder schools to ensure that if places are oversubscribed, students who have attended independent secondary schools up to that point will be offered places only after the demand from students who have attended state-funded schools has been satisfied. Paragraph 1.9l of the Code prohibits fee-paying independent schools from being named as feeder schools in admission arrangements. However, the fact that priority for places for students who attend such schools is prohibited does not provide a basis for them then to be discriminated against, which is clearly what the arrangements intend.

40. While I am not able to agree with the parents that this practice constitutes discrimination against a particular social or racial group, since I cannot easily equate attendance at an independent school with membership of such groupings, I do not believe that there exist any reasonable grounds for lower priority to be afforded systematically to students who have previously attended schools outside the state-funded sector than to those who have. The referrers have each complained that the arrangements offend against paragraph 1.9b of the Code because they say that the arrangements do not name feeder schools, but give preference to students who have attended certain types of school. I accept that the LA named feeder schools at the time the arrangements were determined. However, its purpose in doing so is clearly to afford lower priority for places at state-funded sixth forms to students moving from the independent sector or from other schools outside Sheffield. Grounds for naming schools as feeder schools for admission purposes must be reasonable, and this might be seen to be the case if for example specific cross-phase curricular collaborations existed between a school and what would necessarily be a limited group of feeder schools. The grounds in such a

case would be to afford children the benefits of that collaboration. Instead, the LA's grounds are to disadvantage children on the grounds that they have not attended a state-funded school in Sheffield. So my view is that the selection of feeder schools is not made on reasonable grounds, and that this contravenes paragraph 1.15 of the Code. For the avoidance of doubt, the listing of schools in the documents provided by the referrers which specify attendance at types of state-funded school within the LA's area contravenes the Code as it does not name individual schools, and the list of named schools as shown in the Cabinet minutes and another document contravene the Code as the choice of feeder schools is not made on reasonable grounds.

(ii) the clarity of the arrangements

41. The view expressed by the parents on the basis of the content of the document given to prospective sixth form student by the LA is set out above. This is a document provided to students in all types of school, and is entitled "Sheffield Sixth Form Schools for New Students Entry September 2013". It contains the statement: "All preferences will be considered equally, looking to offer your highest ranked school available. If there are more applications than places available, distance from home to school (straight-line measurement) will be used as the tie breaker". This document makes no mention of the previous school attended and so the parents say this variance "shows inconsistency and therefore fails to be clear and objective". The LA has not commented on this aspect of the referrals.

42. It is extremely unhelpful that the information given to prospective sixth form candidates, a copy of which I have seen is erroneous and misleading, since it misrepresents the determined arrangements. As the referrers point out, no other ranking criteria are listed in this document, and this obviously makes the process unclear for parents and for students since they are aware of the existence of the oversubscription criteria in what they understand to be the admission arrangements determined by the LA. The Code (footnote 4 to paragraph 5 of the Introduction) says that admission arrangements are "the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered." The procedures which affect whether school places are offered are the admission arrangements themselves, and it is the oversubscription criteria which admission arrangements must contain that the Code (paragraph 1.8) requires to be clear. The misrepresentation of them in another document, albeit a document published by the LA, does not in my view affect the clarity of the oversubscription criteria that are part of the determined arrangements. I cannot therefore agree with the objection raised concerning the clarity of the arrangements on these grounds, but I shall set out below the reasons why I believe the arrangement fail to achieve the standard of clarity required by the Code, nevertheless.

B. Admission Numbers

43. Sections 88D and 142 of the Act require a published admission number (PAN) to be determined for any age group at which pupils will normally be admitted to a school, as set out in paragraph 1.2 of the Code and the footnotes thereto. So while a school with a sixth form is not bound to admit new students to the school in Year 12, if it does so, in addition to oversubscription criteria there must be a PAN, which is the minimum number of places that will be available to external candidates. The purpose of this is in order that anyone considering applying for a place from outside the school can make a judgement of the likelihood of their success in the light of the arrangements and the number of available places.

44. I have been concerned to establish whether or not schools have determined and published an admission number for external admissions to their sixth forms for September 2013, since the value of even the clearest admission arrangements is compromised if the number of available places is not known to prospective students and their parents. The LA informed me in its letter of 19 March 2013 that it acknowledges that “the Code of Practice” requires an admission number, but that schools had found this difficult in previous years and therefore no such numbers were determined for September 2013. Instead, “there is an agreed working number between the schools and the Admissions Officer”. However, either from the correspondence described above, or by visiting individual school websites, I have obtained evidence that two schools for which the LA is the admission authority have in their own view established a clear admission number, as have three of the schools that are their own admission authority. One more school in each category has described a limit to sixth form admissions using words that do not equate to the setting of an admission number (for example: “the optimum number of admissions is 200”, which is a reference to the desired size of the sixth form, not to the number of places available to external applicants).

45. My view is that there has been a failure to determine a PAN by the LA in respect of the following schools for which it was the admission authority for admissions in September 2013: King Egbert School and High Storrs School. It should have done so also for Silverdale School and for King Edward VII School, but says that it did not, even though the schools themselves are of the opposite view. This nevertheless remains a matter for the LA as the admission authority for these two schools, and so the admission numbers set by Silverdale School and by King Edward VII School have no validity. The failure to determine admission numbers, as set out here, renders the arrangements determined by the LA for September 2013 in breach of the Code and unclear. The LA told me on 19 March 2013 that if the Adjudicator finds that this omission breaches a requirement of the Code, then this would be rectified for admissions in 2014/15.

C. Publication

46. Regulation 5 and Schedule 2 of the School Information (England) Regulations 2008 state that local authorities are required to publish by 12 September each year a composite prospectus which contains the determined

admission arrangements for each state-funded school in the local authority area. This information must contain the admission arrangements that apply “to each relevant age group at the school (including ages above and below compulsory school age)” (Schedule 2, paragraph 14). This requirement therefore applies to sixth form admissions no less than to those at Year 7. The Code, paragraph 1.47 also requires admission authorities to publish determined arrangements on their website as soon as they have been determined, and in the case of a local authority, this duty applies in respect of the schools for which it is the admission authority. One of the main reasons the Code makes this publication a requirement is in order that there is a known place where a definitive version of admission arrangements to schools can always be found.

47. When the LA responded to my request to be sent a copy of the determined arrangements, it made no reference to their publication on its website, and no reference to any composite prospectus of school sixth form admission arrangements. I have exhaustively examined the LA website and have not found the determined arrangements for sixth form admissions in September 2013. Neither is there any composite prospectus for admissions to Year 12, although one exists for admissions to Year 7.

48. My view is that the LA is in default of the requirement to publish admission arrangements set out in paragraphs 1.47 and 1.51 of the Code in respect of admissions to school sixth forms.

D. Other Matters

49. I have also raised with schools that are their own admission authority matters which it has appeared to me may constitute breaches of the requirements of the Code in the arrangements which they have determined themselves (where they have done so), or in material published on their website.

1. Schools determining their own arrangements

(i) Notre Dame Catholic High School

50. The school wrote to me on 28 March 2013 informing me that it has not “delegated” the determination of the admission arrangements to its sixth form to the LA, and that it determined those for September 2013 at a meeting of its governing body on 9 May 2012. I accept that the school has determined arrangements, but it has contravened the Code at paragraph 1.46 as the arrangements were not determined by 15 April 2012.

51. Contained within the arrangements sent to me by the school is a sentence which says that the minimum of 75 places available to external students will be allocated “based on the criteria set out in the Admissions and Oversubscription Criteria for entry to Sheffield Sixth Forms for External Students – Academic Year 2013-14”. The school’s arrangements then continue under a heading which implies that what follows constitutes those arrangements. This part of the school’s arrangements is clearly based on the LA’s determined admission arrangements sent to me by the referrers and by

the LA itself, but is not identical to them. However, it does contain the statement that the governing body of Notre Dame Catholic High School “is responsible for setting application criteria”, and says that places will be offered in a priority order which gives first priority to looked after students (but does not include previously looked after children, as required by paragraph 1.7 of the Code) and second priority to academically qualified students “who attend a Sheffield Community, Voluntary Aided, Foundation, Trust School or Academy”. No schools are named as feeder schools.

52. The sentence referring to the 75 places available to external students is the final clause in the main part of the school’s determined arrangements, and follows statements saying, firstly, that students already at the school “will be considered first for transition to Year 12”, and secondly that “students in diocesan secondary schools and Catholics from other secondary schools will have priority consideration”.

53. I wrote again to the school asking if I had correctly understood that the intention of the arrangements is that internal students and those attending diocesan secondary schools (and Catholics from other schools) are admitted and that 75 places are then available to other external students using the “Sheffield” arrangements. At the same time I sought the school’s response to my preliminary views regarding possible breaches in its arrangements of the requirements concerning sixth form admissions. I told the school that the arrangements did not appear to me to make it clear that minimum entry requirements apply equally to both internal and external candidates, and also that the Code precluded priority being given on the basis of the previous school attended, unless this were a named feeder school, and that any feeder schools must be named on reasonable grounds.

54. The school responded that the available 75 places for external students applies to all external students, and that the minimum entry requirements included in the section of the arrangements under the “Sheffield” heading applied to “all the categories”. However, I remain concerned that the arrangements do not make either point sufficiently clear, since the availability of 75 external places is mentioned only after it is stated that priority is given to students from diocesan schools, and since the minimum entry requirements appear only within the section explicitly dealing with external students. The arrangements therefore fail in my view to meet the requirement of paragraph 15 in the Introduction to the Code, which requires that admission arrangements clearly set out how children will be admitted.

55. The school responded to my other concerns by saying that there are six diocesan schools which are in fact feeder schools, and that although they are not named, there would be reasonable grounds to do so “as the school is Catholic”. The Code clearly requires that if students attending the six diocesan schools are given priority, these must be named individually as feeder schools for the arrangements to be compliant. The school also helpfully provided the number of students admitted within the different categories in the most recent year. Of 89 students admitted to the school, 20 had been from diocesan schools or admitted as Catholics. It seems to me therefore on the basis of this albeit limited evidence, that there is no attempt on the part of the school to seek to act exclusively towards other students, and that there might

therefore be reasonable grounds for the designation of the six diocesan schools as named feeder schools for the purposes of sixth form admissions. The school also re-iterated that it uses “the Sheffield common admissions policy” to decide how to offer places to external students who are not attending diocesan schools or who are admitted because of the priority afforded to Catholics. There is therefore no doubt in my mind that the school’s arrangements, which give priority as in “the Sheffield common admission policy” on the basis of the school previously attended (in the way described in the referrals and in relation to which there is no attempt in this case to designate feeder schools) are in breach of paragraph 1.9b of the Code.

56. In view of the nature of the matters which have arisen in connection with the admission arrangements of the two Catholic High schools, I have copied the correspondence for both to the diocesan authority, the Diocese of Hallam, seeking their comments. The Diocese has offered no comments to me.

(ii) Forge Valley Community School

57. The school has been a foundation school since 1 September 2011, and has confirmed that it has not “delegated” the admissions function to the LA. However, I wrote to the school on 28 April 2013 pointing out that the admission arrangements for September 2011/12 were the most recent that could be found on the school’s website and that I had previously requested sight of the minute of the governing body meeting at which the arrangements for September 2013 were determined. I asked for a copy of the determined arrangements and of the minute of the governing body decision to determine them. On 22 May 2013 the school sent me a copy of determined arrangements for September 2013 but no relevant minute.

58. Although I have not been given evidence that these arrangements were determined prior to 15 April 2012, and cannot say whether or not the requirements of the Code in this respect have been met, I have looked at the arrangements and make the following observations. The arrangements state that “the number of external places will be published in the partnership prospectus”, referring to the academic partnership with two local schools, Bradfield School and Stocksbridge High School, which are also named as feeder schools, whose students are given priority for admission to Forge Valley sixth form. An admission number forms part of the admission arrangements and should be stated as part of them. It is not sufficient to refer to it only in a prospectus, and so my view is that the arrangements are deficient in this respect, and that they contravene what the Code requires.

59. The arrangements also give priority to students who attend “a Sheffield Community, Voluntary Aided, Foundation, Trust School or Academy” over students who do not. They therefore give priority on the same basis as the arrangements determined by the LA, and for the reasons discussed above, breach the Code. The school is also in breach of the requirement set out in paragraph 1.47 of the Code that arrangements are published on the school’s website. The absence from the school’s website of any determined arrangements has been raised with the school, but no reply has been received on this point.

60. The school's failure to provide evidence that it has lawfully determined its arrangements and the breaches of the Code in the arrangements that it has provided lead me to the conclusion that the school failed in its responsibility to determine lawful admission arrangements for September 2013. If, despite the school's inability to respond positively to my request for evidence that the arrangements had been properly determined the correct procedures had in fact been followed, then the arrangements provided as the determined arrangements contravene the Code.

iii) Sheffield Springs Academy

61. The school became an academy school on 1 September 2006. It told me that it had not "delegated" admissions to the LA for 2013/14. The minute of the governing body meeting sent to me by the school at which it was stated that the arrangements for 2013/14 were approved was dated 15 April 2013, the last date for the determination of the arrangements for September 2014. I have not received evidence of when the arrangements for 2013 were determined, and so cannot say whether or not the requirements of the Code in this respect have been met. Nevertheless I have looked at the arrangements and make the following observations. The arrangements for 2013/14 with which I have been provided were not those determined by the LA. In them, the term "admission number" has been incorrectly applied to describe the intended size of the school's Year 12. A minimum number of places available for external admissions is stated, which is the information needed by students and their parents, but this is not correctly described as the admission number, and so this requirement of the Code would not have been met. No determined arrangements have been published on the school's website, which is a breach of the requirements set out in paragraph 1.47 of the Code. The school has failed to provide evidence that the arrangements were lawfully determined and I must conclude that this did not take place. If the correct processes were in fact followed, the arrangements provided to me are nevertheless in breach of the Code's requirements.

2. Schools "delegating" the determination of arrangements

62. My jurisdiction is limited to making a judgement on determined admission arrangements. However, although I cannot make any judgement concerning the compliance or otherwise of the arrangements that the schools believe, erroneously, to be in place, I believe it may be helpful if I indicate what view I would have taken, had what I have seen constituted determined arrangements for the school, in each case.

(i) All Saints Catholic High School

63. The school informed me in an e-mail dated 28 March 2013 that it delegated the determination of its sixth form admission arrangements to the LA as long ago as 2002. It provided me with minutes of governing body meetings from 2004, 2005 and 2007 which it says are "relevant", and which show that the school has clearly been acting on this understanding. The school's website gives within its Sixth Form Prospectus for 2013/14 an admissions policy which is the policy the LA determined for community schools, in the form provided by the referrers. That is, it does not have a list of

named feeder schools. This part of the “arrangements” therefore, in this form, would contravene the requirements of the Code at paragraph 1.9b.

64. This prospectus also contains a document entitled “The Application Procedure”, which requests external applicants to indicate support for the school’s Christian ethos, and to indicate whether they are baptised Catholics. I asked the school whether these matters had any bearing on the admission of students to sixth form places, since the Code (paragraph 1.9a) forbids the use of information that is not part of oversubscription criteria when allocating places. The school’s reply has been only that support for the Christian ethos does not form part of the admissions process, and it has not responded on the matter of whether Catholicity has any bearing on admissions to its sixth form.

65. It would of course be permissible for a school designated as having a religious character to give priority on the grounds of religion when making admissions. The school exercises this freedom in its admission arrangements for Year 7. However, the school tells me that it has “delegated” the determination of its sixth form admission arrangements to the LA, and although it remains the admission authority in law, my view is that it cannot at the same time give priority to those of the Catholic faith itself. Since the arrangements which it believes have been determined on its behalf by the LA give no priority to Catholic students, I am unclear as to why applicants for places in the school’s sixth form are asked if they are baptised Catholics, and no explanation has been provided as to how this information might be used. Paragraph 1.9a of the Code forbids admission authorities from placing any conditions on the consideration of an application for a school place other than those which are stated in the oversubscription criteria, and paragraph 2.4 forbids requests for additional information unless it has a direct bearing on decisions about oversubscription criteria. Neither support for the ethos of the school, nor the Catholicity of students plays any part in the admission arrangements which the school says it is using, and this information should therefore not be requested. No clear admission number is contained within the arrangements (the school has referred in correspondence only to a number “last agreed” with the LA). The school needs to determine admission arrangements that comply with admission law and the Code without delay.

(ii) Sheffield Park Academy

66. The school had become an academy school on 1 September 2006. It believes that “delegation” has taken place but has been unable to locate documentary evidence of this when asked to provide it concerning the arrangements for September 2013. The school had not published admission arrangements for its sixth form on its website but uses those determined by the LA, which are discussed above. The school needs to determine admission arrangements that comply with admission law and the Code without delay.

(iii) Tapton School

67. The school opened as an academy school on 1 April 2012. It has provided me with a governing body minute dated 8 June 2011 stating that the Chair had advised the governors at that time that “.....there is no plan for the school to become its own admission authority. The Academy will remain within LA

process” I am therefore clear that the school believes that delegation has taken place, and that this is a permanent situation. The school’s website sets out the oversubscription criteria used for admissions, which are those forwarded with the referrals. Had these been properly determined arrangements they would, in this form, contravene the requirements of the Code at paragraph 1.9b. No admission number is contained within the arrangements. The school needs to determine admission arrangements that comply with admission law and the Code without delay.

E. Determined arrangements for September 2014

68. The following schools have become their own admission authority for the first time in respect of admissions for September 2014: King Ecgbert School, which opened as an academy on 1 October 2012; and Silverdale School, which became an academy school on 1 January 2013. I shall deal with each in the relevant section below. One further school, Meadowhead School, which is also its own admission authority, will admit external students to its sixth form for the first time in September 2014.

1. Arrangements determined by the LA

69. The LA has told me that it has no formal record of the arrangements for September 2014 having been determined, since this has been dealt with at officer level within the authority. There had been no consultation, since the intention was to make no changes to the arrangements which had applied for 2013/14. The LA says that it therefore believes that the arrangements have been determined by officers and that they are the same as for September 2013. The Code states (paragraph 1.46) that all admission authorities must determine admission arrangements by 15 April every year, even if they have not changed from previous years and a consultation has not been required. The admission authority for the two community schools is defined in the Act and regulations as the local authority. I have been given no evidence that the determination of admission arrangements has been delegated to officers in the LA, and my view on the information which I have been given is therefore that the LA has failed in its duties in this matter, and that it has not determined admission arrangements for September 2014 for those schools for which the LA is the admission authority namely High Storrs School and King Edward VII School. Had they been properly determined, the arrangements would have suffered the same deficiencies as those for September 2013.

70. I have been informed that the admission arrangements have been “confirmed” on the LA website, which I have therefore visited, but I cannot find any new information in the section concerning admissions to sixth forms beyond that already described, and nothing therefore concerning arrangements for September 2014. From the evidence which I have, I must conclude that the LA also remains in breach of the requirements of paragraph 1.47 of the Code, although this must in practice be a technical breach only, given my view that there are no determined arrangements. The LA needs to determine lawful arrangements without delay and meet all of the requirements of the Code.

2. Schools determining their own arrangements

(i) Notre Dame Catholic High School

71. The school became an academy school on 1 July 2012. It informed me after that date that it has not delegated its admission arrangements to the LA, and wrote to me on 8 May 2013 in response to my request that it inform me about the position concerning the arrangements for September 2014, telling me that there had been no change from the September 2013 arrangements, concerning which my view is set out above. The arrangements for September 2014 therefore suffer from the same defects as those determined for September 2013, as set out above. The governors need to determine lawful admission arrangements without delay and meet the requirements of the Code concerning publication.

(ii) Sheffield Springs Academy

72. My request for information concerning the arrangements for September 2014 was responded to on 24 May 2013, and took the form of the minute of a governing body minute dated 21 May 2013 referring to the arrangements for 2013/14 and a further copy of the same. The school has given me no evidence that it has determined arrangements for September 2014, in spite of a specific request to do so, and I must therefore take the view that it is in breach of paragraph 1.46 of the Code. As the school has not provided evidence that it has determined lawful arrangements for admission in September 2014 it needs to take action to comply with the Code without further delay.

(iii) Silverdale School

73. Silverdale School told me on 3 May 2013 that no admission arrangements for September 2014 had yet been determined, but that “we anticipate they will be the same arrangements”. Those for 2013 were of course the arrangements determined by the LA, since the school was formerly a community school. The school is clearly in default of the requirement of paragraph 1.46 of the Code concerning the determination of arrangements and needs to take action without further delay to determine lawful arrangements that comply fully with the Code.

(iv) Forge Valley Community School

74. When I approached the school for information concerning the arrangements for September 2013, I asked also to be provided with evidence that admission arrangements had been determined for September 2014, and for a copy of these or a statement that they were unchanged from the 2013 arrangements. When the school replied to me on 22 May 2013, it sent a copy of a minute of the governing body meeting of 28 September 2012 which alluded to the admission arrangements for 2014/15 needing no substantive change, and I take this to mean that the school intends that the arrangements for September 2014 should be those that the school told me were determined for September 2013, but for which I have seen no evidence of their lawful determination, as discussed above. The school remains in breach of

paragraph 1.47 of the Code concerning the publication of admission arrangements, and action is needed without delay to meet all the requirements of the Code and to determine lawful arrangements for admissions in September 2014.

3. Schools “delegating” the determination of admission arrangements

(i) All Saints Catholic High School

75. The school became an academy school on 1 July 2012. The correspondence which I have had with it concerning its arrangements for September 2013, described above, took place after this date and I was told by the school on 28 March 2013 that it had delegated the admissions function to the LA “since September 2003”, and therefore for admissions in September 2014. My view is that no arrangements have been lawfully determined for the school, since it is its own admission authority and cannot delegate this function. No determined arrangements are to be found on the school’s website. The governing body needs to determine lawful arrangements without delay and meet all of the requirements of the Code.

(ii) Sheffield Park Academy

76. I wrote to the school asking whether there was written evidence of any decision concerning “delegation” of arrangements for September 2014, but none has been forthcoming. The school sent me “proposed” sixth form admission arrangements for September 2014 and correspondence which showed that these had been discussed by the governors, but in which the headteacher advised that there was a duty to “review” these before April 15. This correspondence also advises the governors that the proposed arrangements “closely reflect(s) the LA’s own policy”. From the evidence which I have seen, I am therefore now in some doubt as to whether the school has “delegated” the determination of its arrangements as it has said. The arrangements forwarded to me as the proposed arrangements for September 2014 are in all important respects the same as those determined by the LA for admissions in September 2013, however. My view concerning these is set out above. The school has not provided clear evidence that it has determined its own arrangements for September 2014 and no determined arrangements are to be found on its website. Without delay, the school needs now to determine lawful admission arrangements and comply with all of the requirements of the Code.

(iii) Tapton School

77. As described above, the school incorrectly believes that it can rely on the LA for the determination of its arrangements for September 2014. I am of the view that these arrangements have not been properly determined, since the school is its own admission authority. No determined arrangements are to be found on its website. The school needs to determine lawful arrangements that comply fully with the Code without further delay.

(iv) King Ecgbert School

78. King Ecgbert School wrote to me on 7 May 2013 and said that it had “maintained the LA” as its admissions authority for its sixth form, and did not provide a copy of any arrangements determined by the school, as it had been requested to do. Rather, it stated that “we adhere fully to the LA principles for admissions to Sheffield school sixth forms”. I had asked to see the minute of the meeting when any decision concerning delegation was made, but this was not provided. I have therefore seen no formal evidence of “delegation” to the LA, which would in any event have been unlawful. The governing body minute forwarded to me ratified “about 50” as the admission number for external students for September 2014. My view is that this is not an appropriately determined admission number, as this must specify the actual number of places that are available. My view is that no arrangements for the school have been appropriately determined. No determined arrangements are to be found on its website. The school needs to determine lawful arrangements and to comply fully with the requirements of the Code, without further delay.

Conclusion

79. I have set out above the reasons why I am of the view, with regard to the referrals made to the Schools Adjudicator concerning the arrangements determined by the LA for September 2013, that

(i) I agree with all three referrers that the priority given to students attending a Sheffield community, voluntary aided, foundation, trust school or academy, which were the types of school described and also set out as a list of named schools in the draft admission arrangements which were approved by the Cabinet on 21 March 2012, contravenes the requirements of the Code, and

(ii) I agree with the parents who referred the arrangement that they are not clear.

80. I have set out above the reasons why I am of the view that other aspects of the arrangements contravene the Code:

(i) the LA failed to set an admission number for King Ecgbert School, High Storrs School, Silverdale School and King Edward VII School, as required by the Code (paragraph 1.2);

(ii) the LA has not met the requirements concerning the publication of determined arrangements, in breach of paragraph 1.47 and 1.51 of the Code;

(iii) for Notre Dame Catholic High School, the arrangements do not make sufficiently clear how the available 75 places are allocated, and are in breach of paragraph 15 of the Introduction to the Code. They fail to give preference to previously looked after children, as required by paragraph 1.7 of the Code. They also give preference to students attending a Sheffield community, voluntary aided, foundation, trust school or academy, and give further preference to students who attended diocesan schools, and in neither case are any feeder schools designated, in breach of paragraph 1.9b of the Code;

(iv) two schools, Forge Valley Community School and Sheffield Springs Academy have failed to determine admission arrangements lawfully and to publish admission arrangements, in breach of paragraphs 1.46 and 1.47 of the Code, and

(v) three schools, All Saints Catholic High School, Sheffield Park Academy and Tapton School state that they have “delegated” admissions to the LA, and have not determined admission arrangements for their sixth forms. Each is therefore in breach of the requirement set out in paragraph 1.46 of the Code.

81. The process of making admissions to sixth forms in state-funded secondary schools in Sheffield for September 2013 is well advanced. Conditional offers have already been made and responded to. The process of making final offers will follow the publication of GCSE results in August. While admission authorities are required to revise their arrangements as quickly as possible in the light of a determination by the Schools Adjudicator, the date after which it is possible to do so meaningfully for admissions in September 2013 is long since passed. I would however expect all the admission authorities whose arrangements have been found not to comply with the requirements of legislation and the Code to review the relevant aspects of them and seek wherever possible to act to mitigate their negative effect on students. Admission authorities, appeals panels and applicants for a sixth form place that are refused a place will need to take the decisions in this determination into account in the event that an unsuccessful applicant makes an appeal for a place.

82. It is a different matter concerning arrangements for admissions in September 2014. There is no reason why each of the admission authorities should not now take steps to ensure that arrangements are determined which are compliant with what the Code requires – for those schools that are their own admission authority, determining those arrangements themselves.

83. I have set out above the reasons why I have come to the view in respect of arrangements for admissions in September 2014 that

(i) the LA is in breach of the requirements of the Code, paragraph 1.46, that admission arrangements be determined by 15 April 2013. This means that High Storrs and King Edward VII School have no determined arrangements for September 2014;

(ii) Notre Dame Catholic High School has determined the same arrangements as for September 2013. Those for September 2014 therefore suffer from the same deficiencies;

(iii) six schools, All Saints Catholic High School, Forge Valley Community School, King Egbert School, Sheffield Park Academy, Sheffield Springs Academy and Tapton School have not determined admission arrangements for their sixth forms and a seventh, Silverdale School, has told me itself that it has not done so. Each is therefore in breach of the requirement set out in paragraph 1.46 of the Code, and

(iv) neither the LA, nor any of the eight schools which are their own admission authority for admissions in September 2014, has published determined admission arrangements for their sixth form on their websites, and are in breach of the requirement to do so set out in paragraph 1.47 of the Code.

Determination

84. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for sixth forms at maintained and academy schools in Sheffield for September 2013 and September 2014. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

85. By virtue of section 88K(2) of the Act the adjudicator's decision is binding on each of the admission authorities. The School Admissions Code requires the admission authorities to revise their admission arrangements as quickly as possible.

Dated: 18 June 2013

Signed:

Schools Adjudicator: Dr Bryan Slater

ANNEX

Secondary Schools in Sheffield with sixth forms

School	2013	2014
All Saints Catholic High	Voluntary Aided	Academy
King Egbert	Community	Academy
Notre Dame Catholic High	Voluntary Aided	Academy
Sheffield Park	Academy	Academy
Sheffield Springs	Academy	Academy
Silverdale	Community	Academy
Tapton	Academy	Academy
Forge Valley	Foundation	Foundation
High Storrs	Community	Community
King Edward VII	Community	Community
Meadowhead	n/a	Academy