



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3315

Objector: Shropshire Council

Admission Authority: The Shropshire Gateway Educational Trust for
Lacon Childe School, Shropshire

Date of decision: 11 October 2017

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 2018 determined by the Shropshire Gateway Educational Trust for the Lacon Childe School, Shropshire.

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.

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 specify that the arrangements must be revised by 20 October 2017.

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 Shropshire Council (the objector), about the admission arrangements (the arrangements) for the Lacon Childe School (the school), a comprehensive, mixed secondary academy for pupils aged 11 to 16 for September 2018. The objection is to the changes made to the school's admission arrangements to introduce two-tiers for feeder schools; giving a priority for pupils attending a named Shropshire Gateway Educational Trust primary above pupils attending other state-funded primaries. All are within the school's catchment area.
2. The local authority for the area in which the school is located is Shropshire Council. The local authority is the objector and is a party to this

objection. The other party to the objection is the Shropshire Gateway Educational Trust (the trust).

Jurisdiction

3. The terms of the Academy agreement between 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 on that basis by the Local Governing Body on behalf of the Shropshire Gateway Educational Trust, which is the admission authority for the school. The objector submitted its objection to these determined arrangements on 10 May 2017. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. the objector's form of objection dated 10 May 2017;
- b. the admission authority's response to the objection and supporting documents;
- c. Further correspondence between the Office of the Schools Adjudicator and the parties;
- d. maps of the area identifying relevant schools;
- e. copies of the minutes of the meeting at which the trust determined the arrangements; and
- f. a copy of the determined arrangements.

The Objection

6. The objection is to the changes made to the school's admission arrangements to introduce two-tiers for feeder schools giving a priority for pupils attending a named trust primary school above pupils attending other primary schools within the school's catchment area. The objector did not specify which parts of the Code it believes that the arrangements contravene.

Other Matters

7. In the course of reviewing the admission arrangements a number of other matters came to my attention which I have considered within my jurisdiction under section 88I of the Act. These are set out below, together with my findings on each.

Background

8. **The 2017 arrangements.** The school converted to academy status on 1 October 2014 within the trust. The school has a published admission number (PAN) of 108. The school initially proposed to change its arrangements for 2017. An objection was referred to the Office of the Schools Adjudicator (OSA) and it was concluded that the adjudicator had no jurisdiction in relation to that objection as the 2017 admission arrangements had not been lawfully determined. As a result, the school made no changes to its admission arrangements for 2017. There are discrepancies between the arrangements currently published as the 2017 arrangements on the school's website and those published on the local authority's website. However, as discussed in more detail below, it appears that all those who expressed a preference for the school, and who did not gain a place at a school for which they had expressed a higher preference, were admitted. This means that the oversubscription criteria did not need to be applied and so any discrepancy had no practical effect. Up until determining the arrangements for 2018 the school continued with the admission arrangements it had had when maintained by the local authority, in common with the other rural community and voluntary controlled schools for which the objector was and is the admission authority. In summary form these were:

- a. *"Looked after and formerly looked after children*
- b. *Children living in the school's catchment area with a sibling at the school*
- c. *Other children living in the school's catchment area*
- d. *Children living outside the school's catchment area with a sibling at the school*
- e. *Children living outside the school's catchment area attending a state-funded primary school within the school's catchment area (the relevant schools are named)*
- f. *Other children*

In each group above straight line distance from home to school is used to determine the rank order."

9. **The 2018 arrangements.** Following consultation, the school determined amended arrangements for entry in 2018. Again there is discrepancy, with two different versions appearing on the school's website, and the version most prominent on the school's website differing from the arrangements shown on the local authority's website. The trust has clarified the arrangements determined. The determined arrangements are as follows:

"Children with a Statement of Special Educational Need or Education and Health Care Plan which names Lacon Childe School will be

allocated places (if we feel able to meet their educational and social care needs).

- 1. Relevant looked After Children (that is, children in public care) and former looked after children as defined in the schools' admission code*
- 2. Siblings of pupils attending the school and living at the same home address, within the catchment area of the school. In order to qualify for a place on the grounds of a sibling attending the school, the sibling must be on roll and attending the school at the time of application. (Please see 'sibling' definition.)*
- 3. Residence in catchment area*
- 4. Attendance at a Shropshire Gateway Educational Trust* primary school*
- 5. Attendance at a primary school within the catchment area*
- 6. Children living outside catchment area with an older sibling from the same address attending the school and on roll at the time of application*
- 7. Children of staff currently employed at Lacon Childe School who have at least 2 years' service.*
- 8. Proximity of home address to school.*

**SGET primary schools: Cleobury Mortimer Primary School
Stottesdon CoE Primary School Clee Hill Community Academy*

In the event that two individual applications are exactly the same after all other criteria have been taken into account a tie breaker will be used. This will be by random allocation and overseen by an independent party not connected with the admissions process."

In addition to the changes to which the objection applies I note that the criteria relating to feeder schools (4 and 5) now come above children living outside the school's catchment area with a sibling attending the school (6). In addition, the provision for determining the ranking within each group by distance is no longer set out.

Consideration of Case

10. The objector was not specific about which provisions of the Code were engaged in the objection. However, when taken with the letter dated 23 January 2017 from the objector (relating to the changes then determined for 2017 entry), it is clear that the objector considers the arrangements for entry

in 2018 to be unfair. This is on the grounds that, the objector considers the arrangements potentially disadvantage those children attending the primary schools in the catchment area (all of which are feeder schools) but not those primary schools within the trust, which are given a higher priority. The objector also raises the point that parents made decisions about which primary school to send their children to some seven years earlier, when all catchment area primary schools were feeder schools for the school with equal priority.

11. The inclusion of feeder schools within admission criteria is provided for in paragraph 1.15 of the Code:

“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds.”

And in paragraph 1.9:

*“It is for admission authorities to formulate their admission arrangements, but they **must not**:*

...

b) take into account any previous schools attended, unless it is a named feeder school”

12. Paragraph 14 of the Code applies to all admissions arrangements:

“In drawing up their 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.”

Paragraph 1.8 applies to all oversubscription criteria:

“1.8 Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

13. As the objector observes, the admission criteria which applied for entry in 2016 and 2017 were the same as those applying to all other rural community and voluntary controlled secondary schools for which the objector was and is the admission authority. Admission authorities are entitled to

change their admission arrangements, following the process set out in the Code. Paragraph 1.10 of the Code provides that: *“It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”*

14. The 2018 arrangements depart from the previous arrangements with the introduction of two tiers of feeder schools. However, the determined arrangements are clear, objective and transparent and each feeder school is individually named as required by the Code. I find that (subject to the issue of publication discussed under “Other Matters” below) parents would be able to look at the set of arrangements and understand easily how places for that school will be allocated.

15. I have also considered whether the selection of feeder schools as an oversubscription criterion has been made on reasonable grounds. The trust has stated that this change is based on the principle of creating a progressive and developmental programme of education from 2 to 16 within trust schools. They have two nursery providers who feed into trust primary schools (although priority is not given to those who attend the nurseries) and the children attending trust primaries transfer to the school with very few exceptions. The trust wish to develop an offer which allows trust pupils to remain within trust schools throughout their education. The trust feeder primaries are all within the school’s catchment area. I find that in the circumstances it is reasonable to give a higher priority to children attending trust primary schools within the school’s catchment area.

16. I must next consider whether the 2018 arrangements are fair which is the primary issue raised in the objection, and reasonable in their effect. Firstly I will look at recent admissions data for the school.

17. The school’s PAN is 108. Table 1 shows the admission numbers for entry in the years 2015 to 2016.

Table 1

Date of allocation	PAN	No of 1 st preferences	Total places allocated	No of 2 nd preferences	No of 3 rd preferences
March 2015	108	102	105	2	1
March 2016	108	103	105	2	-

Table 2

Table 2 sets out the allocation of places for 2017 entry in more detail. This shows the allocations including four applications made post national offer day (1st March 2017)

The total preferences as at June 2017 were as follows:

Criteria	Preference 1	Preference 2	Preference 3	Total
Education, health and care plan (EHCP)	11	1		12
looked after/previously looked after	4			4
Living in catchment + sibling	24			24
Living in catchment	47	4	3	54
Out of Catchment + sibling	15			15
Out of Catchment + linked primary	4	2	2	8
Out of Catchment	27	17	7	51
Total	132	24	12	168

One EHCP application was still being processed by the local authority's special educational needs team as part of that process. Places for 36 applicants (all the second and third preferences) were no longer required as they could be offered a higher preference.

Table 3

LACON CHILDE SCHOOL ALLOCATIONS 2017

Criteria	Preference 1	Total
Education, health and care plan	10	10
looked after/previously looked after	4	4
Living in catchment + sibling	24	24
Living in catchment	47	47
Out of Catchment + sibling	15	15
Out of Catchment + linked primary	4	4
Out of Catchment	26	26
Total	130	130

18. For entry in 2015 and 2016 (Table 1) fewer applications were received than the school's PAN of 108 and consequently all those who applied, who did not receive an offer of a place at a school for which they had expressed a higher preference, were allocated a place. It would not have been necessary to apply the oversubscription criteria.

19. For 2017 there were more preferences expressed than the school's PAN of 108. The total number of first preferences (combined with EHCP) was

132 and the overall number of preferences was 168. The school informed the local authority it could accommodate 135 pupils, 27 over PAN. All those who placed their preference for the school second or third received an offer of a place at a school for which they had expressed a higher preference. Consequently all those who put the school as a preference and who did not receive an offer of a place at a school for which they had expressed a higher preference, were admitted.

20. Looking at the position had the school not admitted over its PAN then all those who put the school as a first preference in each criterion down to and including those living out of catchment and attending a feeder primary would have been allocated a place (total including EHCP 104). Four of those living outside catchment, who were not attending a catchment primary and who did not have a sibling attending the school, would have been allocated a place. 22 of those in the latter group would not have been admitted.

21. I have considered what difference (if any) it would make if the 2018 arrangements had been applied to the 2017 applications.

- a. If in 2018 the school had admitted up to 135 pupils, all pupils who put the school as a preference and did not receive an offer of a place at a school for which they had expressed a higher preference, would have been admitted. In this hypothesis the changes to the arrangements for 2018 would have made no difference.
- b. If the school admitted only to PAN, the same pupils would have been allocated a place as would have been allocated a place in in 2017, save that any qualifying children of staff would have displaced an equal number children admitted solely on distance. In this hypothesis the changes to the arrangements for 2018 would have made no difference to children attending primary schools within the school's catchment area.

22. The school point out (and the objector has not contradicted the statement) that its PAN of 108 exceeds the total number of pupils in Year 6 in all the feeder primaries, both those within the trust and those not in the trust. The school have also stated that the demographic projections suggest that the numbers in the feeder primaries are unlikely to change over the next five years (and again the objector has not contradicted this assertion). The change introducing a two tier level of priority for feeder schools would not have made any difference to the allocations for entry in 2015, 2016 or 2017 for pupils attending primary schools within the catchment area of the school. It is unlikely to make any difference for that group of pupils in 2018 which is the year for which I have jurisdiction.

23. I also observe that all pupils living in catchment, whether or not they attend schools within catchment (all of which are feeder schools), have a higher priority than those living outside the catchment and attending feeder schools in both the current arrangements and those for 2018. Thus the changes in the 2018 arrangements will not affect the chances of a child living within catchment gaining a place in his or her catchment secondary school in

any event.

24. I have considered whether there are children attending primary schools within the school's catchment who might reasonably expect to gain a place at the school and who would be displaced by the higher priority given to named trust primary schools. As set out in the analysis above no such pupils would be displaced and so no significant disadvantage arises.

25. Looking at the numbers for 2017 entry, were the school to admit only to PAN for 2018 entry, I note that there is little spare capacity. It would take only five more first preferences, from pupils meeting a higher criteria, for some pupils, living outside catchment but having siblings at the school, not to be allocated places. It is, in general, less important for siblings to attend the same secondary school than for siblings to attend the same primary school. For example, most secondary pupils do not need to be taken to school by a parent and so the issues in this respect where siblings attend different primaries do not arise. Also, there are significant numbers of single-sex schools in the country so siblings who are of different genders often may not be able to attend the same school. I am not persuaded that the potential adverse affect of this change for some out of catchment siblings renders the provision unfair or unreasonable in its effect.

26. I note that the school states that it will continue to admit over PAN and so the issue will not arise. However, this is not guaranteed and when the school is considering its admission arrangements for future years, as it is required to do annually under the Code, it may wish to consider formally increasing its PAN, which is not a change requiring consultation.

27. The objectors make the point that parents apply for primary schools some seven years before their child reaches secondary transfer age and that some will have taken into account, when choosing their preferences, the admission arrangements at Lacon Childe School. It is suggested that therefore those parents and their child or children are put at an unfair disadvantage. I do not find this persuasive. I accept that parents may well send their children into a reception class in the expectation that they will go on to join their catchment secondary school and, as set out above, that expectation will be met regardless of the changes to admission arrangements for 2018. For the reasons set out above I consider it unlikely that any significant class of parents will be placed at a disadvantage. An admission authority is permitted to change its admission arrangements from time to time (provide a proper process is followed) and parents cannot expect such arrangements always to remain unchanged. Also, as with any school for which distance has a role in oversubscription criteria, demographic changes in population and demand for places at the school will, over time, affect the chances of a successful application.

28. I do not find that the proposed changes are unfair. I find that they are clear, transparent, reasonable and made on reasonable grounds. The objection is not upheld.

29. However if, in future, primary schools outside the school's catchment

area join the trust and if those primary schools are to be given a higher priority than non-trust primary schools within the school's catchment area, the question of reasonableness and fairness may be differently decided, although of course that would depend on all the relevant circumstances at that time.

Other matters

30. The matters which follow were not raised in the objection but have been considered within my jurisdiction under section 88I of the Act.

31. The arrangements appear in two different versions on the school's website and in a version which is incorrect on the local authority's website. It is important that this is corrected and that all published versions of the arrangements are identical. The arrangements are not displayed as determined and were not sent as determined to the local authority. The effect of this is that the arrangements are not clear and are therefore in breach of paragraphs 14 and 1.8 of the Code.

32. **Children with statements of SEN/EHCPs.** The insertion after a statement about children with statements of SEN or EHCPs naming the school of the words "*if we feel able to meet their educational and social care needs*" does not comply with the provisions of the Code. This statement is incompatible with the duty to admit all such children as described in paragraph 1.6 of the Code|:

*"...All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted..."*

33. **Looked after children.** The reference to "*relevant Looked After Children*" does not conform to the definition in paragraph 1.7 of the Code and is not clear as required by paragraphs 14 and 1.8 (set out above). This is separate to the definition of "previously looked after" children. Paragraph 1.7 states:

*"All schools **must** have oversubscription criteria for each 'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children. Previously looked after children are 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). Further references to previously looked after children in this Code means such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangement."*

and the footnote defining a "looked after child" reads:

“A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school.”

34. **Catchment area.** The catchment area is not defined as required by paragraph 1.14 of the Code which states: *“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.”*. The trust is an admission authority separate from the local authority and is required to ensure that the admission arrangements are clear:

35. **Children of staff.** The school has added a priority (7) for children of staff. The objector does not take issue with this. I have considered this in light of the provisions of the Code, which provides for this as an oversubscription criterion at paragraph 1.39:

“Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:

- a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*
- b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.”*

I find that the inclusion of this provision is fair and reasonable in principle and compliant with the Code save that it omits the time at which two year's employment is reached as specified in 1.39 a).

36. **Ranking within criteria.** There is no clear provision for ranking applicants within criteria 1 to 7 should oversubscription require the admission authority to do so. The provision for ranking within criteria by distance included in previous years' arrangements has not been included in the arrangements for 2018 and the oversubscription criteria are consequently unclear in breach of paragraphs 14 and 1.8 of the Code.

37. The trust has helpfully agreed to make the amendments to the arrangements required following my findings set out above. Given that the objection is not upheld and the necessary amendments are not complex, it is reasonable to expect the trust to ensure they are made quickly and published consistently in order that parents may have the opportunity to see the amended version before 31 October 2017, the national closing date for secondary school applications for entry in 2018.

Summary of Findings

38. The objection is not upheld. The introduction of a two tier priority for the primary schools within the school's catchment area is clear, transparent and made on reasonable grounds. It is not unfair or unreasonable in its effect.

39. With regard to the other matters set out above the Trust has agreed to amend the arrangements as required and must ensure that there is a single, accurate version of the admission arrangements both on the school's website and provided to the local authority for publication.

Determination

40. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the Shropshire Gateway Educational Trust for the Lacon Childe School, Shropshire.

41. 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 in the ways set out in this determination.

42. 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 specify that the arrangements must be revised by 20 October 2017.

Dated: 11 October 2017

Signed:

Schools Adjudicator: Tom Brooke