

## **DETERMINATION**

**Case reference:** ADA/002543

**Referrers:** 1. The Independent Appeals Panel for Oxfordshire  
2. A member of the public

**Admission Authority:** The Academy Trust for Europa School UK

**Date of decision:** 5 September 2013

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Europa School UK for admissions in September 2013 and September 2014. I determine that they conform to the requirements of the legislation and the School Admissions Code in relation to the matters referred to me and other matters.**

### **The referral**

1. The admission arrangements (the arrangements) of Europa School UK (the school), an academy free school in Culham, Oxfordshire for pupils aged 4 - 18, for September 2013, have been brought to the attention of the Office of the Schools Adjudicator (OSA) in an email dated 16 July 2013. The referral questioned whether the aspects of the oversubscription criteria based on proximity to four “nodal points” were clear as required by the School Admissions Code (the Code). A separate email referral dated 1 August 2013 questioned whether the priority given in the oversubscription criteria to children who had a sibling attending the neighbouring European School Culham breached the requirements of the Code relating to the naming of fee-paying independent schools as feeder schools.

### **Jurisdiction**

2. The terms of the academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for the academy free school are in accordance with admissions law as it applies to maintained schools, subject to provisions which allow the proprietor to determine arrangements that give priority in the school’s oversubscription criteria to children whose parents have permitted Founders status for the first year of operation only and provisions relating to children and siblings of children who attend the neighbouring European School Culham . These arrangements were determined by the proprietor, that is, the academy trust for Europa School UK, which is the admission authority for the school, on that basis.

3. The person making the second referral has provided me with their name and address and has asked to remain anonymous. I am satisfied that I should consider the matters raised. Although the referrals were too late for an objection to be made to the arrangements for 2013, I am satisfied that it is within my jurisdiction to consider the arrangements under section 88I of the Act.

4. Having reviewed the arrangements for 2013 in relation to the matters brought to my attention, I have also used my power under section 88I of the Act to consider the arrangements as a whole and to consider the arrangements for 2014.

### **Procedure**

5. In considering the arrangements for admissions in September 2013 and September 2014, I have had regard to all relevant legislation and to the Code.

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

- the referral from the independent appeals panel (the panel) for Oxfordshire dated 16 July 2013;
- the referral from a person whose identity is known to me dated 1 August 2013;
- a copy of the determined arrangements for 2012 and 2013 which were those agreed with the Secretary of State and annexed to the funding agreement between the Secretary of State and the school;
- a copy of the determined arrangements for 2014 approved by the governing body on 21 March 2013;
- the school's responses of 23 July and 8 August 2013 to the referral and supporting documents, including the Free School Consultation Report produced by E C Harris in 2012;
- email comments from Oxfordshire County Council, the local authority (LA) for the area dated 30 July 2013.

7. I have also taken account of information received during the meeting I convened at the school on 19 August 2013 which was attended by the school's Principal, the chair of governors and a representative of the LA.

### **The Referral**

8. The referral by the panel related to the admission arrangements with particular reference to the oversubscription criterion giving priority to

*“Children who live closest to the four nodal points set out... Each nodal*

*point has a different weighting, these being: Nodal Point 1 – 50%, Nodal Point 2 – 30%, Nodal Point 3 – 10%, and Nodal Point 4 10%.”*

9. The panel considered that while the explanation of the nodal points was satisfactory if one understood how it was implemented, anyone reading it without any further explanation might not understand it as there was nothing in the policy that made its application absolutely clear, particularly in relation to any late allocations when places become available. The referral went on to say that :

*“the panel had established that, when a place becomes available, the School notes which nodal point the child who has left comes under. The School then allocates a place from the waiting list to a child in a particular criterion based on the nearest distance measured to the same nodal point as the child who had just left. The panel established that the School operated the waiting list in this way to maintain the percentage of the nodal point as specified in the policy.*

*The panel found that this process of allocating places when places become available was extremely complicated and, in effect, it meant that there were four waiting lists in operation which all depended on the particular nodal point of the child who had left.*

*Therefore, whilst the criteria do not appear to be in direct contravention of paragraph 1.9 of the School Admissions Code 2012, they are not as “clear” as paragraph 1.8 would indicate is necessary. “*

10. The second referral from a person whose identity is known to me concerned the oversubscription criterion which gives priority to “children who, on the date of admission, will have a sibling attending the neighbouring state funded European School Culham, with whom the educational site is shared between 2012 – 2017.” The referrer stated that she understood that Culham was possibly a fee paying school and she was not sure if naming such a school as a feeder school contravened the Code.

## **Background**

11. The school opened in September 2012 as an academy free school. It shares its site with another school – Culham European School (Culham) - which is due to close in 2017. It is worth saying a little about Culham as its history and circumstances are relevant to the establishment of Europa School UK and, indeed, to the referrals.

12. Culham is one of a number of educational establishments across Europe controlled jointly by the Governments of the member states of the European Union. In all these countries they are legally regarded as public institutions. Their mission is to provide a multilingual, multicultural and multid denominational education for nursery, primary and secondary level pupils. The schools cater particularly for the children of staff of European

Union institutions.

13. Culham's website explains that:

*“the school’s intergovernmental Board of Governors took the decision in 2007 to phase out the school ....by 2017. This has to happen because for years the school has had insufficient numbers of children of parents either working for the European Commission or seconded by it to work at the Joint European Torus nuclear fusion project established over 30 years ago at the Culham Science Centre. As such, the European Union is no longer able to continue subsidising the education at the school.”*

14. Against this background, a proposal was made to establish an academy free school on the Culham site. Those involved in this project included parents of children at Culham. The proposal was approved and the Europa School UK opened in September 2012. The school has a published admission number (PAN) of 56 for admissions to Year R. It was oversubscribed for 2012 and 2013.

15. The school's oversubscription criteria can be summarised as:

A looked after and previously looked after children;

B children with a sibling at the school;

C children with a sibling at Culham (until 2017 only);

D children who live closest to one of four nodal points – each of which relates to a set of GPS co-ordinates as follows:

1 – the school's reception (50% available places)

2 – Oxfordshire County Council's City Hall (30% available places)

3 – junction of Grove Park Drive and Station Road (10% available places)

4 – junction of Purley Rise and Beech Road (10% available places).

16. In September 2012, the school admitted children into Reception (YR), Year 1 (Y1) and (Y2). From 2013 until 2016 the school will have one relevant age group and that will be YR. This means that come September 2017, there will be pupils in each year group up to and including Year 7 (Y7). In 2017, as noted above, Culham will close. At that point, children at Culham, who will by then be in Year 8 or above, will be able to transfer to the school. This is specifically provided for in paragraph 10 of Annex B to the school's funding agreement which states: “In 2017, the Academy will allow all relevant children on roll in the European School Culham to transfer to the Academy in September 2017.”

17. From 2017 onwards, the school also expects to admit some students from outside the school into Y12. It will thus have two relevant age groups from 2017 and they will be YR and Y12 and a PAN will be required for each of these year groups.

18. Paragraph 10 of Annex B also reflects and recognises the link between Culham and the school by providing that: “Until the closure of the European School Culham in 2017, the Academy will adopt oversubscription criteria that give priority to children with siblings at the European School Culham.”

### **Consideration of Factors**

19. I will deal first with the referral about the use of the nodal points. It is the case that the use of four nodal points with three different weightings makes the arrangements more complicated than if, say, the arrangements gave priority after looked after and previously looked after children and siblings simply on the basis of distance from the school. However, the key tests which all admission arrangements must meet as set out in paragraph 14 and paragraph 1.8 of the Code are that they be fair, clear and objective. While arrangements that are extremely complex are likely to be unclear and hence unfair, it is not the case that the simplest arrangements will always be fair. A catchment area, for example, may be very simple indeed, but if it is drawn to exclude a group of children for whom a school may be a natural option, then it is likely to be unfair. Admission authorities when determining their arrangements - and adjudicators when investigating objections and referrals – must consider whether the arrangements are fair in the circumstances of the particular school and whether they are clear and objective.

20. I am satisfied that the arrangements for admission to the YR of the school – including the use of the nodal points - are objective. There is no scope for discretion in their application and the question of where a child lives is purely a matter of fact. I have considered carefully whether the arrangements are fair and clear. Having read the school’s arrangements, I consider that the operation of criterion D is clear and clearly explained. The locations of two of the nodal points (the school and Oxfordshire City Hall) are very straightforward. I think that it would be helpful if the school were to provide a map with their admission arrangements to show the location of the other two points. This might especially assist those new to the area. However, I do not consider that the omission of such a map makes the arrangements as they stand unclear.

21. I have gone on to consider whether the inclusion and operation of criterion D are fair in the circumstances of the school.

22. The school provided me with copies of the report of the consultation exercise carried out by EC Harris on behalf of the proposers of the school in spring 2012 as part of the process of establishing the school. It is evident that the admission arrangements, including the oversubscription criteria and the use of nodal points were key aspects of the consultation. The conclusion to

the report noted that, within a context of significant support for the proposed school, two issues relating to the admission arrangements had been raised by a number of those consulted. One of these was about the perceived arbitrary nature of the admission nodes. The report recommended that the admission nodes be reviewed in the autumn of 2013.

23. The school explained in its initial response to the referral that the nodal points criterion was devised and set up to ensure that the school could be accessible to a number of communities. At the meeting, the school added that it had changed one of the nodal points from that originally proposed (a point in north Oxford) to the City Hall which is in the centre of Oxford in response to points made in consultation. The school also confirmed its commitment to reviewing the operation of the nodal points in autumn 2013 and, more generally, to keeping the operation of the arrangements under review. The LA for its part supports the use of the nodal points. The LA also commented on the school's willingness to work collaboratively and constructively with the LA. The LA stated that it works closely with the Europa School to apply its oversubscription criteria, in particular the measurement to the four nodal points and said that it had no doubt that the school was thorough in ensuring that places are allocated fairly under the criteria.

24. The referral arose from the panel's concerns about the operation of the waiting list. Paragraph 2.14 of the Code requires that, "Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic 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. Priority **must not** be given to children based on the date their application was received or their name added to the list." This means that, for any school, a child's position on a school's waiting list can go down if a place is sought for child who has a higher claim under the oversubscription criteria (such as a looked after child).

25. I have set out above the panel's view of how the waiting list works. The school does not agree entirely with the panel's description. Rather, its view is that has one waiting list. When a child leaves and a place thus becomes available, the school applies its oversubscription criteria to all those on its waiting list and the place is offered to the child who is the highest ranked. If all the children on the waiting list are applying under criterion D, then the school will identify the nodal point which is furthest below the required proportion of places as set out above. The child who lives nearest to that nodal point will then be offered the place.

26. To the extent that a child's position on a waiting list can be affected by the subsequent application of a child who satisfies a higher oversubscription criterion or indeed in the case of a criterion based on distance from the school a child who lives nearer, the school is no different from any other. It is more unusual to find a school where the position of a child on the waiting list can change depending on who leaves the school. However, the fact that arrangements are unusual does not make them unclear or unfair. The school

explained to me that it keeps a record of what proportion of pupils have been admitted on the basis of proximity to each nodal point and that, when a place arises and there is no applicant on the waiting list under one of the higher priority criteria, that place will be offered to the applicant living closest to whichever nodal point is furthest adrift from the percentage set out in the arrangements.

27. I consider that the arrangements are not difficult to understand and that they are clear. I do not agree with the views of the referrer that the arrangements for the waiting list are not clear. I find that the school's waiting list arrangements conform to the requirements of paragraph 2.14 of the Code and that they are fair. I note that the school recognises that its arrangements are unusual and that it is committed to keeping them under review. I note also that the LA is supportive of the school and has expressed its confidence in the arrangements.

28 I turn now to the second referral which relates to the priority within the oversubscription criteria given to children whose siblings attend Culham.

29 The referrer's email states that the referrer believes that Culham may be a fee paying school and that naming such a school may be contrary to the prohibition in the Code on naming fee-paying independent schools as feeder schools. Paragraph 1.9 I of the Code does indeed state that fee-paying independent schools may not be named as feeder schools.

30 The Code refers to feeder schools in paragraph 1.9 I and in paragraph 1.15. The term "feeder school" is not itself defined in the Code. However, it is commonly understood to refer to schools from which children usually proceed to another school when they leave having reached the upper age limit. Thus – as the Code suggests at 1.15 – a primary or middle school may be a feeder for a secondary school. The only children whose own attendance at Culham will afford them any priority to join Europa School UK are those who will join in 2017 when Culham closes. I do not consider that this makes Culham a feeder school for Europa School UK. In any case, and as noted above, this provision was included in the admission arrangements for the school approved by the Secretary of State when he entered the funding agreement for the school. It is open to the Secretary of State to agree derogations from the Code for academies and there have been other cases where provision has been made for children from closing fee-paying independent schools to transfer to new free school academies.

31 The referrer also cited the priority given for admission to the school of those with siblings at Culham. This is covered in paragraph 1.12 of the Code which provides: Some schools give priority to siblings of pupils attending another state funded school with which they have close links (for example, schools on the same site or close links between tow single sex schools). Where this is the case, this priority must be set out clearly in the arrangements."

32 It is beyond doubt that there are close links between the two schools. They share the same campus and some of the same facilities. They are both bilingual schools. Moreover, as noted above, the admission arrangements in the funding agreement make specific provision for priority for admission to the school to be given to those with siblings at Culham.

### **Conclusion**

35. With regard to the referrals I have concluded that the arrangements of the school conform with the legislation relating to admissions and the Code.

### **Determination**

36. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Europa School UK for admissions in September 2013 and 2014. I determine that they conform to the requirements of the legislation and the School Admissions Code in relation to the matters referred to me and other matters.

Dated: 5 September 2013

Signed:

Schools Adjudicator: Ms Shan Scott