



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3083

**Objector:** Lincolnshire County Council

**Admission Authority:** The Enquire Learning Trust

**Date of decision:** 13 May 2016

### **Determination**

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by The Enquire Learning Trust for Keelby Primary Academy, Lincolnshire.

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 Lincolnshire County Council (the objector) about the admission arrangements for September 2017 (the arrangements) for Keelby Primary Academy (the school). The school is an academy school for children aged 4 to 11 in Keelby, Lincolnshire. The objection concerns the measurement of home to school distance and the priority given in the oversubscription criteria to children of members of staff.

### **Jurisdiction**

2. The terms of the academy agreement between The Enquire Learning Trust (the 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. These arrangements were determined on 26 February 2016 by the trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined

arrangements on 7 April 2016. 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. I have also used my power under section 88I(5) of the Act to consider the arrangements as whole.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 7 April 2016 and information provided by it in its role of local authority (LA) for the area;
  - b. the trust's response to the objection and my subsequent enquiries together with supporting documents;
  - c. a map of the area identifying relevant schools;
  - d. confirmation of when consultation on the arrangements last took place;
  - e. copies of the minutes of the meeting at which the trust determined the arrangements; and
  - f. a copy of the determined arrangements.

### **The Objection**

5. The objector referred to paragraph 3.2 of the Code which places it, as the LA, under a duty to "*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.*" There are two parts to the objection.
6. The first part of the objection is that the arrangements may not meet the requirement in paragraph 14 of the Code to be clear. The objector said it was not clear in the arrangements how home to school distances are measured.
7. The second part of the objection is that the oversubscription criterion which gives priority to children of members of staff does not meet the requirements of paragraph 1.39 of the Code.

### **Other Matters**

8. On 19 April 2016 I looked at the trust's website, I also looked at the school's website. I found multiple versions of the arrangements on both websites some of which were abbreviated and lacked detail. There also appeared to me to be some confusion in the arrangements over whether or not the school operated a catchment area, and if it did where a map or other description of it could be found. The final oversubscription criteria also appeared to me to be unclear. This meant the arrangements may not meet the requirements of paragraph 14 or paragraph 1.8 of the Code.

## Background

9. The school became an academy on 1 March 2015. It belongs to a multi-academy trust which includes 23 primary schools in the north of England. The school is situated in the village of Keelby which is approximately 10 kilometres to the west of Grimsby. From figures supplied by the LA the school was undersubscribed for September 2016.
10. The school has a published admission number (PAN) of 30 and the oversubscription criteria supplied to me by the trust are:

*“1. Looked after children (children in public care), or previously looked after children.*

*2. Pupils with brothers or sisters who are already at the Academy*

*3. Pupils whose main residence is within the catchment area. Parents can view each academy catchment area through their local authority website (details can be found on the Trust website*

*www.enquirelearningtrust.org). NB; this is not applicable to Keelby Primary Academy or academies within Tameside Local Authority.*

*4. Children of staff employed by the Multi Academy Trust.*

*5. Proximity to the Academy will be measured by the shortest walking distance from the from the [sic] child’s front door to the main entrance at school using the Trust [sic] electronic measuring system.”*

11. The oversubscription criteria are followed by definitions of looked after children, siblings and other terms in the oversubscription criteria together with information about waiting lists and the admission of children outside their normal age group.

## Consideration of Factors

### Distance measurement

12. 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.”* Paragraph 1.8 of the Code begins *“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair”* and paragraph 1.13 says *“Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.”*
13. In the arrangements supplied by the trust it says in the fifth criterion *“Proximity to the Academy will be measured by the shortest walking distance from the from the [sic] child’s front door to the main entrance at school using the Trust [sic] electronic measuring system”*. The objector said this is unclear because *“there is no explanation of what the ‘Trust’s measuring system’ actually is, nor are there definitions of*

*‘walking route’, ‘front door’ and ‘main entrance’; these terms could give rise to ambiguity and be open to interpretation.” The objector continues to say that “in Lincolnshire the Local Authority school admissions team is able to measure electronically either by straight line or driving distance; we do not believe that the necessary mapping data is available to measure by “walking” distance electronically. No other Lincolnshire admission authority uses walking distance in its criteria and we have concerns that this could not be done to the required standard to ensure the accurate allocation of places.”*

14. In its response to the objection the trust said *“The Trust will be using the Ordnance Survey online mapping tool to calculate the walking distance from the pupil’s front door (or main entrance for flats) to the main entrance of the school building.”* I then asked the trust whether the use of this tool required any subjective decisions by the operator such as the location of the front door and main entrance, the safety of the route, which side of the road a child walks, where they might cross a road and the use of public footpaths, alleyways and other informal routes.
15. In response to my further enquiry the trust said *“I am happy to provide further details about the Trust’s mapping tool. This system which is based on Ordnance survey maps has been purchased from GIS (geographic information system). This measures the precise distance, to three decimal points, in a straight line from the centre of the pupil’s main home to the designated main school entrance nominated by the school. For shared properties, e.g. flats, the measurement is taken from a designated center [sic] of the building. The use of the geographic information system (GIS) ensures that all applications are measured by the same method.”*
16. I am satisfied that this is a robust, objective and accurate method of measuring home to school distance, but it is not the shortest walking distance described in the arrangements and in the trust’s initial response to the objection, it is a straight line distance. The arrangements are consequently not clear and do not meet the requirements of the Code. I uphold this part of the objection.

#### Children of members of staff

17. The Code, in paragraph 1.9f, generally prohibits giving priority for places to children based on the occupation of their parents. There is, however, an exception to this set out in paragraph 1.39 of the Code *“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.”*

18. In the arrangements supplied to me by the trust the fourth oversubscription criterion is *“Children of staff employed by the Multi Academy Trust.”* The objector said this criterion may not meet the requirements of paragraph 1.39 because *“the criterion apparently extends this priority to all staff at the Trust, not the school. Section 1.39 specifically refers to ‘at the school’”*. The objector continued to say that the criterion *“does not mention the two years of employment at the time of application required in the Code or, in the alternative, a recruited member of staff to fill a demonstrable skill shortage”* and *“The staff criterion as determined also does not define ‘staff’, leaving open the question of whether it means only teaching staff, or whether support staff, management etc. are included. This is unclear and may therefore breach section 14 of the Code.”*
19. In response the trust said *“All employees within the Trust are entitled to place their children in schools within the Trust. This offer is available to all staff who have a permanent contract with the Trust.”* I have looked at the school’s funding agreement and can find no derogation which allows priority to be given to children of all staff employed by the trust, paragraphs 1.9f and 1.39 of the Code therefore apply to these arrangements.
20. I have noted that the arrangements provided by the trust do, in the notes following the oversubscription criteria, set out the two circumstances where the Code gives permission to give priority to children of members of staff. In the above comment the trust says the criterion is intended to apply to all staff so no qualification of which staff it applies to is required. However the criterion does not comply with Paragraph 1.39 of the Code. That paragraph only sets aside the prohibition on giving priority for places to children based on the occupation of their parents for children of staff at the school. It does not allow any priority to be given to other employees of the trust and certainly does not give any *“entitlement”* to a place for any child as suggested by the trust in its response, for the reason that the school may reach and exceed its PAN under one of its higher oversubscription criteria. I uphold this part of the objection.

#### Publication and clarity of the arrangements

21. Paragraph 14 of the Code quoted in full above says *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*. The requirement to publish admission arrangements is set out in paragraph 1.47 of the Code *“Once admission authorities have determined their admission arrangements, they must notify the appropriate bodies and must publish a copy of the determined arrangements on their website displaying them for the whole offer year”*.
22. On 19 April 2016 I looked at the trust’s website. The second item on the home page was headed Admissions. This introduced consultation on the admission arrangements for 2017 which closed on 29 January

2016. Following the timetable for consultation and determination of the arrangements there was a link “*Admissions 2017*”. This link led to document setting out admission arrangements for all academies in the trust. It was not labelled as a draft or for consultation, therefore could be taken by a parent as being the arrangements for 2017.

23. This version of arrangements did not include a PAN for the school; a PAN is required by paragraph 1.2 of the Code. There were six oversubscription criteria:

*“1. Looked after children (children in public care), or previously looked after children.  
2. Pupils with brothers or sisters who are already or have been at the Academy  
3. Pupils whose main residence is within the catchment area.  
4. Attending a [sic] Early Year Provision which is a member of The Enquire Learning Trust  
5. Children of staff employed by the Multi Academy Trust.  
6. Proximity to the Academy.”*

24. The third criterion refers to a catchment area and no catchment area was defined for any school in the trust. There are several ways that I consider these arrangements might not comply with the Code, but as they are not the determined arrangements provided to me by the trust I will not consider them further. I remain concerned, however, that a parent could take these to be the arrangements for the school.

25. I also noted that there was another admissions section under the “About” tab on the home page of the trust’s website. Following this route led to a different set of arrangements for 2017 which had five oversubscription criteria:

*“1. Looked after children (children in public care), or previously looked after children.  
2. Pupils with brothers or sisters who are already at the Academy  
3. Pupils whose main residence is within the catchment area. Parents can view each academy catchment area through their local authority website (details can be found on the Trust website under ‘Our Academies’). NB; this is not applicable to Keelby Primary Academy and Tameside Academies.  
4. Children of staff employed by the Multi Academy Trust.  
5. Proximity to the Academy will be measured by the shortest walking distance from the from the [sic] child’s front door to the main entrance at school using the Trust [sic] electronic measuring system.”*

26. Underneath these criteria there was a link “*ELT 17 Admissions*”. Following this link led to a document with the same heading as that found under the “*Admissions 17*” link referred to above, it was however substantially different. This document set out the PANs for each school

in the trust and had the same five oversubscription criteria as shown on the webpage on which it sits and there were definitions of terms used.

27. On receipt of the determined arrangements from the trust I noted this third set of arrangements found on the trust's website is the determined arrangements. I do not think it helps parents to understand easily how places for the school will be allocated if the full determined arrangements can only be found after extensive exploration of the trust's website on which draft and incomplete versions can be found with no explanation of their status.
28. On the same day I also looked at the school's website where parents might also look for information on admissions. An admissions page could be found under the heading "*Key Information*". This had a link to the school admissions pages on the LA's website and a heading "*Consultation document: Admission Arrangements for schools within the Enquire Learning Trust*" with a file to download entitled "*Admissions 2017*". This was the same document as the first one I found on the trust's website with six oversubscription criteria. The document did not include a PAN for the school and although it said that a catchment area applied, no such area was defined.
29. Under the same heading on the school's website "*Key Information*" there is a sub-heading "*Policies*". The first policy on this page is "*Admissions Policy - Enquire Learning Trust:: 2017 – 2018*" with a downloadable document named "*Admissions Policy ELT*". This document contains the determined arrangements as supplied to me by the trust.
30. In response to my enquiries, the trust said on 28 April 2016 that it could "*only identify one policy on their website. The front page is an overview of the attached policy.*" On 29 April, all three versions identified above were available on the trust's website. I am prepared to accept that one version might be considered a summary of the full determined arrangements, but it does not say so, and the link to the full arrangements is not obvious. It remains that I have identified three versions of the arrangements in five different locations across two websites. This makes the arrangements unclear and so they do not comply with paragraph 14 of the Code. I will now turn to the further lack of clarity within the determined arrangements.
31. The third criterion in the arrangements says "*Pupils whose main residence is within the catchment area. Parents can view each academy catchment area through their local authority website (details can be found on the Trust website under 'Our Academies'). NB; this is not applicable to Keelby Primary Academy and Tameside Academies*". This criterion is not clear. Is it the entire criterion that does not apply to the school, or is it the possibility of parents viewing the catchment area that does not apply at Keelby? If it is the latter, then the question remains of how parents can find out what the catchment area is.

32. In response to my enquiries the trust confirmed that this third criterion does not apply to Keelby Primary Academy and that the school does not have a catchment area. The wording of this criterion does not make this clear.
33. The last oversubscription criterion says “*Proximity to the Academy will be measured by the shortest walking distance from the from the [sic] child’s front door to the main entrance at school using the Trust [sic] electronic measuring system.*” This criterion does not say which children get priority; it just says, as it transpires incorrectly, how proximity will be measured. In the note on distance later in the arrangements it confirms that children living closer to the school get priority, this should be clear in the criterion itself. The trust did not comment on this issue.
34. These two oversubscription criteria are not clear and do not meet the requirements of paragraph 14 of the Code.
35. In passing I note that as the third oversubscription criterion does not apply at the school, then children of staff have higher priority than local children. The Code does not prohibit this, but it makes the arrangements at this school different to those for other schools in the trust located nearby.

## **Conclusion**

36. The description given in the arrangements of how distance is measured between children’s homes and the school is not the method used by the trust. This means the arrangements fail to comply with the Code which requires the measurement of home to school distance to be set out clearly. The arrangements also fail to comply with the Code as they give priority for admission to children of employees of the trust. The Code only allows priority to be given to children of specified employees of the school. I therefore uphold the objection.
37. The Code requires that admission arrangements are clear. These arrangements are not clear because both the trust and school have sets of arrangements on their websites which are not the determined arrangements. These are easier to find than the determined arrangements themselves and could mislead parents. In addition two of the oversubscription criteria are not clear.

## **Determination**

38. 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 Enquire Learning Trust for Keelby Primary Academy, Lincolnshire.



39. 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.

40. 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: 13 May 2016

Signed:

Schools Adjudicator: Mr Phil Whiffing