

## **DETERMINATION**

**Case reference:** ADA/002233, 2234 and 2235

**Objector:** Surrey County Council

**Admission Authority:** The Governing Bodies of Heathside School, Jubilee International High School and De Stafford School

**Date of decision:** 27 October 2011

### **Determination**

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections lodged by Surrey County Council. Each of the Schools must cease to use a Supplementary Information Form in connection with the admissions process for 2012/13, but Heathside School may continue to do so for those pupils seeking admission to an aptitude place.

In addition to considering the objection, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998.

I determine that for September 2012 admissions, the arrangements for Jubilee International School should be amended as set out in paragraph 34 of this determination.

### **The referral**

1. Surrey County Council (the Council) has referred an objection to the Adjudicator about the admission arrangements (the arrangements) for Heathside School, a Foundation Specialist Technology College, for Jubilee International High School, a Foundation School, and for De Stafford School, a Foundation Specialist Maths and Computing College (the Schools) for 2012.
2. The Council also submitted on the same day an objection about the admission arrangements at Thamesmead School, an Academy. The Young People's Learning Agency (YPLA) has asked the Adjudicator to make a recommendation to it concerning this objection, and the YPLA will subsequently issue its own determination.
3. In all four cases, the objection is to the use by the School of a Supplementary Information Form (SIF) for parents applying for a place there. This determination, however, refers only to the three Schools listed in paragraph 1 above.

## **Jurisdiction**

4. These arrangements were determined under section 88(C) of the School Standards and Framework Act 1998 (the Act) by the governing bodies of the respective Schools, which are the admission authorities. The Council submitted its objection to these determined arrangements on 31 July 2011. I am satisfied that this objection has been properly referred to me in accordance with section 88H(2) of the Act, and that it falls within my jurisdiction.

## **Procedure**

5. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code.

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

- the Council's letters of objection of 31 July 2011 and supporting documents;
- each school's response to the objection and supporting documentation;
- the Council's booklet for parents seeking admission to schools in the area in September 2012;
- the Council's Common Application Form (CAF) and its Scheme for the coordination of Admissions in 2012/13.

7. In addition to investigating the matters raised by the objector I have also reviewed each of the admissions arrangements as a whole and considered whether I should use my power under section 88J(2)(b) of the Act. I am using my powers under the Act to make further changes to the arrangements of one of the Schools.

## **The Objection**

8. The Council has in each case referred to paragraph 1.83 of the Code which says:

*“ ....admission authorities must only use supplementary application/ information forms that request additional information when it has a direct bearing on decisions about acceptable oversubscription criteria or for the purpose of selection by aptitude.”*

9. Although it recognises that the Code allows a SIF to ask for additional information beyond that already provided on the CAF where a parent is applying for a place determined by aptitude, the Council maintains that since each of the Schools requires a SIF to be completed for all applicants, they are breaching a mandatory provision of the Code in so doing.

10. It also complains in the case of Jubilee International High School that the SIF does not comply with the requirements of paragraph 1.78 of the Code which prohibits forms from seeking certain specified types of information.

## Other Matters

11. I have also given my consideration to each of the Schools' admission arrangements as a whole, and it appeared to me that there were further aspects of the arrangements for Jubilee International High School which may breach the requirements of the School Admissions Code.

12. I therefore wrote to the School Governors on 12 October 2011 setting out my concerns about the following, each of which appears in its "Admission Policy 2012/3" available on its website:

- (i) In the preamble, the sentence "We then inform Surrey Local Education Authority of those applications that meet our admission criteria" is used to describe the process of providing the LA with the priority afforded to applicants according to the School's oversubscription criteria. As a maintained school, Jubilee must admit all those seeking a place, unless oversubscribed (which the School says has not yet happened). However, as a description of this process, the quoted sentence is potentially misleading, since applications are not matched to criteria, with some candidates therefore capable of being rejected, under the arrangements set out in the Code.
- (ii) The statement "If it is found that a place has been obtained on the basis of fraudulent or incorrect information, the offer will be withdrawn" appears to offend against the Code (paragraph 1.51) which does not permit unqualified withdrawal of a place obtained fraudulently.
- (iii) The statement that children who are the subject of a Statement of Special Educational Needs "may have a priority for a place" is inaccurate, since the Code (paragraphs 1.56, 2.8) makes it clear that there is no discretion on the part of governing bodies where the School is named in the Statement.
- (iv) The terms "brother" and "sister" must be defined if the oversubscription criterion which refers to them is to be clear.
- (v) A fifth oversubscription criterion "All other children" is necessary (see above).
- (vi) I had been unable to understand the meaning of the sentence "When the three criteria are applied to each preference category children who are in public care will be given priority." Looked after children are appropriately given priority as a group within the arrangements.
- (vii) The Code and regulations apply to all school admissions, not just to the year in which admissions are normally made. The sentence: "In accordance with the stated aim of the admission policy, admissions of pupils to year groups other than the intake year will be considered on an individual basis" is at odds with the fundamental principles of the Code, set out for example Chapter 1 thereof.
- (viii) I had previously referred the sentence "In line with the agreement with the Director of Education, Surrey LEA, any students with identified challenging behaviour seeking to transfer from other schools will not be admitted to Jubilee High School" to the LA who confirmed that no such

agreement exists. The Code (paragraph 3.31) prohibits such a statement being made.

13. The School replied to me on 14 October 2011 and I have considered these comments carefully. In summary they were, responding in turn to the points raised above, as follows:

- (i) That the School is a Foundation school, not a “maintained” school. The School quotes a statement in the Surrey Admissions booklet for parents which says that the Governing Body is responsible for school admissions and decides how pupils will be admitted.
- (ii) That the School will insert the word “normally” into the offending sentence in order to comply with the Code.
- (iii) That paragraph 1.56 refers to maintained schools (and therefore, presumably, not to Jubilee High School). The School has offered to remove the sentences in its admission arrangements which follow on immediately from the one which says that children with Statements may have a priority for a place. These read “There is a separate process for students with a Statement of Special Educational Needs. Surrey Local Authority will send you information at the beginning of the Autumn Term explaining what you need to do about his or her future placement.”
- (iv) Asking whether there is any guidance concerning suitable definitions of “brother” or “sister”.
- (v) That the required fifth criterion will be inserted into the policy.
- (vi) That the sentence could be removed.
- (vii) That the School understands that the (Surrey) In Year Fair Applications Panel examines cases on an individual basis, and “in addition” that there had been cases where Surrey “has tried to insist Jubilee take students that are from outside of Runnymede”.
- (viii) That the statement appears to be historic, of unknown origin and will be removed.

### **Consideration of Factors**

14. The Code (paragraph 1.83) states that “admission authorities must only use supplementary application/information forms that request additional information when it has a direct bearing on decisions about acceptable admission criteria or for the purpose of selection by aptitude”. It would be possible to read this to mean that SIFs that did not ask for new information other which had not been asked for on the CAF would be permitted. However, it is clear from Chapter 3 of the Code that the application process takes place generally through the CAF, and this form must normally therefore be able to provide the information which schools which are their own admission authorities need in order to rank applications. This is a process clearly set out in Surrey’s Co-ordinated Scheme. So the SIF should only ask for new information, since if it does not, the information it asks for is not part of any process of determining admissions. That new information must also relate to an acceptable admission criterion which forms part of the School’s admission arrangements.

15. Consequently, I have considered the objections on this basis.

**a. Heathside School**

16. The Governors of Heathside School have told me that they need a supplementary form in particular for those applicants wishing to have exceptional circumstances taken into account. The second oversubscription criterion in the School's arrangements (after Looked After Children) reads:

*"Exceptional Circumstances: for example medical grounds or other sensitive or compelling family circumstances. Where such an application is made the special factors pertaining as to why attendance at Heathside is essential, must be made known at the time of the original application if they are to be considered. Supporting evidence from, for example, a Doctor or a Social Worker will be required."*

17. The Governors say that in the past the School, has received "minimal information from the LA compared to information attached to their Supplementary Information Forms" (meaning that provided by candidates as part of the supplementary form currently used by the School). This asks candidates to state if they are "applying under criterion (2)", and if so "to list special factors in the space overleaf attaching supplementary pages where necessary. Where supporting evidence is being provided by, for example a Doctor or a Social Worker, this will need to be attached to this form."

18. The LA's Common Application Form has the following wording:

*"Exceptional Arrangements It is important that any exceptional medical or social reasons are submitted together with the relevant documentation before the closing date."*

19. Given that the LA's CAF is used to respond to the wording of the School's oversubscription criterion, I cannot see that the former is likely to elicit any less full response than the School's SIF, and that provided that the LA furnishes the School with the documentation which it receives that the Governors will not have the information which they need.

20. The LA accepts that a SIF is needed, but only for those applicants who are applying to be considered for one of the available aptitude places.

**b. Jubilee International High School**

21. The Governors protest that the Council's objection is unnecessary and effectively irrational since the School has never been oversubscribed, and so has never used any information about applicants in connection with its oversubscription criteria.

22. Nevertheless, a SIF exists on the School's website and parents are asked to complete it. The form is titled "2012 Entry Application Form" and says "This form should be returned directly to Jubilee International High School and not to the LEA".

23. If it were what it says it is, this form would clearly undermine the LA's coordination of admissions process, since the ability of the LA to coordinate admissions depends upon it receiving and processing parental applications through the CAF. Paragraph 1.30 of the Code says that admission arrangements must be consistent with that scheme. The School's form also asks for information about ethnic origin, the language spoken in the parental home, the religious affiliation of the family, the address of the family Doctor, information about medical or home circumstances, what the child's lunchtime arrangements are (including whether entitled to free school meals) and the means by which the child travels to school. None of these matters is in my view capable of forming part of an acceptable oversubscription for the School (since it is not a faith school) and so asking about them is forbidden by paragraph 1.83 of the Code (see paragraph 14 above).

24. Concerning the School's admission arrangements themselves, admission authorities do have powers to make changes to their determined arrangements themselves, but only in limited circumstances. This is set out in paragraph 4.24 of the Code. While I am grateful to the Governors for their willingness to make a number of changes to their arrangements in response to my letter, I intend to use the powers available to me to make all the changes necessary to ensure compliance with the Code. For those matters where I need to do more than repeat the Governors' own changes to accomplish this, I have set out the relevant considerations below.

25. Firstly, the School is a foundation school and it is also a maintained school (see section 84(6) of the School Standards and Framework Act, 1998). The School must therefore comply with the relevant mandatory sections of the Code. In describing the process which takes place in its admission arrangements, the School must reflect accurately what takes place if it is not to be misleading to parents and thus contravene the Code's requirements about clarity (such as paragraph 1.71). I do not believe that the wording of the arrangements currently reflects accurately the process of making admissions as set out in the Code in paragraphs 1.34, 1.35 and 2.1.

26. My concerns about the statement currently made by the School concerning children who have a Statement of Special Educational Needs that names the schools, as set out in paragraph 12(iii) above, have not been allayed by the response which I have received since this does not address the central issue which I have raised.

27. I have investigated the definitions of siblings used by Surrey LA for schools for which it is the admission authority. This reads:

*"A sibling will be considered to be a brother or sister (that is, another child of the same parents, whether living at the same address or not), a half-brother or half-sister or a step-brother or step-sister or an adoptive or foster sibling, living at the same address."*

28. I have also viewed the arrangements of a limited number of schools which are their own admission authorities in Surrey, and these use essentially the same definition. This would therefore seem to be a perfectly good definition for the School to use itself.

29. While it is true that in year applications are dealt with on an individual basis, so are all admissions. The Code however refers to all admissions and requires that all (with one exception) admissions should be made in relation to a school's admission arrangements (paragraph 1.34). It may be that the School has confused the issue with the Code's requirement (paragraph 2.70) that admissions of children to a place which is outside their normal age group (the exception allowed by the Code) be made on the basis of the circumstances of each case.

30. The School does not admit any pupils on the basis of aptitude, and so does not need a SIF for this reason and there is no other reason for which it would be permissible for it to do so.

### **c. De Stafford School**

31. The Governors have told me that they do not use the SIF as part of the School's admission arrangements and that they have now removed it from their website. I have confirmed that that is the case. However, this was done as a result of the objection, following discussion between the School and the LA. The SIF did form part of the admission arrangements for the School at the time that the LA submitted its objection, and it is clear that this was information requested from every applicant. The School does not admit pupils on the basis of aptitude and there is therefore no reason for it to use a SIF.

### **Conclusion**

32. For the reasons set out in paragraphs 17 to 20 above, I do not accept the need for Heathside School to have a SIF for all candidates, and I therefore uphold the objection in relation to requiring a SIF for all pupils.

33. For the reasons set out in paragraphs 22 to 24 above, I do not accept the need for Jubilee International School to have a SIF, and I therefore uphold the objection.

34. For the reasons set out in paragraphs 25 to 30 above, I am of the view that a number of aspects of the admission arrangements of Jubilee International School contravene aspects of the Code. I have considered carefully whether at this late point in the 2012/13 admissions process to use my powers to make changes to the admission arrangements. Since these changes would not be to oversubscription criteria themselves (other than by introducing a necessary final criterion) and would not therefore be significant in the way parents would expect the admission process to operate, I have decided that they should be made. I am therefore using the powers available to me to require the following changes to be made to the admission arrangements of Jubilee International Schools for 2012/13:

- (i) Removing the sentence "We then inform Surrey Local Authority of those applications that meet our admission criteria" and replacing it with "We then inform Surrey Local Authority of the list of applications ranked according to the School's oversubscription criteria."

- (ii) Inserting the word “normally” into the phrase “the offer will be withdrawn” so that it reads “the offer will normally be withdrawn”.
- (iii) Removing the phrase “he or she may have priority for a place”, replacing it with the phrase “he or she will be admitted to the School”.
- (iv) Adding the following definition of the term “sibling”:

*“A sibling will be considered to be a brother or sister (that is, another child of the same parents, whether living at the same address or not), a half-brother or a half-sister or step-brother or step-sister or an adoptive or foster sibling, living at the same address.”*

- (v) Adding a fifth oversubscription criterion “All other children”.
- (vi) Removing the sentence referred to in paragraph 12(vi).
- (vii) Removing the sentence referred to in paragraph 12(vii).
- (viii) Removing the sentence referred to in paragraph 12(viii).

35. For the reasons set out in paragraph 31 above, I do not accept the need for De Stafford School to have a SIF, and I therefore uphold the objection.

### **Determination**

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections lodged by Surrey County Council. Each of the Schools must cease to use a Supplementary Information Form in connection with the admissions process for 2012/13, but Heathside School may continue to do so for those pupils seeking admission to an aptitude place.

37. In addition to considering the objection, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998.

38. I determine that for September 2012 admissions, the arrangements for Jubilee International School should be amended as set out in paragraph 34 of this determination.

Dated: 27 October 2011

Signed:

Schools Adjudicator: Dr Bryan Slater