



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: REF3337

Referrer: A member of the public

Admission Authority: The Academy Trust of The Emmanuel Schools Foundation, for Bede Academy, Blyth, Northumberland

Date of decision: 22 December 2017

Determination

I have considered the admission arrangements for September 2018 for Bede Academy, Blyth, Northumberland in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the higher priority given to siblings of children of secondary age than to those living in the primary catchment area for admissions to Year R, and in relation to the clarity with which they state how home to school distances are measured, the arrangements do not conform with the requirements relating to admissions. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K (2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements no later than 28 February 2018.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), a objection has been referred to the adjudicator by a member of the public (the referrer), about the admission arrangements (the arrangements) for Bede Academy (the school). The date of the objection is 27 May 2017. The School Admissions Code (the Code) requires objections to admission arrangements for 2018 to be made to the Schools Adjudicator by 15 May 2017. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to the attention of the Office of the Schools Adjudicator (OSA), I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements. I am therefore treating the objection as a referral.

2. The referral relates to the following:

- a. that the priority given to siblings of children already at the school above that given to children living in the school's catchment area may cause the arrangements to be unreasonable, unclear and to unfairly disadvantage first born children living in the catchment area, and that this breaches paragraph 1.8 of the Code;
- b. that the school may be in breach of the requirements concerning consultation about admission arrangements which are set out in paragraph 1.42 of the Code because it has failed to consult on its admission arrangements in the last seven years;
- c. that the means for measuring distance between the school and parental homes may be unclear and in breach of paragraphs 1.8 and 1.13 of the Code; and
- d. that the catchment areas which the school uses may be unreasonable, and so breach paragraph 1.14 of the Code .

Jurisdiction

3. The terms of the Academy agreement between the multi-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 to which it belonged prior to joining the multi-academy trust which is now the admission authority for the school, on that basis, in line with its own Academy agreement. The referrer submitted her referral to these determined arrangements on 27 May 2017. I am satisfied the referral has been properly referred to me in accordance with section 88I of the Act and it is within my jurisdiction.

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 referrer's email of referral dated 27 May 2017 and supporting documents;
- b. the admission authority's response to the referral and subsequent correspondence;
- c. the comments of the local authority on the referral and subsequent correspondence;

- d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e. a map of the area identifying relevant schools;
 - f. copies of the minutes of the meeting at which the governing body of the school determined the arrangements on behalf of the admission authority;
 - g. a copy of the Academy agreement between the Trust and the Secretary of State, and
 - h. a copy of the determined arrangements.
6. I have also taken account of information I received during a meeting which I convened on 19 September 2017 at the school, and of information provided to me subsequently by the school and the local authority.

Other Matters

7. When I examined the school's determined admission arrangements, I was also concerned that there were a number of matters which may cause further breaches of the Code and I therefore sought the school's comments on these. My concerns were that (with relevant paragraphs of the Code given in brackets):
- (i) the arrangements were not dated. Since annual determination of admission arrangements is required, I was concerned that it is unclear to any reader to which year the undated admission arrangements published by the school refer (paragraph 14);
 - (ii) the arrangements did not state clearly how many places are available in Year 7 (i.e. what the PAN is) (paragraph 14);
 - (iii) the arrangements contained an erroneous statement about admission by ability which rendered the arrangements unclear, (paragraph 14);
 - (iv) the arrangements do not comply with the requirements relating to the admission of children with a statement of special educational needs or Education, Health and Care plan (paragraph 1.6);
 - (v) the reference to "children in care" did not conform to that set out in the Code (paragraph 1.7);
 - (vi) the arrangement did not set out the catchment areas which are used (paragraph 14 and 1.8);
 - (vii) no final tie breaker was included (paragraph 1.8);
 - (viii) the arrangements contained no statements conforming to those required concerning admissions to Reception (Year R) (paragraph 2.16) and concerning admission outside the normal age group for a child (paragraph 2.17);
 - (ix) the admission arrangements for the school sixth form failed to conform to the requirements of the Code (paragraph 2.6); and

- (x) the arrangements required parents to complete a supplementary information form which does not meet the requirements of the Code (paragraph 2.4).

8. At the meeting which I held with the parties, I also said that in addition to the referrer's complaints about the effect of the priority which is given to siblings in the school's arrangements, I was concerned that this may cause the arrangements to be unfair and so breach paragraphs 14 of the Code.

Background

9. Bede Academy is an academy school for children aged between three and 18 which is a member of a multi-academy Trust, The Emmanuel Schools Foundation (the Trust). It was first established as an academy school in 2009 and joined the Trust in 2017. The school has a designated religious character of Christian. The town of Blyth in which the school is located is served by one other secondary school and several primary schools and these form what is known locally as "the Blyth partnership of schools".¹ Each of the secondary and primary schools has a defined catchment area, with that of the secondary schools covering the catchment areas of a group of primary schools or parts of these areas.
10. The school is located on two sites, one for Year 7 and above, the other for Year 6 and below. For admissions to Year R, a catchment area which is the same as that which was employed for admissions to the former primary school on the site is used. Similarly, for admissions to Year 7 the catchment area of the former secondary school is used. So the catchment areas used for the two points of admission to the school are not the same, and that used for Year 7 admissions is much larger than that for admissions to Year R, which it encompasses. In this determination, I refer to the catchment area for Year R as the primary catchment area and the catchment area for Year 7 as the secondary catchment area. The secondary catchment area of Bede Academy comprises the catchment areas of New Delaval Primary school, the Bede Academy primary catchment area and part of the catchment areas of Blyth Newsham Primary school and of Croftway Primary school. The school has a published admission number (PAN) of 90 for Year R and 105 for Year 7. The PAN for Year 7 relates only to children joining the school at that point for the first time and not to those who will be transferring from Year 6. The total number of Year 7 places is accordingly 195.
11. There are eight primary schools in Blyth (including the primary site of Bede Academy). Three are members of The Blyth Quays Trust, and these give a higher priority to all siblings than to those living in the school's catchment area in their admission arrangements. Three schools are community schools and give a higher priority to those living in their catchment area than to children who live outside the catchment area but have a sibling at the school and the eighth school, which is a Roman Catholic Voluntary Aided school,

¹ The local authority has described this to me as consisting of each secondary school and its "feeder" primary schools, some of which appear in the list for both secondary schools. The primary schools do not act as feeder schools in terms of school admissions and it is therefore unclear to me why the term is used.

gives priority on the grounds of faith and then by distance to the parental home. Of the three schools closest to the Bede Academy primary site, and therefore to those living in its catchment area, two are community schools and so give a higher priority to those living in their own catchment area than to siblings. These are New Delaval Primary school and Blyth Newsham Primary school.

12. I was able to access a copy of what were said to be the admission arrangements for Year R and for Year 7 on the school's website when I looked there on 7 June 2017, and was supplied by the school with a document which it said was "*a copy of our admission criteria*" later that month. This was a list of the oversubscription criteria contained within the arrangements. The school has provided minutes of a meeting of the governors' Finance and Audit Committee dated 11 January 2017. It has also subsequently provided me with the scheme of delegation operating within the Emmanuel Schools Foundation, and that of the Bede Academy governors. I am satisfied that the arrangements were appropriately determined by the governors' sub-committee on 11 January 2017.

13. The arrangements start by saying:

"The Bede Academy Admissions Policy determines admissions to its places in Reception and Year 7: 90 for Primary Years and 195 for Secondary Years"

and that:

"Although Academies have been given the right to choose up to 10% of their Year 7 intake on ability, Bede Academy has refused to take up this means of selection, preferring a system which does not discriminate against a child on the basis of intelligence."

This is followed by:

"When oversubscribed, Bede Academy allocates its places at annual intake in Reception and Year 7 against priorities of:

- *Children with an Educational Health Care Plan (sic)*

First priority is given to children with a Statement of Special Educational Need or Educational Healthcare Plan (sic) where Northumberland County Council and Bede Academy agree that the Academy is the most appropriate school to meet their needs."

14. The remaining places are allocated firstly to "children in public care", then to those with exceptional medical or social need (as defined), then to children already having a sibling (as defined) at the school, then to those living in the "published catchment area for the Academy" and finally on the basis of distance from the child's home to the Academy "*measured by walking in the shortest possible line without entering private property*".

15. The following is what is to be found on the school's website under the heading "Sixth Form Entry":

"Entry into the Sixth Form will be open to any student through written application, interview with the Senior Management Team and an offer made subject to examination results at 16+, especially GCSE. The same priorities and decisions regarding oversubscription will exist as those in place for Years 7-11 and numbers are funded to a maximum of 350 in future Years 12 and 13 combined. External applicants at Year 12 will only be offered a place after all students from Bede Academy's own Year 11 have had their destinations resolved."

Consideration of Case

a. The priority given to siblings

16. The school has determined common oversubscription criteria for admissions to Year R and to Year 7. I was able to establish at the meeting which I held with the parties that it was the effect of the arrangements on admissions to Year R that were the referrer's cause of concern. In particular, the referrer says that the priority given to siblings of children already attending the school in any year group over that for those who live in the primary catchment area means first born or only children living in the primary catchment area cannot gain places at the school. She points out that the secondary catchment area is much bigger than the primary catchment area and that the arrangements confer on Year R children living there who have a sibling of secondary age at the school a higher priority for a place in Year R than that given to a first child living in the smaller primary catchment area who does not have such a sibling. Further, she says, because other nearby primary schools prioritise those living in their own catchment areas, Year R children with a secondary age sibling living in the larger secondary catchment area will have a priority for a Year R place also at their local primary school while those living in the school's primary catchment area who are refused a place are then at a disadvantage in securing an alternative place at a school close to their home. This was the referrer's own experience when seeking a place in Year R for September 2017. The referrer's daughter now attends a school which is outside the Blyth partnership of schools which I described above.

17. The referrer considers that the arrangements are unreasonable and unclear and that they unfairly disadvantage first born children living in the primary catchment area, and that each of these causes a breach of paragraph 1.8 of the Code. I raised with the school at the meeting which I held that my own concern was that this effect may render the arrangements unfair, and so cause a breach of paragraph 14 of the Code, which says that *".....admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective"*.

18. I shall consider first the referrer's concern that the priority given to siblings is unreasonable. I need therefore to come to a view about:

(i) the school's reason for giving a higher priority to all siblings than

to all those living in the catchment area;

(ii) the school's reason for giving priority within this group of children to those whose older brother or sister is in Year 7 or above at the school;

(iii) the effect, which each of these aspects of the arrangements has.

19. In explaining why it gives priority at all to those children with older siblings, the school has referred to its Christian ethos, and said that:

“.....we believe that it is important to retain and strengthen the unity within families as well as endeavouring to minimise hurdles to the education of those children, and as such sibling link (sic) was given a higher priority. Bede Academy seeks to put families and the community at the heart of everything we do rather than to split and divide families contributing to further stresses because of a criteria (sic) that could potentially send one child in the same family to one school and the other child to another.”

20. This approach is of course laudable. It is also logical in nature because it will obviously assist the daily cohesion of family life when children from the same family go to the same school. So I am of the view that the school's grounds for giving such priority are not of themselves unreasonable.

21. Secondly, there is the question of the priority given to those with siblings who are of secondary school age. At the meeting, the school referred to the benefits of all-through schooling as a reason for giving priority in making new admissions to Year R to those with siblings in any part of the school. However, it was not able to expand on the reason for linking these matters at the time, and declined to do so when I wrote to it following the meeting specifically inviting this. It seems to me that while for an individual child there may indeed be a benefit of all-through schooling, it does not follow that this is a reason for all children in the same family to be in the same school as each other. For the 90 children admitted to Year R, all-through schooling is a possibility, but this cannot be the case for the 105 children which the school admits at Year 7, since they will have had their primary education elsewhere. It makes no difference in terms of obtaining or not obtaining all-through schooling whether a child admitted to Year R has an older sibling at the school or not. The two matters are separate in my opinion, as I suggested to the school when I met them. The school has not come forward with any further reason for me to consider on this point and so I am of the view that the school's practice fails to meet the requirement of reasonableness, because the reason given for it lacks a logical basis. For this reason, I am of the view that the oversubscription criterion which gives priority to siblings of Year R of children whose older sibling is of secondary school age is unreasonable in nature, and so causes the arrangements to breach paragraph 1.8 of the Code which says that “...oversubscription criteria **must be reasonable, clear, objective, procedurally fair....**”.

22. Thirdly, I consider the effect of the arrangements. In its initial response to the referral, the school said that the number of children living in the primary

catchment area who were not successful in securing a place should be seen in the context of the preferences which they had expressed, and that it did not have this information. It said that 64 children had been allocated a place in Year R in September 2017 because of a sibling link but that “*only 9 of these had a sibling link in years 7 and above.*” 23 children had, it said, been admitted because of the priority afforded to those living in the catchment area. No further children were admitted, meaning that the school was full at this point, with some children living in the primary catchment area failing to secure a place.

23. In its response to the referral, the local authority confirmed that children living in the Bede Academy primary catchment area were subject to the effect described by the referrer and gave me the details of some children who live in the primary catchment area but who were unable to obtain a place at the school in Year R for September 2017 and who are now attending a school at some distance from their home.

24. The local authority has subsequently provided me with information concerning all those children living in the catchment area who, for admissions in September 2017 and September 2016, had sought a place in Year R at Bede Academy but who were unsuccessful. The school has seen this information but did not comment on it. In September 2017, there were 19 unsuccessful such applicants, of whom 11 had made the school their first preference. The schools which these 11 children are now attending are:

School attended	Number of children	Distance of school from Bede Academy primary site (my measurement from Googlemaps)
Seaton Sluice First	5	2.5 miles
St Wilfred's RC VA Primary	2	1.1miles
Croftway Primary Academy	1	0.9 miles
Malvins Close Primary Academy	1	1.4 miles
Northburn Primary	1	2.0 miles
Marine Park First School, North Tyneside	1	4.7 miles

25. For these 11 children, six of the schools finally attended are second preferences, and two are third preferences. Three parents had none of their original preferences met, the three schools where places were finally secured being Marine Park, Northburn and St Wilfred's.

26. For admissions in September 2016, 11 children living in the primary catchment area did not obtain a place at Bede Academy in Year R, seven of whose parents had made it their first preference. Four of these were admitted to Seaton Sluice First School and one each to Croftway Primary School, St Wilfred's RC VA Primary School and Felton CE Primary School

(which is 14 miles distant). All of the seven parents obtained a place at their second or third choice school.

27. The data which I have set out above show the number of families who live within the primary catchment area who have sought a place at the school as their first priority but who were not admitted, for the two most recent admission rounds. The school has told me that in 2017, 64 children were admitted because of a sibling link, the effect of this being that 23 places remained available for children living in the catchment area who had no sibling already at the school. Of the 64, 53 were living in the primary catchment area, but 11 were not, and nine of the 11 had their elder sibling in Year 7 or above at the school. These children were admitted ahead of any child who lived in the primary catchment area without a sibling at the school, and as I have set out above, 11 families living in the catchment area who made the school their first choice were refused a place for their child.
28. Giving some priority to children with older siblings at a school has its place, because it recognises for instance the need for parents, particularly those of the youngest children, not to have to transport or accompany them to different schools on a daily basis. However, it is at least equally important in my view that very young children are able to access a reasonably local school. This school is in an area where the very great majority of primary schools have a catchment area (the exception being a school with a religious character). These schools all give priority to those living in their own catchment areas over those living outside them, either before or after siblings of children already in attendance. In such circumstances, unless they are fortunate in having a sibling already there, children will lack significant priority for a place at a school (without a religious character) which is not their catchment area school. So not being able to secure a place at their catchment area school if their parents wish it may well mean a longer journey to an alternative school which does have a place. So a balance needs to be struck between these two groups – those with older siblings, and those seeking a place at their catchment area school. The Chief Adjudicator has pointed out in recent annual reports that this balance has been struck elsewhere by giving a higher priority to those living in a school's catchment area, with those with siblings being given the highest priority, followed by those living outside the catchment area, with those with older siblings again being given higher priority.
29. This need for there to be a balance would exist even if the older siblings involved were only those of primary age. What the school does however, is to give priority to those seeking a place in Year R who have an older sibling in any year at the school, including those in Year 7 and above. Far from balancing the needs of the two groups in question, what the school does is to favour those with siblings to a greater extent than could any school which catered only for children of primary age. As the objector has pointed out, the catchment area for the secondary years of the school is much larger geographically than that used for the primary years and the effect on admissions in 2017 was that nine of the 11 children admitted to Year R at the school because of the sibling priority were living outside the primary catchment area with an older sibling in the secondary years at the school. My view is that this effect is unreasonable, given the inability of 11 parents

living in the primary catchment area to secure a place at the school for their child. This is a further reason why I am of the view that the inclusion by the school of older siblings of secondary school age for the purpose of giving priority to siblings of children for admission to Year R breaches paragraph 1.8 of the Code. I note in addition that as the primary provision is located nearly two miles from the secondary provision by the shortest travelling distance, there is no practical benefit to parents in terms of taking children to only one site if the older sibling is of secondary age.

30. Although this did not form part of the referral, I think it is most helpful to the reader if I consider at this point my own concern that the arrangements may also be unfair since I need to test the fairness of this aspect of the arrangements by the effect which they have and whether any group of parents is being unfairly treated as a result. I had expressed my concern about the fairness of the arrangements at the meeting and wrote subsequently to the school inviting it to comment, but it declined to do so.

31. The data above shows that for a not insignificant number of children living in the school's primary catchment area who sought a place there, in both years for which I have the relevant information, a primary school place has only been secured at some distance from their home. I have viewed raw live birth data and data from GPs which the local authority has made available to me and the other parties to this case. While not amounting to a refined pupil forecast, these figures do support a picture of a generally consistent level of need for Year R places within the primary catchment area of the school in coming years. Neighbouring schools are oversubscribed and the strong likelihood is therefore that under the existing arrangements the effect seen in the last two years will be repeated and that a number of children living in the primary catchment area and seeking a place at the school will be unsuccessful, even if exercising a first choice for a place there, and that their eventual school place may well be quite distant. The neighbouring schools in the Blyth conurbation are oversubscribed, and while the data I have been given by the local authority shows that some parents living in the Bede primary catchment area obtained places there in 2017 (two at Croftway and four at Newsham), it is also the case that parents who had expressed a first preference for Bede and were unsuccessful, were also unsuccessful in obtaining a place at one of their neighbouring schools in Blyth even though they expressed a second or third preference for them. There were two such cases in 2017. Bede is geographically on the southern edge of the conurbation, and so the next nearest schools for parents without a place at their catchment area school or their next nearest school must seek one further across the town or at a greater distance in the adjoining rural area. For very young children and their parents, and particularly for parents of more than one child whose first child is refused a place and who may only secure places at different schools which are themselves at some distance from each other, this creates a very real hardship. My view is that this means that an unfairness has been created for some children who live in the school's primary catchment area because the arrangements give those living there a lower priority than that given to children with siblings of secondary school age at the school. This renders the arrangements unfair and in breach of paragraph 14 which requires that admission arrangements as a whole are fair.

32. I have said that it is unreasonable and unfair for the arrangements to include older siblings of secondary school age when giving priority for admissions to Year R. I have also considered whether it is unreasonable and unfair that the arrangements give a higher priority to all children with older siblings in the primary years of the school than to all those living in the school's primary catchment area. The data shows that the removal of the link with secondary age siblings would considerably ameliorate, at least in the short term, the situation for those living in the school's primary catchment area. For example, in 2017 there would have been nine further places available to this group, eleven of whom were unsuccessful with their expressed first preference for a place at the school. Nevertheless, it also seems to me to be clear from my examination of the available data that the potential for the arrangements to have an effect which is unreasonable currently exists, even if they are amended to sever the link with secondary age siblings. I do not, however, consider the evidence to that effect to be compelling and so I do not find that it is unfair for the school to give priority to children with siblings in primary age groups over those who live in the primary catchment area. That said, if the pressure for places at the primary part of the school increases, that situation could change, and the school should be conscious of this possibility and of the changing local demographics when it revises its current arrangements.
33. The referrer also says that the arrangements are unclear, because she initially understood them to mean that siblings of children already attending the academy's primary site were those given priority for admission to Year R, not siblings of children in any year of the academy. However, the arrangements do state clearly that sibling priority is given to "*Children who have a sibling who is already in the Academy*". I do not regard this statement as unclear, and I do not believe that the arrangements breach the Code for the reason which the referrer gives.
34. The referrer also says that that the priority given to siblings "*unfairly disadvantages first born children living in the catchment area*", citing paragraph 1.8 which stipulates that admission authorities must ensure that arrangements do not "*disadvantage, either directly or indirectly, a child from a particular social or racial group...*". This statement in paragraph 1.8 is concerned, in my view, with the need for oversubscription criteria to be written in such a way that they do not discriminate unfairly within a group of children by doing so on the grounds of race or social class. No evidence has been presented to me that the arrangements have any such effect, and neither can I see that first born children form a racial or social group of the type to which paragraph 1.8 refers. I do not agree with this aspect of the referral.
35. I have considered above the common set of oversubscription criteria which the school has determined for admissions to Year R and to Year 7 as these apply to admissions to Year R, since this was the focus of the referral. I have made it clear to the school that I am considering the arrangements as a whole and therefore how they apply to admissions to Year 7. The school may of course determine different arrangements for the two points of admission if it chooses. In revising its arrangements in order to comply with this determination the school will therefore need to take into account my

reasoning in relation to Year R admissions when it decides what arrangements are appropriate for Year 7, and also the outcome of the consultation which it has a statutory obligation to carry out prior to determining them.

b. Consultation

36. I turn now to the other aspects of the referral. The school has readily accepted in this case that it has failed to consult on its admission arrangements in the last seven years. There is now a new admission authority for the school, the Academy Trust of the Emmanuel Schools Foundation, which is legally required to consult, albeit through the local governing body of the school in accordance with its scheme of delegation, in the manner laid out in the Code prior to determining its admission arrangements for September 2019. I am aware that at the time of completing this determination, that consultation has quite properly begun.

c. The measurement of home to school distances

37. The referrer complained that the means for measuring the distance between the school and parental homes as set out in the arrangements is unclear. The arrangements say that home to school distances are:

“...on the basis of the closeness of their home’s front door to the front gate of the Academy, measured by walking in the shortest possible line without entering private property”.

38. Paragraph 1.13 of the Code says:

*“Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances will be measured.”*

In correspondence, the school has explained that it employs a commercial enterprise which uses Ordnance Survey information to “geocode” addresses. It instructs the company to calculate distances via “*the shortest legal walking route*”, but does not say how the term “legal” is employed in determining routes. Part of the correspondence concerning this matter involving both the school and the referrer also included reference by the school to “safe” walking routes, which the referrer said was not a consideration which emerged from the wording in the arrangements, which I agree is the case. The school in correspondence did explain what it meant by the term “safe”, but this does not appear in the arrangements, which themselves make no reference to safe routes.

39. The school has to ensure that the admission arrangements themselves contain all the information required to satisfy the requirements of the Code. Essentially, a parent must be able to understand how home to school distances are measured in such a way that they can verify them for their own address should they so wish. The arrangements as determined do not allow for this in my view, since they do not make sufficiently clear the basis on

which routes between parental homes and the school are actually determined prior to them being measured. The arrangements breach paragraph 1.13 of the Code.

40. The referrer also complained that this lack of clarity causes a breach of paragraph 1.8 of the Code. This paragraph requires that oversubscription contained within admission arrangements **must** be clear. Since the measurement of home to school distances is not explained clearly, the oversubscription criterion in the arrangements which employs them is also not clear, and I am of the view that the arrangements also breach paragraph 1.8 of the Code.

d. The reasonableness of the school's catchment area

41. The referrer says that the "primary" catchment area breaches paragraph 1.14 of the Code which says:

*"Catchment areas **must** be designed so that they are reasonable and clearly defined"*

because it is unreasonable, since children living there are unable to secure a place in Year R at the school. In effect, she says, the school does not serve the catchment area and the effect of this on some children is unreasonable. The school did not respond to this point. From an inspection of the maps which have been made available to me, it is evident that the primary catchment area is part of a pattern of primary school catchment areas that cover the town, and I have been told that the school continues to use the same catchment area which was originally defined by the local authority. There seems to me to be nothing unreasonable in that, and no further argument has been put to me. It is in fact the combined effect of the arrangements and the catchment area which have the effect on some children that the referrer complains is unreasonable, not the definition of the catchment area itself. I have already considered these matters above. I do not believe that the school's catchment area is unreasonable in its design.

Other matters

42. The school did not respond to my concern that the arrangements which appear on its website, and as it provided to me in its response to the referral, are not dated. It is plainly of importance that admission arrangements should be dated, since they are determined annually by every admission authority. Parents must know to which year admission arrangements apply, and therefore whether they are those relevant to the admission of their child to the school. Since the arrangements published by the school do not state this, they are unclear and in breach of paragraph 14 of the Code.

43. The arrangement say that there are "195 places" in Year 7. The local authority composite prospectus for admissions to secondary schools in September 2017 says "*Bede Academy...has 105 places to allocate to (sic) Year 7 in order to achieve the Published Admission Number of 195*". The PAN for an age group to which children are normally admitted in a school is the number of places which are available for such admissions. The

year-group size at the school is 195, but 90 of these children (assuming the year group is full) will already be on roll at the school and will transfer from Year 6 into Year 7. The school's PAN for Year 7 is therefore 105 and not 195, and it is this figure which should be clearly stated as part of the school's admission arrangements. Since the arrangements fail to do this, they are unclear and in breach of paragraph 14 of the Code, which states that:

"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

44. The arrangements contain the following:

"Although Academies have been given the right to choose up to 10% of their Year 7 intake on ability, Bede Academy has refused to take up this means of selection, preferring a system which does not discriminate against a child on the basis of intelligence."

The school has said to me that its Academy agreement allows it to "admit 10% of high ability students", but has provided no documentary evidence to support this statement although it has had every opportunity to do so. The school confirmed to me in a letter dated 20 June 2017 that "the requirements which are in the school's funding agreement concerning the admission of pupils remain those set out in the school's funding agreement dated 2007". I have obtained a copy of this funding agreement and examined it in detail. It contains no provision for the admission of children on the basis of ability, and the school does not appear in the list of partially selective schools published by the Department for Education (August 2016).

45. On the basis of the evidence in front of me, I must conclude that the school is in error in believing it is permitted to select children by ability, and that the statement contained within its admission arrangements is incorrect and in fact misleading. Although the statement does not affect the making of admissions to the school in a practical sense, it is hard to understand why it should appear in its admission arrangements if not to have some influence on parents considering whether or not to seek a place there. The statement makes the arrangements unclear in breach of paragraph 14 of the Code.

46. The arrangements clearly state that children whose statement of special educational needs or Education, Health and Care plan are admitted "as a first priority". Paragraph 1.6 of the Code says:

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

This makes it plain that the process of admission for children with an SEN or EHC plan stands outside that for other children, and that the requirement to admit is mandatory in nature in their case. Admission arrangements should not give the impression that such admissions take place under the school's oversubscription criteria, which is what the use of the phrase "as a first priority" does.

47. The arrangements also state:

“First priority is given to children with a Statement of Special Educational Need or Educational (sic) Healthcare Plan where Northumberland County Council and Bede Academy agree that the academy is the most appropriate school to meet their needs.”

Paragraph 1.6 makes it plain that if a local authority, that is, not solely the local authority in whose area the school is located, names the school, the child must be admitted. The school has repeated its understanding of the process in saying to me in correspondence that *“If a child applies to Bede Academy and we are named on the EHC plan and can meet their needs (my emphasis) then those children will be automatically admitted.”* The school has also said that *“we put SEN children at the top of the oversubscription criteria to highlight to parents that the admission of SEN children is a priority for the academy”* and that *“we do have a number of parents who indicate that their child has special educational needs and they do not.”* Such statements lead me to believe that the school does not appreciate the difference between a child with special educational needs and one who has a statement of special educational needs or Education, Health and Care plan, who will be a child with the most severe special educational needs. Paragraphs 1.8 and 1.9i) of the Code, and the school’s Academy agreement require it not to discriminate against children with special educational needs, that is, to admit them on an equal basis with other children in its admission arrangements. An admission authority could therefore set out an oversubscription criterion giving priority to all children with special educational needs within its oversubscription criteria if it chose to do so, provided this was in accord with other provisions of the Code. However, where these needs are such that a statement is issued by a local authority, the process set out in paragraph 1.6 of the Code applies and children are not admitted under an oversubscription criterion.

48. The school has not referred me to its Academy agreement concerning this matter, but I have seen what is said there about the admission of children “with SEN and disabilities”. This annex to the school’s funding agreement makes clear the distinction between the admission of pupils having special educational needs in general, for whom admission must be *“on an equal basis with others”*, and the process of naming the school in a statement made in accordance with section 324 of the Education Act 1996. This latter process allows for the school not to consent to being named in the statement under specified conditions, and for the Secretary of State to determine whether or not it should be if this happens. If the Secretary of State decides the school shall be named, the school must admit the child. This is consistent with paragraph 1.6 of the Code. What the school says in its admission arrangements however does not reflect this position because it says that it must be in agreement before the child is admitted. The school is in breach of paragraph 1.6 of the Code for this reason, and because its arrangements state that such admissions are under its oversubscription criteria.

49. The arrangements state that after the admission of children with a statement of SEN or EHC plan, the next priority group are *“Children in Public*

Care”. The Code at paragraph 1.7 says that:

*“...the highest priority **must** be givento looked after children and all previously looked after children.”*

The school responded to my concern that the arrangements did not comply with what the Code requires by saying that it would change their wording. However, the arrangements as determined do not conform with paragraph 1.7 of the Code.

50. The Code at paragraph 1.14 says that:

*“Catchment areas **must** be designed so that they are reasonable and clearly defined.”*

The school has at no time responded to my concern that the arrangements do not contain a definition of the catchment areas which it uses for admissions. The arrangements do point out to parents that the catchment area “for admission to the Primary years” is subsumed within the larger catchment area “for the Secondary Years”, but describe neither. The version of the arrangements provided to me by the school contains the statement “If you wish to check your address against this list, you can telephone.....”, but does not explain which list is referred to. The school website provides “application” forms for Year R and Year 7 (discussed below) which say that “the full list of addresses within the catchment area is available via the Bede Academy website”, but I do not consider that either constitutes a clear definition of the catchment areas set out as part of the arrangements themselves. The relevant sections of the local authority composite prospectus state that the two catchment areas are “as defined by Northumberland Local Authority and agreed by the Academy”. It is obviously helpful that the catchment areas used by the school respect the pre-existing pattern, but it is not the case that they are defined by the local authority. They are as determined by the school in its admission arrangements, which must conform with paragraph 1.14 by setting them out clearly. The arrangements fail to do this and this causes them to be unclear in breach of paragraph 14 of the Code. They also employ unclear oversubscription criteria as a consequence, in breach of paragraph 1.8.

51. Paragraph 1.8 of the Code, in addition to requiring that oversubscription criteria are clear, says:

*“Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applicants that cannot otherwise be separated.”*

The school has not responded to my concern that since distance measurements alone cannot be guaranteed to act in this way, the arrangements contained no effective tie-breaker. The arrangements fail to comply with the above requirement in paragraph 1.8 of the Code.

52. Paragraph 2.16 of the Code states:

*“Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:*

- a) that child is entitled to a full-time place in the September following their fourth birthday;*
- b) the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and*
- c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”*

The school admits children at Year R, but its arrangements contain none of the statements required by paragraph 2.16.

Paragraph 2.17 of the Code states:

*“Parents may seek a place for their child outside of their normal age group.....Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”*

No statement is contained in the arrangements which meets the requirement set out in paragraph 2.17. The school has not responded to my concern that this was the case. The arrangements breach paragraphs 2.16 and 2.17 of the Code.

53. I set out in full above what the arrangements say concerning admission to the school’s sixth form. The school did respond to my concern that the arrangements failed to comply with what is set out in paragraph 2.6 of the Code, saying that the sixth form was not oversubscribed. Nevertheless, admission arrangements must be determined for this point of admission which comply with what the Code requires, as for other points of entry. This means that the requirements of the Code as a whole must be met, as well as those specific to sixth forms in paragraph 2.6, which has the following to say:

“Children and their parents applying for sixth form places may use the CAF, although if they are already on the roll they are not required to do so in order to transfer into year 12. Admission authorities can, however, set academic entry criteria for their sixth forms, which must be the same for both external and internal places. School sixth form admission arrangements for external applicants must be consulted upon, determined and published in accordance with the same timetable as for admission arrangements for other entry points. As with other points of entry to schools, highest priority in

oversubscription criteria for sixth form places must be given to looked after children and previously looked after children who meet the academic entry criteria. As stated in paragraph 1.9 m) above, any meetings held to discuss options and courses must not form part of the decision process on whether to offer a place.”

54. The arrangements as determined by the school appear to disregard these requirements. The school has assured me that *“discussions regarding courses and options do not form part of the decision process on whether places are offered.”* However, this is not apparent from the arrangements, where the word “interview” is used. Interviews are prohibited under paragraph 1.9m of the Code. The school has said that applicants for places in the sixth form fill in an application form. Those transferring from Year 11 at the school do not need to apply for a place, as they are already on the roll of the school. Academic entry requirements may be set, but the arrangements say that the entry of a given student will be “subject to examination results”, not that there are general entry requirements which, if met, whether by internal or external candidates, will result in the offer of a place (subject to any oversubscription of the external places). The arrangements say what the size of the sixth form is intended to be, but this is of no interest or value to external candidates considering whether to seek a place. As for other points of entry, a PAN must be determined so that the number of places on offer to external candidates is clear. The arrangements fail to do this. Paragraph 2.6 also makes it plain that sixth form admission arrangements must contain provision for determining which students are offered places if the places available to external candidates are oversubscribed. Oversubscription criteria must therefore be provided which comply with other provisions of the Code. The arrangements fail to provide any such criteria. For all these reasons, the arrangements concerning admission to the school’s sixth form fail to comply with paragraph 2.6 of the Code.

55. The admission arrangements which I located on the school’s website refer to “annual admission forms” and I was able to see there what were referred to as “application forms” for entry to Reception and entry to Year 7. The school is required by its Academy agreement to participate in and comply with the requirements in relation to local authority co-ordination of admission arrangements. This means that parents apply for a place at the school by completing their local authority common application form (CAF). The Code in paragraph 2.4 permits supplementary application forms to be used where an admission authority requires additional information to that available through the CAF in order to apply oversubscription criteria contained within its admission arrangements. I have seen the CAF which the local authority provides, and the parties confirmed to me at the meeting which I held that all applicants for a place at the school complete this form (or that of a neighbouring local authority). The local authority CAF allows parents to provide all the information which is required to apply the oversubscription criteria contained within the admission arrangements, and in such circumstances, an admission authority is not permitted to issue separate “application forms”. The school does so, and is in breach of paragraph 2.4 of the Code.

Summary of Findings

56. I have explained why I am of the view that the higher priority given to children with siblings in Year 7 and above than to those living in the school's primary catchment for admissions to Year R causes the arrangements to be unreasonable and unfair, in breach of paragraphs 14, and 1.8 of the Code.

57. I have also said that the arrangements fail to set out clearly how home to school distances are measured, in breach of paragraphs 1.8 and 1.13 of the Code.

58. I have further set out my reasons for coming to the view that the arrangements breach:

(i) paragraph 14 because they are unclear as a result of being undated, because they do not set out the catchment areas which are used and because they describe inaccurately the potential for the school to admit some children on the basis of ability;

(ii) paragraph 1.6 because they say that children whose statement of special educational need or Education, Health and Care plan names the school are admitted under an oversubscription criterion, and because they appear to place a condition on the admission of these children;

(iii) paragraph 1.7 because they do not include the required description of looked after and previously looked after children;

(iv) paragraph 1.8 because the oversubscription criterion which gives priority to children living in the school's catchment area is unclear, and because no final tie-breaker is provided;

(v) paragraphs 2.16 and 2.17 because they fail to include a statements which describes the admission of children below compulsory school age and deferred early entry to school, and because they contain no description of the process by which parents may request admission outside their child's normal age group;

(vi) paragraph 2.4 because they contain application forms for admission in Year R and in Year 7 which are not required for the application of the school's oversubscription criteria; and

(vii) paragraph 2.6 because the arrangements for admissions to the school's sixth form do not conform to the requirements set out there.

The school will need to amend its admission arrangements for September 2018 to comply with this determination. It will not now be possible for it to do so prior to the deadline of 15 January 2018 for primary school applications, and the deadline for secondary school applications for September 2018 has already passed. The existing arrangements will perforce apply in relation to applications made or shortly to be made for places in September 2018. However, revised arrangements will have their effect for in-year admissions. The school is required by the Code to determine revised admission arrangements for September 2018 no later than 28 February 2018, the date

by which it must also determine its admission arrangements for September 2019.

Determination

59. I have considered the admission arrangements for September 2018 for Bede Academy, Blyth, Northumberland in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the higher priority given to siblings of children of secondary age than to those living in the primary catchment area for admissions to Year R, and in relation to the clarity with which they state how home to school distances are measured, the arrangements do not conform with the requirements. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

60. 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 no later than 28 February 2018.

Dated: 22 December 2017

Signed:

Schools Adjudicator: Dr Bryan Slater