

Determination

Case reference: ADA 2605

Objector: The Royal Borough of Windsor and Maidenhead

Admission Authority: The Academy Trust of Charters School, Sunningdale, Ascot

Date of Decision: 5 September 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust, the admission authority for Charters School, for admissions in 2015.

I have also considered the arrangements in accordance with section 88I(5) of the Act. I determine that there are other matters as set out in this determination that 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 Schools 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 Office of the Schools Adjudicator by the Royal Borough of Windsor and Maidenhead, (the objector), which is also the local authority for the area in which the school is situated. The objection was made on 2 May 2014 to the admission arrangements (the arrangements) for Charters School, a secondary academy school (the school), for admissions in 2015. The objection is to the inclusion in the arrangements of an oversubscription criterion which affords priority to the children of staff above the published admission number.

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. The governing body of Charters School,

with the authority of the trust, which is the admission authority for the school, determined the arrangements on that basis, on 11 March 2014.

3. 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 power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all the relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objection made by the local authority in an email dated 2 May 2014;
 - b. the school's responses to the objection dated 19 May 2014;
 - c. responses from the school and the local authority to questions from me;
 - d. the minutes of the governing body's meeting held on 17 December 2012 when the governing body agreed to consult on its arrangements for 2014;
 - e. information on the consultation process for admissions for 2014 including emails between the school and the local authority; and between the school and the Education Funding Agency;
 - f. the minutes of the governing body's meeting held on 11 March 2013 which considered the responses to the consultation and determined the arrangements for 2014;
 - g. the arrangements for admissions to the school in 2014;
 - h. the minutes of the governing body's meeting held on 10 March 2014 at which the arrangements for 2015 were determined;
 - i. the arrangements for admission to the school in 2015; and
 - j. the school's funding agreement dated 30 May 2012.
6. The arrangements for 2015 are the same as for 2014, the year when consultation last took place, in respect of the matter that is the subject of this determination.
7. I held a meeting on 10 July 2014 with the school and the local authority to discuss the objection and other aspects of the arrangements for both 2014 and 2015 which I considered might not be fully compliant with the Code. I have taken into account all the information received at that meeting and the information submitted subsequently by the school and the local authority.

Objection

8. The objection is that oversubscription criterion 9, as determined by the governing body, does not meet the requirements of the Code. Criterion 9 is, *“Recruitment and retention of staff (children of staff who have been employed at Charters for at least two years or those that meet a skills shortage). These students will be admitted in addition to the admission number, but limited to a maximum of five per cohort, including the Sixth Form. Applications in this category should be made by letter directly to the Co-Headteachers of Charters School. If more than five places in any one cohort are requested, admissions will be decided by a panel approved by the Governors.”*
9. The objector stated, *“If the school is oversubscribed there is potential that children in criterion 9 will be admitted above those in higher criteria. We would consider this as procedurally unfair and not compliant with the Admissions Code.”* The objector refers to paragraphs 1.6, 1.7 and 1.8 of the Code.

Other Matters

10. Having reviewed the arrangements as a whole for admissions in September 2015, I considered other issues which may contravene the Code. I discussed with the school the breadth and effectiveness of its consultation; the rationale for the current feeder schools and the relationship of the feeder school areas with the designated area of the school; the need for an explicit final tie-breaker; the rationale for criterion ten which relates to preference for a single sex or co-educational education; the need for clarity around how the intention to give priority to siblings of those attending the resource unit is applied; and the arrangements for post-16 admissions.

Background

11. Charters School is a non-selective secondary school for students between the ages of 11 – 18. It converted from community to academy status on 1 October 2012. The school is increasingly over-subscribed. It has a published admission number of 240. For places in year 7 in September 2014 there were 550 preferences for the school of which 298 were first preferences. There were 21 appeals of which four were allowed. For admission to the school for year 7 in September 2014, 245 places have been offered and accepted. The 245 places include two staff places under criterion 9.
12. At its meeting on 17 December 2012 the governing body decided to consult on proposed changes to its arrangements for 2014. The consultation took place between 19 December 2012 and 12 February 2013. The consultation proposed two matters: the removal of the criterion relating to sporting

aptitude; and the definition of sibling to include those students attending the sixth form.

13. The governing body considered the feedback from the consultation on the arrangements at its meeting on 11 March 2013. The co-headteacher provided the governing body with a summary of the responses with recommended actions. This stated that there were eight communications received in response to the consultation. Seven responses were from individuals and one was a letter signed by approximately 130 members of staff. This letter from staff stated, as explained by the co-headteacher in a note to governors, the wish *“to see the school incorporate its legal right to include the admission of staff children in order to retain or recruit in its criteria.”*
14. The governing body determined the arrangements for 2014 at its meeting on 11 March 2013. The minutes of that meeting say, *“Governors unanimously agreed that children of staff will be admitted in addition to the PAN but limited to a maximum of five pupils per cohort, including the sixth form. Applications should be made direct to the co-headteachers. If more than five places are requested, the Admissions will be decided by a panel approved by the Governors.”*
15. There was no consultation for 2015 arrangements. The governors determined the arrangements for 2015 at the meeting of the governing body on 10 March 2014. The arrangements determined for 2015 in respect of criterion 9 were those determined for 2014. There were some minor amendments to the wording and dates to improve the clarity of the arrangements that made no change to the substance of the arrangements and thus were permitted changes that could be made.

Consideration of Factors

16. Paragraph 1.39 of the Code specifies that priority can be given to children of staff at the school. It says, *“Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:*
 - a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*
 - b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.”*

17. An admission authority can include an oversubscription criterion giving priority for admission to the children of staff provided the terms of the Code are met. The two questions that I consider are:
- a. Have the requirements concerning consultation been met in order to introduce criterion 9 giving priority to the children of staff?
 - b. Does the criterion as written comply with the Code; in particular can the school hold places above its published admission number for this purpose?
18. I will consider the matter of consultation first. At the meeting held on 17 December 2012 the governing body debated whether or not to include a new criterion, to give priority to the children of staff, as part of the consultation on the arrangements for 2014. I was told that the governors decided not to include any such proposal. The changes proposed in the consultation were the removal of the criterion relating to admission on the basis of a sporting aptitude and the definition of sibling to change to include students attending the sixth form.
19. The local authority circulated the consultation proposals to schools, other local authorities and other interested parties on behalf of the school. The letter sent to these parties explained, "*The proposed Admission Policy contains a small number of changes, notably:*
- a. *The definition of 'siblings' has been modified to allow students who are currently in the Sixth Form to be classified as siblings at the time at which the application for a place at the school was made.*
 - b. *The criterion relating to selection by aptitude for sport has been removed.*"
20. The school and the local authority were not clear how all parents of children aged 2 – 18 years, as required by the Code in paragraph 1.44a, had been consulted. At our meeting we discussed potential options for ensuring that all those who must be consulted are consulted in future.
21. There has been no consultation about the 2015 arrangements. The effect is that the criterion giving a priority for children of staff was introduced without raising it as a possibility during the consultation period prior to determining the arrangements for 2014 and it has been retained in the 2015 arrangements.
22. The minutes of the meetings of the governing body, 17 December 2012 and 11 March 2013, demonstrate considerable discussion by governors on matters relating to the possibility of introducing a criterion based on the children of staff. The evidence from the minutes of the governing body

meetings and the discussion of these minutes at the meeting I held, indicate that the governors considered:

- a. the wish to provide places for all students who live in the school's catchment area who sought a place at the school;
- b. the growing pressure for places, due to the increasing number of children of secondary school age living in the area;
- c. the concern that soon there would be insufficient places for all students living within the catchment area;
- d. the pressure from staff for a priority for places for staff children; and
- e. the wish not to take places from potential students living in the catchment area by prioritising the children of staff who do not live in the catchment area.

At the meeting, the co-headteacher referred to the considerable challenges faced by the school in recruiting and retaining staff despite the fact that the school had been judged to be outstanding by Ofsted at its most recent inspection.

23. The school asked for advice from the local authority and the Education Funding Agency via emails. The school asked the local authority on 19 December 2012 if a material change, such as including a priority for children of staff which was not included in the consultation, could be included in the final policy. The advice received was that this could not happen unless *“there were a number of objections raised about the fact that the children of staff were not given priority.”*
24. This advice interprets objections to a lack of a change to admission arrangements as valid. In this case however those consulted, with the exception of the staff, had no idea that the inclusion of this criterion for the children of staff was a possibility as it was not mentioned in the proposed arrangements. The school, however, faced a dilemma as it had received significant feedback from one interested party, the staff, on a matter that was not included as part of the consultation.
25. The enquiry by the headteacher to the local authority was made at the start of the consultation for the 2014 arrangements. The school also asked the Education Funding Agency for advice by email as the consultation came to an end in March 2013. The email from the school dated 6 March 2013 says, *“We have been consulting on our admission arrangements for 2014 – 15 intake in recent weeks. Having read the Code of Practice we would like to include the criterion to allow places for children of staff for recruitment and retention processes. We understand that the staff members will need to fill a vacancy in a shortage subject and/or been at the school for at least two years. In order not to disadvantage the local community we wish to make these (very few)*

places available over and above the pupil admission number when the need arises." The school asks if it can make this change.

26. The Education Funding Agency in its response states, "*I trust that the changes in criteria you refer to have been included in your consultation on your admission arrangements.*" The Education Funding Agency confirms that paragraph 1.39 of the Code refers to the criterion concerning children of staff at the school and states, "*So there is no reason why you cannot make these changes in line with the requirements set out in the Code.*" The Education Funding Agency makes no comment on the question of places being held above the published admission number for the children of staff who may meet this criterion. The headteacher understood the response from the Education Funding Agency meant that the Code allowed the inclusion of criterion 9. The minutes of the governing body meeting held on 11 March 2013 say, "*RP (the co-headteacher) reported that the Recruitment and Retention criteria to offer places in addition to the published admission number is in line with Department for Education code.*"
27. Paragraph 1.42 of the Code says, "*When changes are proposed to admission arrangements, all admission authorities **must** consult by **1 March** on their admission arrangements (including any supplementary information form) that will apply for admission applications for the following academic year.*" The school did consult on changes to its arrangements for 2014, namely on removing the criterion on relating to allocating places on the basis of sporting aptitude amending its definition of sibling. It did not consult on the inclusion of priority for the children of staff. That criterion was introduced without giving all those that should have been consulted the opportunity to comment and the criterion has been retained in the 2015 arrangements, again without any consultation on that criterion. The arrangements breach the requirements of the Code concerning how changes can be made to those arrangements. The Code requires the admission authority to amend its arrangements as quickly as possible.
28. I turn now to the criterion that has been introduced contrary to the Code's requirements on consultation and consider the operation of that criterion. The decision was taken that up to five places could be offered above the published admission number. The Code states in paragraph 1.2, "*As part of determining their admission arrangements, all admission authorities **must** set an admission number for each 'relevant age group.'*" In paragraph 1.4 the Code states, "*If, at any time following determination of the PAN (published admission number), an admission authority decides that it is able to admit above its PAN, it must notify the local authority in good time to allow the local authority to deliver its co-ordination responsibilities effectively. Admission authorities may also admit above their PAN in-year.*" This does not cover the

situation here where the intention was to hold up to five places above the published admission number in case they were needed by a particular group of applicants who were not allocated a place under any other criterion.

29. When a school is oversubscribed places must be offered in accordance with the oversubscription criteria and places allocated in that order. Places are not allocated in the order of the oversubscription criteria in these arrangements. It is a principle of the Code that *“Parents should be able to look at a set of admission arrangements and understand easily how places for that school will be allocated,”* as stated in paragraph 14.
30. The arrangements for oversubscription say: *“In the event of there being greater demand for admission than there are places available, places will be offered using the following criteria in the order given:*
1. *Children in Care. This category includes a ‘looked after child’ or a child who was previously looked after but, immediately after being looked after, became subject to an adoption, residence or special guardianship order .*
 2. *Children with exceptional medical or social reasons for requiring the school (as explained in Note 1 on page 6).*
 3. *Children who live in the ‘designated area’ of the school and who would have a sibling at the school at the time of application of the child for whom a place is sought and who also attend a feeder school. (The list of feeder primary schools is provided in the arrangements).*
 4. *Children who live in the ‘designated area’ of the school and who would have a sibling at the school at the time of application of the child for whom a place is sought.*
 5. *Children who live in the ‘designated area’ of the school and who also attend a feeder school.*
 6. *Children who live in the ‘designated area’ of the school.*
 7. *Children who would have a sibling at the school at the time of application of the child for whom a place is sought.*
 8. *Children who attend a feeder primary school.*
 9. *Recruitment and retention of staff (children of staff who have been employed at Charters for at least two years or those that meet a skills shortage). These students will be admitted in addition to the admission number, but limited to a maximum of five per cohort, including the Sixth*

Form. Applications in this category should be made by letter directly to the Co-Headteachers of Charters School. If more than five places in any one cohort are requested, admissions will be decided by a panel approved by the Governors

10. Individual preference for single-sex or co-educational.

11. All other applicants.”

31. The arrangements clearly state, *“places will be offered using the following criteria in the order given,”* but this is not what happens, even though this is what is required by the Code. A parent would reasonably believe they see where their child fits in the criteria, and has priority, say against criterion X and before 9, but does not get a place as 240 places have been allocated. They then could find that another child fulfils criterion 9 and therefore has a place. The effect for admissions is that up to five children of staff fulfilling criterion 9 are the highest priority in that they will always be allocated a place but the arrangements obscure this. This is not clear or procedurally fair and is therefore contrary to paragraph 1.8 of the Code.
32. The school explained that the intention of the governing body was that the arrangements ensure that those living in the catchment area would not feel that the admission of the children of staff had affected the overall number of places available, or in other words, it would not seem that staff children from out of area were potentially taking places from children in the school’s designated area. This does not meet the requirements of the Code as the arrangements are not clear.
33. Paragraph 2.14 of the Code says that *“Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”* It is unclear to me how this requirement of the Code on waiting lists will be applied with the existing arrangements and the use of criterion 9.
34. The application of criterion 9 needs clarification. The Code in paragraph 1.39 says, *“Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:*
- a. *“where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*

- b. *the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.*”

It is not clear to me if the school intends to give priority in either or both of these circumstances. Any member of staff, or potential member of staff, needs to be able to tell if they may fulfil the criterion for their child. This is not currently clear.

35. Criterion 9 says, “*Applications in this category should be made by letter directly to the Co-Headteachers of Charters School.*” It was clarified at the meeting that every applicant for a place under criterion 9 needs to complete the common application form and that the letter required to be sent to the co-headteachers is “a type of supplementary information form”. This is not immediately clear to the reader and ought to be. A supplementary information form is permitted if needed to apply an oversubscription criterion, but it must conform with paragraph 2.4 of the Code. Criterion 9 further says, “*If more than five places in any one cohort are requested, admissions will be decided by a panel approved by the Governors.*” Objective and transparent criteria are required in order to make decisions that are fair to all applicants.
36. The school can include priority for members of staff as permitted by the Code, but it cannot do so without first consulting fully on such a criterion and being very clear in the formulation of a criterion, for example about which staff, all or some, would be included.

Other matters

37. At the meeting on 10 July 2014 I discussed a range of issues about the arrangements for admissions in September 2015 with the school and the local authority, as described in paragraph 11 above. This was a positive discussion and the school expressed its intention to clarify several matters before information was sent out to parents in advance of applications for places in 2015. These matters included the rationale for the current feeder schools and the relationship of the feeder school areas with the designated area of the school; the need for an explicit final tie-breaker; the rationale for criterion ten which relates to preference for a single sex or co-educational education; the need for clarity around the intention to give priority to siblings of those attending the resource unit; and the arrangements for post-16 admissions.
38. The school agreed to correct errors in its arrangements for 2015 and expressed its intention to consult for arrangements for 2016 ensuring it meets fully the requirements for consultation.

39. These amendments need to include the correct wording with regard to *“looked after children and previously looked after children.”* The terminology of the Code in paragraph 1.7 needs to be followed as opposed to the short hand statement of *“Children in Care”* which is currently in the arrangements.
40. The school agreed that criterion 10, *“Individual preference for single-sex or co-educational,”* was inappropriate and that it should be deleted at the earliest opportunity.
41. In its arrangements is a sentence stating, *“Preference will be given to siblings of students admitted to the Charters School Resource Unit, who will be allocated places before other siblings.”* The school explained that it wishes to give priority to siblings of those attending the resource unit as they understand the challenges facing these families. Paragraph 1.11 and 1.12 of the Code describe the requirements with regard to siblings and that if there is a priority, *“this priority must be set out clearly in the arrangements.”* This is not the case here; this aspect of the arrangements does not meet the requirements of the Code.
42. At the meeting we considered the arrangements for post-16 admissions in some detail. It was agreed that most of the information on the current application form was inappropriate as it requested information that may only be needed once a place had been allocated such as home, work and mobile telephone numbers for both parents; anticipated mode of transport to school; and any health issues. The school stated that it would re-write its post 16 application form for 2015 admissions and only ask for information that was appropriate for an application for a place at the school as permitted by the Code.
43. We also agreed that there was wording in the post-16 prospectus which was inappropriate. Paragraph 1.9(g) where admission authorities **must not**, *“take account of reports from previous schools about children’s past behaviour, attendance, attitude or achievement, or of that of any other children in the family,”* and paragraph 1.9(m), which prohibits interviews, are most pertinent. This is because, as stated in the prospectus, the school looked for information from *“a school report that showed a willingness to learn”* through, *“recommendation, trials and interview,”* for prospective students for its BTEC courses. The school recognised that requiring references or holding interviews were forbidden by the Code and agreed to change its practice.
44. The school’s arrangements for post-16 state, *“Charters School will hold a waiting list, in order of the above criteria, of students who have not been offered a place. The waiting list will operate until Friday 18 September 2015, after which no more students will be admitted.”* The Code states in paragraph

2.14 that, *“Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”* The school recognised that its arrangements did not meet the requirements of the Code and would amend this as appropriate at the earliest opportunity.

Conclusion

45. The objection is to the inclusion in the arrangements of an oversubscription criterion which affords priority to the children of staff for up to five places above the published admission number. The Code allows the school to have a priority for the children of staff in its oversubscription criteria, but the school had not consulted for 2014 on including such a priority and retained the criterion for 2015 again without consulting on its inclusion. The school has not met the requirements relating to consultation and changing its arrangements.
46. The reservation of up to five places above the published admission number for children of staff and then making children of staff the ninth criteria does not meet the requirements of the Code with regard to the determination and use of a published admission number. Nor does it meet the requirements of the Code for the arrangements to be clear, procedurally fair and easily understood.
47. I have also considered the arrangements as a whole for admission to the school in September 2015 and have concluded that several aspects of the arrangements detailed above do not comply with the Code. With regard to these other issues of non-compliance the Code requires the admission authority to revise its admission arrangements as quickly as possible.

Determination

48. In accordance with section 88H(4) of the School Standards and Framework Act 1998 (the Act), I uphold the objection to the admission arrangements determined by the governing body, the admission authority for Charters School, for admissions in 2015.
49. I have also considered the arrangements in accordance with section 88I(5) of the Act. I determine that there are other matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

50. By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The Schools Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 5 September 2014

Signed:

Schools Adjudicator: Deborah Pritchard