Office of the Schools Adjudicator

DETERMINATION

Case reference:	**ADA2897**
Objector:	**Worcestershire County Council**
Admission Authority:	**The Academy Trust for Prince Henry's High School, Evesham**
Date of decision:	**24 August 2015**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for Prince Henry's High 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 one month of this decision.

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 Worcestershire County Council, the local authority (the LA) for the area, in an email dated 16 June 2015, concerning the admission arrangements for September 2016 (the arrangements) for Prince Henry's High School (the school), a secondary academy school in Evesham. The objection is to an oversubscription criterion which gives priority to children who have attended a school within the multi-academy trust (the MAT) for at least one year.

Jurisdiction

2. The terms of the academy agreement between the Prince Henry's Academy Trust and the Secretary of State for Education require that the admission policy and arrangements for an academy school are in accordance with admissions law as it applies to maintained schools. The 2016 arrangements were determined on 18 March 2015 by the

governing body which, representing the academy trust, is the admission authority for the school.

3. The objector submitted the objection to these determined arrangements on 16 June 2015. In a letter to the school dated 25 June 2015, its legal adviser questioned whether the LA's admissions officer had the requisite delegated power from the county council to raise an objection with the OSA. In pursuing this question, I was provided with a statement from the County Council's Director of Children's Services issued when the same matter was raised in respect of a previous objection made to the OSA by the same LA officer. That statement reads in part, *"As to the questioning whether the objection was duly made, I can respond that in the view of myself, the Director and … the Head of Legal and Democratic Services, it was … I confirm that the objection was made under my general authority at the time and that I hereby confirm my support for that objection."* With regard to section 88H of the Act and paragraph 3.2 of the Code, I am therefore satisfied that the objection has been properly referred to me and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

   a. the objection, dated 16 June 2015;

   b. the school's admissions policy for 2016/17, determined at a meeting of the governing body on 18 March 2015;

   c. minutes of the meeting of the school's admissions committee held on 7 October 2014;

   d. minutes of the meetings of the school's full governing body held on 26 November 2014 and 18 March 2015;

   e. the school's response to the objection, dated 26 June 2015, and accompanying papers, including advice to the admission authority from its legal advisers, dated 28 January 2015;

   f. the school's response to the adjudicator's further enquiries, dated 9 July 2015;

   g. copies of emails and correspondence exchanged between the LA, the school, and members of the governing body on dates between 2 November 2014 and 11 June 2015;

   h. a letter to the head teacher of the school from the school's legal advisers, dated 25 June 2015;

i. the LA's response to a further enquiry from the adjudicator in an email dated 15 July 2015; and

j. the school's website.

The Objection

6. The LA has objected to the inclusion, in the school's arrangements, of an oversubscription criterion that gives priority to children who have attended a school within the MAT for at least one full academic year. The LA contends that this criterion does not meet the requirement for "fairness" in paragraph 14 of the Introduction to the Code, or for "reasonableness" in the naming of feeder schools as required by paragraph 1.15.

7. The LA's objection is that the tripartite system that operates within the area means that after attending a first school a pupil then spends a three year period in a middle school before moving to the high school. It is therefore neither *"reasonable [n]or transparent to class … first schools as feeder schools."* The objection develops the point in stating that *"a child might have attended a particular first school in Reception for a year and then moved to a school outside of the Prince Henry's High feeder pyramid. They would then have a higher priority, 9 years later, to attend a particular high school, when a child who may well be living closer to the high school that has not attended a particular first school, has a lower priority."* The objection contends that the criterion *"has the potential to create a much larger pool of children over the years that could unfairly disadvantage children that live more locally … it does not seem reasonable to give priority to children in a high school that may have attended a particular school for their reception year, but subsequently have had no other relationship with a particular high school, or pyramid of schools."* In such a case, the objection contends, *"[c]ontinuity of provision and relationship could not be reasonably justified"* in treating this as a feeder school relationship. The objection further states that it is neither reasonable nor fair *"for a parent of a child aged 4, to have to make the decision on which first school to send their child to, based on which high school they might want them to attend in the future."* The final point made in the objection is that this criterion does not allow parents to see easily how the arrangements apply to them and to decide whether or not they are likely to obtain a place at the high school.

Other matters

8. In the course of considering the objection I reviewed the arrangements as a whole and brought several matters to the attention of the school. A footnote concerning the place of residence of siblings was potentially confusing; and the sixth form arrangements for external applicants referred to an interview, the need for a reference from the applicant's previous school and required parents, as well as applicants, to sign the application form.

Background

9. The school is a mixed secondary academy school for pupils between the ages of 13 and 18, with almost 1250 pupils on roll, including more than 300 in the sixth form. It was judged to be outstanding in its most recent Ofsted inspection in May 2013. There is a tripartite system of education in the area; the school is part of a "pyramid" that comprises two middle schools and 12 first schools, two of which are also linked to other "pyramids". In the summer of 2014, the school began a formal consultation on its proposal to establish a MAT; orders to form the trust were issued in October 2014 and, at the time of making this determination, the school was hoping to complete legal processes to incorporate the MAT on 1 November 2015. The MAT will therefore not be in place before the closing date of 31 October for applications for admissions to year 7 in September 2016, but is referenced by criterion 8 in the arrangements. It is envisaged that the MAT will comprise one of the two feeder middle schools and two of its four feeder first schools, together with three of the eight feeder first schools for the second of the school's feeder middle schools. Of the schools in the "pyramid", therefore, one middle school and seven first schools will not be part of the MAT, including two first schools that had been part of the initial planning but subsequently decided not to join the MAT.

10. The school submitted draft arrangements for 2016 to the LA on 2 November 2014 following detailed discussion at the meeting of the admissions committee on 7 October 2014. There was further discussion at the meeting of the full governing body on 26 November 2014. In an email dated 22 January 2015, the LA raised concerns with the school over some aspects of its arrangements for 2016, including criterion 8, which is the subject of this objection. The other concerns included: the inaccuracy of the definitions of looked after and previously looked after children; the need to remove a reference to previously attended schools that were not named feeder schools; and the lack of priority for looked after and previously looked after children in the sixth form arrangements. With regard to criterion 8, the LA raised essentially the same points as those elaborated in its formal objection, as detailed above. In response to the LA's email of 22 January 2015, the school consulted its legal advisers and received a reply, dated 28 January 2015, that was circulated to members of the governing body for comment. Responses by email copied to me show that governors were content with the legal advice and that none felt criterion 8 should be removed from the arrangements, which were accordingly determined at the meeting of the governing body on 18 March 2015, including criterion 8 but making the other amendments requested by the LA mentioned above. The school informed the LA that the arrangements had been *"carefully checked by our legal advisers, who have confirmed that [they are] compliant with the new Admissions Code."* The LA emailed the school again on 11 June 2015 reiterating its concern over criterion 8, informing the school of its intention to raise a formal objection with the Office of the Schools Adjudicator (OSA) and

outlining again the basis for the objection, repeating the points made in its earlier email of 22 January 2015.

11. The school has a planned admission number (PAN) of 315 at age 13. The arrangements state that children with a statement of special educational needs, or an Education, Health and Care plan, in which the school is named, will be admitted. Oversubscription criteria are then, in summary:

    1. Looked after or previously looked after children
    2. Children who attend the designated named middle schools and who live in the catchment areas for these schools
    3. Other children who live in the Prince Henry's School catchment area
    4. Children who attend one of the designated middle schools but do not live in the Prince Henry's catchment area
    5. Children who have a sibling currently attending or having attended the school
    6. Children who have strong medical, social or compassionate grounds for admission
    7. Children of staff employed at the school on a permanent contract and have been so for two or more years at the time of admission
    8. Children who have attended a named school within the Prince Henry's High School MAT for at least one full academic year
    9. Other children, with priority given to those living nearest to the school by the shortest straight line distance

12. Notes explain that the combined catchment areas of the two feeder middle schools comprise the catchment area of the school; define "sibling"; explain the process of application under criterion 6; and list the schools that will comprise the MAT, although this list is no longer accurate as two first schools have since decided not to join the MAT. Information is also provided regarding the admission of children of multiple births, and admission to a year group outside the child's normal age group. The tie-breaker is detailed as a straight line measurement and applicants are informed that where this cannot separate equidistant candidates, an independent random selection process will take place.

13. The school has been oversubscribed in recent years, but not greatly. Over the past three admission rounds, the total number of applications for the 315 available places in year 7 (308 in 2013) has gone down from 381 to 371 and then to 329 for entry in 2015. In 2013 and 2014 respectively, 15 and 14 first preference applications were unsuccessful; for entry to year 7 in September 2015, all first preference applications were successful in gaining a place including, for the first time over that three-year period, a small number of applications that were considered against the final category of oversubscription, "other children". The number of successful applications on behalf of children attending a feeder middle school but living outside the catchment area has increased notably over the

same period as a proportion of the intake, from about one in seven in 2013 to one in five in 2015.

Consideration of Factors

14. Although the school provided factual information to assist me in making this determination, its response to the substance of the objection has been made through its legal advisers, in a letter written in response to the objection by the LA, dated 25 June 2015. This letter offered similar advice to that received from its legal advisers on 28 January 2015, as mentioned above, but included some additional points. In the following paragraphs, I draw exclusively on the second letter from the school's legal advisers as the formal response to the LA's objection.

15. In defending criterion 8, the legal adviser first considers it in relation to paragraph 1.15 in the Code. He argues that the criterion meets the need for "transparency" as it names local feeder schools, although the Code is misquoted as referring to *"primary and middle schools"* whereas in fact the reference is to *"primary or middle schools"*, a distinction which may be significant and which I shall discuss further below. In considering the "reasonableness" of naming feeder schools, the legal adviser refers to the recent judicial review of an OSA determination in which *"the court considered reasonableness based on evidence that demonstrated 'specific and active curricular or other links between the primary school and the secondary school' or ' … where continuity throughout a child's period of schooling is provided through such collaborations … '."* The legal adviser's letter, addressed to the head teacher of the school, continues, *"I understand you will provide the evidential basis for the naming of such schools given the collaborative work within your cluster/pyramid."* I requested any such evidence from the school in an email dated 15 July 2015; the reply I received on 20 July 2015 merely listed those schools that would comprise the proposed MAT but offered no comment on the nature of curricular or any other links between these schools or others in the "pyramid".

16. I accept that progression and continuity are intrinsic, valued aspects of the tripartite system within the LA. However, I would expect these benefits to apply to all schools in the "pyramid", that is, to the eight that are not to be part of the proposed MAT as well as to the seven that would be. I have not been provided with any evidence of links with the proposed MAT member schools that show stronger curricular or social relationships than those with schools that have chosen not to be members of the trust.

17. In moving to consideration of that part of the objection that references paragraph 14 of the Code, the legal adviser contends that the arrangements are not unfair if taken holistically. He points out that the disputed criterion is eighth in a list of nine, arguing that *"[c]riteria 2 to 7 will provide the priority for the majority of applicants, including those from close to the School through operation of the catchment*

area. The objection does not set out any substantive evidence to support the claim of unfairness." The remaining aspect of the objection, the contention that the arrangements do not permit a parent to understand how places will be allocated is rejected. The legal adviser notes that criteria 2 to 7 *"fall within the list of those 'commonly used' in accordance with the … Code and are set out in a logical manner which does allow applicants to understand how places will be allocated … it is difficult to show how the application of the arrangements could be made clearer."*

18. I share the view that the arrangements are clearly set out, and that data relating to the most recent three admission rounds confirm that the bulk of places would be expected to be allocated against criteria 2 to 7. It is worth repeating, however, that the fall in the number of applications during this period led (for the first time) in September 2015 to places being allocated to all first preference applications, including three made against the equivalent of criterion 9 ("other children") in the arrangements for 2016. Applicants for places in 2016, aware of these data, might therefore be less than clear whether their child would have any realistic chance of gaining a place against criterion 9, or whether applications considered under criterion 8 might take up the few places remaining after applications had been considered against the first seven criteria. It is true that applicants would not know with any certainty from one year to the next how many places might be allocated against each oversubscription criterion but some degree of predictability is possible, for example, by awareness of the numbers of pupils on roll in the two feeder middle schools. It is entirely speculative, and irrelevant in respect of the Code, to claim either that criterion 8 would not affect many applications, or that it would. The inclusion of criterion 8 in the 2016 arrangements certainly does not make it any easier for parents to *"understand … how places for [the] school will be allocated."* This lack of clarity is compounded by the fact that, as I have mentioned above, the MAT will not be in place at the closing date for applications to year 7 for September 2016 and so there would be uncertainty about when, and if, the criterion could in fact be applied.

19. I move now to the objector's reference to paragraph 1.15 in the Code. The wording of this paragraph is significant in the light of the legal adviser's views quoted above. It reads, in full: *"Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion* ***must*** *be transparent and made on reasonable grounds."* There are several points to make here. Criteria 2 and 4 name the two middle schools linked to Prince Henry's School through the "Evesham pyramid". Although the school did not provide me with evidence of curricular links or collaborative undertakings with these middle schools, in the normal way of school partnerships in such circumstances, active links exist and therefore it is reasonable to name these two middle schools as feeder schools. What concerns me, however, is the naming in criterion 8 of some of

the schools within the "pyramid" – that is, those schools that will be within the proposed MAT, including several first schools together with just one of the two feeder middle schools: will all collaborative work with schools that are not in the MAT cease when the trust becomes a legal entity? I would hope not, but, if so, why does this criterion exclude children who have attended one of the non-trust schools? In my view, this distinction between schools that are, or are not, in the MAT fails the test of transparency. The wording of paragraph 1.15, moreover, makes it clear that individual feeder schools **must** be named on reasonable and transparent grounds, not types of schools, which would be non-compliant with paragraph 1.9b) in the Code, which prohibits arrangements taking account of any previous school attended, unless it is a named feeder school. Even if, as proposed by criterion 8, individual schools within the MAT were named, I can see no reasonable or transparent grounds for not naming those schools in the "pyramid" but outside the MAT.

20. The potential complication of this situation is shown by a question asked of me by the school when I sought further information about its relationships with the feeder schools. Referring to the footnote to criterion 8 in the arrangements, which names the "qualifying" schools, I was asked, *"would we be able to remove Swan Lane and Harvington from the footnote, since there will no longer be a MAT link? Similarly, if between now and September 2016, additional schools were to join the MAT, would we be able to add their names to a footnote?"* Putting aside my concern, expressed above, about the transparency of how being "in" or "out" of the proposed MAT might affect the educational opportunities offered to pupils in the schools, such uncertainty and possible changes to footnotes hardly promotes ease of understanding for applicants. It might lead parents to suspect that their child would in some way be "penalised" by not having attended one of the MAT schools, if only indirectly, by being "queue jumped", as it were, in the allocation process by another child who had attended a MAT first school for just one year some eight nor nine years previously, a situation that draws attention to another aspect of the LA's objection and which I would agree is unfair, in that parents might feel the need to apply to a MAT first school as a possible "safety net" for any application to the high school many years later. If the membership of the MAT were to change in the meantime, of course, further complications might arise in applying a criterion such as that under consideration here.

21. My final point concerns the precise wording of the Code in the paragraph (1.15) quoted above. I mentioned earlier that the school's legal adviser (in his letter of 25 June 2015) misquoted it, substituting *"and"* for *"or"* in the reference to the types of schools that might be named as feeders. My view is that the Code intends secondary schools to have the facility to name primary or middle schools as feeders, depending on the system within which they are working – that is, the *"local circumstances"* mentioned in paragraph 1.10 of the Code, to which the school's legal adviser also refers. I take the view

that a “feeder” school is intended to be in a phase contiguous to that of the establishment for which it is named as a feeder. To name first schools as feeders to a high school defies common sense if applying the test of *“specific and active curricular links”* when there are middle schools interposed between first and high schools in the local system. I question, as does the objection, whether such continuity and progression could be invoked if there were a break in the process as early as the end of the child’s Reception year and so, how it could be “reasonable” to prioritise high school applications on behalf of children who may have spent no more than one year in a first school.

22. My view is that criterion 8 is neither fair, nor reasonable nor transparent, and I therefore determine that it does not comply with the requirements of paragraphs 14 and 1.15 in the Code. Moreover, as the MAT will not be incorporated until after the closing date for applications for September 2016, the preferences expressed by some applicants might be affected by a criterion that, at that time, would have no foundation in the legal status of the school and its proposed partner schools in the MAT.

23. I turn now to the other matters mentioned above. Part of the footnote to criterion 5, concerning the place of residence of siblings, was potentially confusing and when brought to the school’s attention it agreed to remove the sentence in question. The sixth form arrangements for external applicants referred to an interview; the school responded that the prospectus states *“the interview does not form the basis of an offer, but is intended to provide an opportunity for students to gain advice and options”*. However, the application process outlined on the school’s website states that *“new students may be interviewed and we will ask for a reference from their current Head of Year/Tutor”* and there is no indication here that the “interview” does not form part of the offer process, (although this disclaimer is included in the notes addressed to internal applicants). This might therefore be non-compliant with paragraph 1.9m) in the Code unless clarified, and the request for a reference from the applicant’s previous school is non-compliant with paragraph 1.9g) in the Code. The application form required a parent, as well as the applicant, to sign; when brought to the school’s attention, a modified form requiring only one signature was placed on the website.

Conclusion

24. The objection concerns an oversubscription criterion in the school’s arrangements for 2016 that the LA considered to be neither reasonable, nor transparent, nor fair, giving priority to children who had attended one of the schools in the proposed MAT for at least a year. I found that it was not reasonable to name a first school as a feeder to a high school within a tripartite system, not least when the attendance requirement was only one year. I found the criterion to be unfair as it discriminates against children who have not attended a first school that is in the proposed MAT, even though they may have

attended another school within the local “pyramid”; no rationale has been offered for making this distinction, so that the criterion lacks transparency. Furthermore, I found that the criterion might increase the difficulty for parents in judging the likelihood of success in applying for places for their children at the school, thus affecting the ease of understanding the arrangements, not least when the proposed MAT will be incorporated only after the closing date for applications to year 7 for September 2016. I therefore uphold the objection to criterion 8 as it does not comply with paragraphs 14 and 1.15 in the Code.

25. In considering the arrangements as a whole, I found that a footnote lacked clarity and that some aspects of the application process for external applicants to the sixth form were non-compliant with the Code. Most of these matters have been accepted and amended by the school, although it may still appear to applicants that the interview is part of the decision-making process, and they are still required to supply a reference; these two requirements do not comply with paragraphs 1.9m) and 1.9g) in the Code.

26. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised within one month of this decision in order to meet the national timetable for the admissions process.

Determination

27. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for Prince Henry’s High School.

28. 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.

29. 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 one month of this decision.

Dated: 24 August 2015

Signed:

Schools Adjudicator: Andrew Bennett