



DETERMINATION

Case reference: ADA002593

Objector: Lincolnshire County Council

Admission Authority: The Greenwood Dale Foundation Trust

Date of decision: 18 June 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for admission to Year 7 in September 2015 determined by the Greenwood Dale Foundation Trust for Skegness Academy, Lincolnshire.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements for admission to Year 12 do not conform with the requirements relating to admission arrangements.

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

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of the Schools Adjudicator (OSA) by the school admissions manager on behalf of Lincolnshire County Council, (the objector), which is the local authority (LA) for the area, about the admission arrangements (the arrangements) for September 2015 for Skegness Academy (the school), an academy school for pupils aged 11 – 18 for September 2015. The objection is to the priority for admission at Year 7 (Y7) given to children who have attended any of 14 feeder primary schools named in the school's arrangements.

Jurisdiction

2. The terms of the funding agreement between the Greenwood Dale Foundation Trust which is the academy trust for the school (the 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. These arrangements were determined by the trust, which is the admission authority for the school, on that basis. The

objector submitted the objection to these determined arrangements on 15 April 2014. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's letter of objection dated 15 April 2014 and subsequent emails dated 30 April 2014 and 9, 21 and 28 May 2014 and attachments to those emails;
 - b. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;
 - c. the funding agreement between the Secretary of State for Education and the trust dated 25 August 2010 and Annex B to the funding agreement which is concerned with admissions;
 - d. maps of the area identifying relevant schools;
 - e. the "expression of interest" form relating to the setting up of Skegness Academy and signed on behalf of Lincolnshire County Council and the Greenwood Dale Foundation Trust in July 2009;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the trust on 7 March 2014 at which the arrangements for September 2015 were determined;
 - h. a copy of the determined arrangements; and
 - i. comments from the trust in its letters dated 28 April 2014 and 15 May 2014 and its email of 27 May 2014.

The Objection

5. The objection is to the school's use of feeder primary schools in its oversubscription criteria. The objector raises a number of concerns which can be summarised as follows:
 - a. The sum of the published admission numbers (PAN) of the feeder schools is 487 while the PAN for the school is 200. This objector believes that this means that where the school is oversubscribed a child who has not attended one of the feeder schools will be unlikely to gain a place and the objector considers that this may fail the test of fairness set out in paragraph 14 of the Code. The objector also considers that

attendance at one of the feeders may amount to a “condition” for admission to the school and thus conflict with paragraph 1.9 a of the Code; and

- b. The objector considers that in the light of local geography, the selection of feeder primaries may not be “reasonable” as required by paragraph 1.15 of the Code as some of the schools included as feeders are further away from the school than some schools which are not included as feeders.

Other Matters

6. When I reviewed the arrangements as a whole in the course of considering the objection, I noted that the arrangements for the admission of pupils into Year 12 (Y12) appeared not to conform with the requirements relating to admissions.

Background

7. Skegness Academy was established on 1 September 2010. It is a sponsored academy – the sponsor being the Greenwood Dale Foundation Trust which is the academy trust for a number of schools. The school replaced St Clement’s College, a community school which closed on 31 August 2010. The school has a PAN for Y7 of 200. The school was inspected by Ofsted in October 2012 and found to be good with outstanding leadership.

8. As was the practice at the time the school was established, Annex B to the school’s funding agreement outlined the admission arrangements which were to apply at the school, including oversubscription criteria. The arrangements gave priority after looked after children to those who had attended one of a number of feeder primary schools, followed by siblings and then distance. I have been informed by the trust that the only change made to the arrangements between the establishment of the school and the arrangements determined for 2015 was the change required to give priority to previously looked after children as well as looked after children. The arrangements for admission to the school in 2015 which included changes to the list of feeder schools were consulted on from 18 December 2013 to 12 February 2014 before being determined on 7 March 2014.

9. The school’s admission arrangements for Y7 for 2015 include the following:

“9. The Academy will first accept all pupils with a statutory right to a place at the Academy through a statement of special educational needs naming the Academy. After the admission of pupils with statements of special educational needs, criteria will be applied for the remaining places in the order in which they are set out in paragraph 10 below.

10. For this age group after the admission of children with statements of special educational need which name the Academy on the statement, the criteria are, in order:

a) Looked After children or Previously Looked After children(see definitions)*

b) A child attending one of the following primary schools, without taking the school's order in the following alphabetical list into account:

[there follows a list of the 14 schools]

c) A child with a sibling on roll at the Academy at the time of application and admission.

d) Children of staff in either or both of the following circumstances:

- where the member of staff has been employed at the Academy for two or more years at the time at which the application for admission to the Academy is made; and*
- the member of staff is recruited to fill a vacant post for which there is a demonstrable skills shortage.*

e) Other children.

In the event of oversubscription within the above criterion, preference will be given to children who live nearest the Academy as the crow flies.”

10. This is followed by a tie breaker which is the drawing of lots and a statement that the school has developed close links with the partner (feeder) schools listed and that they are all involved in its Primary Partnership programme.

11. The arrangements which applied at the predecessor school were different. These gave priority to looked after children, followed by siblings of current pupils, followed by proximity to the school.

12. I have found it helpful to compile a table showing all the schools that been listed as feeder primary schools for the school since 2010. Those in bold have been feeder schools since then and continue to be listed. Of those not in bold, two schools (Bucknall and Spilsby) have been removed from the list of feeders and four (Beacon, Great Steeping, Mablethorpe and Partney) have been added to the list of feeders for 2015.

Name of School	Listed in funding agreement as feeder school	Listed in arrangements for 2015 as feeder school	Distance from school Straight line/driving
Bucknall	Yes	No	22.403/26.818
Chapel St Leornard's	Yes	Yes	4.986/8.6.729
Friskney All Saints	Yes	Yes	8.166/9.321
Great Steeping	No	Yes	7.36/8.792
Halton Holegate (note : spelt as Hatton Holegate in funding agreement)	Yes	Yes	8.958/10.402
Hogsthorpe	Yes	Yes	5.386/6.928
Ingoldmells	Yes	Yes	3.073/4.772
Mablethorpe	No	Yes	13.397/17.274
Partney	No	Yes	9.541/10.079
Seathorne	Yes	Yes	0.979/1.858
Skegness	Yes	Yes	0.319/0.994
Spilsby	Yes	No	9.925/11.365
St Peter and St Paul	Yes	Yes	3.821/4.281
The Richmond School	Yes	Yes	0.848/1.367
(Wainfleet) Magdalen	Yes	Yes	5.081/5.679
Beacon	No	Yes –new school opening in September 2014 – will have no Y6 pupils for several years	0.164/0.429

13. The schools identified by the LA as being closer than at least one of the feeder schools are shown in the table below.

Name	Distance from school Straight line/driving
Huttoft Primary School	8.191/10.439
Wrangle Primary	11.087/12.098
Toynton All Saints	10.29/12.589
Alford Primary School	9.559/13.217
New Leake Primary School	11.233/13.322
Sutton on Sea Primary School	11.018/13.906
Old Leake Primary School	12.687/13.968
Stickney Primary School	14.173/12.743

14. A selective system for secondary education operates in the Skegness area. The LA has told me that around 25% of all pupils leaving Y6 in the area will go on to grammar school. Skegness Academy is not a grammar school and its Ofsted report notes that nearly all of its pupils were not selected for the local grammar school.

15. The school has different admission arrangements for the purposes of admitting pupils who have not previously attended Skegness Academy into its sixth form at Y12. The trust has set a PAN of 10 for Y12 for 2015. The arrangements state that following the admission of students with statements of SEN which name the Academy, the following oversubscription criteria will be used in the order given:

- a. Looked After Children or previously Looked After children
- b. Distance from home to the Academy
- c. Children of teaching staff in either or both of the following circumstances:

Where the member of staff has been employed at the Academy for two or more years at the time at which the application for admission to the Academy is made; and

The member of staff is recruited to fill a vacant post for which there is a demonstrable skills shortage.

- d. Other children.

Consideration of Factors

16. When I first reviewed the school's website in early May 2014, the

arrangements for 2015 had been published and were easy to find via the tab headed parents on the homepage. However, the arrangements for 2014 were not on the website. Paragraph 1.47 of the Code requires that admission authorities **must** publish their arrangements on their websites once they are determined and that they must be displayed there for the whole of the offer year which is the academic year in which offers for places are made. I made this point to the trust which acted promptly to reinstate the 2014 arrangements on its website.

Admission to Y7

17. The school has been well subscribed in recent years and much better subscribed than the predecessor school which had significant surplus places. It has chosen to admit a few pupils over PAN each year so that it has been able to accommodate every child who would like a place. This means both that the school has not had to apply its oversubscription criteria and that no child has been disadvantaged by the use of these criteria. However, I am concerned with the arrangements for 2015. Applications for places in 2015 have yet to be made and the school may be more heavily subscribed and not able to accommodate all who would like a place. In any event, schools are required to have arrangements which conform with the Code whether or not they are oversubscribed.

18. Giving priority to children who have previously attended particular schools is covered in the Code. Paragraph 1.9I states that fee-paying independent schools cannot be named as feeder schools. Paragraph 1.15 says that: *“admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”* I have also considered the objection against the key Code requirements in paragraph 1.8 that oversubscription criteria must be clear, objective and procedurally fair. Finally, I have considered whether the use of feeder schools in this case might amount to a condition for entry and not conform to paragraph 1.9a of the Code as suggested by the objector.

19. The school has not named any fee-paying independent schools as feeder schools and has not, therefore, breached paragraph 1.9I of the Code.

20. The feeder schools are all identified clearly in the arrangements so they are transparent and clear in the sense that one can easily see which schools are feeder schools. However, the basis on which schools have been selected as feeder schools is rather less transparent or clear. In two letters to the OSA, the trust has given different reasons for the adoption of feeder primary schools. In its letter of 28 April 2014 it said:

“When the Skegness Academy first opened in 2010 it kept the same determined admission arrangements and oversubscription criteria, including the list of partner primary schools that the former St Clement’s School had in place.

Since opening, the academy has built up strong working links with the named partner schools now listed and they are all part of a successful

Academy Primary Partnership Programme.

The two primary schools that were removed from the policy, Bucknall Primary School and Spilsby Primary School, were removed in agreement with the schools as their Year 6 pupils do not transfer to the Skegness Academy; they go to other schools nearer their area.

We added Great Steeping Primary School as we already had included Halton Hologate who are in very close proximity to Great Steeping and both schools are also part of the Academy Primary Programme. The Mablethorpe Primary Academy was added as it is part of our Trust Group and also part of the Academy Primary Partnership.”

21. The LA subsequently pointed out that St Clement’s actually had different arrangements as outlined above. The trust then said in its letter of 15 May 2014 that *“through the consultation process [for the establishment of the academy] and beyond, it became clear that the adoption of feeder schools better served the local community and better reflected the current “make up” of students applying for the previous St Clements College.”* The trust added that the LA had supported this and notes that the arrangements were approved by the Department for Education (DFE).

22. The school’s website refers to working with 17 partner primary schools. This section of the website does not give any names of partner primary schools, and 17 is neither the current number of feeder schools listed nor the number that was previously listed. I asked the trust for its comments. In its email of 27 May 2014, it provided me with a list of the 17 schools. Twelve of the schools on this list are included in the list of current feeder schools set out above including three of those added this year. The list also includes one of the schools (Spilsby) removed from the feeder list this year. Two of the schools which have been feeder schools since 2010 and continue to be so are not included on this list. The trust has explained that the references on the website are out of date and that some aspects of this programme *“encompasses a wider area of Skegness and schools, not just the listed partner primary schools, hence the number listed.”*

23. I have not found the reasons given by the trust for the selection of its feeder primary schools clear or convincing. As noted above, the trust said in its letter of 28 April that: *“Since opening, the academy has built up strong working links with the named partner schools now listed and they are all part of a successful Academy Primary Partnership Programme.”* Beyond this assertion, I have not been provided with any evidence that the school has a particularly close relationship with all of the feeders that is in any way qualitatively different from the relationships it has with other primary schools.

24. The objection stated that some of the schools selected as feeder primary schools were further away from the school than eight other primary schools and that this might not be reasonable. I have included in the tables above the distances between the school and the feeder schools and the other schools listed by the LA. There are two primary schools that are further away from the school than the eight schools listed by the LA. These are Bucknall (one of the original feeders which the school has now removed from its list of

feeders and which is 22 miles away as the crow flies or 27 miles away by driving distance) and Mablethorpe (one of the schools added to the list for 2015 and which is 13 miles away as the crow flies or 17 miles away by driving distance). Spilsby (the second school removed from the list) is further away than one of the schools listed by the LA on both measures of distance and further away from another as the crow flies. Partney (one of the schools added to the list for 2015) is further away from one of the schools listed by the LA as the crow flies.

25. The greatest number of first preference applications for the school have come from pupils who have attended the following schools:

School	PAN	Number of first preference applications for Skegness Academy for September 2014	Number of places offered	Distance from Academy Straight line/driving
Skegness	90	67	67	0.319/0.994
Richmond School	60	30	32	0.848/1.372
Seathorne Junior	60	35	44	0.979/1.858
Ingoldmells	20	18	19	3.073/4.772
Chapel St Leonards	30	18	22	4.98/6.729
(Wainfleet) Magdalen C of E	30	15	15	5.081/5.679

26. All of these schools have been included in the list of feeder schools for Skegness Academy since it opened. They are six of the seven schools closest to the school (leaving aside the Beacon as it has not yet produced any Year 6 pupils). The other school within the seven nearest is St Peter and St Paul which has a PAN of 30 and from which between 7 and 2 children have progressed each year to Skegness Academy.

27. No other school – whether named as a feeder or not – has yielded more than three first preference applications for Skegness in any of the past three years. It is the case that some of these schools are very small, so three pupils could represent a significant proportion of their Year 6 leavers. For those schools with PANs below 20, over the past three years 44 per cent pupils from Hogsthorpe have put the school as first preference. No more than 10 per cent of pupils from any of the other small schools have chosen

Skegness Academy over the past three years.

28. Other children will have opted to go to one of the area's other secondary schools, which for most of them will be considerably nearer than Skegness Academy.

29. The trust has told me that it has removed Bucknall and Spilsby as *"their year 6 pupils do not transfer to the Skegness Academy; they go to other schools nearer their area"*. It is true that no pupil has moved from Bucknall to the school in the past three years. According to the information provided by the LA one Y6 leaver from Spilsby transferred to the school in 2102.

30. The trust has told me that its reasons for adding Great Steeping, Partney and Mablethorpe to the list of feeders were that they were part of the Academy Primary Partnership programme and, in the case of Great Steeping close to Halton Hologagte which was already a feeder and, in the case of Mablethorpe, part of the same trust. I have already commented on the partnership and concluded that I do not consider being part of the partnership to be an adequate basis for a primary school to be a feeder school in this case. I do not consider that the fact that Mablethorpe is part of the same academy trust to justify its inclusion given its distance from the school and the number of other primary schools that are nearer.

31. The LA has questioned whether it is reasonable to have so many feeder schools that the combined PAN at 487 is more than twice the number of places available at the school. It is also significantly more than the combined PAN of the schools which were included as feeders when the school first opened in 2010 which was 406. On the basis that around 25% of the children at the feeder schools might progress to the area's selective grammar schools, that would leave about 365 children. Clearly, they could not all be accommodated at Skegness Academy as 200 is only 55% of 365. There is thus a real possibility attendance at one of the feeder schools would be a necessary condition for securing a place at the school but that this alone would not give a child a particularly good chance of gaining a place there. Rather, the school would have to discriminate among applicants who had attended feeders on the basis of its distance based criterion which is applied when the school reaches and exceeds its PAN in any of its oversubscription categories. It follows that no other local child who had not attended one of the feeder schools would be able to gain a place at the school.

32. Even if all the schools listed as feeder schools were part of a close and exclusive partnership which included no other primary schools, I do not think it is reasonable to have so many feeder schools that the total number of Y6 pupils who might seek a place at the school is almost double the Y7 capacity of the school. It is, of course, rather more than double if the numbers who might be expected to go to a selective school are included. Moreover, these figures do not take account of the fact that the school would have to admit any pupils with statements of special educational needs that named the school and any looked after or previously looked after children whether or not they had attended a feeder school.

33. I have accordingly concluded that the use of so many feeder schools

with such a high combined PAN in the circumstances of this school is not reasonable as required by paragraph 1.15 of Code and that that it also amounts to conditionality and does not conform with paragraph 1.9a of the Code. The Code requires the trust to revise the school's arrangements as quickly as possible.

Admission to Y12

34. The admission arrangements for Y12 are set out in the background section above. I consider that there is a logical flaw in the arrangements. The arrangements give priority (after looked after and previously looked after children) on the basis of distance (criterion b) and then to children of staff (criterion c) and finally other children (criterion d).

35. There is no descriptor of criterion b. so all possible applicants will fall within criterion b as it will be possible to establish for all such applicants the distances at which they live from the Academy. In these circumstances, criteria c and d seem superfluous as those falling within these criteria will fall within the higher criterion b or criterion a.

36. I asked the trust for its comments. In response it noted my points and asked if I would suggest re-arranging the criteria. It is not part of my jurisdiction to give advice on arrangements and I cannot do so. As they stand, the arrangements are not clear and hence do not conform to the Code. The Code requires the trust to amend the school's arrangements as quickly as possible.

37. The trust uses a Supplementary Information Form (SIF) for admission of pupils previously at other schools to Y12 at the school. When I reviewed the form I was concerned that it requested information that was not necessary to apply the school's oversubscription criteria or that was specifically proscribed by the Code. The Code states at paragraph 2.14 that admission authorities can only use SIFs to request "additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** ask...for any of the information prohibited by paragraph 1.9 [of the Code] or for [a range of other information which is set out in paragraph 2.4]."

38. The school's form does not ask for any of the information listed in paragraph 2.4 of the Code. However, it does seek information which is prohibited by paragraph 1.9 of the Code and for information which is not necessary to apply the school's oversubscription criteria.

39. The form asks:

- a. For details of attendance in Year 11
- b. applicants to explain why they wish to study their chosen subjects and to set out their career plans;
- c. For two referees "in a professional capacity, ie tutor, teacher or head of year";

d. For predicted grades in subjects currently being studied.

40. Paragraph 2.6 of the Code provides that admission authorities can set academic entry criteria for their sixth form and if they do so they must be the same for internal and external students. It is accordingly permitted for the form to seek details of predicted grades which would, of course, then need to be confirmed once students had received their examination results.

41. The trust told me that the information about attendance is requested to allow the school to work out if the applicant could cope with the courses they have applied for, noting that if attendance levels are low, students may not be able to complete or cope with coursework. The trust says that information about reasons for choosing particular subjects and career plans is used to open up dialogue with applicants at the meeting held to discuss courses and to help ensure that applicants choose the right subject to support their chosen career. The trust says references can give valuable information about the student to ensure that they have chosen the right course.

42. I accept that the trust is seeking this information in order to help support and guide applicants and that it is not using it in order to decide who is to be offered a place. However, this does not mean that it is permissible for the trust to seek information prohibited by the Code. Paragraph 1.9g of the Code states that admission authorities cannot take account of reports from previous schools about children's past behaviour, attendance, attitude or achievements. The form asks specifically for details of attendance and I consider it highly likely that references will also address at least some aspects of behaviour, attitude and achievement. Of these, the only element permitted by the Code is academic achievement, if necessary, and, as noted above, that is covered separately on the form.

43. The requirement to set out the reasons for choosing the subjects they wish to study and their career plans may deter some young people from applying and is not permitted. An oversubscription criterion based on such information could not conform to the Code as it could not be assessed objectively.

44. Finally, the SIF contains a box marked for office use only which says, among other things: "Interview: Yes No". I drew the trust's attention to the prohibition in the Act on interviews and the provision in paragraph 2.7 of the Code that any meetings held to discuss options and courses for sixth form students **must not** form part of the decision process on whether to offer a place. In its response, the trust assured me that it was fully aware of the relevant requirements of the Act and the Code and said that the form would be amended accordingly.

45. The arrangements for admission to Y12 to the school do not conform to the requirements relating to admissions as set out in the preceding paragraphs. The code requires the trust to amend its arrangements as quickly as possible.

Conclusion

46. For the reasons set out above, I have concluded that the selection of feeder schools has not been made on reasonable grounds and giving priority for admission to Y7 to children who have attended the number and selection of feeder schools named in the arrangements amounts to conditionality and is not reasonable, clear or fair. Hence the arrangements do not conform with the Code.

47. I have concluded that the arrangements for the admission to Y12 do not conform with the Code. This is because the SIF asks both for information that is not necessary to apply the school's oversubscription criteria and is prohibited by the Code.

48. The Code requires the trust to revise the admission arrangements for the school as quickly as possible.

Determination

49. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for admissions in September 2015 determined by the Greenwood Dale Foundation Trust for Skegness Academy, Lincolnshire.

50. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements for admission to Year 12 do not conform with the requirements relating to admission arrangements.

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

Dated: 18 June 2014

Signed:

Schools Adjudicator: Shan Scott