



DETERMINATION

Case reference:	ADA 3252
Referrer:	A member of the public
Admission Authority:	Merchants' Academy, Withywood, Bristol
Date of decision:	22 February 2017

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for September 2017 determined by Merchants' Academy Trust for Merchants' Academy in Bristol. I determine that there are matters which do not conform with the requirements concerning 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 the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2017.

The referral

1. The admission arrangements (the arrangements) for Merchants' Academy (the school), an all through academy school for children aged between three and 18, for admissions in September 2017 were brought to the attention of the schools adjudicator by a member of the public in November 2016. This referral was submitted in the form of an objection to a number of aspects of the arrangements as these appeared on the local authority's website and made reference to a previous determination concerning the school's admission arrangements for September 2016. The objector was concerned that the school had failed to make changes required by the earlier determination, amongst other things. The objection was submitted after the last date by which objections to admission arrangements for September 2017 could be made under section 88H of the School Standards and Framework Act 1998 (the Act). Having looked at these same arrangements, I considered that there may be matters which did not comply with the School Admissions Code (the Code) and so decided to consider them further using my powers under section 88I of the Act to do so. I was provided with a different set of admission arrangements, together with evidence of their determination, on 5 January 2017. These are the arrangements which I am considering.

Jurisdiction

2. The terms of the Academy agreement between the Merchants' Academy 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 by the Trust, which is the admission authority for the school, on that basis on 17 March 2016. I have used my power under section 88I of the Act to consider the arrangements as a whole, as it appeared to me that they may not conform with the requirements relating to admission arrangements.

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 referral dated 24 November 2016;
 - b. the school's response to the referral, supporting documents and further correspondence;
 - c. a copy of the minutes of the meeting at which the governing body, on behalf of the trust for the school, determined the arrangements; and
 - d. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on 26 January 2017 at the school, and of subsequent correspondence.

Background

6. Merchants' Academy opened as a secondary school in September 2008. Its initial Funding Agreement referred to it as "Merchants' Academy Witherwood" and made reference to "the Witherwood area" from which pupils would be admitted and included a map defining that area. It also set out the Fair Banding procedure to be used in the case of oversubscription. This was the Funding Agreement to which the member of the public referred when making the objection which brought the school's arrangements to my attention.
7. In September 2012, the school became an all-through school and the Trust and the Secretary of State for Education agreed at that time a variation to its Funding Agreement. This no longer included any reference to the Witherwood area or to the use of Fair Banding. The school provided me in January 2017 with a copy of a further revised

Funding Agreement dated September 2015, the version in force at the time the school's admission arrangements were determined.

8. When I first visited the school's website on 5 December 2016, I was unable to find any admission arrangements, and this was again the case on 13 January 2017. The local authority website had, however, throughout this period included admission arrangements which were said to be those for the school for admissions to Year R, to Year 7 and to the school's sixth form.
9. When the school replied in January 2017 to the letter from the Office of the Schools Adjudicator which informed it of the initial referral, part of the information which it provided was a document setting out admission arrangements for September 2017 for each of the three points of entry. These were different to the admission arrangements being displayed on its website by the local authority.
10. Documents also supplied at that time by the school as evidence of the process of consulting upon and determining its admission arrangements for September 2017 made reference variously to Fair Banding being a requirement of the Funding Agreement, and to the existence of an "area of first priority" for the school. This was confusing for two reasons. Neither reference was accurate and since neither of these matters is mentioned in the Funding Agreement relevant to the school's admission arrangements for September 2017, the school was not required to determine admission arrangements which employed them.
11. I was able to establish at the meeting which I held with the school and the local authority that:
 - (i) the admission arrangements for the school for September 2017 were those which it had forwarded to me on 5 January 2017 and that there was evidence of their determination by the governing body on behalf of the Trust on 17 March 2016;
 - (ii) the admission arrangements which were being displayed on the local authority website were those which had been determined for an earlier year and not those for 2017 and, indeed, materially different from those for 2017; and
 - (iii) the Funding Agreement which was relevant to the determination of the school's admission arrangements was that which had been agreed in 2015.
12. The school is not currently oversubscribed. However, as required by the Code, the school's determined admission arrangements for September 2017 set out general oversubscription criteria applicable to each point of entry which give first priority to looked after and previously looked after children, followed by siblings (as defined) of children already in attendance. Further places are allocated by random allocation, which is also the tiebreaker for the earlier priority

categories.

13. The arrangements go on to say in relation to admissions to Year R that:

- (i) the planned admission number (PAN) is 60;
- (ii) *“nursery education is not statutory and children in the Nursery class cannot, therefore, be guaranteed a place in the reception class”*; and
- (iii) *“The Academy is required to provide for the admission of all children in the September following their fourth birthday but flexibility exists for summer born children...”*. This statement is followed by a paragraph explaining deferred and part-time entry in general terms.

14. For admissions to Year 7 the arrangements say that the school will admit *“up to 182 students in total”* and that *“30 of these places will be allocated to all students in Year 6”*.

15. The arrangements say that the school *“will admit up to 250 students in Year in 12 and 13, including the students who transfer from Year 11 of the Academy. The PAN set for external students for 2016 is 30”*.

Issues of concern

16. When I met the representative of the school, I explained that I had the following concerns relating to its admission arrangements:

- (i) that they had not been published on its website in accordance with paragraph 1.47 of the Code, which says:

*“Once admission authorities have determined their admission arrangements... they **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year”*;

- (ii) that the statement which they contained which was intended to explain the position for the parents of a child attending the school's Nursery class concerning admissions to Year R may not be clear and so not comply with paragraph 14 of the Code, which says:

*“...admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are... clear... Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*;

- (iii) that the statement which they contained concerning the admission of summer-born children appeared to render unclear the general statement which followed it, which was intended to be a statement covering all admissions to Year R including those of summer-born children. If so, this would also not comply with paragraph 14 of the

Code;

- (iv) that the statement stating the number of places in Year 7 may not be clear, and so not comply with paragraph 14 of the Code;
- (v) that the arrangements appeared to fail to state clearly how many places were available in the school's sixth form, and so result in a further breach of paragraph 14 of the Code.

Consideration of Case

17. When I met representatives of the school and the local authority, neither was able to explain why the admission arrangements which were posted on the latter's website were not those which the school had determined for admissions in September 2017. I was shown the school's website and the admission arrangements which were available there, and have subsequently been sent what the school says is cache evidence of uploads to this site, one of which was dated September 2016 and referred to the admission arrangements for September 2017. However, I am not able to link these documents unequivocally with publication of the arrangements, which in any event should have taken place as soon as they were determined on 17 March 2016. This date is itself after the deadline of 28 February 2016 set out in paragraph 1.46 for this determination to happen.
18. It is also the case that when I visited what I understood to be the school's website I was, on more than one occasion, unable to view the admission arrangements. This is an experience likely to be shared by parents seeking to view the school's arrangements. I have therefore come to the view that the school, in addition to failing to meet the requirement of paragraph 1.46 of the Code that it determine its admission arrangements for September 2017 no later than 28 February 2016, also failed to publish these in line with the requirements of paragraph 1.47.
19. Although the statement in the arrangements that those attending the school's Nursery Class could not be guaranteed a place in Year R is obviously intended as clarification, it does not in my view fulfil this aim, since the phrase "not guaranteed" implies more than is the case. The admission arrangements give no priority to those who have been at the Nursery, and so there can be no expectation whatsoever that a place for such a child is likely to be available in Year R. My view is that this makes the arrangements unclear, and is a breach of paragraph 14 of the Code.
20. The arrangements state, as required by paragraph 2.16a) of the Code, that the school must provide for the admission of all children in the September following their fourth birthday. They go on, as required by paragraphs 2.16b) and 2.16c), to set out the entitlement which parents have to deferred entry and to part-time admission. While the arrangements therefore appear to comply with what paragraph 2.16 as a whole stipulates, the insertion of a reference to summer-born children

between the statements which satisfy paragraph 2.16a) and 2.16b) leaves the reader in my view uncertain as to which children are the subject of the statements concerning deferred and part-time entry. The arrangements can in my view be read to mean that this flexibility applies only to summer-born children. So parents of a child born in February, for example, would find it difficult to see from the arrangements as set out that their child could start school in the September or January following their fourth birthday, and that they could attend on a part-time basis until the April following their fifth birthday when their compulsory full-time schooling begins. The arrangements therefore fail to be clear, and do not comply with paragraph 14, or the requirement in paragraph 2.16 that what it requires is made clear in admission arrangements.

21. Paragraph 1.2 of the Code says that “*all admission authorities must set an admission number for each ‘relevant age group’*” and which is “*the age group at which children are or will normally be admitted to the school*”. The arrangements state that the school “*will admit up to 182 students*” in Year 7 but says that 30 of these “*will be allocated to all students in Year 6*”. The school said at the meeting which I held that it had 182 places available in total, and accepted that it was therefore incorrect to say that this number of children would be admitted to Year 7, since children already on the roll in Year 6 are not being admitted to the school. Rather, they have the right to transfer to Year 7 if they wish to do so in exactly the same way as they progressed from Year 5 to Year 6. The arrangements provide for a maximum of 60 children to be admitted to the school’s Year R, and so up to this number of children could take up Year 7 places. However, the arrangements refer to 30 such children. A parent reading the arrangements as a whole is therefore unable to be clear how many places are available for new admissions to Year 7, that is, whether it is 182 or 152 or 122. I am therefore of the view that the arrangements are unclear and fail to comply with paragraph 14 of the Code.

22. The statement in the arrangements which is intended to explain the admission number which applies to Year 12 says that “*The PAN set for external students for 2016 is 30.*” Since the arrangements are those for 2017, this statement is in itself unclear. The arrangements also say that the school “*will admit up to a maximum of 250 students in Year 12 and Year 13, including the students who transfer from Year 11*”. When I met the school I said that I was unable to equate the figure of 182, which is the maximum number of children who might transfer into the school’s sixth form, the stated PAN of 30 and what I assumed to be a statement that there are a maximum of 250 places in Year 12. I also pointed out that it was unclear to me whether in fact this assumption was accurate since the arrangements refer to “*Year 12 and Year 13*” and do not make it clear whether the stated number of places is the number available in each year or is for the two year groups combined. The school must set a PAN for Year 12 if it intends to admit external students. A parent or a student reading the arrangements would in my view not be able to know with certainty how many places are available in Year 12 because of the conflicting statements which appear in there.

My view is that the arrangements are unclear as a result, and do not comply with paragraph 14 of the Code.

Summary of Findings

23. I have set out in the preceding paragraphs the reasons which I have for coming to the view that the school has failed to meet the requirements of paragraphs 14, 1.46, 1.47 and 2.16 concerning the admission arrangements which it has determined for September 2017.
24. The school has been aware of these concerns since the date of the meeting which I held and so should be able to amend its arrangements for 2017 by the date on which it will have had to determine those for 2018.

Determination

25. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for September 2017 determined by Merchants' Academy Trust for Merchants' Academy in Bristol. I determine that there are matters which do not conform with the requirements concerning admission arrangements.
26. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2017.

Date: 22 February 2017

Signed:

Schools Adjudicator: Dr Bryan Slater