



DETERMINATION

Case reference: ADA2747

Objector: A parent

Admission Authority: The Academy Trust for Dr Challoner's Grammar School

Date of decision: 19 September 2014

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 academy trust for Dr Challoner's Grammar School in Buckinghamshire for admissions in September 2015.

I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that 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 adjudicator by a parent whose identity is known to me, (the objector), about the admission arrangements (the arrangements) for Dr Challoner's Grammar School (the school), a selective academy school for boys aged 11 to 18 in Amersham, Buckinghamshire for September 2015. The objection is to the school's use of a catchment area, to a residency requirement in the school's admission arrangements and to the priority given in the arrangements to boys entitled to free school meals. The objector also considers that the school's arrangements breach paragraph 1.8 of the School Admissions Code (the Code).

Jurisdiction

2. The terms of the academy agreement between the academy trust 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 academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 19 June 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. I have also used my powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the Code.
4. The documents I have considered in reaching my decision include:
 - a. the objector's email of objection dated 19 June 2014 and further emails and attachments to emails dated 13, 16, 19 and 21 July 2014;
 - b. the school's letter of 9 July 2014 and supporting documents in response to the objection and its further emails dated 15 and 16 July 2014 and 4 August 2014;
 - c. the letters of 18 July 2014 and 4 August 2014 from Buckinghamshire County Council, the local authority (LA) for the area setting out its comments on the objection;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;
 - e. maps of the area identifying relevant schools and showing catchment areas for the mixed and boys' selective schools in Buckinghamshire;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. data on entitlement to free school meals published by the Department for Education (DfE) on the School Performance Tables website;
 - h. copies of the "minutes" recording the email sent to governors seeking their approval of the admission arrangements for 2015 and details of the responses to that email and the subsequent determination of the arrangements;
 - i. a copy of the determined arrangements; and
 - j. a copy of the school's funding agreement and a copy of the sealed variation to that funding agreement dated 28 July 2014.

The Objection

5. The objection is to a number of aspects of the school's admission arrangements. The objector argues that is unreasonable and unfair and thus contrary to the provisions of paragraph 1.8 of the Code for any selective school to have a catchment area or to give priority on any other basis than scores achieved in the school's selection tests. The objector has also objected to the provision in the school's oversubscription criteria which give priority to boys entitled to free school meals. The objector argues that residency requirements set by the school for boys to be considered as living in its catchment area breach paragraphs 1.14 (which is concerned with catchment areas), 1.8 (which is concerned with objectivity, fairness and reasonableness and the requirement not to discriminate unfairly), 2.18 (which is concerned with service children) and 2.19 (which is concerned with overseas children) of the Code.

Other matters

6. When I reviewed the arrangements in the course of considering the objection I noted the arrangements appeared not to conform with the requirements relating to admissions as follows:
 - a. the definition of previously looked after children was not accurate and did not conform with paragraph 1.7 of the Code; and
 - b. there was no final tie-breaker to separate two candidates who tied for the final place as required by paragraph 1.8 of the Code.

Background

7. The school is a grammar school in Buckinghamshire, a county in which a selective system of secondary education operates. The school's admission arrangements are easy to find on its website, accessed via the "About" tab on the homepage. When I first reviewed the arrangements in early July 2014 the arrangements for 2015 had been published but contained two minor typographical errors in terms of dates. These have now been corrected.
8. The arrangements explain clearly how the LA wide testing arrangements for the Buckinghamshire grammar schools work and that boys are eligible to be considered for admission to the school in Year 7 (Y7) if they meet the required qualifying score of 121 in the admission tests or have been deemed qualified by a Selection Review Panel. The arrangements set out the school's oversubscription criteria to be used when more qualified applicants apply than the school has places for and which are:

"Boys who are 'looked after' children

Boys living in the catchment area of the school who qualify for free school meals.

Brothers of boys in Years 7 to 12 living in the catchment area of the school.

Boys living in the catchment area of the school.

Brothers of boys in Years 7 to 12 living outside the catchment area of the school.

Once the rules have been applied, then any further places will be offered in distance order using straight line distance between the family's normal home address and the main entrance to the school on Chesham Road."

9. All the Buckinghamshire grammar schools have catchment areas as do the great majority of the LA's non-selective upper schools. So far as places for boys are concerned, there are 14 catchment areas served by nine grammar schools. Dr Challoner's is the sole grammar school catering for boys for one catchment area and shares three other catchment areas with one or two other grammar schools.
10. The academy trust decided at its meeting on 5 November 2013 to consult on changing its admission arrangements for 2015 to give priority in Y7 to boys who met the selection test and were entitled to free school meals. The consultation required by the School Admissions (Admission Arrangements and Co-Ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) and paragraphs 1.42 – 1.45 of the Code began on 10 December 2013 and ended on 1 March 2014. This met the requirement in regulation 17 of the Regulations relating to the timing and duration of consultation. The proposed arrangements were displayed on the school's website for the duration of the consultation as required by Regulation 16 of the regulations and paragraph 1.45 of the Code. No responses were received.
11. The arrangements were subsequently determined by means of an email sent to all governors to which 12 responded agreeing to the proposed arrangements. The arrangements were then determined as recorded in the minute of 27 March 2014 and published on the school's website.
12. The school needed a variation to its funding agreement to implement the change to its arrangements on which it had consulted. On 21 May 2014 the school's solicitors approached the Education Funding Authority (EFA) seeking a variation to the school's funding agreement to allow the school to give priority to boys entitled to free schools meals. That variation was made and duly sealed on 28 July 2014. However, the variation refers to pupils attracting the pupil premium rather than to only those eligible for free school meals.

Consideration of Factors

13. I shall address first the objector's key argument that it is unreasonable for a grammar school to have a catchment area and that the only fair and reasonable way for grammar schools to allocate places is on the basis of the highest scores achieved in the selection tests. Such an approach could not, of course, co-exist with the giving of priority to those who live in a particular catchment area. The objector says in his objection: *"This is a selective school. By definition it should select the best with the highest scores. To create a catchment area prevents the best children being allocated a place."*
14. Section 104 of the Act provided for a school to be designated as a grammar school *"if its admission arrangements [in 1997] make provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils of high ability."* The Act does not say whether "high ability" means ability of a particular level or the highest ability of those applying or whether it can mean either of these.
15. The Code provides two possible approaches to admissions for grammar schools. Paragraph 1.19 provides that grammar schools may give priority for all places on the basis of the highest scores achieved in their selection test or tests. Paragraph 1.20 provides that grammar schools may choose to have a pass mark and then use other criteria to allocate places to those who reach that pass mark. I am satisfied that a mark of 121 or above in the tests used by the school indicates high ability. There is nothing in the Act to suggest that a grammar school is required to allocate places on the basis of the highest scores of those applying and the Code specifically provides for a different approach. The objector makes the point that other selective schools do not have a catchment area. The Act and the Code allow them to adopt this approach, but that does not mean that Dr Challoner's Grammar School must adopt the same approach. Against this background, I do not find the objector's argument that selective schools should *"by definition...select the best with the highest scores"* well founded or persuasive.
16. Where a school does have a catchment area, it must meet the requirement of paragraph 1.14 of the Code that catchment areas *"must be designed so that they are reasonable and clearly defined."* The LA has helpfully set out the rationale for the use of catchment areas across all the Buckinghamshire grammar schools. It notes the statutory duty placed on the LA to secure the provision of school places for those resident in the LA area and the way in which the catchment area system supports the LA to meet that duty. The LA has explained that the catchment areas – including the shared elements noted above - were designed so that, so far as possible, pupils qualifying for a grammar school place could secure such a place in one of their catchment area selective schools. The school's catchment area is thus part of a wider LA wide strategy designed to ensure that pupils in Buckinghamshire can be educated in a school that is reasonably close to their home and is appropriate in the light of their performance in the selection tests used in the LA.

17. The objector has argued that the use of catchment areas – combined with the school’s residency requirement which I address below – is unfair and unreasonable. The original objection argued that “*properties [sic] prices around the school are high compared to the national average and the oversubscription criteria effectively discriminates against people from a low socio-economic groups [sic] who cannot afford to live close to the school.*” The objector believed that this meant that the arrangements breached paragraph 1.8 of the Code which requires that admission arrangements **must** be reasonable, clear, objective and procedurally fair and that arrangements **must not** disadvantage unfairly, either directly or indirectly a child from a particular social group.
18. It is the case that the area around the school is affluent and housing is expensive. The LA has, however, pointed out in its letter of 18 July 2014 that the school’s catchment area includes many different socio-economic areas. The objector has not provided and nor have I found any evidence to suggest that removing the catchment area would result in more pupils from lower socio economic groups gaining places. I also find the objector’s argument in this regard confused as in his submission of 13 July 2014 he argues against the school’s giving priority to boys in receipt of free school meals, which is a well-established proxy measure for socio-economic disadvantage, and accuses the school of attacking wealthy parents.
19. The objector has cited the Greenwich judgement in support of his arguments against the school’s catchment area. The Greenwich judgement found that pupils should not be discriminated against in relation to admission to school simply because they reside outside the local authority area in which the school is situated (my underlining). The Greenwich judgement does not mean that catchment areas are unacceptable. The school’s catchment area is not based solely on the local authority’s boundary.
20. I find that the catchment area which is part of a long-established pattern of provision in the LA is reasonable and it is clearly defined and I do not uphold this aspect of the objection.
21. I turn now to the question the school’s residency requirement. The arrangements state that the school’s processes for verifying home addresses follow that used across the LA except that:
- “a. In order to qualify for admission under rules referring to the school’s catchment area, the applicant must have been resident within the catchment area continuously since April 1st of the year preceding proposed admission.*
- b. If a family still owns a property within 20 miles of the school which has been the main family home, a property closer to the school will not be accepted as the basis for a legitimate residence qualification even if the former property is leased to a third party.”*

22. The objector considers that children should be able to apply for a place at a selective school wherever they live, be considered for that place purely on the basis of their performance in the selection tests and that if the child is successful the family should then be able to move if they so choose to live near to the school. The objector also thinks that these provisions discriminate against children from overseas who have recently moved to the UK and to children of service personnel. The objector considers that there is no reason why people should not own more than one property and continue to own one which is within 20 miles of the school while living in one closer to the school.
23. The school has explained in its submission of 9 July 2014 that the purpose of its residency qualification is to discourage the practice of parents with financial means from acquiring a second home near to the school late in the process of application, moving there temporarily and then returning to their original home. They add that this was common before they introduced the residency requirement in 2010. The LA in its letter of 18 July 2014 states that before the introduction of the residency requirement several children each year gained places at the school having moved near to it before moving back to family homes further away. The LA notes that the school's location a five minute walk from Amersham tube station helped to facilitate this. The LA also notes that the school is oversubscribed within its catchment area so the fact that people from outside the catchment area moved temporarily into the area to gain places meant that families, often long term residents of the area, living at the edge of the school's catchment area could not secure a place at the school.
24. I have already indicated that I accept the school's use of a catchment area. It is reasonable and sensible for the school to seek to ensure that those who secure places in Y7 actually live permanently in the catchment area. If they did not, then the principle of giving priority to those who live in the catchment area would be undermined. It is, of course, the case that some families move to an area in part or wholly because of the schools. If they do so permanently and by the date specified in the arrangements, then they will be treated in the same way as others who have lived there longer.
25. So far as service children are concerned, the school's arrangements make clear that they abide by the provisions of paragraph 2.18 of the Code which makes special arrangements for children of service personnel and of crown servants. The school has confirmed that it abides by the provisions of paragraph 2.19 of the Code in relation to other children moving from overseas who are not children of service personnel or crown servants. I find that the school's residency requirement is reasonable and I do not uphold the aspects of the objection concerning sons of service personnel or those recently moving from overseas.
26. The objector maintains also that the school should not give priority to those with brothers at the school as this would breach the principle of awarding places to those who scored highest in the selection tests. The

Code provides for admission authorities to give priority to siblings and I see no reason why a sibling who has reached the qualifying score should not be afforded priority if that is what the admission authority has decided following the proper procedures. I do not uphold this aspect of the objection.

27. The objector claims that the school's approach discriminates against families who cannot afford to have more than one child and suggested that *"if parent want children at the same school, then do not select a grammar school."* I find this argument entirely without merit and I do not uphold this aspect of the objection.
28. The objector refers to the requirement in paragraph 1.32 of the Code that admission authorities **must** *"take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications."* The objector argues that this was intended to allow parents to move near to any school in the knowledge of their child's result. In fact the purpose of the provision is contained in paragraph 1.32 itself and it is *"so as to allow parents to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place."* My view is that the intention of this provision is as stated; so that parents know whether to put selective or non-selective schools or a mix of both on their common application form and thus do not "waste" preferences on schools which their child would not qualify for. There is nothing to suggest that it is related to residency requirements. I do not uphold this aspect of the objection.
29. I turn now to the element of the objection concerned with priority for pupils entitled to free school meals. While the Code generally prohibits giving priority to children according to their parents' financial status, it includes an exemption for academies to give priority for pupils entitled to free school meals or the pupil premium if this is provided for in the school's funding agreement. The exemption was introduced after this school became an academy so its funding agreement did not include such permission.
30. The school consulted fully and then made a request to the EFA to amend the existing funding agreement to allow the school to give priority to boys eligible for free school meals. However, it did this after it had determined the arrangements rather than before, so at the point of determination of the arrangements for 2015 the school's funding agreement did not permit the school to give priority to boys eligible for free school meals. This means that the admission arrangements determined for 2015 contravene paragraph 1.9(f) of the Code. As the objection was lawfully made, I must uphold this aspect of the objection.
31. The funding agreement has now been varied and I have seen a copy of the executed Deed of Variation. The variation does not relate to those entitled to free school meals but to those eligible for the pupil premium, including the service premium. While the group of those eligible for the pupil premium includes those entitled to free school meals, I consider that the variation to the funding agreement entitles the school to give

priority only on the basis of eligibility for the pupil premium and not on the basis of entitlement to free school meals. I have considered also whether it is – in the circumstances of this school – fair for it give such priority. The school has explained that the purpose of introducing such priority (albeit on the basis of free school meals) was to “*enhance the opportunity for children from less advantaged backgrounds to access the school.*” DfE data shows that 1.7% pupils at the school have been entitled to free school meals at any time over the past six years. The corresponding percentages for the LA area and for state funded schools in England are 13.8% and 28.3%. Against this background, I think it fair that the school is seeking to give opportunity to boys from less advantaged backgrounds who have achieved the required standards in the school’s selection process. However, the wording in the school’s arrangements as it stands does not conform with the Code and the school needs to revise them to bring them into line with the change made to its funding agreement as quickly as possible.

32. Finally, I address a point raised by the objector about the school’s consultation on its admission arrangements which the objector considered was inadequate as it was not a national consultation. There is no requirement for national consultation; rather, the requirements set out are in the Regulations and the Code are for local consultation. I do not uphold this aspect of the objection

Other matters

33. The admission arrangements give the highest priority to looked after children. A footnote explains that this includes previously looked after children. A previously looked after child is not the same as a looked after child and the arrangements do not therefore conform with the requirements of paragraph 1.7 of the Code. I have no reason to doubt that the school does in fact give the required priority to previously looked after children
34. The arrangements explain that distance from the school will be used to separate eligible candidates should its PAN be reached and exceeded in any of its oversubscription categories. However, there is no final tie-breaker to cater for the – admittedly rare situation – that two such candidates might live at the same distance from the school.
35. These breaches of the Code can be easily rectified and the Code requires the school to amend its arrangements as soon as possible.

Conclusion

36. The funding agreement for Dr Challoner’s Grammar School in place at the point of determination of the admission arrangements for 2015 did not allow the school to give priority in its admission arrangements to boys eligible for free school meals and therefore the school did not comply with the Code in its determined admission arrangements for 2015. I conclude that I must uphold this aspect of the objection. The funding agreement in place now does allow the school to give priority to

boys eligible for the pupil premium. I do not uphold any other part of the objection for the reasons given.

37. I find that the arrangements in relation to previously looked after children do not conform with paragraph 1.7 of the Code and that the arrangements lack a clear tie-breaker as required by paragraph 1.8 of the Code.

Determination

38. 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 academy trust for Dr Challoner's Grammar School in Buckinghamshire for admissions in September 2015.

39. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

40. 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: 19 September 2014

Signed:

Schools Adjudicator: Shan Scott