



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA 2723

Objector: A member of the public

Admission Authority: The Jeffreys Education Trust for Shirley Infant School

Date of decision: 21 November 2014

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Shirley Infant School.

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 member of the public, the objector, about the admission arrangements (the arrangements) for Shirley Infant School (the school), an academy primary school for pupils of age range 4-7 years for September 2015. The objection is that the oversubscription criteria do not give priority to vulnerable children nor to children with a significant medical or psychological problem which are priorities given by the community maintained schools in the City of Southampton, the local authority (the LA).

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 governing body, on behalf of the Jeffreys Education Trust which is the admission authority for the academy school, on that basis. The objector submitted his objection to these determined arrangements on 27 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.

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 form of objection dated 27 June 2014;
 - b. the school's response to the objection and supporting documents;
 - c. the response by a consultant on behalf of the school and supporting documents;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
 - e. information from the LA;
 - f. maps of the area identifying relevant schools;
 - g. confirmation of when consultation on the arrangements last took place;
 - h. minutes of the meeting at which the governing body of the school determined the arrangements; and
 - i. a copy of the determined arrangements.

The Objection

5. The objection is that the oversubscription criteria do not include a criterion that gives priority to vulnerable children nor to children with a significant medical or psychological problem which are priorities given by the community maintained schools in the local authority. The objector argues that the above criteria omissions, particularly as there are, in his view, a significant number of schools within one local authority area, which also omit these criteria, contravene the whole purpose of the admissions code of fairness and in particular paragraph 1.8 of the Code, "*Oversubscription criteria **must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs.*****" He argues that this omission may in terms of equality across the LA contravene equalities legislation. Further he says such omissions may discriminate against pupils with special educational needs contrary to paragraph 1.9h) which forbids admission arrangements that "*discriminate against or disadvantage disabled children or those with special educational needs*".

Background

6. The school was previously a foundation school and became an academy on 1 November 2012. The school reports that it consulted on its own admission arrangements for the 2013/2014 academic year; it reports that the arrangements for 2015 are the first for which it has consulted as an academy.

The trust was previously named the Upper Shirley Trust. The Jeffreys Education Trust is now part of an umbrella trust, the Hamwic Trust. The school has an executive head teacher who is head teacher of both Shirley Infant and Shirley Junior schools.

7. The LA's arrangements for community and voluntary controlled schools give priority as a second oversubscription criterion to children subject to child protection planning or those deemed vulnerable by the senior officer with responsibility for safeguarding in the LA. This was introduced as a criterion in the LA's arrangements for 2012. The intention was to be able to give priority, particularly in dealing with in year applications, to children who might otherwise have difficulty in changing schools because of low priority under criteria such as catchment or distance from home to school but for whom continued attendance at their current school was not appropriate because of possible pressure / harassment from wider family members or members of the local community.
8. Also within its admission arrangements the LA gives priority in its community and voluntary controlled schools to in catchment children who satisfy its medical criterion over other in catchment children and to out catchment children who satisfy its medical criterion over other out catchment children.
9. The school, as did others in the trust, decided not to adopt these criteria for 2015 having taken advice from a consultant who supported the school and has also made the responses on the school's behalf to the objection. Having consulted on the arrangements from 18 December 2013 to 1 March 2014, and considered the responses, the governing body, as did the governing bodies / trust directors of another eleven schools for whom the consultant was acting, decided to put the criterion "children subject to a child protection plan" to position 2 in the oversubscription criteria as it is in the LA's arrangements, but not to add ... 'those deemed vulnerable' nor 'children with a significant medical or psychological problem'. The governing body, at their meeting on 20 March 2014 noted "*The criterion of judging a child on 'vulnerable grounds' will be impossible since governors will not have access to the necessary information; and indeed Southampton City Council (SCC) are peculiar to other councils in having this in their policy*".
10. The admission arrangements are in summary;
 1. *Children in public care (looked after children) and previously looked after children as defined by section 1.7 of the School Admissions Code.*
 2. *Children subject to a child protection plan.*
 3. *Children who have a brother or sister already on the roll of the school who will continue to attend that school for the following year. (This includes children living as siblings in the same family unit.) In the case of applications for places at infant schools a sibling at the linked junior school (Shirley Junior School) will count as a sibling at the infant school.*

4. *Children who live within the school's designated catchment area. The catchment area is defined by the roads listed at the end of this policy.*

If the school is oversubscribed within categories 1-4 above then priorities (i) to (ii), as set out in 5 below will be used to determine which children will be offered places.

5. *Children who live outside the school's designated catchment area, in the following order:*

(i) *Children of qualified teaching staff employed at the school for two or more years at the time of application and/or the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.*

(ii) *Children who live closest to the school based on the shortest practicable walking distance using public roads and footpaths*

11. The consultant employed by the school to support the development of the admission arrangements has responded on behalf of the school to the objection and queries. The school has provided additional information and confirmed it has seen all the correspondence between the consultant and OSA on this matter and supports and agrees with all the comments made by the consultant. Correspondence between the consultant, the school and OSA went on over a prolonged period to clarify some matters. In particular the publication of the determined arrangements as the arrangements I had downloaded from the school's website on 11 July 2014 were different to those sent to me by the consultant who had checked the website and assured me that only the determined arrangements were available. The school sent evidence that it had archived the previous arrangements. However, they were still available to public view in July. The consultant investigated and discovered that it was possible that search engines retained a 'cached' copy of archived documents. While I accept the assurances of the consultant that the school had removed the proposed arrangements after determination, I had nonetheless found them and parents might also do this, so, while I do not consider this a breach of the Code, the school should ensure that it does not happen again.

Consideration of Factors

Oversubscription criteria

12. The objector argues that the two admission criteria referred to above, used by the LA, should not be omitted by the school, with reference to paragraph 1.8 "oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation².

13. The consultant says the criterion about vulnerable children was not included because the LA could not pass information regarding vulnerable children to academies for reasons of confidentiality and data protection. Medical / psychological reasons were not included as a criterion as the governing body did not have access to appropriate expertise and did not feel competent to

make such a decision themselves.

14. The LA agrees that its admission arrangements give priority in its community and voluntary controlled schools to in catchment children who satisfy its medical criterion over other in catchment children and to out catchment children who satisfy its medical criterion over other out catchment children. It adds however that *“This is a very limited degree of priority given that there are very few schools where all in catchment children do not gain a place at the school if it is the parental preference”* and adds that *“the criterion of children “deemed vulnerable” was in fact no longer really fit for its original purpose. It had been over taken by the PHIG (Primary Heads Inclusion Group) which is the primary In Year Fair Access Panel and was not really suitable.”*
15. The LA reports that it has never had a formal request from an academy trust about the possibility of being given information about such children. However, it has confirmed that it would not pass to an admission authority information about vulnerable children. This was communicated to the consultant in the *“course of a conversation with the consultant employed by the academies.”* I accept that the admission authority would not be able to identify vulnerable children.
16. With regard to children with medical / psychological needs, while I see the difficulty raised by governors, I do not accept the argument that the governing body does not have the expertise and so cannot undertake this function. Academies are funded differently to community schools because they undertake the duties otherwise performed by local authorities and are funded so to do. However, this does not mean that the governing body must do this.
17. The Code at paragraph 1.9 says *“It is for admission authorities to formulate their admission arrangements”* and at 1.10 *“This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”*
18. So, while I consider the arguments put forward for not using these criteria have varying validity, both the absent criteria may be used by admission authorities but they do not have to be included to comply with the Code. I therefore do not uphold this part of the objection.

Fairness and Reasonableness

19. The objector argues that not giving a priority to vulnerable children nor to those with a medical / psychological need is unfair and unreasonable, again with reference to paragraph 1.8 of the Code, because this school and several others in the LA that are their own admission authority have all made this decision and the consequence will be that the responsibility for admitting children in these categories will fall unfairly on the community schools for whom these are priorities. Further, as some of the schools are sited in close proximity to one another, families of those children in that area will be disadvantaged.

20. I have reflected on whether I have jurisdiction to consider this part of the objection as it bases the possible unfairness on the impact of the arrangements of several schools taken together. I have no jurisdiction to consider groups of schools' arrangements; however I can see it may be possible to argue that the effect of the arrangements of individual schools considered together may produce a consequence, intended or otherwise, that may be detrimental to some possible applicants. I shall therefore consider this element of the objection on that basis.
21. The consultant on behalf of the school argues that the objection "seems to be in relation the number of schools that have removed these two criteria".
22. The LA says it does "*not take the view that an admission authority, or group of admission authorities, must in some way tailor its own admission arrangements so that the arrangements for the city are uniform, or present a common front.*"
23. As considered above, I can see that it might be possible that a group of schools with a common set of admission arrangements might somehow have an impact on the admission of pupils to other schools which might in turn be viewed as unfair or unreasonable. The map of the area shows the school in the trust are in close proximity to one another. However, there is no evidence from the objector that vulnerable children or those with medical / psychological needs will not be admitted to this school or other schools in the trust and thus increase the numbers of children in these categories at other schools. The children are not excluded or barred from admission, but do not have a priority; criterion 3 is children with siblings in the school and criterion 4 is children who live in the catchment area. I note the LA's comment that the majority of pupils get a place in the school of their parents' preference. I do not uphold this part of the objection.

Equality

24. The objector also argues that not giving priority to vulnerable children or children with medical / psychological needs may disadvantage children unfairly either directly or indirectly, specifically a child from a particular social or racial group, or a child with a disability or special educational need, again with reference to paragraph 1.8 of the Code. He further argues that this may in terms of equality across the LA contravene equalities legislation and contravene paragraph 1.9 h) in that it discriminates against or disadvantages disabled children or those with SEN.
25. The objector has provided no evidence that a particular social or racial group are predominant in either those who are vulnerable or those with medical / psychological needs. Such categories are not 'protected characteristics' as identified by the Equality Act 2010 (which are sex; race; disability; religion or belief; sexual orientation; gender reassignment and pregnancy or maternity). No recognised group of children who are, or maybe disadvantaged has been identified. I do not find the admission arrangements contravene equalities legislation.

26. Pupils with a statement of special educational needs will be admitted to the school if the statement names the school, this complies with the Code. I do not uphold this part of the objection.

Conclusion

27. The school's admission arrangements do not include oversubscription criteria that form part of the arrangements of schools for which the LA is the admission authority. The objector argues that this omission taken in the context of several schools omitting them is unfair and discriminatory. I find that those criteria are not required by the Code; that pupils are in no way barred from admission and that such pupils do not have a protected characteristic as identified by the Equality Act 2010. I do not uphold the objection.

Determination

28. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Shirley Infant School.

Date: 21 November 2014

Signed:

Schools Adjudicator: Jill Pullen