

DETERMINATION

Case reference: ADA/0002286

Objector: London Borough of Havering

Admission Authority: The Governing Body of The Coopers' Company and Coburn School

Date of decision: 18 July 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of The Coopers' Company and Coburn School for admissions in September 2013.

I do not uphold the objection in the matter of criterion 1 and the accompanying footnote, being open to misinterpretation about the priority to be given to previously looked after children.

I do uphold the objection in relation to the second and third elements, in that criterion 6, as currently worded does not enable parents to assess the likelihood of gaining a place under this criterion and the information in the arrangements about the maintenance of the School's waiting list, is insufficiently clear.

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 Schools Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by the London Borough of Havering, the local authority (the LA), the objector, about the admission arrangements (the arrangements) of The Coopers' Company and Coburn School (the School), an Academy school for pupils aged 11 to 18 years for September 2013. The objection is to oversubscription criterion 1 concerning looked after children (LAC); criterion 6 relating to children of former students and to information about the maintenance of the School's waiting list.

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 School are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the Academy school, on that basis. The LA submitted the objection to these determined arrangements on 6 June 2012. 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:

- the LA's response to the consultation about the arrangements for 2013 dated 29 February 2012;
- the objector's form of objection dated 6 June 2012;
- the School's response to the objection and supporting documents;
- the LA's composite prospectus for parents seeking admission to schools in the area in September 2012;
- a copy of the determined arrangements;
- the minutes of the meeting on 19 March 2012 at which the governing body determined the arrangements; and
- a copy of Annex B of the Funding Agreement, 'Requirements for the Admission of Pupils'.

The Objection

5. The objector raises three issues.

(i). The wording of oversubscription criterion 1 concerning looked after children and children who were previously looked after is not sufficiently precise in that it does not precisely mirror the wording of paragraph 1.7 of the Code and is therefore open to interpretation. It also appears to be inconsistent with footnote 3.

(ii). Criterion 6 gives priority to the children of former pupils of the School. As there are potentially a huge number of children in this category who could be afforded priority for admission, this could disadvantage children from ethnic groups who have only arrived very recently in the country. This is contrary to paragraph 1.8 of the Code.

(iii). Information concerning the maintenance of the School's waiting

list does not make sufficiently clear that each added child will require the list to be ranked again and therefore is contrary to paragraph 2.14 of the Code.

Background

6. The School for pupils aged 11 to 18 years is designated as having a religious character and is required to preserve and develop its Christian character in accordance with the principles included in the Scheme of The Coopers' Company and Coborn Educational Foundation. The School converted to become an Academy school on 1 April 2011 and specialises in sports, humanities and training.

Consideration of Factors

7. I note from documentary evidence provided by both parties that the LA responded to the School's consultation about its arrangements on 29 February 2012 and provided a detailed view of its concerns about these three matters and other issues that were of concern at that time.

8. Minutes from governing body meetings provide evidence that the LA's response and its recommendations were considered before the arrangements were determined.

9. I will consider each of the 3 elements of the objection in turn and the first relates to the wording of criterion 1 concerning looked after children and previously looked after children. The LA is of the view that the wording is insufficiently precise, does not mirror the wording within the Code and is inconsistent with footnote 3 of the arrangements and thus contravenes paragraph 1.7 of the Code. The LA states that if it is the governing body's intention to give priority to any children who have been adopted or are subject to a special guardianship order, rather than those who were previously looked after, then the footnote should be amended.

10. Criterion 1 says 'Looked after children and children adopted or subject to residence or special guardianship orders.' It refers the reader to a comprehensive footnote which states, 'A looked after child, as defined by Section 22(1) of the Children Act 1989, is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority. Priority is also given under this criterion for looked after children who ceased to be so because they:

- (i) were adopted under Section 46 of the Adoption and Children Act 2002;
- (ii) became subject to a residence order under Section 8 of the Children Act 1989, which settles the arrangements to be made as to the person with whom a child is to live;
- (iii) became subject to a special guardianship order under Section 14A of the Children Act 1989, which is an order appointing one or more individuals to be a child's special guardian(s).

Applications under (i) to (iii) as outlined above, can only be considered if supporting documents, in the form of a copy of the adoption order, residence order or special guardianship order, together with a letter from the local authority that last looked after the child confirming that (s)he was looked after

immediately prior to the order being made, is submitted with the SIF.'

11. It is the School's contention that in making the objection about criterion 1 the LA has not taken account of the revisions that governors had made to their proposed arrangements, after receiving and considering the LA response to the consultation response. The School asserts that the wording used in the footnote concerning looked after children is precisely as recommended by the LA and that this in turns mirrors exactly the wording included in the Code and documents support this.

12. I agree with the LA that the wording of the criterion does not precisely mirror the wording in paragraph 1.7, in that the School does not use the term 'Previously Looked After Children', and the Code says, 'All schools must have oversubscription criteriaand the highest priority must be given, unless otherwise provided in the Code, to looked after children and previously looked after children.' Technically it would be more precise to use the wording of the Code and the governing body will want to consider this point to improve the clarity of the arrangements and remove any possibility of doubt. However, given the comprehensive nature of the footnote, I cannot agree that the governing body's intention, to give priority to children who have been adopted or are subject to a special guardianship order, that is, to previously looked after children, is not clear and for this reason I do not uphold this element of the objection.

13. The second element relates to criterion 6 which gives priority for admission of children of former pupils. In the view of the objector it is not unreasonable to assume that former students could still be having children some 30 years after they left the School and given this possibility there are a number of children who could be accorded priority for admission. This could disproportionately disadvantage those children from ethnic groups who have only arrived very recently in the country. The objector contends that this criterion is not reasonable, clear and objective as required by paragraph 1.8 of the Code.

14. The School has explained that its arrangements state that 10 per cent of the remaining places (after criteria 1 to 5 have been applied) will be offered to children of former pupils. As 80 to 90 offers (from the 170 available) will already have been made by this point this means that only around eight or nine places will be available under this criterion. The School acknowledges the argument that it could disadvantage those children from ethnic groups who have only arrived very recently in the country but contends that this could apply to a far greater extent to the sibling criterion, which a majority of schools across the country include in their arrangements

15. In my view is inevitable when a school is oversubscribed that the application of oversubscription criteria will give greater priority to some children over others and thus could be said to discriminate in a permitted way between children in different categories. Indeed the criteria are designed to enable decisions to be made as to which children should be offered places. In this case one could argue that there would be a similar impact on families

moving into the area regardless of their ethnicity and therefore I do not agree with the objector that newly arrived children from ethnic groups would be particularly disadvantaged in a way that singles them out as a group from other children moving into the area, from within the country. The admission policy includes a statement about the aim of the School in preserving its rich cultural and religious diversity and its historical heritage. Although the school has relocated from its original site in 1971, its arrangements seek to maintain previous links with east and central London, in order to achieve this aim.

16. However, although the School's explanation is clear, the current wording of the criterion does not enable parents to assess the likelihood of gaining a place under this criterion and so contravenes the Code which says that parents must be able to look at a set of arrangements and be able to assess the likelihood of gaining a place and for that reason I uphold this element of the referral.

17. In limited circumstances outlined in paragraph 3.6, the Code enables an admissions authority to amend the wording of oversubscription criteria in order to meet the mandatory requirements of the Code. The School has already responded to this element of the objection and has revised the wording of the criterion to provide much greater clarity for applicants. Criterion 6 now states, '10 per cent of the remaining places will be offered to children of former students. If there are more applicants than places available these will be allocated on the basis of random selection. As around half of the available places will have been offered by this stage, this criterion should provide a maximum of approximately 9 places.'

18. The third and final element refers to information concerning the maintenance of the School's waiting list. The LA says that current arrangements do not make it sufficiently clear that as each child is added to the waiting list, it will be reordered in line with the published oversubscription criteria and that priority will not be given to children based on the date their application was received or the date their name was added to the list.

19. The School states that the LA had not spoken to them about this element of the objection, although it is clear from documents provided by the LA that officers had included specific comment on this point in its consultation response of 29 February 2012.

20. Current arrangements state, 'Unsuccessful applicants who wish to be placed on a waiting list after the start of the Autumn Term will need to notify the school.....' Paragraph 2.14 of the Code requires admission authorities to state in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. It goes on to say that, 'Priority must not be given to children based on the date their application was received or their name was added to the list.' I would agree that as worded this aspect of the arrangements is insufficiently clear and for this reason uphold this element of the objection.

21. The School accepts the point and states 'it is perfectly reasonable and we would be happy to amend the wording to whatever is suggested to accord

with the Code.'

Conclusion

22. With regard to the three elements of the referral I have concluded that two elements within the arrangements do not comply fully with legislation and the Code. Mandatory requirements have not been fully met in relation to criterion 6 and to information about the maintenance of the waiting list, where greater clarity is required. I have therefore determined for the reasons given above that I should partially uphold the referral.

23. The School has willingly and promptly considered the three elements of the objection and has confirmed that it will revise its arrangements, as permitted in paragraph 3.6 of the Code to amend the wording of criterion 6 and the information about the waiting list to ensure that they give effect to the mandatory requirements of the Code in the arrangements for 2013.

Determination

24. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of The Coopers ' Company and Coburn School for admissions in September 2013.

25. I do not uphold the objection in the matter of criterion 1 and the accompanying footnote, being open to misinterpretation about the priority to be given to previously looked after children.

26. I do uphold the objection in relation to the second and third elements, in that criterion 6, as currently worded does not enable parents to assess the likelihood of gaining a place under this criterion and the information in the arrangements about the maintenance of the School's waiting list, is insufficiently clear.

27. 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 July 2012

Signed:

Schools Adjudicator: Carol Parsons