Office of the Schools Adjudicator

DETERMINATION

Case reference: **ADA2988**

Objector: **The Chairman of the Governors of Dunchurch Broughton Church of England Junior School, Rugby, Warwickshire**

Admission Authority: **Ashlawn School, Rugby, Warwickshire**

Date of decision: **20 November 2015**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Ashlawn school.

I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of this determination.

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 the Chairman of Governors of Dunchurch Broughton Church of England Junior School (the objector) about the admission arrangements (the arrangements) for September 2016 for Ashlawn School, a mixed secondary bilateral academy for children aged 11 to 18.

2. The objection is to aspects of the arrangements which the objector says render them unfair to children living locally.

Jurisdiction

3. The terms of the funding agreement between 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. These arrangements were determined by the governing body on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 30 June 2015. 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.

4. I have also used my power under section 88I to consider the arrangements as a whole.

Procedure

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

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

a. the objector's email and form of objection dated 30 June 2015 and subsequent correspondence;

b. the school's response to the objection and supporting documents, and subsequent correspondence;

c. the comments of Warwickshire County Council, the local authority (the LA) concerning the objection, and its composite prospectus for parents seeking admission to schools in the area in September 2016;

d. a map of the area identifying relevant schools;

e. confirmation of when consultation on the arrangements last took place;

f. copies of the minutes of the meeting at which the governors of the school determined the arrangements; and

g. a copy of the determined arrangements.

The Objection

7. The objection raises four matters concerning the school's arrangements. These are that:

(i) prior to the determination of the arrangements by the governors, the consultation carried out by the school was inadequate, and that as a result the governors were not fully aware of the views of those living locally concerning the effect of changes made to the arrangements from those which had applied previously. The objection also describes an aspect of the arrangements for September 2016 in a way which, by comparing it with the proposed arrangements for September 2013, appears to make the complaint that there has been a further change introduced into them which had not been the

subject of consultation;

(ii) the changes made to the arrangements have the effect of introducing a new form of selection by ability;

(iii) the changes also mean that the school has contravened the requirement that partially selective schools must not exceed the limit on selective admissions which is imposed on them by the Code, and

(iv) the arrangements use a catchment area which is not reasonable or clearly defined.

Other Matters

8. Having viewed the school's admission arrangement I was concerned that further aspects of them may constitute breaches of the requirements which are set out in the Code. I therefore wrote to the school to seek its views concerning each of these matters, which included:

A. Concerning the arrangements for admission to selective places

(i) paragraph 19 within the arrangements which refers to "admission at an automatic level" is unclear as to its meaning.

B. Concerning the arrangements for admission to non-selective places

(i) the number of non-selective places available is not clear;

(ii) the statement concerning the waiting list does not to conform to that which is required under paragraph 2.14 of the Code, and

(iii) the oversubscription criterion:

"Where applications are received from twins, triplets or same-year siblings of a child selected for a place within this application cycle"

appears not to be sufficiently clear because it does not explain what the term "selected" means. Since this criterion appears in the part of the arrangements which results in admissions to the school's non-selective places, it seemed to me to be unclear whether "selected" refers to children given such a place or only to those admitted to the school's selective places. Paragraph 1.8 of the Code requires that oversubscription criteria are clear.

C. Concerning admissions to Year 12

The requirements set out in paragraph 2.6 of the Code may not have been met in the following ways:

(i) there is no statement of the published admission number for external students ;

(ii) there is no statement of the requirements which must be met for current

Year 11 student to continue into Year 12;

(iii) no priority is given to looked after or previously looked after children, and

(iv) the school takes into account reports from a student's previous school, which is not permitted by paragraph 1.9g of the Code.

Background

9. Ashlawn School is a popular academy school situated in Rugby, Warwickshire. It has a bilateral intake. Children are admitted in Year 7 to one group of places based on their ability and to the remaining places without reference to ability. Admission arrangements for each group of places are set out in what the school calls its "selective" and "non-selective" arrangements respectively.

10. The school admits 256 children each year in Year 7 and is much larger than the average secondary school in England. When the school was last inspected by Ofsted in November 2013 it was judged to be outstanding.

11. The school's admission arrangements for selective places at Year 7 are published in a document which gives the following information:

(i) up to 12 per cent of the available places in Year 7 are allocated to children *"who have met the admission criteria for a selective place".* The PAN is 256;

(ii) eligibility for a selective place is established by a child achieving the qualifying score on the Warwickshire selection test. The qualifying score is not stated, as this is set each year through a process overseen by the LA which the arrangements describe;

(iii) after the priority given to eligible looked after and previously looked after children, the remaining places are divided equally between:

a. eligible children who live in the Eastern Area of Warwickshire (which is described), with higher priority for those who would be eligible for Pupil Premium funding, and

b. eligible children who live in a priority circle (which is described), with higher priority for those who would be eligible for Pupil Premium funding.

Any remaining places are allocated, in order, to

c. children who live in the priority circle and who have been placed on the school's reserve list, and

d. other eligible children.

12. The arrangements make the statement that:

"Within all criteria first priority is given to those achieving the highest score in the 11+ test. Where there is a need to split any category or group of pupils,

places will be offered in accordance with distance between the child's home and school (shortest distance = highest priority)."

A final tie-breaker of random allocation which the arrangements say will *"be carried out under independent supervision"* is also provided.

13. The arrangements also include the following paragraph:

*"**For entry to Year 7 in September 2016***

Admission at an automatic level will be determined by comparing the children's performances in two papers commissioned by Warwickshire Local Authority from the University of Durham CEM Unit."

14. The school's admission arrangements for non-selective places in Year 7 are published in a separate document and say that it *"will admit its allocated Published Admission Number (PAN) to Year 7 in 2016-2017. Of these places, 12% will be allocated to selected students who have successfully completed the 11+ and the remaining places will be available to non-selected students".* Places equivalent to up to 10 per cent of the PAN are available to students with the highest scores on the school's modern foreign languages (MFL) aptitude test.

15. In describing the processes associated with applying for a place at the school, these arrangements have the following to say about a waiting list:

"In addition to the right to appeal, all applicants will be placed on the Waiting List. The order of the Waiting List will be determined in accordance with the order determined by the over-subscription criteria."

16. Oversubscription criteria for non-selective places are given as:

(i) looked after and previously looked after children;

(ii) twin, triplets or same year siblings *"of a child selected for a place"* within the application cycle;

(iii) children with a sibling at the school at the time of application;

(iv) children successful in the MFL aptitude test;

(v) children of members of staff;

(vi) children living within the school's Priority Area, and

(vii) other children.

17. Suitable tie-breakers are provided and the arrangements make the same statement concerning the use of random allocation as those described for the selective intake. The school's Priority Area is described in an appendix, where both a written explanation and a map showing the boundary of the area defined are given.

18. Also included with the admission arrangements for non-selective places is a section under the heading *"Admission Arrangements for Years 12 and 13"*. This consists of three short paragraphs which set out an overall academic entry requirement for *"students seeking entry at 16+"* and state that individual subjects also have minimum GCSE requirements which are to be found in the school's prospectus. Finally, the arrangements say that *"offers of places are made subject to the entry requirements being met, a satisfactory reference being received from the applicant's school, and to there being places in the subjects of the student's choice".*

Consideration of Factors and Other Matters

19. I shall set out first my consideration of the different elements of the objection, followed by that concerning the matters which I have raised with the school.

Consultation

20. The objector's complaint arises from the introduction of two changes into the arrangements when these were determined by the school for 2013 following consultation. The arrangements have been unchanged since that time and so the changes made then remain part of the arrangements for September 2016, which are the subject of the objection. These changes were:

(i) the admission to some of the available places of children who demonstrate aptitude in MFL; and

(ii) the introduction of a priority for siblings of those already at the school which is a higher priority than that given to those living in the school's Priority Area.

The objector also implied in making the objection that the school was introducing an increased proportion of admissions on the basis of aptitude for admissions in September 2016.

21. The combined effect of these changes has been, according to both the objector and the LA, that fewer places than previously are available to children living locally who do not have a sibling at the school. The objector is of the view that the consultation which preceded the introduction of these changes was flawed and that therefore the current arrangements do not comply with what the Code requires.

22. The Code requires admission authorities to determine their arrangements on an annual basis (paragraph 1.46), but requires them to consult prior to this determination not annually, but when changes are proposed, or failing that every seven years (paragraph 1.42). A consequence of this is of course that consultation may precede the determination of a set of admission arrangements by several years. In such a case it would normally be difficult I believe for it to be possible to uphold an objection concerning consultation on reasonable evidential grounds, given the time that has elapsed.

23. From the evidence which I have seen, it is true that the school drew attention to other aspects of the proposed changes than those which have given rise to the objection in the letters which notified consultees about the consultation, and it is also true that the school has not provided firm evidence concerning some aspects of the consultation process that took place in late 2011 and early 2012. I note the objector's assertion that some who could have expected to be consulted were apparently unaware of the consultation taking place.

24. The consultation may not have been perfect, but would not render what the school did non-compliant with the Code. The fact is that there was a consultation prior to the school determining its admission arrangements for September 2013 and from the evidence which I have seen the school did not in any case fail to meet the relevant requirements. I do not uphold this part of the objection.

New selection by ability

25. The objector believes that the introduction of testing for aptitude in MFL contravenes the prohibition in paragraph 1.9d of the Code that any new form of selection by ability be introduced into the admission arrangements of a school.

26. Section 102(1) of the Act lays out that a school may admit children by reference to their aptitude in one or more of the prescribed subjects where the admission authority are satisfied that the school has a specialist in the subject and where the proportion so admitted does not exceed 10 per cent of the relevant age group. Paragraph 1.24 of the Code names MFL as a specialist subject for which selection by aptitude is permitted.

27. The prohibition on new forms of selection in paragraph 1.9d of the Code concerns selection by ability. Selection by aptitude is distinguished from selection by ability under the Act and its introduction does not contravene paragraph 1.9d. I do not uphold this part of the objection.

The proportion of selective places

28. The objector says that the school has contravened paragraph 1.22 of the Code, which says the following:

*"Partially selective schools **must not** exceed the lowest proportion of selection that has been used since the 1997/98 school year."*

The objector states that in the case of Ashlawn School this means 30 out of 230 places, and the school concurs and has written to me stating:

"The School has not introduced any new selection by ability and has not exceeded the lowest proportion of selection (which was 30 selective places out of 230 in 97/98 and has remained at 30 to date)."

This proportion, 30 admissions out of a total of 230 places, is equivalent to 13 per cent of the places in the year group.

29. The objector has responded by saying that paragraph 1.22 of the Code does not refer to selection by ability, but to *"selection".* The school has argued that while that is so, paragraph 1.22 needs to be read in the context in which it appears in the Code. It believes that since that context is a section of the Code which is about pre-existing partially selective schools, which are described in the previous paragraph in terms of their selection of pupils by ability, paragraph 1.22 should be read to refer also only to selection by ability.

30. The objector has laid before me what he believes to be evidence concerning the difficulty of separating testing for aptitude entirely from testing for ability, seeking to link paragraph 1.22 to selection by aptitude. However, as I have already stated, selection by ability and selection by aptitude are distinguished under the Act.

31. I have stated above my view that the school's arrangements do not breach paragraph 1.9d of the Code. My concern here is whether they breach paragraph 1.22. In the Code a footnote to paragraph 1.22 refers the reader to section 100 of the Act. This says the following:

" (1) Where at the beginning of the 1997-98 school year the admission arrangements for a maintained school made provision for selection by ability or by aptitude (and they have at all times since that date continued to do so), the admission arrangements for the school may continue to make such provision so long as –

(a) the proportion of selective admissions in any relevant age group does not exceed the permitted proportion (as defined by subsection (1A)), and

(b) there is no significant change in the basis of selection.

(1A) In subsection (1)(a), "the permitted proportion", in relation to any relevant year group, means the lowest proportion of selective admissions provided for by the school's admission arrangements at any time since the beginning of the 1997-1998 school year.", and

"(3) In this section "the proportion of selective admissions", in relation to a relevant age group means the proportion of the total number of pupils admitted to the school at that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to ability or to aptitude (as the case may be). "

32. I have already referred to section 102(1) of the Act which permits any school to introduce selection by aptitude and so does not inhibit a school which has pre-existing partial selection by ability from doing so. Section 100(3) refers to any existing form of selection for the purpose of deciding whether the prohibition on increasing the proportion of selective admissions has been breached as *"pupils so admitted by reference to ability or aptitude (as the case may be)"*, and I understand this to mean that the proportion of admission made by the existing form of selection must not be increased.

33. The school has confirmed that the permitted proportion of selective admissions in its case is 30 out of 230 places, and its funding agreement with

the Secretary of State says *"The Academy's partially selective proportions are 30 pupils per year".*

34. However, since the school acquired academy status, the total number of places in Year 7 has increased to 256. In order that the school should comply with section 10 of the Act and paragraph 1.22 of the Code, it is required to limit the total number of selective admissions by reference to ability to the same proportion that applied in 1997, that is to say to a total of 33 admissions.

35. The school's arrangements do this, and so do not fail to comply with the terms of the school's agreement with the Secretary of State, with section 10 of the Act or with paragraph 1.22 of the Code. I do not uphold this part of the objection.

The catchment area

36. The objector says that the effect of the arrangements is that some of those living within the catchment area, which in the arrangements is called the school's "Priority Area", have little chance of gaining a place at the school and so are not clear as to their status in relation to this fact because they "are not accorded any priority".

37. Data provided by the LA shows that in September 2015, 97 children were admitted to the school under the oversubscription criterion which gives children living inside the school's catchment area priority over those living outside it. Clearly, some priority is given to those who live in the school's catchment area, albeit a low priority. The admissions data for 2015 also shows that these 97 children were admitted to all the places that remained after children to whom the arrangements give a higher priority had been admitted, including siblings of children already at the school and those showing aptitude for MFL.

38. The objector says that the fact that some parents who live inside the catchment area cannot be sure whether their child will be offered a place at the school renders the catchment area unclear and unreasonable. He says that paragraph 1.14 of the Code is breached. This paragraph says;

*"Catchment areas **must** be designed so that they are reasonable and clearly defined."*

39. The objector does not complain that parents do not know whether or not they live in the area which the school designates. In my view, the arrangements do define the catchment area clearly, by setting them out descriptively and by providing a map of the area so described.

40. The Code does not define the term "reasonable", but the school has chosen to interpret it to mean that there should be a practical or educational justification for the definition of a catchment area and says that it has used this understanding in the designation of its own Priority Area. The school has explained that:

"The Priority Area has been drawn by using the railway line and main roads as natural geographical boundary lines and is drawn to intersect with catchment

areas for other schools."

This seems to me to be an appropriate approach and I can see no basis for saying that the school's designation of its Priority Area has not been made reasonably.

41. Although the objector cites paragraph 1.14 of the Code in saying that the arrangements breach the Code, the complaint which is made is about the lack of clarity and reasonableness which the objector says result from the operation of the catchment area within the admission arrangements. The arrangements set out clearly how the priority given to those living within the catchment area operates, and how priority is given if there remain insufficient places to admit all those living there who are seeking a place at the school. In that sense, the way in which the catchment area operates is clear in the arrangements.

42. It may be the case that not all those living with the area to which priority is given can be offered a place at the school if there are insufficient places to meet demand. However, the Code in paragraph 14 requires only that:

"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

No parent can ever be certain that their child will be offered a place at a school for which they express a preference. The degree of certainty in this respect for parents living in the school's Priority Area may have decreased but that does not mean that the arrangements are unclear. There is no requirement in the Code that any school should use a catchment area to give priority to those who live there. The fact that the school does this, but does not give certainty as to the availability of a place does not make its practice unreasonable. I do not uphold this part of the objection.

I turn now to the matters which I have raised with the school.

<u>Admission to selective places</u>

43. The school has agreed that paragraph 19 within the arrangements should refer readers to the section which explains the process used in Warwickshire to determine the score in tests of ability which is used in any given year as the qualifying score for entry to "selective" places. However, even if it were clear that paragraph 19 refers to the use of this minimum score, my view is that it would still be unclear as to its meaning since it refers to an automatic *"admission"* to the school, and it is evident from the arrangements as a whole that achieving the minimum qualifying score does not equate to admission to the school. As a result, the arrangements fail to meet the requirement in paragraph 14 of the Code that they be clear.

<u>Admission to non-selective places</u>

44. The school has pointed out that the arrangements for admission to places at the school on the basis of ability, which it terms *"selective"*, state that the PAN for Year 7 admissions is 256 overall. It says that it has therefore not breached the requirement that the published admission number for non-

selective places is stated, but agrees that it would be clearer if the number of non-selective places were made explicit within the arrangements that apply to those admissions. My view is that while it is possible to calculate the number of non-selective places by reading the two documents together, since the arrangements set out separately the parallel processes which apply to the admission of children to the two groups of places, it is insufficiently clear if the number of places in one group cannot be seen except by reference to the arrangements which apply to other places. Paragraph 14 of the Code requires arrangements to be clear and as determined, the arrangements do not meet this requirement.

45. Paragraph 2.14 of the Code says in respect of waiting lists that:

*"Each admission authority **must** maintain a clear, fair and objective waiting list…..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 has agreed that the arrangements do not make such a statement. They fail to comply with what the Code requires.

46. The school has also suggested that it could revise the wording of the oversubscription criterion which is set out in the following terms:

"Where applications are received from twins, triplets or same-year siblings of a child selected for a place" within this application cycle."

The school has told me that in this oversubscription criterion the wording "a child selected for a place" refers only to a child admitted to one of the places at the school which are awarded on the basis of ability, and not to a child admitted to one of the school's non selective places. The criterion as determined does not make this clear and so fails to meet the requirement in paragraph 1.8 of the Code that oversubscription criteria are clear.

<u>Admission to Year 12</u>

47. The school has accepted that the arrangements for admission to Year 12 are deficient in each of the matters which I have drawn to its attention. They fail to comply with the requirements which are set out in paragraph 2.6 of the Code.

Conclusion

48. I have set out above the reasons why I have not upheld the objection:

(i) concerning the consultation which the school carried out prior to the determination of the arrangements;

(ii) which complained that a new form of selection by ability had been introduced by the school and that the school selects a higher proportion of children than the lowest proportion of selective admissions which there have been since the 1997-1998 school year, and

(iii) which claimed that the school's catchment area was not clear or reasonable.

49. I have also considered the school's admission arrangements as a whole. For the reasons I have given they do not comply with what the Code requires:

a. concerning the arrangements for admission to selective places, by

(i) containing an unclear statement describing the process determining eligibility for a place which is awarded on the basis of a child's ability.

b. concerning the arrangements for admission to non-selective places, by

(i) being insufficiently clear by failing to state the number of non-selective places which are available as part of the arrangements;

(ii) failing to state that the waiting list will be re-ordered each time a name is added to it;

(iii) using an unclear oversubscription criterion, and

c. concerning admissions to Year 12

(i) in failing to comply with the requirements set out in paragraph 2.6 of the Code concerning admissions to Year12.

Determination

50. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Ashlawn school.

51. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

52. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of this determination.

Dated: 20 November 2015

Signed:

Schools Adjudicator: Dr Bryan Slater