

DETERMINATION

Case reference: ADA2475

Objector: Plymouth City Council

Admission Authority: The governing body of the Academy Trust of Oreston Community Academy, Plymstock, Plymouth

Date of decision: 10 September 2013

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 governing body of the Academy Trust of Oreston Community Academy for admissions in September 2014.

I have also considered both the 2013 and 2014 arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 38 of this adjudication.

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 make any remaining revisions to their 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 representative of Plymouth City Council about the 2014 admission arrangements (the arrangements) for the Oreston Community Academy (the school). The objection relates to the oversubscription criteria which prioritise children who have attended the school's nursery provision.

Jurisdiction

2. The terms of the academy agreement between the Oreston Community Academy Limited (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 arrangements were determined on that basis by the governing body which is the admission authority for the school.

3. The objector submitted an objection to the determined arrangements on 24 June 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this objection.

4. The objector also brought to my attention a long-standing concern about the 2013 admission arrangements which, although by now was past the time when an objection should have been made, has been considered as it applies to any waiting list held by the school and because the 2013 arrangements were then adopted unchanged and determined as the 2014 arrangements. Under section 88I(5) of the Act, the adjudicator has the power to consider admission arrangements that do not, or may not, conform with the requirements relating to admission arrangements. I am satisfied that I have the power to consider the 2013 arrangements and other matters about the 2014 admission arrangements.

Procedure

5. 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:

- the objector's form of objection sent by email on 24 June 2013;
- a copy of the 2013 and 2014 admissions policies and the funding agreement;
- the minutes of two Community and Premises meetings of governors dated 12 November 2012 and 11 March 2013, supplied by the school on 4 July 2013;
- the school's response to the objection emailed on 15 July 2013;
- the council's on-line guide for parents about primary school admissions called '*Starting School in Plymouth 2013/2014*' accessed by me on 29 July 2013;
- the nursery oversubscription criteria and application form accessed from the school's website by me on 22 July 2013;
- an information pack supplied by the council during the meeting at the school on 30 July 2013;
- a copy of the funding head count for May showing anonymised information about children in the nursery, their postcode and number of hours provision, emailed by the council on 31 July 2013;
- a copy of the minutes of the governing body meetings of 12 November 2012 at which the 2014 arrangements were determined, and of 21 January 2013 confirming those determined arrangements, as supplied by the school at the meeting on 30 July 2013;
- a copy of the minutes of governing body meeting dated 26 March 2012 at which the proposed changes to the admissions policy were discussed and agreed, as supplied by the school at the meeting on 30 July 2013;
- an information pack, including copies of correspondence, supplied by the council during the meeting at the school on 30 July 2013;
- an information pack provided by the school at the meeting, including letters from parents in support of the admissions policy and a nursery budget forecast statement for 2013/14;

- an email from the council on 30 July 2013, providing a funding headcount for children in the nursery in the period 13-17 May 2013; and
- supplementary evidence provided by the school on 5 August in response to my request for further information, including maps A and B showing the spread of admissions to reception year (YR)

6. I arranged a meeting with representatives of the school and the council at the school on 30 July 2013, and I have taken account of the information I received during the meeting and subsequent correspondence.

The Objection

7. The objection was made by a representative of the council and relates to children who attended the nursery being given priority in the oversubscription criteria. The council believes that naming the nursery as a feeder school is not compliant with the Code because admissions authorities '*are prohibited from naming fee-paying independent schools as feeder schools*' under paragraph 1.9(l) of the Code, and that '*even if the nursery is part of the school, where parents are paying for additional hours over the standard allocation this is in breach of paragraph 1.9(e) on the basis that it is giving priority to parents who are financially supporting the school.*'

Background

8. Oreston Community Academy is a co-educational primary academy which opened on 1 January 2011 and replaced the previous community school and nursery trust. The funding agreement states that the planned capacity of the academy is 315 in the age range 5 to 11 plus a nursery unit of 30 places. The school confirmed that the published admission number (PAN) is 45 and that there are 40 places (10 more than the funding agreement) in each of the two nursery sessions (morning and afternoon). When children attend for both the morning and the afternoon sessions, parents have the option of paying for lunch and supervision between the two sessions. Parents may also purchase sessions in addition to those that are provided as the early years entitlement paid for by the government. The school also runs the Lighthouse Club, a fee-paying club which provides "wrap around day care" before and after the nursery and school are in session, and in the school holidays.

Consideration of Factors

9. At the time of the meeting on 30 July 2013, the 2012 oversubscription criteria were still available on the school's website. It is evident that in 2012 the school used the same criteria as those published by the council for community and voluntary controlled schools, which were:

1. A child in care;
2. Children with a sibling already attending the school at the time of admission or, for admission to an infant school, attending the linked junior school;
3. Other children.

10. In 2013 the oversubscription criteria were changed significantly to prioritise siblings, the children of staff and other children who attended the nursery at the time of application for a YR place, as follows:

1. Children in Care or those who have ceased to be in Care because they were adopted, made the subject of a residency order, or made the subject of a special guardianship order;
2. A child registered in the Nursery with a sibling in the main Academy at the time of application;
3. A child registered in the Nursery whose parent is a member of staff employed for more than two years by the Academy or recruited within the past two years to fill a vacancy for which there was a skills shortage;
4. A child registered in the Nursery;
5. Other children with a sibling in the main Academy;
6. Other children whose parent is a member of staff employed for more than two years by the Academy or recruited within the past two years to fill a vacancy for which there was a skills shortage;
7. Other children.

11. The council's objection relates to children registered at the nursery being given priority in the oversubscription criteria. The council believes that naming the nursery as a feeder school is not compliant with the Code because admissions authorities '*are prohibited from naming fee-paying independent schools as feeder schools*' under paragraph 1.9(l), and that '*even if the nursery is part of the school, where parents are paying for additional hours over the standard allocation*'... which the council believes '*...is in breach of paragraph 1.9(e) on the basis that it is giving priority to parents who are financially supporting the school.*' The Code at 1.9(b) also makes explicit that that admission authorities '*must not take into account any previous schools attended, unless it is a named feeder school*'. An important consideration, therefore, is the formal designation of the nursery.

12. The funding agreement at paragraph 17 states that the '*planned capacity of the Academy is 315 in the age range 5-11 plus a nursery unit of 30 places. The Academy will be an all ability inclusive school*' Furthermore, the funding agreement at paragraph 62A states that '*for the purposes of the foregoing [Ofsted] the grade received ... shall be regarded as the grade received by the Academy*' and the most recent Ofsted inspection (May 2011) categorised the age range of the school as 3-11 years. The school maintains that the nursery is not a private enterprise but is an integral part of the academy, which is one charitable organisation. I also note that the school's website records that the nursery is in purpose-built facilities within the main school, that the nursery teacher is part of the wider Early Years Team, and that there is joint weekly planning across the foundation /nursery areas. Accordingly, I am persuaded that the nursery is run as part of the academy, and as it is not a school in its own right, it cannot be regarded as a feeder school, and therefore there is no breach of 1.9(l) of the Code.

13. In the second part of the objection, the assertion is made that '*parents are paying for additional hours over the standard allocation*'... which the council believes '*...is in breach of paragraph 1.9(e) on the basis that it is giving priority to parents who*

are financially supporting the school. In the meeting on 30 July 2013, the council explained that Early Years settings, such as the nursery, can choose whether or not to offer more than the standard early years entitlement of 570 hours per year commonly taken as 15 hours per week for 38 weeks which is funded by the government. I have analysed the funding headcount data emailed by the council on 30 July 2013. In the period 13-17 May 2013 the funding headcount shows that 66 children were in the nursery and that additional sessions were purchased for 39 of these pupils. In choosing to offer more than 15 hours I accept that the school is supporting working parents in the community, nevertheless, parents purchasing this option are making payments directly to the school and are, in my view, deemed to be offering financial support to the school which contravenes paragraph 1.9(e) of the Code.

14. The school also runs the fee-paying Lighthouse Club which provides “wrap around day care” before and after the nursery and school are in session. It is in operation during the school term and in the school holidays. The school describes this facility as *‘extended school arrangements’* and a number of children from across the age range of 3 to 11 years do attend, but the school states this facility is separate from the nursery which does not make a profit. However, I took note in the meeting that the school said that *the ‘nursery is part of a wraparound service including after hours and holiday care which parents can take advantage of should they choose (but without obligation)’*.

15. I asked about the financial arrangements of the nursery and daycare facility in the meeting as it appeared in the financial statement for the year ending 31 August 2012 that the nursery staffing subsidised the day care provision which had no staffing costs at all. In the response of 5 August, the school explained that the nursery and day care figures were combined due to the school *‘becoming an academy part way through a financial year and adjusting to both a new reporting format (splitting restricted and unrestricted funds) as well as a new finance reporting system (SAGE). We have been reporting them as separate entities since September 2012, our first full year reporting period’*. As the statement for the most recent financial year was not available, the school included a small amount of information about nursery and daycare costs and a nursery budget forecast, but this evidence is limited and therefore not conclusive. Although the financial arrangements of the nursery and day care have not yet been clarified, both provisions do appear as cost centres in the financial statement for Oreston Community Academy as a whole, which again supports the interpretation above that the nursery should not be regarded as a feeder school. Nevertheless, parents are paying for additional hours over the government-funded allocation (with or without wraparound day care) and so I agree with the council that these nursery parents are financially supporting the school. As the 2014 arrangements prioritise children registered at the nursery at positions 2, 3 and 4 of the seven oversubscription criteria, this can be interpreted as giving priority to children on the basis of financial support parents may give to the school, which is contrary to paragraph 1.9(e) of the Code.

16. However, at the meeting at the school on 30 July 2013, I discovered that the council had a more fundamental and long-standing concern about the 2013

determined arrangements which had then been adopted again as the 2014 determined arrangements. The council asserted that the school had not properly consulted on the 2013 arrangements before they were determined and provided as evidence a pack of supplementary information including related correspondence. During the meeting, and in the response emailed afterwards on 5 August 2013, the school expressed surprise and concern that the council was now calling into question a consultation process that had happened nearly two years ago. The school argued that there was no evidence of the council having raised any issues at the time or by the relevant deadline which was 30 June 2012, and that the council had said in several meetings that the consultation for 2013 was compliant with the Code. However, in accordance with section 88(5) of the Act, as the objector has brought a relevant matter to my attention, I have decided to consider this concern about the 2013 arrangements as they apply to any waiting list held by the school that has to be kept for at least the autumn term, and because the arrangements for 2014 are the same as those for 2013 and there was no consultation on the 2014 arrangements.

17. From the evidence available in the council's information pack, a letter dated 19 October 2011 shows that the council had informed all "own admission authority schools" about the process for setting admission arrangements, and offered to host a consultation website. The council also asked the schools for which it was not the admissions authority to supply their proposed 2013 arrangements or to confirm if they wished to continue to use the council's admission policies. In an email dated 11 November 2011, the school notified the council that the governors *'are happy to stay with the LA Policy with the continued exception that our distance will be calculated on walking distance rather than the straight line method'*. The consultation process took place between 3 January and 29 February 2012, and during that period, the proposed arrangements for the school matched the council's proposed oversubscription criteria, except for the distance measure. However, on 10 February 2012, well over half way through the consultation period, the school informed the council by email that *'in the light of the comments we have received and having had the opportunity to review the new Code, there are a number of points we intend to change.'* At that point, I note that the school did not detail what it intended to change. In the same email, the school notified the council that as *'their additional Admissions Services'* would be purchased from Devon County Council from 1 March 2012, *'an appropriate protocol will need to be established to ensure smooth and efficient working between us in the future'*.

18. Further to the school's email of 10 February 2012, I note that the school has not provided evidence of the comments it received. I am of the opinion that as the council was conducting the consultation on behalf of the school, any comments received by the school should have been passed to the council. In a letter to the school dated 8 March 2012, the council confirmed that the only comment received in response to the consultation was from the school itself, by email on 28 February 2012, which confirmed that the school intended to adjust its admission policy in order to give priority to children registered at the nursery; review the acceptable walking routes to the school; and manage its own in-year admissions. I note that the letter did not mention the school's intention to include the other new priority for the children of staff. As the 2013 arrangements that were the subject of the consultation

undertaken by the council on behalf of the school were markedly different from the amended arrangements, I am of the opinion that the school should have undertaken its own public consultation because of the significant changes it decided to make.

19. The Code at paragraph 15(b) specifies that when changes to admission arrangements are proposed *'the admission authority **must** first publicly consult on those arrangements'* so that parents, the local community and other interested parties have the opportunity to understand the changes being proposed and then to have time to submit their views. When changes are proposed, paragraph 1.42 states that *'the admission authority **must** consult by **1 March**'* and 1.43 explains further that the minimum consultation period is for *'eight weeks which **must** take place between **1 November** and **1 March** in the determination year.'* In the meeting on 30 July 2013 the council advised that it was not aware of any evidence that the school had undertaken to consult on the amended 2013 arrangements that were not those that were the subject of the consultation it had undertaken on behalf of the school. The council also said that given the date of notification of the amended arrangements (10 February 2012), there would not have been enough time for the school to consult by the deadline of 1 March 2012. For this reason, in an email response dated 1 March 2012, the council advised the school that *'Any changes to the consultation carried out need to be reflected in your determined admission arrangements. Once determined, any changes must be notified to consultees, anyone can then object to the Adjudicator until the end of June'*. However, there is no evidence that the school had notified consultees of the changes.

20. In a letter to the school dated 8 March 2012, the council confirmed that the only comment received in response to the consultation conducted on the school's behalf was from the school (by email on 28 February 2012) which confirmed that the school intended to adjust its admission policy in order to give priority to children registered at the nursery; review the acceptable walking routes to the school; and manage its own in-year admissions. In an email dated 2 April 2012 the school supplied the council with a copy of the 2013 determined arrangements, which now included seven oversubscription criteria (rather than the three that had been the subject of the consultation). The changed criteria now included priority for children registered at the nursery (at criteria 2, 3 and 4) and priority for the children of staff (at criteria 3 and 6).

21. In the summary document included in the information pack, and in the meeting on 30 July 2013, the council stated that it did consider making an objection to the arrangements and sought advice, but it was some months before the council was in a position to do so and so it was decided not to make an objection because a decision on the objection would not have been reached until after the closing date for applications for primary schools, and may therefore *'prejudice the notification of primary results to parents'*.

22. The school emailed a copy of the 2014 determined arrangements to the council on 15 April 2013. It was after the school had determined the 2014 arrangements, again without any consultation, that the council submitted an objection, in the knowledge that there had not been an effective consultation for the

changes introduced in the 2013 arrangements, and that the same arrangements had been determined unchanged for 2014. The council said it felt *'legally obliged to make an objection'* and I accept that the Code is very clear at paragraph 3.2 that *'Local authorities must refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful'*.

23. The school explained in the meeting that as the 2014 arrangements were the same as those of 2013, and that no change was proposed, the school had not consulted as it had no need to do so. Regulation 15(2) of the Schools Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, the effect of which is reflected in paragraphs 15(b) and 1.42 to 1.43 of the Code, sets out the circumstances in which consultation on proposed admission arrangements is not required. It states that admission authorities are *'not required to consult on their proposed admission arrangements for the academic year 2013-2014 and any subsequent admission year where they consulted on their proposed admission arrangements ... in any of the seven preceding determination years, and the proposed arrangements are the same as those determined following the last such consultation'*. The school is therefore required to consult on its arrangements, even if they are the same as its arrangements for 2013, if the 2013 arrangements were determined without consultation on the changes the school proposed to make.

24. The school expressed concern that the council's information pack had not been made available earlier, so the school had not been given the opportunity to analyse it before the meeting. The school was also disappointed at not being copied into communications at the time when the council had sought advice on the validity of the consultation process, and felt this was *'completely contrary to any genuine attempt to resolve this matter in a reasonable or timely fashion'*. However, the school has not offered any evidence that it had consulted on the changes to the 2013 arrangements. Following the meeting on 30 July 2013, I asked the school for further information about the notification by the school for the change in the 2013 arrangements, such as who was notified and when, and I asked for a copy of the notification itself, and for a copy of any views expressed in response. No evidence has been provided by the school.

25. In the meeting on 30 July 2013, the school suggested that the council had submitted the objection as a test case as there are other schools that want to prioritise on the basis of attendance at a nursery. The school explained that the changes to the arrangements had been made in response to comments from parents who wanted priority for attending the nursery, and in the meeting provided copies of letters from parents as evidence in support of the current arrangements. It was clear that the school had written to nursery parents/carers on 5 July 2013, informing them about the objection submitted by the council, and asked them for support by confirming why they felt the priority for nursery children was reasonable and should remain in place. There were 28 replies showing that parents valued the seamless transition from nursery to YR, reassurance and peace of mind from the surety of placement, the reduction in stress as there was no need to uproot their child from a

stable environment where, from the age of three years old, their child (and the parent) had become familiar with teachers, friends and routines. The school also provided copies of the minutes of several governing body meetings. The minutes of 26 March 2012 show that with the unanimous agreement of the governing body, the 2013 arrangements had been determined, and the minutes of 21 January 2013 confirm that the governing body agreed unanimously that the 2013 policy should be readopted and as no change was being made, no consultation was necessary.

26. I do not doubt that the school introduced changes in response to the views of some of its parents, but those changes resulted in the 2013 arrangements that were determined without consultation being significantly different from the proposed arrangements that were the subject of the consultation undertaken by the council on behalf of the school. I accept that arrangements may change after a consultation process as a result of the responses received, and that a school should take account of the responses received. However, the school did not propose the changes and then consult. I believe that it was unreasonable for the school to have introduced new priorities after the consultation was underway, and then not to have consulted on those new priorities, or at least notified the relevant parties about the changes. I accept that the new priority for the children of staff at criteria 3 and 6 was not the subject of the objection, and that the wording of this priority complies with the Code at paragraph 1.39, but as this priority was not a mandatory requirement of the Code, it should not have been introduced without consultation. As the same arrangements were then determined for 2014, again without consultation, then the school had effectively deprived anyone from responding to those arrangements, and so it is my belief that the council had no choice but to submit an objection. Accordingly, I am not persuaded that the school met the requirements for consultation for the 2013 arrangements, and having failed to comply for 2013, the school should not have determined the same arrangements for 2014 without undertaking a consultation that fully met the requirements of admissions law and the Code. Therefore the school has not complied with admissions law and the Code.

27. The purpose of the Code, explained at paragraph 12, is *'to ensure that all school places ... are allocated and offered in an open and fair way'*. Furthermore, paragraph 14 stipulates 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated'* and paragraph 1.8 makes explicit that *'oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation'*. As the Code therefore imports a general requirement that admissions arrangements must be fair, so the fairness of the 2014 arrangements must be considered, and in particular, whether the priority for nursery registration at criteria 2, 3 and 4 is fair.

28. In the meeting on 30 July 2013, the school emphasised that the Code is silent on nurseries so the Code does not prohibit the priority for nursery registration in the admission arrangements. However, the Code's silence can be interpreted both ways and equally, it does not mean that the priority for nursery registration is permitted. In

the meeting I explained that, with respect to the fairness of the arrangements, I would want to consider how easy it would be to gain a reception place at the school for a child not registered in the nursery.

29. I have looked at how places were allocated for both 2012 and 2013 and the tables below show the applications received and the allocations in April (in brackets) for YR places in the school. For the 2012 allocations I analysed the data from the council's on-line guide for parents 'Starting School in Plymouth 2013/2014' which relates to three oversubscription criteria.

2012 PAN	Preference	In Care	Sibling	Other	Applications	Allocations
45	1	0 (0)	17 (17)	23 (23)	40	40
	2	0 (0)	0 (0)	19 (0)	19	0
	3	0 (0)	0 (0)	15 (0)	15	0
Total		0 (0)	17 (17)	57 (23)	74	40

So in 2012, 17 of the 40 first preference places went to children with siblings in the school, and so 23 places went to "other" children. All first preference applications were met.

In an email dated 29 July 2013, the council provided the 2013 data for the table shown below. The seven criteria are the same as those in the 2014 arrangements which are the subject of the objection.

2013 PAN	Preference	In care	Child registered in the nursery with sibling	Child Registered in the nursery with a parent who is a member of staff	Child Registered in the nursery	Other Siblings	Other children with a parent who is a member of staff	Other children	Applications	Allocations
45	1	0 (0)	15 (15)	0 (0)	23 (23)	2 (2)	0 (0)	6 (4)	46	44
	2	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	27 (1)	27	1
	3	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	20 (0)	21	0
Total		0 (0)	15 (15)	0 (0)	24 (23)	2 (2)	0 (0)	53 (5)	94	45

In 2013 as there were more first preference applications than places available, not all first preferences were met; 38 of the 45 places allocated went to children transferring

from the nursery, two further places went to children with siblings in the school. Only five places were available for children whose parents were unable to send their child to the nursery, or chose not to do so. In 2013 there were no applications for the children of staff.

30. It is also important to consider the chance of a child not registered in the nursery securing a reception place at the school in 2014. In 2012 there were 74 applications from which 40 places were allocated, and in 2013 there were 94 applications, with 45 places allocated. Applications to the school increased in the two year period, which ties in with the comments from both the school and the council that the school is increasingly popular. Moreover, in 2013, most (38) of the 45 places available in YR were allocated to children who had previously been registered at the nursery, but less than half of these applicants (15) also had siblings in the school which would have given them priority under the 2013 arrangements before the new criteria were introduced without consultation. Admittedly the data is limited, but I submit that it does illustrate the effect of the introduction of two of the four new oversubscription criteria on the allocation of places at the school. In 2014, if there were to be applications from parents who are employed at the school, then priority at criteria 3 and 5 would also become active, which would have the effect of further reducing the places available for “other” children.

31. It is also important to consider any trend in nursery pupil numbers. During the meeting on 30 July 2013, the school explained that the number of children moving from the nursery to the school has increased. In September 2010 the number of children transferring from the nursery was 25, in 2011 the number transferring was 27, in 2012 the number was 28, and in 2013 the number increased markedly to 39 after the introduction of priority for nursery registration. From the funding headcount provided by the council for the period 13-17 May 2013 there were 66 children in the nursery. The school explained that although the funding agreement is for 30 nursery places, these are full-time equivalent places. However, some children attend the nursery part-time and others full-time, up to a maximum of 40 children per morning or afternoon session. This leads to the deduction that up to 80 children could be admitted by the nursery, and if half of these children did not transfer to YR either because they were not old enough, or because they transferred to another school instead, then up to 40 of the 45 reception places available would be allocated to children who had attended the nursery, and if the remaining places were allocated to children with siblings at the school and/or to children whose parent was employed by the school, there would be no place available for “other children” who might live close to the school.

32. I also note that the most recent Ofsted inspection report states that the *‘creation of the Nursery class has meant that children’s start to school life has been very much improved and enriched. The close working partnership between the Nursery class and the two Reception classes means that the transition from Nursery to Reception is a seamless operation’*. Given the high quality of provision evidenced in the Ofsted report, I predict that the popularity of the nursery will continue to increase, with the likelihood that an increasing proportion of the already high number of the 45 YR places available would go to children transferring from the nursery.

33. The school does not have a catchment area. In the supplementary information provided at the meeting, the council explains that catchment areas are not used (for any school) as most families live *'within a reasonable distance of more than 1 school but more importantly, with the rise in birth rate, catchment areas can raise false expectations as in many cases, it proved impossible to allocate places to every child living in a catchment. Increased building programmes also meant that catchment areas became difficult to maintain'*. As a response to the meeting, in the email of 5 August 2013, the school explained *'When catchment areas existed ours ran along Pomphlett Road up to Deans Cross and followed the road down to Radford Park. It may be that reintroducing a catchment area around the Academy would serve to give greater surety to those living close to the school that they could secure admission whether or not they wished or were able to use the nursery'*. The school provided maps of the geographical spread of admissions, which show that a large majority of children live locally, and from postcodes provided in the 28 letters from nursery parents presented at the meeting, the majority were from the same PL9 postcode as the school, but some were from PL3 and PL4 postcodes. I also note from the funding headcount for the period 13-17 May 2013 that at least 10 of the 66 children had PL1, PL3 and PL4 postcodes and that most of these young children would have a walk to school in excess of 30 minutes along busy roads.

34. I note that in the on-line guide to primary school admissions *'Starting School in Plymouth 2013/2014'* the council comments that *'With the exception of Oreston Community Academy attending the nursery neither guarantees nor gives a child special priority for a place at the school'*. I accept that the school's admission arrangements make clear that a formal application to the reception year is required, but from all the evidence available, I surmise that the effect of prioritising nursery registration in the oversubscription criteria is to "guarantee" children at the nursery a reception place, even though they may live too far to be able to walk safely to the school. It seems to me that children who have not attended the nursery and do not have a sibling at the school, and whose parent is not employed by the school, will have little chance of securing a reception place at the school in 2014.

35. In the email of 5 August 2013, in response to the discussions during the meeting, the school stressed the belief that *'the needs of our local community are served by the inclusion of priority for nursery children, the introduction of which was prompted by the community itself.'* Whilst I accept the school's argument that it is responding to the views of some of the nursery parents, I am conscious that nursery education is not compulsory, and it is the impact of the priority for nursery attendance on access for other children to the start of compulsory education in the school that must also be considered. In the response dated 15 July, the school explained its *'determination that prioritisation for Reception admission be afforded to children at our nursery'* with the aim of *'providing continuity and progression for children in order to enhance their early education experience and to raise their attainment'*. However, I do not agree with the school's assertion that *'the advantages of giving some priority to children attending the nursery... outweighs the disadvantages that may occur to other families'*. The effect of the changes introduced by the school to the oversubscription criteria in the 2013 arrangements,

which have then been determined unchanged in the 2014 arrangements, is that securing a reception place at the school will become increasingly reliant on attendance at the non-compulsory nursery, which for some families may not be possible or desirable. In my opinion the 2104 arrangements are unfair because the disadvantage to families who are unable or choose not to send their child to the nursery outweighs the overwhelming advantage to nursery children afforded by the priorities at oversubscription criteria 2, 3 and 4. Furthermore, the inclusion of priority for nursery registration, and then giving that priority in three different ways, seems to me to give the impression that, in time, the school expects all of its places to be filled from the nursery. Consequently, some parents may feel obliged to send their child to the nursery in order to have a chance of gaining a place at the school, which in my view is unreasonable, particularly as the admission arrangements for the nursery would be unlawful if used for admission to the school. To gain admission to the school having first entered the nursery under terms that could not be used for the school is also unfair. Accordingly, the 2104 arrangements are unfair and contravene the Code at paragraphs 12, 14 and 1.8.

36. In the response dated 15 July, the school reports that it is *'undertaking feasibility studies'* around raising the PAN for YR, and is also *'exploring extending the age range of the nursery to take two year olds without increasing the nursery capacity'* and believes that *'both of these measures would have the effect of opening up more capacity for non-nursery children'*. I appreciate that following the meeting, in the response of 5 August 2013, the school also wondered whether *'any compromise can be offered / accepted at this stage in proceedings but if the key issue is "guaranteeing" access for local children the Governors are willing to put forward in their consultation for next year the principle of reintroducing a catchment area and putting this criteria ahead of any Nursery priority'*. However, my jurisdiction is to consider and make a decision on the lawfulness of the determined admission arrangements, and not to enter into any negotiation about what may or may not be possible for future years.

37. The school also introduced another new priority in the 2013 arrangements, for the children of staff, at criteria 3 and 6 above. Although the Code permits this priority to be given, to include priority for the children of staff was a change to the admission arrangements and had to be consulted on before the criteria were changed.

Other matters

38. In reviewing the 2014 admission arrangements I noticed other matters which 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. During the meeting on 30 July 2013 I raised a number of matters which appeared to contravene the Code, offered the school the opportunity to make the amendments immediately as a permitted variation under paragraph 3.6 of the Code, and agreed to note their progress in my determination. I raised the following points:

- At the time of the meeting, only the 2012 nursery admissions policy was on the website rather than the policies for 2013 and for 2014. In fact, the school's

website generally was out-of-date. The school has now reviewed its website and has updated the information about admissions arrangements;

- In the admissions policies for the school and the nursery, to decide between two applications that cannot otherwise be separated, the tie-breaker is the shortest walking route between the nursery and home, but without any indication as to how the distance from home to the school would be measured, contrary to the Code at paragraph 1.13. This issue has been addressed and admissions policies now show that distance will be measured using the electronic mapping system provided by Devon County Council;
- On the application form for in-year admissions, the question '*Are there reasons for your preference*' is not required to operate the oversubscription criteria and should be removed.

Conclusion

39. The council believes that naming the nursery as a feeder school is not compliant with the Code because admissions authorities are prohibited from naming fee-paying independent schools as feeder schools. I am persuaded that the nursery is an integral part of Oreston Community Academy which caters for children aged 3 to 11 years of age. As the nursery is not a school in its own right, nor is it a private enterprise, it cannot be regarded as a fee-paying independent feeder school, and so I conclude that there is no breach of 1.9(l) of the Code.

40. The council also asserted that even if the nursery is part of the school, where parents are paying for additional hours over the standard allocation then the school is in breach of paragraph 1.9(e) on the basis that it is giving priority to parents who are financially supporting the school. For the reasons stated in paragraphs 13, 14 and 15 above I find that many parents are paying for additional nursery sessions. As the nursery has chosen to offer more than the standard early years entitlement funded by the government, and then chosen to prioritise children registered at the nursery in three of the seven oversubscription criteria, this can be interpreted as giving priority to children on the basis of financial support parents give to the school, which is contrary to paragraph 1.9(e) of the Code.

41. However, a more persuasive argument was the council's long-standing concern about the consultation before the 2013 arrangements were determined. Although, if raised as an objection under section 88H of the Act, this concern should have been made by 30 June 2012, and therefore has been raised out of time, I decided to consider the 2013 arrangements under section 88I(5) of the Act as they still have relevance for admissions to the school. I conclude that the 2013 arrangements do not meet the requirements of admissions law and the Code because:

- the 2013 arrangements that were the subject of the consultation undertaken by the council on behalf of the school were changed significantly by the school part-way through the process;
- the school failed to comply with the Code at paragraph 15(b) because it should have proposed and then consulted with all those specified in

paragraph 1.44 of the Code on the significant changes it considered making before it determined the arrangements, nor did the school notify the parties it should have consulted of the changes it had made.

42. As the 2013 arrangements were then adopted unchanged as the proposed 2014 arrangements, it was unreasonable for the school not to have undertaken a consultation at that stage, before then determining the arrangements, because parties with an interest in the admission arrangements, including the local community, had been deprived a second time of the opportunity to submit their views in response to the changes introduced. Moreover, there was a legal requirement to consult, even if the arrangements were unchanged, as the arrangements had not previously been the subject of consultation. Accordingly, I am not persuaded that the process leading to the determination of the 2014 arrangements was lawful.

43. Furthermore, there is the distinct possibility that giving priority to nursery registration could result in a child not living in the local community but attending the nursery being ranked higher for a place at the school than a local child not attending the nursery. I conclude that the effect of the changes introduced to the admission arrangements is unfair and contravenes the Code at paragraphs 12, 14 and 1.8 because the disadvantage to local families who are unable or choose not to send their child to the nursery, or would like to but were not allocated a place, outweighs the advantage to nursery children who have been afforded priority at oversubscription criteria 2, 3 and 4. It is also unfair to allow places in the reception year effectively to be allocated on the basis of the admission arrangements for the nursery that would be unlawful if used directly for admission to YR. In making my determination, it is the lack of fairness that has been the most compelling argument.

44. Accordingly, for the reasons explained in the paragraphs above, I uphold this objection to the 2014 admission arrangements

Determination

45. 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 governing body of the Academy Trust of Oreston Community Academy for admissions in September 2014.

46. I have also considered both the 2013 and 2014 arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 38 of this adjudication.

47. 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 make any remaining revisions to their admission arrangements as quickly as possible.

Dated: 10 September 2013

Signed:

Schools Adjudicator: Cecilia Galloway