



## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2586</b>
<b>Referrer:</b>	<b>A member of the public</b>
<b>Admission Authority:</b>	<b>The governing body of the academy trust of Watford Grammar School for Girls, Hertfordshire</b>
<b>Date of decision:</b>	<b>22 July 2014</b>

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Watford Grammar School for Girls, for admissions in September 2015. I determine that some aspects 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 2015 determined admission arrangements (the arrangements) for Watford Grammar School for Girls (the school) have been brought to the attention of the Adjudicator as a result of an objection regarding the 2015 admission arrangements for Watford Grammar School for Boys (the boys' school). The two schools operate a shared admissions policy and each school prioritises applicants with a sibling at the other school. The objection about the 2015 admission arrangements for the boys' school was brought by a member of the public about the definition of sibling which does not include any reference to foster family relationships.

### **Jurisdiction**

2. The terms of the academy agreement between the academy trust of the school (the academy trust) and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the governing body of the academy trust which is the admission authority for the school on this basis.

3. The objection to the 2015 determined arrangements for the boys' school was submitted by an anonymous objector on 1 April 2014. The anonymous objection was allowable under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012 because the objector had provided his/her name and address to the Adjudicator. The 2015 determined arrangements for the school came to my attention because it

operates a shared admissions policy with the boys' school which includes a priority for applicants with a sibling at the other school. Arrangements that come to the attention of the adjudicator by any means may be considered under section 88I(5) of the Act. Accordingly, I am satisfied that it is within my jurisdiction to consider the arrangements under section 88I(5) of the Act. 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 relevant legislation and the School Admissions Code (the Code).

The documents I have considered in reaching my decision include:

- a. the form of objection dated 1 April 2014 regarding the sibling definition in the admission arrangements for the boys' school, and further comments from the objector dated 10 April and 12 May 2014;
- b. the school's response dated 8 May 2014 including a copy of the draft minutes of the governing body of 10 March 2014 at which the 2015 arrangements were determined, and a copy of the 2015 determined arrangements for Year 7 admissions;
- c. a copy of the 2015 arrangements for entry to the sixth form sent by the school on 13 May 2014;
- d. the joint response from both schools concerning the cross sibling criteria in a letter dated 21 May 2014;
- e. the determination of September 2008;
- f. responses with attachments from Hertfordshire County Council (the council) dated 6 and 8 May 2014;
- g. admissions information for Year 7 and for the sixth form downloaded from the school's website;
- h. a letter of 18 June 2014 from the community cohesion governor of the boys' school; and
- g. amended arrangements and admissions data from the school and data from the council emailed in the period 18 to 27 June 2014.

5. I arranged a meeting on 4 June 2014 (the meeting) with representatives of the school, the council and the boys' school. After the meeting correspondence was submitted as a result of my requests for further information and clarification, and this has been copied to the council, the boys' school and the objector as appropriate. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

## **The Objection**

6. The referral relates to paragraph 1.11 of the Code with respect to the definition of sibling used by the school and by the council which fails to include foster family relationships. The school prioritises "*applicants with a sister enrolled at the school...*" at oversubscription criterion 4. In using this sibling definition the school

appears to have excluded a younger child from applying as the sibling of a looked after child already on roll at the school, even though both are living together in the same family home. The objector complained that the sibling definition does not comply with paragraph 14 of the Code because it is “*vague, confusing and unclear for families looking after children on behalf of the state.*”

## **Background**

7. The school opened as a state-funded, independent academy school for girls aged 11 to 19 years on 1 September 2010, replacing the predecessor school of the same name which ceased to be a maintained school on that date.

8. The funding agreement confirms that this partially-selective school has a planned capacity of 1250 girls including 350 places in the sixth form. The school has pre-existing partially selective admissions permitted by section 100 of the Act, and as such is permitted to maintain the proportion of 25 per cent selective admissions, the level set in 1998. The arrangements indicate that the published admission number (PAN) is 180, including 45 places for applicants selected on the basis of academic ability, and 18 places on the basis of musical aptitude.

9. The school has designated the catchment area as two sectors: the Watford area, and the rest of the admissions area, defined by postcode. As the school is oversubscribed, girls living outside the catchment area are unlikely to be allocated a place at the school. If there are more applications than the 180 places available for September 2015, then the governing body must allocate places in accordance with oversubscription criteria in the arrangements which are summarised below:

### COMMUNITY PLACES (117 places)

1. Looked after children and previously looked after children who ceased to be so because they were adopted, or became subject to a residence order or a special guardianship order;
2. Applicants whose permanent home address is nearest to the school and would not be allocated a place under another criterion (18 places);
3. Applicants who are children of a parent who is a permanent member of the school staff;
4. Applicants with a sister enrolled at the school, excluding sisters who first entered the school in the Sixth Form (Year 12 or Year 13);
5. Applicants with a brother enrolled at the boys' school, excluding brothers who first entered the school in the Sixth Form (Year 12 or Year 13);
6. Places will then be allocated to applicants living closest to the school;

### SPECIALIST PLACES (38 places in Watford; 25 in rest of catchment)

7. Applicants selected on the basis of aptitude for music as measured by the school's assessment procedures (18 places); and
8. Applicants selected by academic ability as measured by the school's assessment procedures, in merit order (45 places).

10. The school confirmed that following consultation, two changes to the

oversubscription criteria were made for admissions in September 2013: a new priority for the daughters of permanently appointed staff; and the reinstatement of a priority for applicants with an older brother at the boys' school (known as the "cross-sibling criterion"). The school and the council provided data about the breakdown of applications and first round allocations for the last three years, which I have summarised in the table below.

	2012		2013		2014	
<b>Total applications</b>	754		821		886	
<b>First preferences</b>	418		398		426	
<b>SEN</b>	0		0		1	
<b>1. Previously/ Looked After Children</b>	2		2		2	
<b>2. Proximity</b>	18		18		18	
<b>3. Staff children</b>	-		1		3	
<b>4. Sibling</b>	36		38		46	
<b>5. Cross-sibling</b>	-		32		41	
<b>6. Distance</b>	61		26		6	
<b>Specialist Places</b>	<b>Watford</b>	<b>Rest</b>	<b>Watford</b>	<b>Rest</b>	<b>Watford</b>	<b>Rest</b>
<b>7. Music</b>	11	7	11	7	11	7
<b>8. Ability</b>	27	18	27	18	27	18
<b>Total allocations</b>	180		180		180	

11. From the table above it can be seen that the school is oversubscribed. For example, in 2014 there were 886 applications, with 426 of these nominating the school as their first preference. Following the testing process for specialist places, and after applying the oversubscription criteria, 180 places were then allocated in the first round in March 2014, with nearly half of these being assigned to siblings and cross-siblings.

### Consideration of Factors

12. I note that paragraph 1.11 of the Code states that "admission authorities **must state clearly in their arrangements what they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).**"

13. Oversubscription criterion 4 prioritises applicants with a sister already on roll at the school (excluding sisters who were admitted to the sixth form). The definition of sibling used by the school for the purposes of criterion 4 is found at note (iii) of the arrangements, which states that "sister" means:

- "a) a girl having at least one natural parent (or parent by legal adoption) in common with the applicant; or*
- b) a girl related to the applicant as a step-sister by the inter-marriage of one of each of their parents prior to the date of application.*

*In all cases, the relevant parent must have parental responsibility (sole or shared) for the applicant.*” Note (iv) explains further that for an applicant to qualify for a place under criterion 4, the sister must be a student at the school in Years 7 to 13 at the time of admission.

14. For oversubscription criterion 5, the cross-sibling criterion, the same sibling definition would apply to applicants with an older brother in Years 7 to 13 at the boys’ school at the time of admission (excluding a brother who joined the school in the sixth form).

15. In a letter dated 8 May 2014, the school acknowledged that *“the definition of a sibling in our admission notes does have the effect of excluding a child from making an application as a sibling if she lives in the same family home as a child looked after who attends the school. This is mainly because the definition has stood unchallenged for many years as it serves to clarify the circumstances governing the sibling applications normally received. The circumstances in this case are sufficiently rare as not to have required discussion or specific provision by the two schools’ Joint Admissions Committee. This will be rectified at the next JAC meeting in June. There is however no intention in the current arrangements to exclude or in any way penalise children in these family circumstances...”*

16. In the meeting the school said it was concerned that the nature of the objection had not been provided by the Office of the Schools Adjudicator (OSA). However, the initial letter of 30 April 2014 from the OSA clearly states in the third paragraph that the *“adjudicator is looking at your arrangements in relation to paragraph 1.11 of the Code, and the definition of sibling in the arrangements which appears to exclude a younger child living in the same family home from applying as the sibling of a looked after child on roll at the school.”* In the meeting I also explained that the objector had assumed that the school’s sibling definition had been informed by what s/he regarded as the council’s *“narrow”* sibling definition.

17. During the meeting both schools felt that paragraph 1.11 of the Code did not state what had to be included in the sibling definition, and that foster sibling had only been mentioned in paragraph 1.11 as an example of what might be considered, rather than as a requirement of what had to be included. However, the school explained that the lack of reference to foster relationships in the definition of sibling was a *“genuine omission”* and would be rectified.

18. In the response of 6 May 2014, the council confirmed that it does not currently include in its definition *“the siblings of children living in the same household as children looked after and ... it is fairly common for schools and local authorities not to include CLA [children looked after] in their sibling definition.”* The council explained that it *“does not object in principle to amending its sibling definition to include children looked after, however we do feel that if the exclusion of CLA from the sibling definition is indeed a breach of the Code, the Code itself should be clear on this issue.”* The council confirmed that its sibling definition is:

*“the sister, brother, half brother or sister, adopted brother or sister, or child of the parent/carer or partner, and in every case living in the same house from Monday to Friday. A sibling must be on the roll of the named school at the time the younger child starts.”*

19. In the response of 6 May 2014 the council also expressed concerns *“that the inclusion of children looked after in the sibling definition could, perhaps ‘unfairly’ in the eyes of some parents, provide a sibling link to children who would otherwise have little chance of obtaining a place at an oversubscribed school some distance from their home address, particularly if the CLA in question was fostered on a temporary basis.”* In the meeting the council reiterated what it described as a *“slight concern”* that some children are placed with the foster family on a short-term temporary basis, and that in such cases, allocating a place on the basis of being the sibling of the foster child already at the school may be unfair to other families, but the council acknowledged that such cases would be rare. The council said that it did not have an issue in principle with widening the sibling definition to recognise foster relationships, and would be happy to do so.

20. Paragraph 1.11 of the Code requires that *“admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).”* As foster sibling is included as an example in paragraph 1.11, this suggests that it is up to the admission authority to decide whether or not foster relationships should be included in the sibling definition. It seems to me that the lack of any reference to foster relationships in the sibling definition may lead parents with a foster child already at the school to be unsure as to whether their daughter by birth would be eligible to be considered under the fourth criterion. Accordingly, the lack of certainty about whether or not foster relationships fall within the school’s sibling definition does not comply with the Code at paragraph 14 which requires that *“parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

21. However, the school said in the meeting that the lack of reference to foster relationships in the sibling definition was a *“genuine omission.”* The school also explained in the letter dated 8 May 2014 that there was *“no intention in the current arrangements to exclude or in any way penalise children in these family circumstances...”* I fully accept that the school had no intention to exclude foster relationships from being prioritised as siblings, but I need to consider the effect of excluding foster relationships in terms of fairness, as the Code at paragraph 14 states that *“in drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”*

22. In the hypothetical case that two girls live as sisters in the same family home, one a foster child already at the school and the other a younger daughter by birth, I consider that the sisters should have as much right to be eligible as siblings under the fourth criterion as two girls living in any other family arrangement which qualifies under the sibling definition. Not to regard foster relationships as siblings would mean that the younger girl, the birth daughter in the family looking after the foster daughter on roll at the school, would not be allocated a place under the fourth criterion which therefore disadvantages unfairly the sibling of a looked after child. I consider that this would be in breach of paragraph 14 because in drawing up the arrangements, the

school **must** ensure “*that the practices and the criteria used to decide the allocation of school places are fair ...*”

23. In the meeting I explained that there are two other matters regarding the sibling definition, and I drew the school’s attention to paragraph 1.9(f) which makes clear that in formulating their arrangements, admission authorities **must not** give priority to children according to the marital status of parents applying. Accordingly, the sibling definition at note (iii) should be reworded to remove the reference to “*inter-marriage*” and the school agreed to do so.

24. The sibling definition also applies to criterion 5, the cross-sibling criterion, for applicants who have a “*brother*” at the boys’ school and I note that in the earlier adjudication of 2008, the cross-sibling criterion had been removed because of the disadvantage to applicants living very close to the school, which was contrary to a mandatory provision of a much earlier Code.

25. However, the Code now in place, at paragraph 1.12 permits a school “*to give priority to siblings of pupils attending another state funded school with which they have close links (for example ... close links between two single sex schools).*” Accordingly, I had asked the school for further information about any close links it may now have with the boys’ school.

26. In a joint letter with the boys’ school of 21 May 2014, the school explained that the close links between both schools “*have existed for over 300 years, since the schools’ foundation as one school in 1704. The links are evident in our history, our shared ethos, the joint activities provided for pupils in and out of school, in the mixed classes for some advanced level subjects, and in the joint admissions committee and other links with the governance of the two schools.*”

27. In a letter dated 18 June 2014, a governor of the boys’ school explains that a single board of trustees operates for the two schools, overarching both separate governing bodies, to ensure that the two schools remain linked and maintain the traditions started when the school was founded as one school. Having had children at both schools, the governor confirms that the schools demonstrate close links through the coordination of “*consultation evenings, music and drama performances, social events, curriculum meetings and school visits*” which enables “*parents with children at both schools to attend all of them.*”

28. Furthermore, both schools had produced jointly a list of close links which was presented during the meeting. The list of links included a joint ethos statement; joint foundation with trustees overseeing both schools and owning the land on which each school stands; linked academy companies including some governors in common; joint admissions committee and identical admissions criteria; joint extended curriculum activities such as trips, orchestra, drama productions, and special events; a joint curriculum statement; some joint sixth form courses and revision classes; and joint sports events. In the meeting the school also spoke about the joint appointment panel for senior posts, and that the schools have to work closely because families have children at both schools and expect the same for their son and daughter. Clearly there are joint activities at sixth form level but much less so in Years 7 to 11. The school explained that joint courses and other activities are more difficult to

arrange in the lower school because of supervision and travel issues as the schools are not on the same site, but the schools were planning together to develop joint activities to the lower school. Accordingly, I am persuaded there are close links between the school and the boys' school.

29. From the table above in paragraph 10, the effect of reinstating the cross-sibling criterion can be surmised. In 2012, which was before the cross-sibling criterion was reintroduced, more than 60 places were allocated on distance at criterion 6, but in the following two years less than half the number of places, and then only a handful, were assigned on distance. In the joint letter of 21 May 2014, the school explained that since the 2008 adjudication, provision had been made in the admissions arrangements *"to offset the effect of the cross-sibling rule on applications by families with no prior connection to the school ..."* I note that the school has clarified in criterion 2 that 10 per cent of the total admissions (18 places) will be available for those applicants living closest to the school who would not otherwise be allocated a place under any other criterion. Accordingly, the school believes *"that in reserving 10 per cent of the places in Year 7 for applicants who live locally and who have no prior connection to the school, nor a qualification for a place under any other criterion, they have addressed the concerns upon which the decision to remove the cross-sibling rule was based, while allowing long-standing family links to be preserved."* I accept that after the previous adjudication the school amended the wording of the second criterion so as to "protect" the places available for local families although it is arguable whether prioritising just 18 of the 180 places for girls living closest to the school is sufficient. The school points out that no concerns have been raised on that aspect.

30. Having considered at length the cross-sibling criterion, I am also of the view that in the hypothetical case of the family with a foster child already on roll at the school, the younger daughter by birth has at least as much right to be prioritised as a sibling as the girl who would be prioritised under the cross-sibling criterion because she has an older brother at the boys' school. For the school not to prioritise for the same school the girl living in the same household as her older foster sister does not seem reasonable when the school clearly extends sibling priority to a brother and sister living in the same household but attending two separate schools. Accordingly, I conclude that the school must include foster relationships in the sibling definition, and that to do otherwise would be unreasonable as it would disadvantage unfairly a birth daughter living in the same family home as her foster sister already on roll at the school, and therefore in breach of the mandatory requirement in paragraph 14 that *"the practices and the criteria used to decide the allocation of school places are fair"* and also a breach of paragraph 1.8 that *"oversubscription criteria **must** be reasonable."*

31. I acknowledge that in the meeting on 4 June 2014 the school agreed to rectify the genuine omission of foster relationships from the definition of sibling. In the letter of 8 May 2014 the school did suggest amended wording for "sister" to include *"a girl (or boy for WGBS) looked after or adopted who lives in the same family home as the applicant."* However, the objector in an email dated 12 May 2014 suggested that *"this would still be unclear as to whether the birth child is a sibling to the foster child. It clearly addresses the relationship between the foster child and the birth child - if it could mention the relationship between the applicant and the foster child this should"*



*avoid unintended exclusion in the future.*” I note that the sibling definition in the Year 7 arrangements currently displayed on the website remains unchanged.

## **Other Matters**

32. In reviewing the 2015 admission arrangements I noticed that there were other aspects of the admission arrangements that appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. I raised with the school several points which appeared to me to contravene the Code and could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to comply with the Code, and agreed to note their progress in my determination. I raised the following points:

### Sixth form arrangements

- a. The requirement to attach a passport size photograph to the application form does not comply with the Code at paragraph 1.9(o). The application form now displayed on the school’s website shows that this requirement has been removed;
- b. The request for further information related to the applicant’s nationality, close family connections to the school, reason for applying, and achievements in academic work, sport and music does not comply with the Code at paragraph 2.4 and must be removed from the application form as this information is not required to operate the oversubscription criteria. These aspects have been removed from the application form now available on the school’s website;
- c. Either the applicant or a parent may be expected to sign the application form, but both signatures should not be required. The form has been amended appropriately to explain that *“this form should be completed and signed by the applicant, or by her parent or guardian”*;
- d. The second page of the confidential information sheet for completion by the applicant’s current school asks for information about the applicant such as behaviour, attendance, and attitude to work which is prohibited by paragraph 1.9(g) of the Code. This information may be requested after places have been allocated. The website now displays an additional information form which complies with the Code;
- e. The Code at paragraph 1.2 states that *“as part of determining their admission arrangements, all admission authorities **must** set an admission number for each relevant age group.”* However, the statement at section 8 of the arrangements that *“places will be offered for external applicants up to a maximum of 65 in Year 12”* lacks clarity. The arrangements now displayed on the website clearly show that the *“admission number ... will be 65 (external) students”*;
- f. The website currently displays the 2015 arrangements, which complies with paragraph 1.47 of the Code. However, the 2014 arrangements should also be available on the website until the end of this calendar year as they apply to any waiting list held by the school. The Code at paragraph 2.14 states 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.* I note that the website currently displays the Year 7 arrangements for both 2014 and 2015;

#### Year 7 and sixth form arrangements

g. The oversubscription criteria do not clearly define children looked after or previously looked after. The relevant form of words may be found at paragraph 1.7 (and footnote 17) of the Code, and an acceptable version may be found in the Appendix to the Code on page 31 at section 1; and

h. The school has not yet included a final tie breaker to determine who has the higher priority between two equidistant applications that are otherwise equal. The Code at paragraph 1.8 makes clear that *“admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”* To comply with paragraph 1.8 of the code, the school must provide an effective final tie breaker such as random allocation.

### **Conclusion**

33. As the school did not refer to foster relationships in its sibling definition, it may be that parents with a foster child already at the school would not be able to look at the arrangements and ascertain whether or not their younger daughter by birth would be eligible to be considered under the fourth criterion. This lack of certainty is, in my opinion, a breach of the Code at paragraph 14 which requires that *“parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

34. The lack of reference may, instead, be interpreted by applicants to mean that the school has excluded foster relationships from the sibling definition. In the hypothetical case of two girls living as sisters in the same family home, one a foster child already at the school and the other a younger daughter by birth, the younger girl would not be eligible for a place under the fourth criterion. In my opinion, these two foster sisters have as much right to be regarded as siblings under criterion 4 as two girls living in any other family arrangement which qualifies under the sibling definition. Not to regard foster relationships as siblings would mean that the younger daughter by birth would not be allocated a place under the fourth criterion even though she has an older foster sister at the school, which therefore disadvantages unfairly the sibling of the looked after child. I consider that this would be in breach of paragraph 14 because in drawing up the arrangements, the school **must** ensure *“that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”*

35. I am also of the view that the daughter by birth who is the foster sister of a looked after child on roll at the school has at least as much right to be prioritised for a place at the school as the girl who would be prioritised under the cross-sibling criterion because she has a brother at the boys' school. Accordingly, I consider that it would be unreasonable and therefore a breach of the Code at paragraph 1.8 for the school not to decide that foster relationships qualify as siblings when the school has

already extended priority to girls with older brothers at a different school. To decide otherwise would be unequal treatment, therefore unfair and in breach of paragraph 14.

36. I acknowledge that in the meeting on 4 June 2014 the school said it had not intended to exclude foster relationships from the sibling definition, and that it had been a "*genuine omission*". The school also agreed to amend the definition so that foster relationships are recognised as siblings, but from the arrangements currently displayed on the website, the school has not done so as yet.

37. Having reviewed the arrangements as a whole for full compliance with the Code I have also concluded, for the reasons given in paragraph 32, that there are other matters in the arrangements that need to be amended.

### **Determination**

38. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Watford Grammar School for Girls, for admissions in September 2015. I determine that some aspects do not conform with the requirements relating to admission arrangements.

39. 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: 22 July 2014

Signed:

Schools Adjudicator: Ms Cecilia Galloway