



DETERMINATION

Case reference: ADA2582

Admission Authority: The Academy Trust of Al-Madinah Academy,
Derby

Date of decision: 5 August 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Al-Madinah Academy. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) of the Act 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. The admission arrangements (the arrangements) of Al-Madinah Academy (the school), a Muslim academy free school for children aged four to 11 for September 2014 first came to the attention of the schools adjudicator as a result of a referral of them in an e-mail received on 2 October 2013. That referral made the complaint that questions asked of applicants on the school's supplementary information form (SIF) were insufficiently objective and that the arrangements therefore did not comply with the School Admissions Code (the Code).
2. It was not possible for the school's adjudicator to consider the matters brought to his attention at the time the referral was made, pending the outcome of matters concerning the school which were being investigated by the Department for Education (the DfE). The referrer concurred with this and then contacted the adjudicator again on 21 February 2014 in the light of a statement made in the document "Consultation on Admission Arrangements for School Entry in 2015-2016" published by Derby City Council (the council). It was stated here that the school did not propose to make any changes to its admission arrangements from those which had applied for September 2014. The referrer brought to the adjudicator's attention the concerns that had been expressed previously.
3. I asked the school on 12 March 2014 to provide a copy of the determined admission arrangements for September 2014, together with evidence of their determination, and when I met representatives of the school and the

Association of Muslim Schools UK, the relevant faith body, on 21 March 2014 I again requested that the school respond to these requests.

4. The school wrote on 26 March 2014 informing me that it could provide no evidence that the relevant body had held any meeting to agree the school's admission arrangements for September 2014, or those for September 2015. I therefore informed all the parties on 28 March 2014 that I had concluded that the school had not determined its arrangements for September 2014 and that as a result I had no jurisdiction to consider the arrangements. I informed the school that it needed to determine admission arrangements for September 2014 without further delay, and that it should determine those which were to apply to admissions in September 2015 prior to 15 April 2014, the date specified in the Code.

5. I had asked the school to provide me with a copy of its determined admission arrangements for September 2014 as soon as they were available, and those for September 2015 no later than 16 April 2014.

6. Having received no response from the school by 12 May 2014, I wrote to the school reminding it of this request, and it replied on 20 May 2014 saying that it had "re-written" its admission arrangements for September 2014 and for September 2015, providing copies of these arrangements. I wrote to the school on 23 May 2014 seeking confirmation and evidence that these arrangements had been determined by the Academy Trust and asking for an early response.

7. The school replied on 2 June 2014 saying that the arrangements would be "ratified" at the next meeting of the Trust, but not stating when this would be. Following my further request to be informed of this date, made on 11 June 2014, the school informed me on 30 June 2014 that this meeting was due to take place on 7 July 2014.

8. I therefore requested by return that evidence of the determination of the school's admission arrangements should be provided immediately it had taken place. The minutes of the meeting of the Trust Board on 7 July 2014, when the admission arrangements for September 2014 and September 2015 were determined, were provided on 14 July 2014.

Jurisdiction

9. 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 Trust Board of the academy trust, which is the admission authority for the academy school, on that basis.

10. When I looked at the school's arrangements for September 2014 and for September 2015, I was concerned that they contained matters which may constitute breaches of the requirements of the Code and I decided to use my powers under section 88I(5) of the School Standards and Framework Act 1998 (the Act) to consider these matters further.

11. The arrangements for September 2014 and those for September 2015 came to the attention of the adjudicator on 14 July 2014 in the manner described above. I am satisfied that it is within my jurisdiction under section 88I(5) of the Act to consider them.

Procedure

12. In considering this matter I have had regard to all relevant legislation and the Code.

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

- a. the referrer's email dated 2 October 2013 and the copy of the school's SIF which it attached;
- b. the school's response to the referral, supporting documents and subsequent correspondence;
- c. the council's response to the referral and supporting documents;
- d. the council's composite prospectus for parents seeking admission to schools in the area in September 2014;
- e. the minutes of the meeting at which the Trust Board of the school determined the arrangements; and
- f. a copy of the determined arrangements for September 2014 and September 2015.

14. I have also taken account of information received during a meeting I convened on 21 March 2014 at the school.

Matters of concern

15. At the meeting on 21 March 2014, I informed the school that I had been unable to locate any admission arrangements on its website but that I had seen a summary of the arrangements set out in the council's composite prospectus and had a copy of the SIF provided by the objector. The council had been invited to this meeting but declined to attend, and had stated in a letter that it had no comments to make on the contents of the referral.

16. Although there was at that point uncertainty concerning the determination of the arrangements and therefore whether I had jurisdiction to consider them, I referred to the elements within the SIF which had been raised by the referrer. These concerned an applicant's adherence to the Muslim faith, and the concern was:

(i) whether it was appropriate for an Imam to attest to beliefs held by individuals, and

(ii) whether following the Islamic code of dress was an objective criterion.

17. I also raised with the school the need to ensure that the use of faith-based

oversubscription criteria, in the context of the requirement placed on the school to ensure that at least 50 per cent of places were offered without reference to faith, took account of the need set out in paragraphs 1.6 to 1.10 of the Code for oversubscription criteria to be capable of being applied sequentially to the PAN and for there to be a single waiting list for places that conformed to the requirements in paragraph 2.14.

18. Although the school provided me at this meeting with a copy of what it believed were school's admission arrangements for September 2014, it could not state with certainty that these had been determined by the Academy Trust. It stated during the meeting that because it was undersubscribed, no child had yet been admitted to the school using faith-based oversubscription criteria. Nevertheless, it intended to refer to the faith body for advice concerning the construction of such criteria. It also intended to give priority to all looked after and previously looked after children without reference to faith. When it wrote to me on 20 May 2014, it enclosed what it said were its admission arrangements for September 2014 and September 2015, and following its confirmation on 2 June 2014 that it intended that these be ratified as the determined arrangements at a later date, I raised with the school in a letter dated 11 June 2014 the following matters which I believed may fail to comply with the requirements of the Code if these draft arrangements were to become the school's determined arrangements:

(i) there was no definition of the term "Muslim" and no details were given as to how a person would be able to prove that they were of the Muslim faith;

(ii) the statement concerning deferred entry for children below compulsory school age was incomplete and did not conform to the requirement set out in paragraph 2.16 of the Code;

(iii) although the school's academy agreement specifically requires it to adopt admission criteria that provide that if it is oversubscribed at least 50 per cent of its places available each year will be allocated without reference to any faith-based admission criteria, the wording used a different phrase which made the arrangements more complex; and

(iv) distance from the school appeared in the arrangements as both an oversubscription criterion and as a tie-breaker, which was confusing.

Background

19. Al-Madinah School was established on 3 September 2012 as a Muslim Academy free school for children from the ages of five to 16. An Ofsted inspection carried out in October 2013 judged it to be inadequate and requiring special measures. The most recent monitoring inspection in March 2014 found that the school was making reasonable progress towards the removal of special measures, and noted that the DfE had declared the closure of the secondary provision of the school by the end of the school year.

20. From September 2014 the school will therefore cater for the primary age-range only, and the school's admission arrangements are for the admission of children to Year R.

21. As determined on 7 July 2014, the school's admission arrangements for both September 2014 and September 2015:

- (i) set a published admission number (PAN) of 60;
- (ii) state that if not oversubscribed, the school will admit all applicants;
- (iii) provide oversubscription criteria which give priority, after the admission of children with a statement of special educational needs which names the school, in the following order (but did not use the following lettering, as explained below):
 - a. looked after and previously looked after children;
 - b. for up to 50 per cent of places, children of the Islamic faith who have completed the supplementary information form;
 - c. for up to 50 per cent of places, children without any reference to faith;
 - d. children who have a sibling at the time of application and admission.

Distance and then random allocation are given as tie-breakers.

22. The arrangements go on to say that a waiting list will be maintained in the order of the oversubscription criteria and that this will be kept in two parts so that there is a priority order for those waiting for a priority faith place and one for those waiting for one of the other places.

23. The SIF allows an applicant for a priority faith place to attest to membership of the Islamic faith.

Consideration of Factors

24. The school has now determined its admission arrangements for both September 2014 and September 2015, and has done so in the light of the issues which I had raised with it when I met its representatives on 21 March 2014, and in my letter to the school of 11 June 2014 concerning the arrangements it had told me at that time it had intended to adopt as its determined arrangements.

25. However, it has not taken full account of the following:

- (i) that paragraph 2.16 of the Code says that all admission authorities

“must make it clear in their arrangements that:

a) all parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and

b) parents can request that their child takes up a place part-time until the child reaches compulsory school age.”

The school's arrangements include a statement which only refers to deferring

entry until the term in which the child reaches compulsory school age, and are therefore deficient in this respect.

(ii) that paragraph 2.14 of the Code has the following to say about waiting lists:

*“ each admission authority **must** maintain a clear, fair and objective waiting liststating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”*

The school’s arrangements contain no such statement and therefore fail to comply with what the Code requires.

26. I also believe that the arrangements could be made clearer since:

(i) the statement concerning the admission of children with a statement of special educational needs is currently included under the heading “oversubscription criteria” but it is itself not an oversubscription criterion because it is a right given to any such child;

(ii) the arrangements do not state in clear terms that the school defines children of the Islamic faith as those for whom this is attested to using the school’s SIF, and

(iii) there appears to be a drafting error in the way that the oversubscription criteria are set out because:

a. the oversubscription criteria referring to children of the Islamic faith and to children admitted without reference to faith are not contained within the oversubscription criteria against the letters “b” an “c” but are nevertheless referred to as “category b” and “category c” elsewhere in the arrangements, and

b. the description of the priority given to siblings currently appears as criterion “c” and therefore as a separate and subsequently applied oversubscription criterion. However, since the two groups of defined places between them must account for all of the available places if the school is oversubscribed, and since oversubscription criteria must be applied sequentially, all of the places would have to be allocated before any sibling were given priority for admission against this oversubscription criterion. If priority is given to siblings at all by the school this can only be as a means for prioritising applicants among those who are being considered for one of the two categories of place. The way priority is given to siblings is therefore unclear as the arrangements are set out.

I am therefore of the view that the clarity of the arrangement does not comply with what paragraph 1.8 of the Code requires in each of these respects.

27. I have looked again at the school’s website but have not found there the arrangements and SIF which the school has provided me with as those determined by the Trust Board on 7 July 2014. Paragraph 1.47 of the Code states that:

*“ Once admission authorities have determined their admission arrangements....they **must** publish a copy of the determined arrangements on their website...”*

The school has therefore failed to comply with this requirement of the Code.

Conclusion

27. I have set out in the previous section the view that I have formed concerning matters which have been raised with the school concerning its admission arrangements and which breach what the Code requires in the arrangements which it has determined for September 2014 and September 2015.

28. I have set out there why I am of the view that the determined arrangements do not conform to what the Code requires:

- (i) in paragraph 2.16 concerning the admission of children below compulsory school age;
- (ii) in paragraph 2.14 concerning waiting lists;
- (iii) in paragraph 1.8 concerning the clarity of the arrangements, and
- (iv) in paragraph 1.47 concerning the publication of determined arrangements.

Determination

29. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Al-Madinah School, Derby for September 2014 and September 2015. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

30. By virtue of section 88K(2) of the Act, 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: 5 August 2014

Signed:

Schools Adjudicator: Dr Bryan Slater