



## DETERMINATION

<b>Case reference:</b>	<b>ADA3123</b>
<b>Referrer:</b>	<b>Two parents</b>
<b>Admission Authority:</b>	<b>The Multi-Academy Trust for Upper Shirley High School, Southampton</b>
<b>Date of decision:</b>	<b>21 September 2016</b>

### **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 September 2017 determined for Upper Shirley High School.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters which 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 two parents (the objectors) about the 2017 admission arrangements (the arrangements) for Upper Shirley High School (the school), an academy school for boys and girls aged 11 to 16 years in Southampton. The objection is to the catchment area of the school which the objectors contend is not reasonable and the use of which as an oversubscription category results in unfairness to children with a sibling at the school.

2. The school is located in the area of Southampton City Council (the local authority). The local authority is therefore a party to this objection.

### **Jurisdiction**

3. The terms of the academy agreement between the multi-academy trust (the trust) and the Secretary of State for Education require that the admissions policy and arrangements for this academy school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined on 25 February 2016 by the local governing body (the governing body) on behalf of the trust, which

is the admission authority for the school, on that basis.

4. The objection was received on 2 May 2016. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that the objectors' concerns about the catchment area and the sibling priority are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

5. The objectors also contend that the differing policies of Upper Shirley High School and Regents Park Community College, when taken together, are not reasonable or procedurally fair and, as such, breach paragraph 1.8 of the Code. My jurisdiction is to investigate the admission arrangements of any (individual) school that I consider may not comply with the mandatory requirements of the Code or admissions law. It is not within my jurisdiction to consider the admission arrangements for the two schools, when taken together.

### **Procedure**

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

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

- a. the objectors' form of objection dated 2 May 2016 and subsequent correspondence;
- b. the response to the objection by a consultant on behalf of the school, and correspondence and supporting documents in the period 12 May to 16 September 2016;
- c. the local authority's response to the objection, supporting documents and further correspondence;
- d. the local authority's 2016 composite prospectus for parents seeking admission to schools in the Southampton area; and
- e. a copy of the 2017 determined arrangements.

### **The Objection**

8. The objection relates to the catchment area of the school which the objectors contend is not reasonable, and to the change in the oversubscription criteria which the objectors consider is unfair to children with a sibling at the school, and breaches paragraph 1.8 of the Code.

### **Other Matters**

9. Having reviewed the arrangements as a whole, I noted that some other aspects appeared not to conform with the requirements relating to admissions. The aspects that appeared not to comply with the Code (relevant paragraph in brackets) are:

- the introduction of a third feeder school (1.9(b) and 1.15); and
- the information in the arrangements about the waiting list (2.14).

## Background

10. Upper Shirley High School is a comprehensive school for boys and girls aged 11-16 years with a published admission number (PAN) of 150. The school became an academy on 1 August 2011, and its funding agreement confirms that the school has a planned capacity of 750 pupils.

11. The school's funding agreement states that the admissions authority is deemed to be the directors of Upper Shirley Trust, but the name of the trust has changed to Jefferys Education Trust (JET). JET is one of three multi-academy trusts within the umbrella trust known as the Hamwic Trust. The determination of the school's arrangements has been delegated by JET to the governing body. The governing body determined the 2017 arrangements at a meeting on 25 February 2016, as confirmed by the minutes of that meeting.

12. The 2017 arrangements published on the school's website at the time of the objection state that if there are more applications than the 150 places available in Year 7, then after children with a statement of special educational needs (SEN statement) or an Education, Health and Care plan (EHC plan) that names the school have been admitted, places will be allocated according to the oversubscription criteria which I have summarised below:

1. Looked after children and previously looked after children;
2. Children subject to a child protection plan;
3. Children living in the catchment area;
4. Children living outside the catchment area who:
  - (i) attend one of the feeder schools (Hollybrook Junior School, Shirley Junior School, or Wordsworth Primary School) and have a sibling in Upper Shirley High School at the time of admission;
  - (ii) attend one of the feeder schools;
  - (iii) have a sibling in Upper Shirley High School at the time of admission;
  - (iv) Children of qualified teaching staff employed at the school for two or more years at the time of application and/or have been recruited to fill a vacant post for which there is a demonstrable skill shortage; and
  - (v) Children living closest to the school based on a straight line distance.

The arrangements explain that if the PAN is reached and exceeded in oversubscription categories 1 - 3, the criteria at 4(i) – (v) will be used to rank applications. In the event that the distance between two or more applicants' homes and the school is the same, and the applications are otherwise equal, the highest priority for the final place will be decided by casting lots.

13. The school states on its website that that the school originally had two feeder schools, Hollybrook Junior and Shirley Junior, then Wordsworth Primary School was named as the third feeder school in the 2017 arrangements. Wordsworth Primary School had been a two-form entry infant school which expanded to three-form entry in 2013 when it became a primary school, and its first Year 6 cohort will transfer to secondary school in 2017.

14. Admissions data was supplied by the local authority and the consultant authorised by the governing body to respond to the objection. I have summarised the data in the table below, and it can be seen that for the last three years the school has been oversubscribed by parents choosing the school as their first preference.

	2014	2015	2016
Number of places available (the PAN)	150	150	150
First preferences	168	199	185
Children with SEN statement or EHC plan	0	1	1
Children looked after and previously looked after	3	3	1
Children subject to a child protection plan	n/a	0	0
Children attending a feeder school	109	129	118
Siblings	9	9	13
Children of staff	0	0	0
Distance	29	8	17

15. I note that the oversubscription criteria for admissions were the same for both 2015 and 2016. In both of these years, places were allocated in the following order of priority: looked after and previously looked after children; children subject to a child protection plan; children attending one of the feeder schools; siblings; children of staff and distance. The 2014 oversubscription criteria were also broadly similar except there was no priority for children subject to a child protection plan.

### Consideration of Case

16. The objection concerns two changes which were made to the 2017 arrangements: the introduction of a catchment area for the school which the objectors contend is not reasonable; and the new priority in the oversubscription criteria for in-catchment children which the objectors regard as unfair to families who live outside this catchment area but who have a child already at the school. As the arrangements show, such children will have a lower priority than children living inside the catchment area who do not have siblings at the school.

17. During my investigation, the objectors also raised an additional concern about the adequacy of the school's consultation before the changes were made to the arrangements, and I will deal with this concern first. The Code at paragraph 1.42 requires that *"when changes are proposed to admission arrangements, all admission authorities must consult on their admission arrangements"* and paragraphs 1.43 to 1.45 specify how that consultation must be conducted.

18. Paragraph 1.43 requires that the “*consultation must last for a minimum of 6 weeks and must take place between 1 October and 31 January in the determination year.*” The consultation period began on 27 November 2015 with an email about the consultation from the consultant (the consultation email) with 15 January 2016 set as the closing date for responses. Attached to the consultation email was a copy of the draft 2017 arrangements. The consultant confirmed that the deadline for responses was extended to 31 January 2016 because the consultation information was only available on the school’s website from 17 December 2015. I am satisfied that the consultation period met the requirements of the Code.

19. Paragraph 1.44 of the Code specifies the parties with whom the admission authority **must** consult. The consultation email was sent to the Chair of the Southampton Admissions Forum, and the local authority. The consultant said that other interested parties would have been consulted through the Southampton Admissions Forum.

20. Paragraph 1.44(a) states that “*parents of children between the ages of two and eighteen*” **must** be consulted. The consultation email was sent to the headteachers of all infant, junior, primary and secondary schools in Southampton, but they were not specifically requested to share the consultation documentation with parents.

21. The consultant said that parents with children already at the school were consulted through the school’s website and newsletter. The objectors have an older child at the school and confirmed they heard of the consultation from the school’s email on 17 December 2015 which contained a hyperlink to the newsletter for parents. The objectors suggest that as the email was sent on the last day that children were in school before the Christmas holidays, many families at such a busy time of year may have had little chance of reading the newsletter and responding to the consultation.

22. The objectors also have a younger child attending one of the feeder schools. Having heard directly about the consultation from Upper Shirley High School, the objectors were surprised not to be consulted again as the parents of a child attending a feeder school. It was only after the objectors contacted the feeder school, that other parents were informed about the consultation by the feeder school on 7 January 2016. There is evidence that all the other local schools were informed about the consultation, but the parents of children at those schools may not have been told. It seems to me that if Upper Shirley High School wished to rely on the headteachers of other schools to inform parents about its consultation, it might have been helpful to have made this expectation clear in the consultation email so that parents would have had an opportunity to express their opinions before the 2017 arrangements were determined.

23. Furthermore, the requirement of the Code is that the school consults parents of children from the age of two, so the parents of pre-school children should have been consulted. An alert to the school’s consultation about the 2017 proposed arrangements was published in the admissions section of the local authority’s website which may have been seen by parents seeking a school place, but the parents of pre-school children may not have seen this alert. There are a number of ways the school might have brought the consultation to the attention of the parents

of pre-school children, such as, through early years providers and childminders, or by placing information in local newspapers, doctor's surgeries, libraries, and local supermarkets, and by use of social media.

24. Given there were some responses to the consultation, it appears that the school did conduct a public consultation before changes were made to the 2017 arrangements. After the consultation period had ended, the minutes of the governing body's meeting on 25 February 2016 confirm that the proposed 2017 arrangements were adopted unchanged as the determined arrangements. It may be that the school did not consult all the relevant parties as carefully as it could have done, but this does not affect the status of the determined arrangements.

25. The objectors are concerned that the school has introduced a catchment area as part of the 2017 arrangements. The objectors contend that the catchment area is a very unusual shape and is not reasonable because some children living very close to the school are not in the catchment area, yet other children living near its far edges are in-catchment even though they live a considerable distance from the school.

26. The Glossary to the Code explains that a catchment area is *"a geographical area, from which children may be afforded priority for admission to a particular school. A catchment area is part of a school's admission arrangements and must therefore be consulted upon, determined and published in the same way as other admission arrangements."* The Code also states at paragraph 1.14 that *"catchment areas must be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."*

27. The local authority has helpfully explained for me the historical basis for the catchment area. Prior to 2008 Upper Shirley High School had been a boys' school which shared a much larger catchment area with another local school (Regents Park Community College) which was then a girls' school. Following a city-wide review of secondary provision to reduce the number of surplus places, both of these single sex schools became co-educational, and the adaptations to accommodate boys and girls in each of those schools led to a reduction in the PANs. The much larger catchment area was split between the two schools, with the dividing line near the schools being drawn down Shirley High Street. The catchment area for each co-educational school also included the catchment areas for their feeder schools.

28. As noted above, the school did not use a catchment area for several years prior to 2017. However, the catchment area introduced into the 2017 arrangements is the same as the one established in 2008. The objectors have drawn attention to the "unusual shape" of the catchment area. It is indeed the case that the catchment area is an irregular and rather long and thin in shape, with the school located, in effect, in one corner rather than at or close to the centre. However, catchment areas are frequently unusual shapes in order to match the need for places. The position of a school within a catchment area does not have to be in or near its centre; it may well be the case that a school built to serve an area is located on the edge of that area. In this particular case, it seems to me that no matter how the original combined catchment area might have been divided between the two schools, families would have become out-of-catchment for one school or the other. I consider that the design

of the catchment area is reasonable in the circumstances because it matches the catchment areas for the school's three feeder schools.

29. The school has published a list of street names to define the catchment area and this was included in the proposed 2017 arrangements which were the subject of the consultation process. I am also satisfied that the catchment area has been clearly defined. I do not uphold the part of the objection which argues that the catchment area is unreasonable.

30. The objectors expressed concern that introducing a high priority for children living in-catchment is unfair to children with a sibling at the school but who live outside the catchment area. In the 2016 admission round, all children with a sibling at the school, irrespective of where they lived, had a good chance of being allocated a place at the school. Siblings were prioritised for a place after looked after and previously looked after children, those with a child protection plan, and children who had attended a feeder school. The objectors said that the change to a catchment-based policy was unexpected and would disadvantage out-of-catchment siblings.

31. The local authority explained in its response to the objection that historically, a significant number of parents living close to the school had chosen to send their children to secondary schools in a neighbouring local authority. Due to an increase in the secondary cohort in that neighbouring local authority, it seems unlikely that out-of-area secondary places will continue to be available to Southampton families living close to the school, so these families will need secondary school places in the city, putting pressure on schools that are already oversubscribed. Subject to the availability of funding, the local authority is seeking to increase the number of secondary school places in the city by 2020, when the existing schools are predicted to be full.

32. The consultant said in her letter of 11 May 2016 that given the increase in pupil numbers predicted for 2017 onwards, the governing body *“opted for a catchment-based policy that then gives priority to siblings and feeder school children. As part of a multi-academy trust, the Governors wanted to ensure the policy stayed within the ethos of the Trust, providing education to local children at a Trust school from Year R to Year 11.”*

33. The consultant explained further why the school could not continue with a policy that favoured feeder school children as the key oversubscription criterion. There were only two feeder schools in previous years, and their combined PANs only slightly exceeded the 150 places available in Year 7. For admissions in September 2017, with three feeder schools, their combined PANs greatly exceeds the number of places available in Year 7. As the feeder schools are oversubscribed, some local children may not have been able to attend a feeder school because it was full. If most of the Year 6 children in the feeder schools then transfer to Upper Shirley High School, there would be few, if any, places available to local children who had not previously attended a feeder school. If the school maintained the high priority for children who had attended a feeder school, any children who had not been able to attend a feeder school in Year R because it was oversubscribed would be disadvantaged for a second time because, having not attended a feeder school, they would have little chance of being allocated a place in Year 7.

34. It was also suggested that if the school had sought to keep attendance at a linked feeder school as the main criterion, the local authority would have referred the school's arrangements to the Office of the Schools Adjudicator because of the potential double disadvantage to local children who may not have been able to attend a feeder school. The school has now changed to a catchment-based policy, and as a result, children living close to the school but who may not have been allocated a place at one of the feeder schools because it was full will now have a greater chance of a place in Year 7 at the school.

35. I asked for further information about the children who may be affected by the change in the arrangements. In her response of 21 June 2016, the consultant helpfully reanalysed the admissions data for the period 2014 to 2016 to show what effect, if any, the changes to the 2017 arrangements would have had on the places allocated to siblings. The consultant provided information on how places were allocated to siblings for the period 2014 to 2016, and the number of children in the feeder schools who would be eligible for sibling status for admission in September 2017, which I have summarised below.

Siblings		2014	2015	2016	2017
Attending a linked feeder school	In catchment area	22	37	37	40
	Out of catchment	4	6	10	5
Not attending a linked feeder school	In catchment area	1	4	1	n/a
	Out of catchment	8	5	12	n/a
Siblings not allocated a place		0	0	0	n/a

36. The consultant explained that *“re-ranking the 2014 application data using the 2017 criteria resulted in exactly the same children being offered places. Re-ranking of the 2015 data ... resulted in one child offered a place...being refused under the 2017 criteria, and one child who was refused under the 2014 criteria being offered a place under the 2017 criteria. Re-ranking of the 2016 data ... resulted one child was offered a place under the 2015 criteria being refused under the 2017 criteria and one child who was refused under the 2015 criteria being offered a place under the 2017 criteria.”* From the evidence available, it appears that changing to arrangements which are based on a catchment would have had little or no impact over the last three years as every sibling, whether in or out of catchment, would have been offered a place at the school.

37. In addition, the local authority confirmed that 185 children living in the school's catchment area are due to transfer to secondary school in September 2017 but only 112 of them currently attend one of the three linked feeder schools. Furthermore, in each of the years 2014 to 2016, between seven and 11 children living in the catchment who had not attended any of the linked feeder schools were allocated a place at Upper Shirley High School.

38. In their email of 5 August 2016, the objectors suggested that the number of applications for admission in September 2017 might be very different from previous years as more local families realise they may stand a better chance of getting a place under the new policy, despite their child not having attended a feeder school.



The objectors feel that using distance as the main criterion would be fairer to children who live outside the catchment area yet may live closer to the school than other families who live in the catchment area but close to its edges furthest from the school.

39. The local authority takes the view that the determination of the admissions arrangements for academies and other own admission schools is a matter for the schools themselves, and it is for the school *“to decide if a catchment area would be among the criteria most suitable to the school.”* In its response of 1 June 2016, the local authority said that the arrangements *“are clear, fair and objective – parents can form an accurate view of which category they would fall into.”* The school *“has made efforts ...to deal with the applications it expects to receive for 2017 entry from children attending feeder school, from parents living close to the school, and those who will have siblings in the school [and the changes made in the 2017 arrangements] do not conflict with the School Admissions Code.”*

40. When a school is oversubscribed and decisions have to be made about which children should be offered places, it seems to me inevitable that some families will be disappointed. The function of oversubscription criteria is to allocate a higher priority to some children than others for a place at a given school. Paragraph 1.10 of the Code says *“it is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”*

41. Given the predicted increase in the number of children who will transfer to secondary schools in the city, and that the combined PANs for the feeder schools greatly exceeds the number of places available in Year 7, I am of the view that the school has introduced the priority for children living in the catchment area in an attempt to be fair to its local community. The arrangements provide for out-of-catchment families to express a preference for the school. The catchment area is reasonable and meets the requirements of the Code. The change to catchment-based arrangements is reasonable in the local circumstances. I note that the change to the arrangements, at least in the short term, may have little or no impact on the places available for siblings, whether they live in or out of catchment. I conclude that the arrangements do not breach paragraph 1.8 of the Code. Accordingly, I do not uphold this part of the objection.

42. I recognise that local circumstances and parental preferences may indeed change in future years. As paragraph 15(b) of the Code requires that *“admission authorities must set (‘determine’) admission arrangements annually”* it may be helpful for the governing body to keep under review on an annual basis whether there is any disadvantage to out-of-catchment families with a sibling at the school before arrangements are then determined.

43. I have also used my power under section 88I of the Act to consider the arrangements as a whole and whether they conform to the requirements relating to admissions.

44. I considered first the introduction of a third feeder school. The Code states at paragraph 1.9(b) that *“it is for admission authorities to formulate their admission arrangements, but they **must not** take into account any previous schools attended, unless it is a named feeder school”* and specifies further at paragraph 1.15 that *“the*

*selection of a feeder school or schools as an oversubscription criterion **must be transparent and made on reasonable grounds.***

45. Wordsworth Primary School has been named at oversubscription criterion 4(i) as a feeder school and its inclusion in the 2017 arrangements is thus transparent. Furthermore, the local authority said that the predecessor school, Wordsworth Infant School, had been a feeder to Shirley Junior School, which itself is a feeder to Upper Shirley High School. When more primary places were needed across the city, Wordsworth Infant School became an all-through primary school, and joined the same multi-academy trust as the other two feeder schools and Upper Shirley High School. I consider that the inclusion in the arrangements of Wordsworth Primary School as a feeder school has been made on reasonable grounds. The inclusion of Wordsworth Primary School as a feeder school therefore complies with paragraphs 1.9(b) and 1.15 of the Code.

46. I also considered whether the information in the arrangements about the waiting list complies with paragraph 2.14 of the Code which requires that *“each admission authority **must maintain a clear, fair and objective waiting list until at least 31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”*

47. It is my view that the section about the waiting list as published in the arrangements at the time of the objection does not comply with paragraph 2.14 of the Code because it neither specifies for how long the waiting list will be maintained, nor how the waiting list will operate after each added child. The consultant said in her email of 16 September 2016 that *“the school actually maintains a waiting list until the end of each academic year, at which point parents are invited to re-apply for the next year should they wish to do so.”* The consultant confirmed that the school would amend the wording of the relevant section to state how long the waiting list would be maintained, and to make clear that the waiting list would be re-ranked after each new application. The school is able by virtue of paragraph 3.6 of the Code to vary its determined arrangements to conform with a mandatory provision of the Code as well as to comply with my determination.

## **Summary of Findings**

48. The school changed the 2017 arrangements by introducing a catchment area which is an unusual shape because of the close proximity of another secondary school. The school and its linked feeder schools are oversubscribed, and the combined PANs of the linked feeder schools greatly exceeds the places available in Year 7. Pupil numbers in the city are expected to increase further, putting pressure on secondary schools that are already oversubscribed. As a result of the change to the arrangements, children living in the catchment area, close to the school, are now more likely to obtain places.

49. Before the catchment area was introduced, applicants with a sibling at the school would have had a higher priority for a place. I have found no evidence that children with a sibling at the school who would be deemed out-of-catchment would be disadvantaged by the change in the arrangements. The catchment area, in the year for which I have jurisdiction, is likely to have little or no impact on the places

available for siblings, whether they live in or out of catchment. However, as local circumstances and parental preferences may change in future years, it may be helpful for the school to keep the impact of the catchment area under review.

50. I find that the introduction of a catchment area is reasonable in the local circumstances, does not breach the Code, and is not unfair to those who live outside the catchment area but have a sibling at the school. I do not uphold the objection.

51. A further matter on which the arrangements do not comply with the Code is the wording of the section with respect to waiting lists which the school has promised to amend.

### **Determination**

52. 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 September 2017 determined for Upper Shirley High School.

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

54. 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: 21 September 2016

Signed:

Schools Adjudicator: Ms Cecilia Galloway