Office of
the Schools
Adjudicator

DETERMINATION

Case reference: **ADA2906**

Objector: **A parent**

Admission Authority: **The Academy Trust for Verulam School, St Albans, Hertfordshire**

Date of decision: **12 October 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 for 2016 determined by the academy trust for Verulam School, St Albans, Hertfordshire.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways 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 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 a parent, (the objector), about the admission arrangements, (the arrangements), for Verulam School, (the school), an academy school for boys aged 11 – 18 in St Albans, Hertfordshire, for September 2016. The objection is to the clarity of the arrangements.

Jurisdiction

2. The terms of the academy 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 academy trust, which is the admission authority for the school, on that basis on 24 March 2015. The objector submitted his objection to these determined arrangements on 22 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. I have also used my power under section 88I of the Act to consider the

arrangements as a whole.

3. Since the objection was submitted, there have been two developments. First, the objector has queried whether the determined arrangements have been used to allocate places in recent years or whether different criteria have been used. My jurisdiction is limited to whether the determined arrangements for 2016 conform with the requirements relating to admissions and, if not, in what ways they do not. The question of whether an admission authority has applied its arrangements is not within my jurisdiction. I have not, therefore, considered this matter further. Secondly, the admission authority has varied its determined arrangements for 2016 in accordance with the provisions of paragraph 3.6 of the Code and has published the varied arrangements on its website. I have considered the objection against the arrangements in place when the objection was made, but taken account of the varied arrangements in considering whether the school needs to amend its arrangements further.

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 objector's form of objection dated 22 June 2015 and subsequent submissions;

    b. the school's response to the objection dated 2 July 2015 and supporting documents and subsequent submissions;

    c. the comments made by Hertfordshire County Council, the local authority (LA) for the area on the objection;

    d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016 and information about school admissions on the LA's website;

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

    f. copies of the minutes of the meeting at which the academy trust determined the arrangements;

    g. copies of the 2016 arrangements as determined and as subsequently varied.

The Objection

6. The objection is to the definition of "nearest" school in the school's oversubscription criteria. The oversubscription criteria as originally determined for 2016 include significant elements of priority for boys who live in particular areas and/or for boys for whom the school is the

"*nearest Hertfordshire non-faith, non-partially selective maintained school or academy, making provision for children of the relevant gender".* The objector considered that this definition is not clear as nearest could mean only a school which was a boys' school or it could mean a school which was a boys' school or a co-educational school and that the arrangements accordingly failed to comply with paragraph 1.8 of the Code.

Other Matters

7. When I reviewed the arrangements I identified the following ways in which the arrangements appeared not to conform with the requirements relating to admissions:

    a. The definition of looked after and previously looked after children given in the oversubscription criteria did not appear to conform with the definition set out in paragraph1.7 of the Code; and

    b. in relation to the admission of pupils to Year 12 (Y12), the arrangements appeared to set different criteria for external candidates than for those transferring from Year 11 (Y11) which is prohibited by paragraph 2.6 of the Code. In addition, the application form to be used for applications to Y12 did not appear to be on the school's website in breach of paragraph 1.47 of the Code.

Background

8. Verulam School is one of two single sex state-funded schools in the city of St Albans; there also being a girls' school – St Albans Girls' School (the girls' school). A similar objection has been made to the arrangements of the girls' school and is the subject of determination ADA2907. The city is also served by a number of state funded co-educational schools. Verulam has a published admission number (PAN) of 178 for Y7 and 30 for Y12. It has been oversubscribed at Y7 in recent years and not able to offer a place to every boy who would like one. The school became an academy August 2011. It was previously a community school which meant that the LA was its admission authority. On becoming an academy the academy trust of school became responsible for its admission arrangements. The school changed its arrangements in 2013 in order to introduce priority for children of staff and to make some changes to the priority given on the basis of medical and social need. It carried out the required consultation when making this change. The school determined its 2016 arrangements on 24 March 2015.

9. It has become clear that when the school changed its arrangements in 2013, it omitted – by mistake – a key paragraph from its arrangements. This error was perpetuated in subsequent years up to and including 2016. The omitted part of the arrangements related to the "parish proportionality rules" historically used for all single sex schools in Hertfordshire. Children living in the school's "priority area" are given

priority under rules 5 and 6. The priority area is sub-divided into a number of areas which are referred to as “parishes”, “unparished areas” or “towns”. Once places have been allocated under the criteria 1 – 4, a certain number of places will remain. These places will in turn be allocated to each of the parishes, unparished areas and towns in proportion to the number of applications from within those areas. Within the number of places apportioned to each parish, unparished area or town, priority will be given first to those for whom the school is the nearest school defined as a *“Hertfordshire non-faith, non-partially selective maintained school or academy, making provision for children of the relevant gender*”. If places remain from the parish/unparished area or town concerned once all those for whom the school is the nearest have been allocated a place, these will be allocated on the basis of random allocation.

10. In relation to some of the parishes/unparished areas or towns, there will be no addresses for which the school is the nearest school as the whole of that part of the priority area will have one or more other nearer schools. For these parts of the local priority area, places will be allocated only under rule 6. For other parts of the local priority area, the school will be the nearest school for some or all addresses. In these circumstances – depending on the address – a boy will be eligible for priority under rule 5 or rule 6. However, no boy can be eligible for priority under rule 5 and rule 6 for the same school as the school will either be the nearest relevant school (rule 5 applies) or it will not (rule 6 applies).

11. In response to the objection, the school varied its arrangements to re-instate the paragraph removed in 2013. The varied arrangements are easy to find on the school’s website. I have summarised below the arrangements as determined and as subsequently varied.

Rule 1 Looked after and previously looked after children

Rule 2 Medical or social need

Rule 3 Siblings

Rule 4 Children of staff

	As determined	As varied
Introduction to Rule 5 & Rule 6	No introduction	***Children who live in the priority area*** *Places will be allocated to each parish/unparished area or town in proportion to the number of applications made. In the event of there being more applications than places available to a particular parish/unparished area or town,*

		places will be allocated as follows:
Rule 5	*Those for whom the school is the nearest Hertfordshire non-faith, non-partially selective maintained school or academy, making provision for children of the relevant gender.*	*Those for whom it is their nearest Hertfordshire non-faith, non-partially selective school or academy, making provision for children of the relevant gender, (if more children qualify under rule 5 than places are available, the tiebreak would be those living closest to the school).*
Rule 6	*Any remaining places available to a parish/unparished area or town. Places will be allocated on a random basis.*	*Any remaining places available to a parish/unparished area or town. Places will be allocated on random basis.*

Rule 7 Children who live outside the priority area allocated on a random basis.

12. For admission at Y12, the school set a PAN of 30 and gave the highest priority to looked after and previously looked after children. The school set minimum entry requirements and said that if the PAN was exceeded by boys who met these requirements it would use the following as a tie-breaker: "*Highest average GCSE point score. Students whose choices have least effect on the preferences of others.*"

Consideration of Factors and other matters

13. I consider first the clarity of the definition of "nearest school". As noted above, the objector has argued that the definition could mean the nearest boys' school (which he calls Interpretation A) or it could mean the nearest boys' or co-educational school (which he calls Interpretation B). In respect of Interpretation A he says that rule 5 of the arrangements "*appears to list categories of school i.e. "non-faith", "non-partially selective" and [includes] "single-sex schools" as a further category. This interpretation would have the effect of treating single-sex schools in Hertfordshire as being subject to a separate test as to which school is the closest*." In respect of Interpretation B, the objector posits that this: "*simply means that boys will not be admitted to single sex girls' schools and vice versa*". In the objector's view, Interpretation A is at least as likely as B to be the understanding of parents. This would in turn mean that parents could apply for a place at the school thinking they will have a certain degree of priority on the basis of the school's being the nearest boys' school whereas they will not actually be entitled to such priority if there is a nearer co-educational school. The objector has suggested other forms of words which he considers clearer.

14. The LA has pointed out that all the same definition has been used by all the single-sex schools in the County and has been used for many

years. The LA does not consider that there is any lack of clarity or any scope for confusion as to what the definition means and says that it has never been challenged. The LA notes that there are only five publicly funded single sex boys' schools in Hertfordshire. It argues against this background that if "nearest" was restricted to nearest boys' only schools then Verulam would count as the nearest school for every boy in "*St Albans, Harpenden, Hatfield and much of Hemel Hempstead*" and that there would be around 1,000 boys annually falling within this group. This would, in the LA's words, make the objector's interpretation of "nearest" *"worthless as a means of prioritising objections. Indeed if [the objector's] interpretation was correct there would be no need to have a definition of "nearest" the admission rules would simply state that applications from children would be prioritised (by parish proportionality) on a random basis*". The school has said: "*The highlighted wording referred to by the complainant "making provision for children of the relevant gender" in no way refers to or could be interpreted to [sic] as referring to "single sex" schools as suggested by the complainant. …The rule points out that the school in question must make provision for a pupil of the particular gender in order to be counted as the nearest school. Thus a girls' school could not be the nearest for a boy and vice versa."* Both the school and LA have, however, said that they would be happy to change the wording if I thought this would be helpful. I must make clear that my jurisdiction is limited to whether or not the school's arrangements comply with the requirements relating to admissions. I cannot comment on whether a particular form of words might be more or less helpful, still less suggest any such wording.

15. As well as considering the arguments put by the LA and the school in response to the objection, I have also examined carefully the detailed arguments made by the objector in support of his view that his Interpretation A is at least as likely as his Interpretation B to be how a parent would understand the arrangements.

16. First, the objector argues that parents applying for the school will know that they are applying for a boys' school. Thus, in the objector's view, the words *"[making provision for children of the relevant gender] do not add any further clarification and, applying Interpretation B to Rule 5 means that Rule 5 means the same whether [making provision for children of the relevant gender] is excluded or deleted. If the interpretation of Rule 5 is the same whether or not the highlighted wording is included, then how can the Rule be described as "clear", particularly when there is a second possible interpretation to the [relevant] wording*". Second, the objector argues that if Interpretation B is correct then the wording "*making provision for children of the relevant gender*" might be expected to be seen in the descriptions of the other oversubscription categories and as it is not the objector believes that this supports his view that Interpretation A is correct and the wording "*making provision for children of the relevant gender*" is "*only relevant in rule 5 itself and in no other of the Rules*". Third, the objector argues that rule 5 could have been drafted in ways which would allow only Interpretation B. Finally, the objector notes that the LA

when publishing information about the allocation of places for secondary schools organises this in a way that would support Interpretation A as it sets out information about single-sex schools separately from mixed schools.

17. It is possible that a parent might read the admission arrangements for the school and infer Interpretation A. The objector is a parent and that is what he has done. This does not, however, mean that the arrangements fail to meet the requirements of the Code for clarity if such an interpretation would be rare or unlikely. The objector is right that parents will know that the school is a single-sex boys' school when they express a preference for the school. However, I do not accept that this means that removing the words "*making provision for children of the relevant gender*" makes no difference to the meaning of the rule if Interpretation B is correct. The purpose of the words is not to inform parents that the school is a boys' only school. Rather, it is – as all the parties agree - to set out which schools are to be counted in defining "*nearest school*". Removing the wording "*making provision for children of the relevant gender*" would mean that the definition could include a girls' only school which – of course – a boy could not attend.

18. So far as the objector's second point is concerned, I do not find that the other oversubscription criteria would need to include the words "*making provision for children of the relevant gender*" in order to support Interpretation B. It is only rule 5 where the matter of whether a school is or is not the nearest school making provision for boys or boys and girls is relevant. The arrangements for single-sex schools may refer to boys or girls (as the case may be) rather than to children and to brothers or sisters (as the case may be) rather than to siblings. The objector has not, however, argued that in order to be clear the school should refer throughout to boys. This school, in preserving the arrangements it has long shared with other Hertfordshire single-sex schools, has continued to refer to children and siblings. This does not make the arrangements unclear.

19. On the objector's third point, it is nearly always possible to improve the drafting of a document and the objector has provided an alternative form of words. The question before me is whether the arrangements are clear as they stand, not whether they represent the best possible form of words. I acknowledge that this objector has interpreted the arrangements in one way. In addition, during the progress of this case, the objector reported that he had asked three of his professional colleagues for their view and two had supported his Interpretation A. On the other hand, the LA reports that its understanding (Interpretation B) has never before now been questioned and has been employed for many years. In relation to the publication of material by the LA, this is outside my jurisdiction and is not part of the school's arrangements (or within its control). I cannot and have not considered this material further. I am not persuaded by the objector's arguments that the definition of "nearest" is unclear. I do not uphold the objection.

20. By changing the wording used and omitting a paragraph, the school had significantly changed the provisions of the arrangements. A parent looking at the arrangements for 2016 as originally determined may be likely to think that rules 5 and 6 operated sequentially and independently. Thus all boys for whom the school was the nearest (however defined) would be considered under rule 5 before any boys for whom it was not the nearest school were considered under rule 6. The objector indeed made these points in correspondence during consideration of the case. The school acted swiftly once this was drawn to its attention and varied its arrangements as also shown above.

21. The Code requires that the school gives the highest priority in their oversubscription criteria to looked after and previously looked after children and sets out in paragraph 1.7 and footnote 16 which children fall within this definition. The school's arrangements as originally determined and subsequently varied do not meet the Code's requirements in this regard. The school's arrangements use the heading "Children in Public Care" as if that were the same as a looked after or previously looked after child. In fact, a looked after child is a child who is in care or who is provided with accommodation by a LA in the exercise of its social services functions. So far as previously looked after children are concerned, the school's arrangements continue to refer in the body of the arrangements to "residence orders" and this term has now been replaced with "child arrangements orders" – the school has used the right term in the notes section of the arrangements. While I have no doubt that the school fully intends to give the correct priority to all looked after and previously looked after children, its arrangements do not fully reflect the requirements of the Code and must be amended.

22. I turn now to the admission arrangements for Y12. The school operates its sixth form as part of a consortium with two other schools and they share common admission arrangements. However, I am concerned here only with those arrangements as they apply to Verulam School. The school sets minimum academic entry requirements for Y12 as it is permitted to do by paragraph 2.6 of the Code. The oversubscription criteria give the highest priority among those who meet these requirements to looked after and previously looked after children and then distinguish among candidates meeting the entry requirements on the basis of "*Highest average GCSE point score. Students whose choices have least effect on the preferences of others.*" Paragraph 2.6 of the Code states that any academic entry requirements **must** be the same for internal and for external candidates. In applying the tests set out in the arrangements to external candidates only, the school is in breach of paragraph 2.6. Furthermore, the school is not a selective school. While it is permitted to set academic criteria as a threshold which a candidate will either meet or not meet, it is not permitted to give priority among those who meet that threshold on the basis of how far it is exceeded. In other words, it cannot give priority to those who achieve the highest grades at GCCE. To do so would be to introduce

unlawful academic selection contrary to the Act and to paragraphs 1.18 to 1.23 of the Code. The provision "*Students whose choices have least effect on the preference of others*" is unclear, not least as applicants would have very little chance of knowing or predicting the effect of their choices on the preferences of others which would be wholly unknown to them.

23. In correspondence the school has acknowledged that its Y12 oversubscription criteria are not compliant with the Code and will be reviewed. The school points out that it has never used these oversubscription criteria and expects to admit over its Y12 PAN this year. The arrangements do not conform with the requirements relating to admissions and must be revised. Finally, when I reviewed the arrangements, I could not locate an application form for Y12 on the school's website. The school has now published the form on its website.

Conclusion

24. I have not upheld the objection for the reasons given above. However, in considering the school's arrangements it became apparent to me and, indeed, to the school and LA that significant changes had unintentionally been made to the arrangements. I also identified a number of ways in which the arrangements – particularly for admission to the sixth form – did not conform with the Code. The school has acted swiftly to vary the arrangements in relation to Y7 and has undertaken to do so in relation to Y12.

Determination

25. 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 Verulam School, St Albans, Hertfordshire.

26. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

27. 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: 12 October 2015

Signed:

Schools Adjudicator: Shan Scott