



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3314

Objector: Worcestershire County Council

Admission Authority: The Governing Body of South Bromsgrove High School on behalf of the Academy Trust for South Bromsgrove High School, Worcestershire

Date of decision: 26 September 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2018 determined by the governing body of South Bromsgrove High School on behalf of the South Bromsgrove Academy Trust for South Bromsgrove High School, Worcestershire which is the admission authority for the school.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements as 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 the 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 Worcestershire County Council, (the objector), about the admission arrangements (the arrangements) for South Bromsgrove High School (the school), for entry in September 2018. The school is a secondary academy converter school. The objection relates to a number of elements of the oversubscription criteria in the admission arrangements which the objector believes do not conform to the School Admission Code (the Code).**

2. The local authority for the area in which the school is located is Worcestershire County Council. The local authority is the objector. Other parties to the objection are the South Bromsgrove Academy Trust (the trust) and the governing body of the school.

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 governing body of the school on behalf of the trust, which is the admission authority for the school, on that basis. The objector submitted an objection to these determined arrangements on 15 May 2017.
4. Some of the issues raised by the objector are not within my jurisdiction. These concerned in-year admissions, including how children covered by the local authority's Fair Access protocol would be treated. Admissions to a school outside the normal admission round and beyond the first term of the academic year for that normal admission round are not within the adjudicator's jurisdiction. Nor is the application of admission arrangements to individual children a matter for me. The objector also referred to a statement in the school's arrangements that "*Only one appeal is permitted in one academic year*". This is also not within my jurisdiction as it concerns the operation of the independent appeals panel for the school. I cannot and have not considered these matters further. My jurisdiction is limited to whether the determined arrangements conform to the requirements relating to admissions. I am satisfied that the other aspects of the objection have been properly referred to me in accordance with section 88H of the Act and are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the Code.
6. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 15 May 2017;
 - b. the governing body's response to the objection and supporting documents;
 - c. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - d. maps of the area identifying relevant schools;

- e. confirmation of when consultation on the arrangements last took place;
 - f. a copy of the determined arrangements for September 2018; and
 - g. a copy of a proposed revised set of admission arrangements for September 2018 sent to me on 26 July 2017.
7. I have also taken account of information received during a meeting I convened on 20 July 2017 at the offices of the Diocese of Worcester. Those attending the meeting were the Headteacher for South Bromsgrove High School and a representative from the local authority. There was no representative present from the South Bromsgrove Academy Trust.

The Objection

8. The objection covers a number of aspects of the arrangements which the objector claimed did not conform to the Code. These were that:
- the arrangements referred incorrectly to The School Admissions Code 2012, which made them unclear, and so they did not conform to paragraph 14 of the Code;
 - the explanation of when late applications would, or would not, be accepted was not sufficiently clear, and therefore did not conform to paragraph 14 of the Code;
 - decisions in relation to admissions outside the normal age group were being made by an admissions officer, as opposed to the governing body, which was said not to conform to paragraphs 2.7 and 2.17A of the Code.

Other Matters

9. In my letter to the parties of 7 July 2017, I outlined other areas of the admission arrangements which did not conform to the Code. These were subsequently discussed at the meeting on 20 July 2017. These matters concerned:
- the definition of the published admission number (PAN);
 - the automatic admission of children who are named in an education, health and care (EHC) plan;
 - late applications;
 - the waiting list;
 - the agreement of parents and carers to the making of an application for admission;
 - the definition of looked after and previously looked after children;

- feeder schools;
- measurement of distance from home to school; and
- the absence of a tie-breaker.

Background

10. The school converted to become an academy on 1 November 2013. It is a mixed secondary school with an age range of 13 - 18. The PAN is 335. There are 1363 pupils on roll and the school has a Department for Education assessed capacity of 1294. The directors of the South Bromsgrove Academy Trust are members of the school's governing body which determined the arrangements in question.
11. The arrangements contained six oversubscription criteria. There were statements about the principles of the school and the admissions process; sections on open evenings, procedure for applications, late applications, the school's special educational needs (SEN) policy, waiting lists, in-year admissions, admissions outside chronological age group, parental responsibility, appeals; and definitions. The oversubscription criteria can be summarised as follows:
- 1) Looked after and previously looked after children
 - 2) Children of staff who have been employed at the school on a permanent contract for at least two years at the date of application or who have been recruited to fill a vacant post for which there is a demonstrable skill shortage
 - 3) Students with a sibling on roll at the school
 - 4) Students within the catchment area of the school
 - 5) Students on roll at a feeder school
 - 6) Students who live nearest the school.
12. The school sent me proposed revised arrangements following the meeting. These proposed arrangements have addressed all of the aspects of the objection and all the matters I raised under section 88I of the Act. The school acted with commendable speed.

Consideration of Case

13. The objector stated that the reference in the arrangements to the School Admissions Code 2012 was incorrect, which therefore made the arrangements unclear in contravention of paragraph 14 of the Code. Paragraph 14 states: *"In drawing up admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and*

understand easily how places for that school will be allocated”.

14. A version of the Code was published in 2012. This was superseded by a new version published in 2014. In fact, most admission arrangements when they refer to the Code do not cite its date of publication (and they are not criticised for this) and the changes from the 2012 to the 2014 version were relatively small. Nonetheless, I have to agree that referring to an out of date version does make the arrangements unclear and I uphold this aspect of the objection.
15. The objector considered that the explanation in the arrangements of when late applications would, or would not, be accepted was not sufficiently clear, and so did not conform to paragraph 14 of the Code. The arrangements refer to late applications as follows: *“6.1 Applications made after the closing date will be processed within the coordinated admissions scheme, but will receive lower priority than those received by October 31. The governing body may consider a late application (between October 31 and 31 January) as being ‘on-time’ in certain circumstances if the delay was reasonable given the circumstances and there is documentary evidence to support this.... 11.4 Late applications will be at a disadvantage with regard to the oversubscription criteria as the 31 October deadline will be held to strictly.”*
16. In my view, it would not have been clear to parents when an application would have been considered to be made on time, or what documentary evidence they would have needed to produce and I therefore consider that the arrangements were not in this matter clear. Moreover, the arrangements provided no indication of the latest date by which a late application could be submitted and this again made the arrangements unclear. I uphold this aspect of the objection.
17. The objector considered that paragraph 9 of the arrangements did not conform to paragraphs 2.7 and 2.17A of the Code. Paragraph 9 of the arrangements stated: *“Parents may request that their child be admitted outside of their normal age group, effectively in the year group below or above their chronological age group, although such requests are rare. Our admissions officer will make a decision based on the circumstances of each case and in the best interests of the student.”* Paragraph 2.7 of the Code includes the following: *“... a decision to offer or refuse admission **must not** be made by one individual in an admission authority. When the school is its own admission authority the whole governing body, or an admissions committee established by the governing body **must** make such decisions.”* Paragraph 2.17A also refers to decisions about admission outside the normal age group being made by admission authorities.
18. As the school’s arrangements provided for decisions to be made by one individual and not by the admission authority or a committee of the governing body, I have concluded that the arrangements did not conform to paragraphs 2.7 and 2.17A of the Code. I therefore uphold this aspect of the objection.

19. I now turn to consideration of the further matters raised by me under section 88I of the Act, and have set out my conclusions below. A number of these matters relate to paragraph 14 of the Code which I have set out above.
20. Paragraph 1.7 of the arrangements refers to a 'Pupil Admission Number'. This should be Published Admission Number, abbreviated to PAN.
21. Paragraph 5.1 of the arrangements did not state that a child named in an Education Health Care Plan will be admitted automatically. Paragraph 1.6 of the Code makes clear that such children must be admitted and the school's arrangements thus did not conform to paragraph 1.6 of the Code.
22. Paragraph 6.1 of the arrangements referred to late applicants receiving "*lower priority*". The effect of this was not explained. Similarly, paragraph 11.4 stated that late applications "*will be at a disadvantage*" but did not explain what that disadvantage was. It would not have been possible for an applicant who had submitted an application after the closing date to know where the application would have stood in terms of priority. This meant that the did not conform to paragraph 14 of the Code.
23. Paragraph 7.3 of the arrangements stated that the waiting list was closed at the end of each term and parents wishing to keep their child's name on the list would have had to write to the Admissions Officer. Paragraph 2.14 of the Code 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 be ranked in line with the published oversubscription criteria [underlining by emphasis added].*" The autumn term will end well before 31 December each year. By saying that the waiting list will be closed at the end of each term – which will include each autumn term – the school's waiting list did not conform to paragraph 2.14 of the Code.
24. Paragraph 10 of the arrangements stated that, where more than one parent or carer have legal responsibility for a child, both parents/carers must be in agreement over the application to South Bromsgrove. It is unclear from this what would have happened if there had been no agreement, which did not conform to paragraph 14 of the Code. Through the funding agreement, the admission authority would have been required to comply with the preference of a parent unless that parent had been prohibited from exercising parental responsibility in such a way that prevented, or limited, him/her from involvement in the child's education. Moreover, applications for this school – in common with all state funded schools – are made via the Common Application Form (CAF) for the area in which a pupil lives. The admission authority for a school is not in a position to seek to apply conditions of this sort on who may apply; the admission authority's role is to apply its

oversubscription criteria to those who choose to name it on the CAF.

25. Paragraph 11.2 and note 13 of the arrangements referred to looked after and previously looked after children. The definition of previously looked after children referred to "*children, who immediately after being Looked After became subject to an adoption, residence or special guardianship order*". As is made clear at paragraph 1.7 of the Code, the correct definition of previously looked after children for the purposes of school admissions is now "*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)*." The definition used by the school needs to be updated in order to conform with the Code.
26. In paragraph 11.2 of the arrangements, oversubscription criterion 5 referred to students on roll at a feeder middle school. Paragraph 1.15 of the Code provides that schools may name one or more feeder schools and that where they do so, the feeder schools must be selected on reasonable and transparent grounds. Paragraph 1.9b of the Code prohibits taking account of "*any previous schools attended, unless it is a named feeder schools*". Because priority is given to children who have attended feeder schools but these schools are not named in the arrangements, the arrangements do not comply with paragraph 1.15 or 1.9b. In addition, the inclusion of un-named feeder schools makes the arrangements unclear in breach of paragraph 14. The proposed revised arrangements name Alvechurch CE Middle School, Aston Fields Middle School and St John's CE Middle Academy as feeder schools.
27. In paragraph 11.2 of the arrangements, oversubscription criterion 6 referred to students who "*live nearest the school by the shortest straight line distance*". Paragraph 1.13 of the Code, which requires that "*Admission authorities must clearly set out how distance from home to school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured.*" As the school's arrangements did not address how home address would be determined or give the point in the school from which distances would be measured, the arrangements did not conform with the Code.
28. There was no provision in the arrangements for a final tie-breaker to deal with cases where two or more applicants tied for the final available place. Therefore, the arrangements did not conform to paragraph 1.8 of the Code, which requires that "*Admission arrangements must include an effective, clear and fair tie- breaker to decide between two applications that cannot otherwise be separated.*"
29. The school has cooperated fully throughout this process. The headteacher attended a meeting on 20 July 2017 to discuss the matters raised in the objection and the other matters I raised under section 88I of the Act. A proposed revised set of arrangements was

sent to me on 26 July 2017. The school has worked hard to produce a proposed set of arrangements which conform to the Code. They deserve full credit for their cooperation and for the speed within which the proposed revisions were made. The Code requires that the governing body vary its arrangements in order to conform with the Code. The school already has proposed revised arrangements which it can adopt for this purpose and then publish these on the school's website.

Summary of Findings

30. Having considered the arrangements for admission to the school in September 2018 which were referred to me by the objector on 15 May 2017 together with the relevant paragraphs of the Code, my findings are that some of the matters referred to by the objector did not conform to the Code. Others were not within my jurisdiction. There were a number of other matters I identified in relation to aspects of the arrangements which also did not conform to the Code. These were shared with the school at the meeting on 20 July 2017. I also find that the school acted promptly in sending me a proposed revised set of arrangements which if adopted will address both the points raised in the objection and the points I raised under section 88I.

Determination

31. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2018 determined by the governing body of South Bromsgrove High School on behalf of the South Bromsgrove Academy Trust for South Bromsgrove High School, Worcestershire.
32. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which did not conform to the requirements relating to admission arrangements. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 26 September 2017

Signed:

Schools Adjudicator: Dr. Marisa Vallely