



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA 2726

Objector: A member of the public

Admission Authority: Ludlow Infant Academy Trust, Southampton

Date of decision: 24 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 Ludlow Infant Academy School.

I have also considered the arrangements in accordance with section 88I(5). I determine that the giving of priority to children looked after and previously looked after 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 member of the public, the objector, about the admission arrangements (the arrangements) for Ludlow 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 who are the directors of the 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. I am also using my powers under section 88I to consider the arrangements as a whole.

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. the 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”.

Other Matters

6. In the course of considering the objection, I reviewed the arrangements as a whole. I was concerned that the requirements of the Code of paragraph 1.7, that highest priority “**must** be given, to looked after and previously looked after children”.

Background

7. The school was previously a community school and became an academy on 1 September 2012. September 2015 is the second year for which the academy has determined its own admission arrangements.
8. 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.
9. 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.
10. The school 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, at its meeting on 5 March 2014, agreed that “*a child subject to Child Protection Planning should be moved to priority two*” as did the governing bodies / directors of another eleven schools for whom the consultant was acting, but not to add ‘... *those deemed vulnerable*’ nor ‘*children with a significant medical or psychological problem*’.
11. The admission arrangements are in summary;

1. Looked After Children as defined above will be admitted as first priority.
 2. Children subject to child protection planning.
 3. In the event of oversubscription places will be offered first to those living in the priority area using the following criteria:
 - a. Children who have a sibling at Ludlow Infant Academy or at Ludlow Junior School at the time of admission.
 - b. Other children living in the priority area.
 4. Children living outside the priority area using the following criteria:
 - a. Children who have a sibling at Ludlow Infant Academy or Ludlow Junior School at the time of admission.
 - b. Other children living outside the priority area.
12. 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 and the school 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

13. 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.
14. 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.

15. 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 ... the Cabinet Member for Education and Change ... undertook to have discussions in autumn 2014 with ALL schools and admission authorities in the city with a view to coming to an agreed “universal” definition of vulnerable that the LA and all own admission authority schools can adopt for their 2016 arrangements”*.
16. 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.
17. 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.
18. 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.”*
19. 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

20. 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.

21. 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.
22. 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*".
23. 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.*"
24. 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. 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

25. 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 1.9h) of the Code in that it discriminates against or disadvantages disabled children or those with SEN.
26. 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 may be disadvantaged has been identified. I do not find the admission arrangements contravene equalities legislation.

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

Other Matters

28. The oversubscription criteria show as first priority 'Looked' after children as defined above will be admitted as first priority. The definition given by the school in the notes is correct; "*Looked after child' or a child who was previously looked after being looked after, became subject to an adoption, residence or special guardianship order. A looked after child is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see definition in section 22(1) of the Children's Act 1989)*".

29. However the Code at paragraph 1.7 says that *the "highest priority must be given, unless otherwise provided in this Code, to looked after children and previously looked after children"*. In my view then, admission arrangements must show as their highest priority children looked after and previously looked after, it is not sufficient to refer to a note elsewhere and to do so does not comply with the Code.

Conclusion

30. 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.

31. I find that giving priority in the oversubscription criteria to looked after children and not also to previously looked after children does not conform to the Code in the ways described above.

Determination

32. 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 Ludlow Infant Academy School.

33. I have also considered the arrangements in accordance with section 88I(5). I determine that giving priority in the oversubscription criteria to looked after children and not also to previously looked after children does not conform to the Code in the ways described above.

34. 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.

Date: 24 November 2014

Signed:

Schools Adjudicator: Jill Pullen