



DETERMINATION

Case reference: ADA3241

Referrer: Sandwell Independent Appeals Panel

Admission Authority: Ormiston Academies Trust for George Salter Academy in West Bromwich and situated in the local authority area of Sandwell Metropolitan Borough Council

Date of decision: 7 October 2016

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements for September 2016 and September 2017 determined by the Ormiston Academies Trust for George Salter Academy and find there are matters which do not conform with the requirements relating to admission arrangements as set out in this determination.

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 the determination.

The referral

1. The admission arrangements for September 2016 and 2017 (the arrangements) for George Salter Academy, a secondary academy school in West Bromwich for children between the ages of 11 and 19, were brought to the attention of the Office of the Schools Adjudicator (OSA) by the Sandwell Independent Appeals Panel by an objection to the arrangements. The objection was that the supplementary information form (SIF) used by the school required information that is not permitted by the Code.
2. The arrangements for the school had not been determined and so the objection was not in the jurisdiction of the adjudicator and not considered further at that time. The school provided the determined arrangements and evidence of their determination on 27 July 2016 and so the matter became within the jurisdiction of the adjudicator. In this determination the organisations referred to are:
 - a. George Salter Academy (the school);
 - b. Ormiston Academies Trust which is the admission authority for the school (the trust);

- c. Sandwell Metropolitan Borough Council as the local authority for the area in which the school is situated (the local authority).

Jurisdiction

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the schools within the trust are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust, which is the admission authority for the school, on that basis on 21 July 2016. I have used my power under section 88I of the School Standards and Framework Act 1998 (the Act) to consider the arrangements as a whole, including those matters brought to my attention by the referrer, as it appeared to me that they may not conform with the requirements for admission arrangements.

Procedure

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

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

- a. the referrer's letter of objection dated 9 May 2016;
- b. the admission authority's response to the referral and subsequent communications;
- c. the comments of the local authority on the referral and responses to my communications;
- d. information on the school's and the trust's websites;
- e. the information on the local authority's website for parents seeking admission to schools in the area;
- f. copies of minutes of meetings of the governing body for the school and of the meeting at which the trust determined the arrangements;
- g. a copy of the arrangements for 2016; and
- h. in relation to admissions in 2107, the draft arrangements discussed by the governing body and put on the school's website; the arrangements for 2017 determined on 21 July 2016 (the determined arrangements); and a draft of revised arrangements for 2017 (the draft revised arrangements) put on the school's website.

I have also taken account of information received during a meeting I convened on 16 September 2016 at the school with representatives of the school; the trust; and the local authority (the meeting).

Matters of concern

6. The matters of concern that may not conform with the Code which came to my attention were (with the relevant paragraph of the Code in brackets):
- a. the SIF used for 2016 required information to be provided on whether the applicant had a statement of special educational needs (SEN) or an Education, Health and Care (EHC) plan (2.4c);
 - b. the consultation undertaken prior to making changes to the arrangements may have been flawed (1.44);
 - c. the trust had not determined the arrangements for the school for 2017 by 28 February 2016 (1.46);
 - d. the arrangements on the school's website as at 27 July 2016 were not consistent with the ones determined by the trust so the arrangements may not be clear (14);
 - e. there appears to be no information on how aptitude will be assessed (14, 1.31 and 1.32);
 - f. it appears that the selection tests for aptitude and banding take place after 31 October which is after applications for places have been made and this may not conform with the requirement to take all reasonable steps to inform parents of the outcome of selection tests before that date (1.32c);
 - g. the arrangements for banding may not make it clear that children who are looked after, or previously looked after, do not have to take a banding test in order to have the highest priority for a place at the school (14 and 1.7);
 - h. the arrangements for banding may not make it clear that a child with a statement of SEN or an EHC plan that names the school **must** be admitted (14 and 1.30);
 - i. the terminology in the oversubscription criteria for looked after and previously looked after children may not be clear (14 and 1.7);
 - j. criterion two in the oversubscription criteria concerns children with EHC plans that name the school. Any such child whose plan names the school **must** be admitted, therefore this may not be appropriate for an oversubscription criterion (1.6);
 - k. criterion four of the oversubscription criteria gives priority to children of staff. This is permitted by 1.39 of the Code but the criterion is not clear as to which such children are entitled to priority (14); and

- I. the arrangements include information on feeder schools when feeder schools are not part of the oversubscription criteria; this may make the arrangements unclear (14).

Background

7. The school became an academy in September 2007 and it has been sponsored by the Ormiston Academies Trust since 2011. There are over 30 schools in the trust. At the meeting, the trust explained that it is working towards consistency in the policies of the schools within the trust while still permitting some local decision making. There is therefore discretion for schools within the trust to propose changes and make some local decisions. The trust remains the admission authority and determines the arrangements. It has not delegated this responsibility to the governing body of the school although the arrangements say "*The Admissions Authority for George Salter Academy is the Governing Body.*" At the meeting the school and the trust said that they would change this statement so that the situation is described accurately.

8. The school is oversubscribed. For 2016 there were 350 first preferences made for the school which has a published admission number (PAN) of 200. There were 78 appeals for places in September 2015 and 113 for September 2016. It was during the appeals for places in 2016 that the SIF came to the attention of the Sandwell Independent Appeals Panel and it made its referral to the OSA.

9. Over recent months, there have been several changes to the leadership of the school and this has made it harder to get clear information on some of the matters referred to in this determination. The arrangements for 2017 had been discussed by the school's governing body but the arrangements were not determined by the trust. These undetermined arrangements were on the school's website as if they were the determined arrangements. The trust determined the arrangements for 2017 on 21 July 2016.

10. The school offers up to ten per cent of its places, 20 places, on the basis of aptitude in the performing arts. For the remainder of the places, 180, the school operates a banding system designed to produce an intake which reflects the ability profile of those applying for places at the school. For this purpose, a non-verbal reasoning test is taken by all applicants to the school who are then divided into five equally sized groups on the basis of their performance in the test. When the school is oversubscribed, the oversubscription criteria are applied to each of the five groups. The oversubscription criteria in the determined arrangements are:

- i) "*Children in Public Care or previously on the Looked after Register. (LAC)*
- ii) "*Children with Education, Health & Care Plans where George Salter Academy is named on the Plan.*
- iii) "*Children having a sibling at the preferred school at the time of admission including the 6th Form.*

- iv) *Children of Staff employed by the Academy or appointed to commence employment at the Academy.*
- v) *Thereafter, on the basis of distance between the child's home address and the main entrance (located on Davey road) to George Salter Academy.*
- vi) *Definitive tie-breaker: in the event of there still being a tie, there will be a random ballot using an electronic random number generator. Such a ballot will be supervised by an officer of the Local Authority."*

Definitions are also provided including for what is meant by children of staff.

11. I wrote to the school raising concerns on the determined arrangements and whether they complied with the Code. Before the meeting I saw that the draft revised arrangements were on the school's website marked as draft pending approval; I have not seen the determined arrangements on the school's website at any point during my consideration of this case. At the meeting we discussed the determined and draft revised arrangements and the wish of the school and the trust to amend and determine the arrangements as quickly as possible so that they complied with the Code and were clear for parents.

12. I understand that the admission authority has, following our meeting, revised its determined arrangements. Paragraph 3.6 of the Code says "*Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements.*" I have added emphasis by underlining. These arrangements have not been provided to me and I have not considered them in this determination.

Consideration of Case

13. Use of SIF: Paragraph 2.4 of the Code describes when a SIF may be used, which is "*when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability.*" It also says that a SIF **must not** ask for, "*details about parents' or a child's disabilities, special educational needs or medical conditions.*" The referrer drew my attention to the SIF used by the school for 2016 which asked if the child has a statement of SEN or whether the child is on the primary school's education, health and care plan. An EHC plan is individual to the child so I assume the form's wording was to ascertain whether the child had an EHC plan.

14. The school has pointed out that, prior to the questions, the form also says, "*To assist with administration of the testing procedure please complete the following if relevant. Replying yes to these questions has no detrimental effect on your application.*" The school says that it had asked the questions in order to provide appropriate support in the test to children with SEN who

were applying. I accept that this was the school's intention.

15. Paragraph 1.32b of the Code says with regard to tests for selection that admission authorities **must** “*ensure that tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation.*”

16. The Code does not tell admission authorities how to fulfil the requirement of paragraph 1.32b but it does prohibit asking for “*details about parents’ or a child’s disabilities, special educational needs*” in any SIF that is used. The trust did ask for details about children’s SEN in the SIF and this would not be in conformity with the Code. The SIF in the draft revised arrangements for 2017 does not include this question.

17. Consultation: Paragraph 1.42 of the Code says, “*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year.*” The arrangements for admissions in 2016 are different from the arrangements determined for 2017. The oversubscription criteria for 2017 include priorities for children of staff and siblings of existing pupils; this was not the case for 2016. I therefore asked what consultation had been undertaken.

18. The school was unable to provide information on what had taken place. At the meeting, the local authority explained that the school had undertaken a consultation in October and November 2015. The local authority had been consulted and had circulated letters to all schools in the local authority area, alerting them to the consultation, on behalf of the school. The letter sent by the local authority at the request of the school did not ask that the schools in the area made their parents aware of the consultation.

19. I have not seen the consultation document but was told at the meeting that the consultation included the proposal to introduce an oversubscription criterion giving priority to children of staff at the school. A priority for siblings of existing pupils was introduced in the arrangements determined by the trust. At the meeting the school and the trust acknowledged that they knew of no consultation on the introduction of a priority for siblings for existing students. A significant change was therefore introduced without any consultation.

20. Paragraph 1.44 lists the bodies with which an admission authority **must** consult. This includes “*parents of children between the ages of two and eighteen.*” Parents of children who may be considering applying for the school in the future will have an interest in the arrangements for the school and the Code requires that their views are sought prior to any change.

21. There is limited evidence of consultation and no evidence of consultation with parents with regard to the introduction of a priority for the children of staff. The consultation therefore did not conform with paragraphs 1.42 and 1.44 of the Code as parents were not consulted at all and there was no consultation on the introduction of a priority for the siblings of existing pupils.

22. The trust expressed its intention to consult thoroughly on the admission arrangements for 2018. This is welcomed.

23. Determination of arrangements: Paragraph 1.46 of the Code says that all admission authorities **must** determine their admission arrangements every year by 28 February in the determination year. The trust had not determined the admission arrangements by 28 February 2016 for 2017. The trust determined the arrangements for 2017 on 21 July 2016. The trust did not conform with the Code in this regard.

24. Publishing of arrangements: Paragraph 1.47 of the Code says that once admission authorities have determined their arrangements they "**must publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made).**" The determined admission arrangements were not published on the school's website once determined; when I looked on 27 July 2016, undetermined arrangements remained described as the arrangements for 2017. This makes the arrangements unclear. At the time of the meeting on 16 September 2016 the draft revised arrangements were on the school's website. This is understandable given the matters which I had brought to the attention of the admission authority but the determined arrangements were not published as required by the Code.

25. Different sets of arrangements have been published on the school's website during 2016; this could easily cause confusion for parents. Paragraph 14 of the Code says, "*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.***" The trust has not complied with the Code in this regard.

26. The requirements of the Code, that arrangements are determined by 28 February and then published, give the opportunity for interested parties, such as parents, to consider the arrangements. If any person or organisation believes that the arrangements do not conform with the Code they have the right to object to those arrangements. Such objections must be made by 15 May each year. In this instance, this was not possible as the arrangements had not been determined and then published as required by the Code. The arrangements were not determined until 21 July 2016, and not made available to me until 29 July 2016 on which date they still were not published on the school's website.

27. When I received the determined arrangements I brought a range of matters to the attention of the school and the trust. I convened the meeting to seek information and to clarify these matters; the school holidays and other commitments of the school meant that this meeting could not be held until 16 September 2016. At the meeting the local authority highlighted that parents were already making applications for secondary school for 2017. All present acknowledged that this meant that the applications were being made when

the arrangements did not comply with the Code in several respects as set out in this determination. In addition there have been more than one set of arrangements, including undetermined ones, on the school's website. This is not fair to parents; they have to make decisions on the basis of the information provided to them and this has not been clear. At the meeting the trust, the school and the local authority discussed ways that they could make the arrangements clearer for parents who were applying for places for 2017. This is welcomed.

28. Information on testing for aptitude: The Act, the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and the Code together allow for priority to be given for up to 10 per cent of a school's PAN on the basis of aptitude in prescribed subjects where the school has a specialism in that subject. This is a form of selection. The school gives priority for up to 20 children each year on the basis of aptitude in the performing arts. Paragraph 1.17 of the Code says, "*All selective schools **must** publish the entry requirements for a selective place and the process for such selection.*" In its determined arrangements the school provided no information on the entry requirements or the process used to select which children would meet its criteria. Parents need to know what the requirements are so that they can assess whether their child has any chance of meeting those requirements. This will inform the decisions that parents make. Arrangement which do not set out the entry requirements and process for selection for selective places do not conform with paragraph 1.17 of the Code. In addition, it is not fair, and so does not meet paragraph 14 of the Code, for parents to be required to make decisions with no information on which to base them.

29. Paragraph 1.31 says, "*Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.*" Paragraph 1.32a of the Code says that admission authorities **must** "*ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability.*" In the absence of any information about the test used to assess aptitude in the performing arts, it is simply not possible to know if the test meets these requirements of the Code.

30. There is no information in the arrangements on the entry requirements for a selective place on the basis of aptitude and the process for such selection. The arrangements do not meet the requirements of the Code in this regard.

31. Information on outcomes from testing: Paragraph 1.32c says that all admission authorities **must** "*take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place.*" The tests for aptitude and banding take place after 31 October so parents cannot know the outcome of the tests before they apply.

By arranging its tests to take place after the deadline for applications, the admission authority has failed to take “*all reasonable steps*” to inform parents of the outcome of the selection tests before 31 October.

32. I have noted that the selection is based on those that apply. If the school had chosen to use banding based on, for example, the national ability range, this may have had a significant effect on who would be allocated a place in certain circumstances. Banding on the basis of those who apply is unlikely to provide information that would affect a parent’s choice of school. However, knowing how well a child had done in a test for aptitude in the performing arts, for which priority is given for up to ten per cent of places, might well affect a parent’s decision on whether or not to apply for a place at the school. The arrangements do not comply with the Code in this regard.

33. Banding for looked after and previously looked after children: Paragraph 1.7 of the Code says that looked after and previously looked after children **must** be given the highest priority in any oversubscription criteria. The arrangements do not make it clear that where the school is oversubscribed then children who are looked after or have been previously looked after will have the highest priority and this is not dependent upon their taking a banding test. Looked after and previously looked after children cannot be required to take the test in order to be given the highest priority for a place at the school and the arrangements should make this clear. The arrangements do not conform with paragraph 1.7 of the Code in this regard.

34. Banding for children with a statement of SEN or EHC plan: Paragraph 1.30 of the Code says, “*Children with statements of special educational needs or Education, Health and Care Plans may be included in banding tests and allocated places in the appropriate bands but, regardless of any banding arrangements, they **must** be allocated a place if their statement or Education, Health and Care Plan names the school.*” The arrangements do not make this clear and so the trust does not comply with the Code in this regard.

35. The definition for looked after children and previously looked after children: The arrangements say, “*Within each band priority for places will be allocated to:*

- i. *Children in Public Care or previously on the Looked after Register. (LAC)”*

The term, “*children in public care*” does not mean the same as “*looked after child.*” Children who were “*previously on the looked after register*” does not have the same meaning as a “*previously looked after child*” as defined in the Code. As related above, the requirement for these children to have first priority is stated in paragraph 1.7 of the Code which says, “*All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special*

guardianship order).” The arrangements do not give any definitions of looked after or previously looked after children and the wording used is inaccurate. This makes the arrangements unclear; they do not meet the requirements of the Code in this regard.

36. Statement of SEN or EHC plan: The arrangements have as criterion two, “*Children with Education, Health & Care Plans where George Salter Academy is named on the Plan.*” Paragraph 1.6 of the Code says, “*All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted.*” These children are not considered for admission at the same time as other children as there is a separate process. A child whose statement of SEN or EHC plan names the school has a place at the school irrespective of any oversubscription criteria. This is not clear in the arrangements and so they do not conform with the Code.

37. Children of staff: Criterion four of the oversubscription criteria is, “*Children of Staff employed by the Academy or appointed to commence employment at the Academy.*” Further definition of this is provided using the words from paragraph 1.39 of the Code which says, “*Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:*

- a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*
- b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.”*

38. The wording in a) and b) above has been copied exactly in the arrangements. The trust does not appear to have decided if it is giving priority to “*either or both.*” A parent who is also a member of staff may not know whether they would meet this priority because of the use of ‘and/or’ implies choice as to which is used at any given time. This does not make the arrangements clear and so they do not conform with the Code in this regard.

39. Feeder schools: The section in the arrangements on definitions includes ‘*feeder schools*’ and these are named. There are no other references to feeder schools in the arrangements including in the oversubscription criteria so their inclusion makes the arrangements unclear. Their inclusion could lead a parent to think their child, who attends one of these named schools, has a priority for this school and this affects their stated preferences for admission when this is not the case under the terms of the school’s oversubscription criteria. This makes the arrangements unclear in contravention of paragraph 14 and they do not conform with the Code in this regard.

Summary of Findings

40. The arrangements for admission to the school were not clear in several regards as detailed above. The school and the trust have expressed the

intention of addressing these matters as quickly as possible.

Determination

41. In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements for September 2016 and September 2017 determined by the Ormiston Academies Trust for George Salter Academy and find there are matters which do not conform with the requirements relating to admission arrangements as set out in this determination.

42. 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 the determination.

Dated: 7 October 2016

Signed:

Schools Adjudicator: Deborah Pritchard