



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2857

Objector: Thurrock Council

Admission Authority: The Academy Trust of The Hathaway Academy,
Grays, Essex

Date of decision: 29 June 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold that part of the objection to the admission arrangements determined by the Academy Trust for The Hathaway Academy for admissions in September 2016 for which I have jurisdiction.

I have also considered the arrangements in accordance with section 88I(5). I determine that for admissions in September 2015 and September 2016 the arrangements do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements for September 2015 as quickly as possible, and those for September 2016 within two months.

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 Thurrock Council (the objector), about the admission arrangements for September 2016 (the arrangements) for The Hathaway Academy (the school), an academy school for children aged 11 to 16. The school opened as a sponsor-led academy on 1 July 2013. Its sponsor is the Academy Transformation Trust, a multi-academy trust covering 16 primary and secondary academies in the midlands, East Anglia and the south east of England.

2. The objection is to the definition of looked after and previously looked after children within the arrangements and to that part of the arrangements which deals with in-year admissions. The objector complains that in respect of this second matter, the school's arrangements fail to meet the requirements of the School Admissions Code as revised in December 2014 (the Code) concerning its own role as the local authority (the LA) in the co-ordination of in-year admissions within its area.

Jurisdiction

3. 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 academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the Academy Transformation Trust (the trust), which is the admission authority for the school, on that basis. The arrangements were determined under Chair's action on 13 April 2015, and this was confirmed by the Board of the trust on 28 May 2015.

4. The objector submitted its objection to the determined arrangements for September 2016 in an email dated 24 April 2015. I am satisfied that the objection was properly made within the period before 30 June 2015 for making an objection under section 88H(2) of the Act and that it is within my jurisdiction.

5. Having considered the arrangements as a whole I was of the view that they contained matters which may constitute breaches of the requirements concerning admission arrangements.

6. The school's arrangements for September 2015 were determined by the governing body of the school on behalf of the trust on 28 April 2014, that is to say after the deadline of 15 April 2014 for such determinations to be made as required by paragraph 1.46 of the version of the Code which was in force at that time. When I looked at these arrangements, which were available on the school's website in line with the requirement of paragraph 1.47 of this version of the Code that admission arrangements remain displayed for the whole of the school year in which offers of places are made, I was concerned that they contained matters which may constitute breaches of the requirements of that Code.

7. I wrote to the trust setting out and seeking its comments on matters which may not conform with the requirements concerning admission arrangements within both the arrangements for September 2016 which were the subject of the objection, and those for September 2015 which have come to my attention as a result of that objection. I am using my powers under section 88I(5) of the Act to consider these matters further.

Procedure

8. In considering these matters I have had regard to all relevant legislation and the Code. I have been mindful that the school's admission arrangements for September 2015 were determined during the currency of the version of the Code which was published in February 2012 and that they are therefore subject to its provisions.

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

- a. the objector's email of objection dated 24 April 2015;
- b. the admission authority's response to the objection and supporting documents;
- c. confirmation of when consultation on the arrangements last took place;
- d. a copy of the determined arrangements for September 2016 and written confirmation of their determination by the proprietor of the School;
- e. a copy of the determined arrangements for September 2015 evidence of their determination, and
- f. further comments supplied by both the objector and the admission authority.

The Objection

10. When the objector emailed the school's adjudicator on 24 April 2015, the matters which it stated did not comply with the requirements concerning admission arrangements in the school's arrangements for September 2016 were set out in the following terms:

" 1. The priority for looked after and previously looked after children does not reflect the widening of the definition to include all previously looked after children.

2. Paragraph 6.1 of the Academy Transformation Trust Document requires parents to apply for in-year secondary places on an Academy Transformation Trust form. It says: "For applications to join Years 7 - 13 applications should be made directly to the academy using the application form in appendix 1." Insofar as this appears to suggest to parents that they must apply on the trust's form and not the one that the council is required to make available our view is that this conflicts with the 2014 Code which at paragraph 2.21 says:

"There is no requirement for local authorities to co-ordinate in-year applications but they must provide information in the composite prospectus on how in-year applications can be made and will be dealt with. Local authorities must, on request, provide information to a parent about the places still available in all schools within its area, and a suitable form for parents to complete when applying for a place for their child at any school for which they are not the admission authority. Any parent can apply for a place for their child at any time to any school outside the normal admissions round. They can do this by applying directly to admission authorities, except where other arrangements are in place locally (e.g. the local authority coordinates all in-year admissions)."

It also takes no account of the fact that Thurrock Council continues to co-ordinate in year admissions in a scheme in which Hathaway Academy fully participates.

We are of the view that the use of generic arrangements to cover schools across phases and in different local authority areas means that locally agreed co-ordination arrangements are likely to be overlooked.”

Other Matters

11. When I wrote to the trust I raised the following as potential matters of non-compliance with the requirements which are placed on admission authorities:

A. Concerning the admission arrangements for September 2016

(i) When I looked at the trust’s website on 8 May 2015 I was unable to find the arrangements for the school for September 2016 because the link to them had not been activated. When I looked at the site again on 12 May, this was no longer the case and the arrangements could be accessed. Admission authorities are required by paragraph 1.47 of the Code to publish arrangements on their website as soon as they have been determined;

(ii) paragraph 14 of the Code says that parents should be able to look at a set of arrangements and understand easily how places for a school will be allocated and that admission authorities **must** to this end ensure that the practices and criteria which they use in the allocation of places are clear. The determined admission arrangements for The Hathaway Academy are the generic arrangements that apply to all the academies within the trust. In order to understand how places at the school will be allocated it is necessary for anyone reading the arrangements first to interpret them at a number of points in order to discern the arrangements that apply to The Hathaway Academy. That is, the arrangements for the school are not stated explicitly. I was concerned that this may not meet the requirement regarding their clarity which is set out in the Code;

(iii) paragraph 8.1 of the arrangements, which although not part of the section concerning waiting lists, state that only those parents expressing a first preference for a place at the school will be included in the school’s waiting list. Paragraph 1.9c of the Code prohibits admission authorities from giving extra priority to those parents ranking a school as a first priority, and the school’s arrangements appeared to contravene this requirement;

(iv) the arrangements refer to in-year admissions as those which are made outside the normal admission round. I was concerned that this was an incorrect description since late admissions are also not made within the normal admission round, and that this statement may therefore be misleading to parents and render the arrangements difficult to understand;

(v) the trust had provided details of the consultation which was carried out prior to the determination of the school’s arrangements for September 2016. I was concerned that this consultation may not have met the requirements set out in paragraph 1.44 of the Code since it did not include:

- a. all the schools in the relevant area, as defined in paragraph 88F of the Act, which are their own admission authority, and
- b. neighbouring local authorities in which the LA is the admission authority for schools.

B. Concerning the arrangements for September 2015

(i) When I looked at the school's website on 8 May 2015, admission arrangements were set out there which differed significantly from those which the objector had provided to me as the determined admission arrangements for the school for September 2016. They were subsequently confirmed by the trust as being the arrangements for September 2015. As well as appearing on the school's website as the school's admission arrangements, the admission arrangements for the school for September 2015 were available through the trust's website. However, the school's website failed to say to which year the arrangements apply. I expressed my concern to the trust that a parent visiting the school's website would not be able to understand easily how places at the school for September 2016 would be allocated, as stated in paragraph 14 of the Code. There would be no reason for them not to believe that the arrangements set out there were those which would be relevant for admissions in September 2016. I was concerned that the 2015 arrangements therefore did not comply with what is required by paragraph 14 of the Code because they were undated and therefore unclear;

(ii) the arrangements give priority to those living within what is described as "the area served by the school" but do not define what this term means. I was concerned that the arrangements did not conform to the requirement in paragraph 1.14 of the Code that if a catchment area is used to give priority to applicants it is reasonable and clearly defined;

(iii) the arrangements also give priority to children attending "a feeder school". The Code (paragraph 1.9b) prohibits arrangements from taking into account a previous school attended unless it is a named feeder school. The arrangements do not name any feeder school, and appeared to be in breach of this requirement, and

(iv) the arrangements included a description of circumstances under which an application for a place would not be given consideration even though a place at the school was available. I explained to the trust that section 86 of the Act sets out the requirement placed on admission authorities that they comply with expressed parental preferences, and that it and section 87 give the limited circumstances where this duty does not apply. Paragraph 15d of the Code repeats the requirement that parents expressing a preference for a place at a school must be offered one if the school is undersubscribed, and paragraph 1.9a prohibits the placing of conditions other than those contained in oversubscription criteria on the consideration of such an application. I asked the trust to comment on my concern that the school's arrangements for September 2015 appeared to breach these provisions.

Background

12. The Hathaway Academy, which is a non-selective school for pupils aged 11 to 16, is situated in Grays, Essex which is in the area of Thurrock Council. It opened on 1 July 2013. The school is not currently oversubscribed with applications for places there.

13. The trust decided to create a single set of admission arrangements for all its academies for admissions in September 2016 and it is these arrangements which are complained about by the objector.

The arrangements for September 2016, which are generic admission arrangements for all the trust's academies:

(i) give admission numbers for each of the trust's academies for their relevant age groups;

(ii) state that a child whose statement of special educational needs or education health and care plan names one of the schools will be admitted to it;

(iii) give highest priority to:

"looked after and previously looked after children (children who were looked after, but ceased to be so because they were adopted or became subject to a child arrangements order or special guardianship order, immediately after having been looked after) in accordance with section 22 of the Children Act 1989";

(iv) give next priority to siblings, as defined;

(v) allocate remaining places by distance from the child's home to the school, as defined;

(vi) state that a child who has not been allocated a place but whose parents expressed a first preference for the school in question will be included in the waiting list for places;

(vii) say that in-year admissions are those made outside the normal admission round and that for applications to join years R to 6 should be made through the local authority and for years 7 to 13 they should be made direct to the academy in question using a provided form.

14. The trust has told me that the governing body of the school acts as a committee of the trust Board of Directors under its Articles of Association, and that prior to the determination of admission arrangements for September 2016, it and all the other academies within the trust "agreed" their own admission policy under delegated powers, and so had different admission arrangements from each other.

15. As agreed by the school's governing body on 28 April 2014, the admission arrangements for September 2015:

- (i) state that the published admission number (PAN) will be 180;
- (ii) provide for the admission of children whose statement of special educational needs names the school;
- (iii) give highest priority to looked after and previously looked after children in accordance with the requirement set out in the version of the Code under which they were determined;
- (iv) give next priority to students living within “the area served by the academy”, with higher priority for siblings, as defined;
- (v) give next priority to those not living within the area served, with higher priority firstly for siblings and secondly for those attending “a feeder school”, and
- (vi) state that the academy “*reserves the right to refuse a place to a student when the student has previously been removed from the academy’s roll by the student’s parent/carers in order to avoid engaging with the academy to resolve an issue, avoid a fixed-term or permanent exclusion or to avoid a prosecution or fine in relation to poor attendance.*”

Consideration of Factors and Other Matters

16. I shall set out my consideration of, firstly, the matters raised in the objection to the school’s admission arrangements for September 2016 and, secondly, the concerns which I have raised regarding the arrangements and those for September 2015.

The Objection

17. The first part of the objection concerns the inclusiveness of the definition given in the arrangements for September 2016 of previously looked after children. The arrangements were determined under the current version of the Code, which was issued in December 2014, and are therefore subject to it. The wording of paragraph 1.7 in the previous version of the Code has been added to in the current version:

a. by the addition of the word “all” in the body of the paragraph so that it now reads:

*“...the highest priority **must** be given....too looked after and all previously looked after children”, and*

b. by the addition in the footnote defining previously looked after children of “*children who were adopted under the Adoption Act 1976*”.

18. The trust has responded by saying that in its view it is not necessary to include the word “all” within the definition given in the arrangements for it to cover all previously looked after children. This might indeed be a reasonable approach if previously looked after children were being defined for the first time in the Code in such a way that all were to be included. However, that is not the case, and the Code now places a mandatory requirement on

admission authorities to give priority to all previously looked after children, which it did not do previously, through the expansion of the definition set out in the footnote. There is nothing within the school's determined arrangements which indicates that this fully inclusive definition of previously looked after children is now to be given effect, for example by inclusion of the full definition provided in the Code's footnote within the arrangements. As a result I am of the view that the arrangements do not reflect what the Code now requires, and I uphold this part of the objection.

19. The second part of the objection concerns the extent to which the arrangements of the school enable it to participate in the co-ordination of in-year admission arrangements by the LA in whose area it is located, which has raised this objection. In doing so, the LA has referred to the source of this difficulty, as it sees it, being the adoption by the trust of generic admission arrangements for a range of schools across different phases of education located in several LA areas.

20. The role of the adjudicator is to consider the admission arrangements of a school and whether or not they comply with the requirements concerning them which have been placed upon admission authorities. This does not extend to the involvement or otherwise of a school in the co-ordination of admissions by an LA. I note that the annex to the supplemental funding agreement for the school which it has agreed with the Secretary of State places a requirement on it to participate in the co-ordination of admission arrangements operated by the LA, and it would be for the Secretary of State to consider the objector's concerns further. I shall have more to say below about the consequences for the school's own admission arrangements of the adoption of generic admission arrangements by the trust, but I am not able to consider the matter of co-ordination here.

Other matters concerning the arrangements for September 2016

21. The trust has acknowledged that it was not possible to access the school's admission arrangements through its website on 8 May 2015. Although this position has now been rectified, this means that the trust had failed to comply with the requirement that admission arrangements should be published as soon as they have been determined, and so it has failed to comply with what paragraph 1.47 of the Code requires.

22. The trust has told me that it has "updated" the school's website, firstly to *"list the key information from the policy so that parents can easily understand how places are allocated"* and to provide a link to the determined arrangements themselves. I visited the school website again on 27 May 2015 and found there the summary information referred to by the trust under the heading "applying to join us in 2016" as well as the link to the arrangements themselves on the trust's own website. These determined arrangements were unchanged and are those to which I must have regard.

23. The trust has determined a generic set of admission arrangements for all its academies, which are both primary and secondary schools and some but not all of the secondary schools have sixth forms. In order to understand the admission arrangements that are relevant to an application for a place at the Hathaway Academy it is necessary for any reader to interpret the generic arrangements in a number of ways. Specifically:

(i) each of the six paragraphs which explain how parents should go about applying for a place depends in its relevance on the year group in which a place is being sought. Three paragraphs are relevant only to primary schools, two only to secondary schools and one only to admissions to sixth forms;

(ii) the PAN relevant to admissions to the school must be obtained from a list of such numbers;

(iii) admissions to year 12 are referred to in two of four paragraphs which set out oversubscription criteria and must therefore be disregarded in the case of the school, and

(iv) the arrangements set out different procedures for in-year applications for places in Years R to 6 from those for Years 7 to 13.

24. I was concerned that this made the arrangements not easy for parents to read and understand how places at the school are allocated. The trust has said that its intention was to ensure compliance with the Code by having a single admission policy and that it had seen local authority admission arrangements which covered all schools for which the LA was the admission authority, citing three examples. It regarded such an approach as advantageous. I have looked at each of these examples given by the trust and found that in one case separate descriptions are provided of the admission arrangements for primary and secondary schools, which makes it much easier for arrangements applying to each school to be described simply and clearly. In the other two cases explanatory notes set out matters not common to all schools. In all three cases, aspects of the arrangements which apply to all schools are expressed in a common set of words requiring no further interpretation, which is not the case for the trust's arrangements.

25. The trust has said that it would prefer not to have a separate policy for each academy for which it is the admission authority. My view is that it is possible for an admission authority to apply a common policy to a range of schools and at the same time to describe admission arrangements for all these schools in a way which makes those for each one clear, which is what is required by paragraph 14 of the Code. The trust has not achieved this in the way it sets out admission arrangements for September 2016, in my view.

26. The trust responded to my concern that the arrangements allow only applications which were first preferences for a school to be included in its waiting list by proposing to amend its arrangements so that waiting lists would be composed only of those whose preference for the school in question was a higher preference than that for the school where they have been offered a

place. Preference information is not available to individual admission authorities and is only used by the LA in whose area children live to co-ordinate the offer of places. Paragraph 2.14 of the Code states 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.”*

27. Paragraph 1.9c of the Code makes it clear that oversubscription criteria **must not** give extra priority on the basis of the order in which preferences have been expressed. The trust’s arrangements do not comply with these requirements.

28. The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) define late applications as those which were made before the start of the school year but which were not satisfied before or on the date by which applications made in the normal admission round result in the offer of a school place. The regulations also define in-year applications as those submitted on or after the first day of the school term. The wording of the trust’s arrangements, notwithstanding the trust’s assertion to the contrary, does not conform with these definitions and is therefore likely to make the arrangements difficult to understand as a result of this lack of clarity, contrary to what is required by paragraph 14 of the Code.

29. Paragraph 1.44 of the Code lists those who **must** be consulted by admission authorities which are proposing to make changes to their admission arrangements. These are:

“a) parents between the ages of two and eighteen;

b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;

c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);

d) whichever of the governing body and the local authority who are not the admission authority;

e) any adjoining neighbouring local authorities where the admission authority is the local authority; and

f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.”

30. When the trust carried out a consultation on the school’s proposed admission arrangements for September 2016, this included *“A letter and copy of the Admissions Policy sent to each Local Authority in which there is a Trust academy and the surrounding schools. Each academy was asked to provide a list of their surrounding schools and this was then cross-referenced against schools within 5, 10 or 15 miles (dependant on the circumstances of the*

academy (primary/secondary, rural/city))” according to the report on this consultation process which it sent to me. The trust has told me that the schools it consulted were those which were their own admission authority and which it believed were likely to be affected by the change it was proposing in the school’s admission arrangements, in accordance, it believed, with paragraph 1.44b of the Code, that is as other interested persons. It had not consulted all neighbouring local authorities since “As the local authority is not the admission authority we understand 1.44e is not applicable. Where we did consult neighbouring local authorities this was under 1.44c because they were the admission authority for a school in the relevant area.”

31. The Code refers to the regulations which I have cited above, which state that the term “relevant area” is as defined in section 88F(4) of the Act as:

“(a) the area of the local authority in which the school in question is situated, or

(b) if regulations so provide, such other area in England (whether more or less extensive than the area of the local authority) as may be determined by or in accordance with the regulations.”

In the absence of further regulations under section 88F(4)(b), this means that the relevant area is as set out in a) above.

32. Paragraph 1.44 lists mandatory consultees and these are set out on the face of the Act in section 88F(3). The Hathaway Academy is located in the area of Thurrock Council, and so those who must be consulted in respect of proposed changes to its admission arrangements include:

(i) all schools in Thurrock for which the LA is not the admission authority (paragraph 1.44c of the Code);

(ii) Thurrock Council (paragraph 1.44d); and

(iii) all adjoining neighbouring local authorities to Thurrock (paragraph 1.44e) which are the admission authority for schools in their area.

33. The trust has failed to interpret correctly the meaning of the requirements set out above and as a result did not comply with what is required when it consulted on admission arrangements for the school for September 2016. It is therefore in breach of paragraph 1.44 of the Code.

Other matters concerning the arrangements for September 2015

34. The trust did not respond to my concern that when I visited the school’s website on 8 May 2015 I found there a set of admission arrangements which I was able to establish subsequently were those for September 2015, but which were undated. The school’s website had been revised when I viewed it again on 27 May 2015 making it possible to distinguish between the arrangements for September 2015 and September 2016 and to see both. However, this was not the case earlier in the month, well after the date by which a parent would know that admission arrangements for September 2016 would have had to be determined, and when they could reasonably expect them to be set out on the

school's website. Such a parent would have been misled by the arrangements published on the school's website because these 2015 arrangements were undated. So my view is that the arrangements for September 2015 are not clear because it is not evident that they apply only to such admissions and not to those in another year. They are therefore unclear and do not comply with paragraph 14 of the Code.

35. The trust responded to my concern that the arrangements did not define "the area served by the Academy" by providing me with a map showing the school's catchment area, which it said it had made available through the school's website. However, when I viewed the website on 8 May 2015 no such map or any description of the school's catchment area, which is used to give priority to applicants living there, was provided. The arrangements failed to comply with the requirement in paragraph 1.14 of the Code that catchment areas be clearly defined.

36. The trust has told me that children attending four named schools are given priority over other children in the school's oversubscription criteria. It has also made this list available through the school's website. These are the schools which are referred to as feeder schools within the school's admission arrangements for September 2015 but which were not named there on 8 May 2015 in contravention of the requirement of paragraph 1.9b of the Code that any such schools be named.

37. The trust did not offer any comment concerning the statement contained in the arrangements setting out the circumstances in which the school says it reserves the right to refuse a place to a student, other than to confirm that this did not form part of the determined arrangements for September 2016.

38. Section 86(2) of the Act says, in practice, that if a school has not admitted children up to its PAN, and if a parent expresses a preference for a place there, that preference must be complied with unless the school is a selective school and the admission would not be compatible with arrangements which exist for selecting pupils. Section 87 of the Act adds that this duty is also not imposed where the child in question has been permanently excluded from two or more schools. Paragraph 15d of the Code repeats the requirement that parents expressing a preference for a place at a school must be offered one if the school is undersubscribed, and paragraph 1.9a prohibits the placing of conditions other than those contained in oversubscription criteria on the consideration of such an application. There is a provision in paragraph 3.12 of the Code which permits an admission authority to refer the case of a child with challenging behaviour to the local authority in the case of in-year admissions, but that is not the circumstance to which the statement in the school's arrangements refers. I am therefore of the view that the arrangements breach what has been laid down in the Act and restated in the Code at paragraph 15d, since they would result in an application being refused for reasons that are not permitted.

Conclusion

39. I have set out above my reasons for concluding that the school's arrangements for September 2016 fail to comply with what the Code requires:

- (i) in paragraph 1.7 concerning the definition of previously looked after children;
- (ii) in paragraph 1.47 concerning the publication of the arrangements following their determination;
- (iii) in paragraph 14 because the arrangements are not clear and are therefore not likely to be readily understood by parents;
- (iv) in paragraph 1.9c by giving priority within the waiting list on the basis of the order in which preferences had been expressed, and
- (v) in paragraph 1.44 concerning those consulted by the trust prior to its determination of the arrangements.

40. I have also set out my reasons for coming to the view that the school's admission arrangements for September 2015 fail to comply with what the Code requires:

- (i) in paragraph 14 because they were published as undated arrangements and were therefore unclear;
- (ii) in paragraph 1.14 since the school's catchment area is not defined;
- (iii) in paragraph 1.9b by giving priority on the basis of the previous attendance of children at schools that were not named as feeder schools, and
- (iv) in paragraph 15d by refusing applications from parents for reasons that are not permitted.

41. The school's admission arrangements for September 2015 are still relevant concerning any late applications for places and are also relevant to in-year applications until at least 31 December 2015. It is therefore important that they are amended as quickly as possible. The Code requires that the admission arrangements for September 2016 are revised within two months to give effect to the decisions set out above.

Determination

42. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold that part of the objection to the admission arrangements determined by the Academy Trust for The Hathaway Academy for admissions in September 2016 for which I have jurisdiction.

43. I have also considered the arrangements in accordance with section 88I(5). I determine that for admissions in September 2015 and September 2016 the arrangements do not conform with the requirements relating to admission arrangements.

44. By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements for September 2015 as quickly as possible, and those for September 2016 within two months.

Dated: 29 June 2015

Signed:

Schools Adjudicator: Dr Bryan Slater