



## DETERMINATION

**Case reference:** REF3346

**Referrer:** The National Education Union

**Admission Authority:** The Local Governing Body of Swindon Academy  
on behalf of the United Learning Trust

**Date of decision:** 23 November 2017

### Determination

I have considered the admission arrangements determined by the Local Governing Body of Swindon Academy on behalf of the United Learning Trust for September 2018 for Swindon Academy, Swindon, in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to the selection of pupils by ability, the arrangements conform with the requirements relating to admissions. I also find that there are 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 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 the National Education Union<sup>1</sup>, (the referrer), about the admission arrangements (the arrangements) for Swindon Academy (the school). The date of the objection is 7 June 2017. The School Admissions Code (the Code) requires objections to admission arrangements for 2018 to be made to the 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 my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements

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<sup>1</sup> At the time the referral was made the referrer's name was the National Union of Teachers (NUT). The National Education Union (NEU) was formed on 1 September 2017 by the amalgamation of the NUT and the Association of Teachers and Lecturers. The NEU confirmed in a letter dated 7 September 2017 that it wished to continue its involvement in this case.

relating to admission arrangements. I am therefore treating the objection as a referral. The referrer argues that the school failed to publish its determined arrangements; that the arrangements include new selection by ability contrary to the requirements relating to admissions and that the arrangements are unclear.

## **Jurisdiction**

2. The terms of the Academy agreement between the United Learning Trust multi-academy trust (the MAT) and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law and the Code as they apply to maintained schools. These arrangements were determined by the local governing body of the school on behalf of the MAT which is the admission authority for the school, on that basis on 6 July 2017. This is several months after the statutory deadline for determining admissions for September 2018 which was 28 February 2017. This does not affect the status of the determined arrangements or my jurisdiction to consider them.

3. One aspect of the referral related to the failure of the admission authority to publish its arrangements in a timely fashion. My jurisdiction under section 88I is limited to the matter of whether the determined arrangements conform with the requirements relating to admissions or not and does not extend to the issue of the date by which the arrangements must be published. I have therefore not considered that aspect of the referral, but I note that the school readily accepted that it had not met the requirements in relation to determination and publication of its arrangements.

4. Having been determined, the arrangements were subsequently varied. This is permitted by Regulation 19 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and paragraph 3.6 of the Code which allow an admission authority to vary its determined arrangements in certain ways and in certain circumstances. In this determination I am considering the arrangements as varied. The varied arrangements were unchanged in relation to the matter of concern to the referrer. I am satisfied that it is within my jurisdiction to consider the arrangements.

## **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 referrer's email of referral dated 7 June 2017 and further comments on the arrangements as determined and as subsequently varied;
- b. the admission authority's response to the referral and supporting documents;
- c. the comments of Swindon local authority (the local authority) on the

referral;

- d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017 and its prospectus for September 2018;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting at which the arrangements were determined in July 2017 and confirmation of their subsequent variation in September 2017;
- g. copies of the arrangements as determined on 6 July 2017 and as subsequently varied on 14 September 2017.

### **Details of the Referral and Other Matters**

7. The referral states that the school's arrangements – through the operation of the school's Grammar Stream - included provision for new selection by ability in contravention of section 99(3) of the Act, section 39(1) of the Education and Inspections Act 2006 and paragraph 1.9d of the Code.

8. When I reviewed the arrangements, I identified the following ways in which they appeared not to conform with the requirements relating to admissions (relevant paragraphs of the Code in brackets):

- a. the definition of previously looked after children (1.7);
- b. how distance from the academy to a child's home will be measured and the arrangements where a child lives for part of the week with each parent following the breakdown of a relationship (1.13);
- c. the supervision of the process of random allocation used as a final tie breaker (1.35);
- d. the process for seeking admission outside the child's normal age group (2.17) and
- e. the right of parents that a child may attend part-time until he or she reaches compulsory school age (2.16c).

### **Background**

9. The school is a sponsored academy sponsored by the United Learning Trust MAT. The MAT's overarching admissions policy explains that: *"Each of our schools has their own detailed admissions and entry policies.. Each United Learning academy is responsible for ensuring that there is a school based [admissions] policy statement and a set of procedures which make clear how the school effectively implements this United Learning policy in their local context and meets relevant regulatory requirements."* Thus, it is for the local governing body of each academy within the MAT to consult on,

determine and publish the admission arrangements for that academy on behalf of the MAT which is the admission authority.

10. The school is a mixed school for pupils aged 2 to 19 and is located in Swindon. It operates from two sites; the pre-school or nursery phases and primary provision operate from both and the secondary and sixth form from one. Admission to the school's nursery is not within my jurisdiction. Admissions to the school at reception (YR) and Year 7 (Y7) are within my jurisdiction. The school has a published admission number (PAN) of 120 for YR and 60 for Y7. The arrangements make clear that the PAN for Y7 covers only pupils who will be joining the school for the first time and not those transferring to the school's secondary provision from its own Year 6 (Y6).

11. Consultation on the arrangements last took place from 20 November 2015 to 31 January 2016 before the arrangements for 2017 were determined. No comments opposing the proposed arrangements were received.

12. As originally determined, the oversubscription criteria for YR and Y7 were as follows:

*“a. A ‘looked after child’ or a child who was previously looked after but immediately after being looked after became subject to an adoption, residence or special guardianship order (see note?[sic]).*

*b. Children with a sibling attending the academy at the time of application. Siblings is defined in these arrangements as children who live as brother or sister in the same house, including natural brothers or sisters, adopted siblings, stepbrothers or sisters and foster brothers or sisters.*

*c. Other children by distance from the school, with priority given to children who live nearest to the academy.*

*i. For secondary admissions distance will be measured between the door of the student's permanent address and the entrance of the main gates of the academy secondary site.*

*ii. For primary admissions distance will be measured between the door of the student's permanent address and the nearest entrance of the nearest primary site.*

*.....In the event of a tie-break being necessary within the criteria b) to d) [sic], this will be conducted through a process of random allocation.”*

13. The varied arrangements for YR and Y7 contained some changes from those set out above. The varied arrangements included the following oversubscription criteria. For ease of reference I have underlined the provisions which are different from those as the arrangements were originally determined:

*“7.1.1 A ‘looked after child’ or previously looked after children.*

Previously looked after children are children who were previously looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order) (see note on page 11)

*7.1.2 Children with a sibling attending the academy at the time of application. Siblings is defined in these arrangements as children who live as brother or sister in the same house, including natural brothers or sisters, adopted siblings, stepbrothers or sisters and foster brothers or sisters.*

*7.1.3 Other children by distance from the school, with priority given to children who live nearest to the academy.*

*7.1.3.1 For secondary admissions distance will be measured between the door of the student's permanent address and the entrance of the main gates of the academy secondary site,*

*7.1.3.2 For primary admissions distance will be measured between the door of the student's permanent address and the entrance of the main gates of the academy primary site measured in kilometres in a straight line (as the crow flies).*

*.....In the event of a tie-break being necessary within the criteria b) to d), [sic] this will be conducted through a process of random allocation.”.*

14. A tab from the school's website homepage "About Us" is headed "Admissions". This main admissions page provides some information and a link to a document described as the admissions policy and which is itself headed "Swindon Academy Policies Admissions Policy for 2018-19 (LO8)". I refer to this document as the "admissions policy document". It sets out the oversubscription criteria as well as covering other matters relating to admission to the school. These include the PANs for YR and Y7, the admission of children with education, health and care plans and the process for applying for a place via the Common Application Form of the local authority area where the child lives. The admissions page on the website does not itself mention the Grammar Stream. The admissions policy document refers to the Grammar Stream as follows: "*Once parents have accepted a place in Year 7 for their child, there will be an opportunity for pupils to take the entrance exam for a place in the Grammar Stream*". That is the only reference to the Grammar Stream in that particular document. I note here that on the school's website there are references both to an "entrance exam" and an "entrance test". I am satisfied that these different terms refer to the same thing and that is the test/exam used to decide whether a child is to be offered a place in the Grammar Stream. In this determination I have referred to the "entrance exam" other than where I am quoting from one of the parties.

15. Another of the tabs under "About Us" is headed Grammar Stream. This takes the reader to a page which gives some information about the Grammar Stream and, in addition, has a number of links to further pages giving more

detailed information. It is worth setting out in full the information provided on the main Grammar Stream page. It says:

*“What is a Grammar Stream?”*

*Swindon Academy Grammar Stream was launched in September 2016 and is the only Grammar Stream in Swindon. A Grammar Stream is an educational arrangement whereby a group of students are educated in a mainstream school, but follow a Grammar School-style curriculum that is taught by subject specialist teachers. All pupils in the Grammar Stream have been identified as having the ability to understand the level at which work is taught, meaning that the teacher has less differentiation to address in their teaching and the group will make good progress together.*

*A Grammar Stream has several advantages over Grammar Schools: firstly, a Grammar Stream in Swindon enables local pupils to enjoy a Grammar-style curriculum, without having to undertake a long bus journey twice daily to Grammar Schools outside of the Swindon area. Secondly, pupils who attend the Grammar Stream are from a variety of backgrounds and are mixed gender, meaning that pupils learn how to socialise and communicate effectively with others.*

*Swindon Academy is well-placed to provide a Grammar Stream for several reasons: Firstly, we have a highly successful partnership with Marlborough College, a prestigious school who supports the educational experiences of our pupils. Secondly, Swindon Academy was rated a ‘Good’ by Ofsted in May 2017 in all areas. Thirdly, Swindon Academy is the top school in Swindon, and in top 20% of schools nationally, for student progress. Finally, GCSE results were the highest ever with year 11 pupils achieving 61% 5A\*-C, including English and maths.”*

16. Other tabs from the Grammar Stream main page lead to pages covering the entrance exam for the Grammar Stream, how to register a child for the exam and for taster sessions, the involvement of Marlborough College, the view of pupils in the Grammar Stream and the launch of the Grammar Stream.

17. The school has not been oversubscribed at Y7 in recent years and so has not had to apply its oversubscription criteria. Every child who wanted a place at the school has been able to be admitted.

18. The school was last inspected by Ofsted in May 2017 and judged to be good in all categories. At its previous inspection it had been judged to require improvement.

## Consideration of Case

19. The referrer's concern is that the arrangements amount to a "*Breach of SSFA section 99(3) that "No admission arrangements for a maintained school may make provision for selection by aptitude" and/or EIA2006 section 39(1) prohibition on "selection by ability and/or School Admissions Code paragraph 1.9 "must not ... introduce any new selection by ability".*

20. The provisions referred to read as follows:

- a. Section 99(3) of the Act: "*No admission arrangements for a maintained school may make provision for selection by aptitude unless they make provision for a permitted form of such selection.*"
- b. Section 39(1) of the Education and Inspections Act "*(1) No admission arrangements for a community, foundation or voluntary school may make provision for selection by ability unless—*
  - (a) *they make provision for one of the permitted forms of such selection mentioned in section 99(2) of the School Standards and Framework Act 1998, or*
  - (b) *the school is a grammar school.*"
- c. 1.9d of the Code "*It is for admission authorities to formulate their admission arrangements but they **must not**: ...d) introduce any new selection by ability". A footnote to 1.9d then adds "*There is a general restriction on selection by ability. Only designated grammar schools or schools with partially selective arrangements which already had such arrangements in place during the 1997/98 school year are permitted to continue to use selection by ability.....*"*

21. Section 99(3) of the Act is not in fact concerned with selection by ability but rather selection by aptitude. There is no suggestion by the referrer that the school's arrangements include any element of selection by aptitude (as permitted by the Act or otherwise). It is section 39 of the Education and Inspections Act 2006, part of which is set out above, and which is headed "General restriction on selection by ability" which prohibits the introduction of new selection by ability. I have accordingly tested the school's arrangements against the requirements of section 39 of the Education and Inspections Act and the requirements of paragraph 1.9d of the Code as well as against the definition of admission arrangements set out in the Act and glossed in the Code.

22. For the avoidance of doubt, I record that the school is not a grammar school and that it has no previously existing partial selection. By "*previously existing partial selection*", I mean such selection in place since the 1997/98 academic year and permitted by sections 99(2) and 100 of the Act and paragraphs 1.21 and 1.22 of the Code.

23. The process used by the school in assigning children to the Grammar Stream is set out on the Grammar Stream pages of the school's website

which I described above. The process can be summarised as follows (all dates relate to admissions in 2018):

- a. information evening held on 12 September 2017 about the Grammar Stream;
- b. places in Y7 at the school are allocated (if the school is oversubscribed – which it has not been to date) to children applying from outside the school on the basis of the oversubscription criteria set out above. Children in Y6 at the school automatically transfer to Y7 unless they choose to apply to another school and are offered and accept a place at another school. Places are allocated by the local authority in which the child lives on national offer day (1 March 2018);
- c. parents accept a place at the school by 15 March 2018;
- d. after 15 March 2018, invitations are sent to take the entrance exam for the Grammar stream to children whose parents;
  - i. have accepted a place at the school or decided in the case of children in Y6 at the school that they will remain at the school, and
  - ii. have registered their children for the exam;
- e. entrance exam for the Grammar Stream is held on 21 April 2018;
- f. parents are informed if children will be offered a place in the Grammar Stream within two weeks of 21 April 2018.

24. The question for me is whether the introduction by the school of its Grammar Stream in 2016 and the continued operation of the Grammar Stream since then amounts to the introduction of provision for new selection by ability in the school's admission arrangements. If it does, then the arrangements would not conform with the requirements relating to admissions as they would breach the prohibition on the introduction of new selection by ability.

25. As the admission arrangements make clear, and the process outlined above illustrates, the question of whether a child will be part of the grammar stream only falls to be decided after a place at the school has been offered and accepted. It is what happens during that later process that gives rise to this referral. The referrer argues that:

*“...while the “entrance exam” does not inform the immediate question of whether a child gets a place at Swindon Academy in the first place, it does inform whether the child is admitted to (and then remains for the rest of their secondary education in) a “place” in the Grammar Stream.*

*Consequently, in its content, timing and effect, the “entrance exam” is entirely bound up with Swindon Academy’s core admissions*



*process and forms part of the Academy's "arrangements for admission of pupils to the school" and thus its "admissions arrangements"*.

26. "Admission arrangements" are defined in section 88(2) of the Act as: "*...admission arrangements" in relation to a school means "the arrangements for the admission of pupils to the school, including the school's admission policy"*". Footnote 4 attached to paragraph 5 of the Code says: "*Admissions arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*"

27. The referrer argues that admission arrangements "therefore goes wider than simply the school's "admissions policy" and covers all matters (including all published documents) dealing with the admission of pupils to the school." The referrer then argues that "*Other documents on the Academy's web site which describe any part of the overall arrangements for admissions are also therefore part of the Academy's admissions arrangements for the purposes of SSFA/EIA/Admissions Code.*"

28. I have noted above that a number of pages on the school's website deal with the Grammar Stream. The referrer considers that:

*"The clear impression given in available material on the school's website is that the "Grammar Stream" is separate from the "main academy" and that once a pupil has gained a place "in the Grammar Stream", they will remain within the Stream throughout their time at the school. The further clear implication of this is that pupils in the "main academy" will not have the opportunity to enter the Grammar Stream at a later point. Those features of the Grammar Stream distinguish it factually and legally from other systems of streaming within a school which simply relate to the ongoing operation of the school from year to year, including those in which some groups of children receive extra input for a particular period. That is because here pupils are not able to enter the stream after admission to the main academy, and that also pupils who are in the Stream do not move out of it into the main academy.*

*For example, the document describing the launch of the scheme in 2015 explained that the Grammar Stream (also called the Academic Stream in that document) would "provide places for up to 30 highly able 7 year pupils each year and continue throughout their secondary schooling." [emphasis added by referrer]*

29. The referrer concludes that the school has introduced new selection by ability.

30. The school in its response to the referral argued that the referrer "was trying to construct an argument for the radical extension of admissions law beyond its intended [and actual] meaning and purpose – he wishes the Schools Adjudicator to rule on a question of grouping within a school. This is

*not a legitimate use of the Office of the School [sic] Adjudicator". The school also says that it is not correct that there is no movement into and out of the Grammar Stream. It said that: "There will, for example, be movement in and out of the Grammar Stream over time. During this academic year [that is the 2016/17 academic year], one pupil has left the Grammar Stream to join "mainstream" classes. Two new pupils who have joined the school have been placed in the Grammar Stream and seven pupils have joined the Grammar Stream from mainstream classes."*

31. I have set out above the legal definition of admission arrangements and the Code's gloss on this. In line with these, I consider that admission arrangements do indeed, as the referrer argues, comprise more than a school's admissions policy document. Admission arrangements include, for example, any supplementary information form (SIF) used by a school. They would also include any test or exam which plays any part in determining whether a child is eligible for a place at a school in a grammar school or what priority an application should be given in the case of a school which has partial selection by ability or aptitude or which uses banding. Admission arrangements can include practical assessments of musical or sporting aptitude in the case of schools which give priority to those with aptitude respectively in music or sport. As required by the Code, admission arrangements must also set out the right of parents for a child below compulsory school age to attend school part-time and for deferred entry and they must provide information about the process for a parent to request a place for a child outside the child's normal age group.

32. The definition of admission arrangements does not, however, encompass everything that might be of interest or relevance to parents considering whether they would like their child to attend a school and whether to apply for a place. An example may be helpful. Some split site schools organise themselves so that children in a particular age group are all on one site. Others offer – as this school does – primary provision from two different sites. A parent applying for a place at the school for his child is doing just that. He is not applying for a place at a particular site. Places will be offered (the oversubscription criteria having been applied if necessary) on the basis of those oversubscription criteria. The school will decide which children will be educated at which site. This process is, however, separate from the application of the oversubscription criteria. The school may ask which site parents would prefer and take this information into account in deciding on the allocation of children to sites once children have been allocated a place at the school. But this process of allocation to sites, including consideration of any preferences as to site expressed by parents, is entirely separate from the process of allocating places at the school. Any description what is involved in deciding which site a child attends – while of interest and relevance to parents – is not part of the admission arrangements. More generally, schools will often publish alongside their admission arrangements information about their curriculum, their ethos, the out of school hours activities they offer, any house system or tutor group system in place and much more. It is far from unreasonable or unusual that schools set out to inform parents about what they offer and that they seek to attract pupils and parents.

33. The timing of the exam for the Grammar Stream is of importance here.

The exam is to be held on 21 April 2018. The national offer day for secondary places is 1 March 2018. The local authority's composite prospectus (as well as the school's website) explains that places must be accepted by 15 March 2018. The school's website and the page of the local authority's composite prospectus both state clearly that a pupil can take the entrance exam for the grammar stream only if he or she has accepted the offer of a place at the school. As the local authority's composite prospectus section on Swindon Academy says: "*If pupils do not pass the entrance exam they are automatically allocated a place in Swindon Academy's mainstream education.*" The local authority in its comments said "*The Grammar Stream at Swindon Academy has very carefully ensured that it sits outside of the schools [sic] Admission Arrangements and can only apply to pupils once admitted to Swindon Academy*".

34. I do not consider that the material on the school's website relating to the Grammar Stream forms part of the school's admission arrangements. For something to be part of a school's admission arrangements it must have some bearing on the question of the allocation or not of places at a school. Admission arrangements do not extend to matters concerned with how the school subsequently organises its provision for the children who have been admitted. The referrer accepts that the Grammar Stream entry exam "*does not inform the immediate question of whether a child gets a place at Swindon Academy in the first place*". The school is not unusual in testing children for the purposes of organising provision (including for the purpose of streaming). It may be more common to carry out such tests after the start of Y7 but the school is not unique in its approach of testing before the beginning of Y7.

35. The school's Y7 cohort will include children transferring there from the school's own Y6 and children joining the school for the first time in Y7. Children in Y6 at the school and transferring to Y7 are not being admitted to the school at all for the simple reason that they are already registered pupils there. For these children at least, the Grammar Stream cannot be any part of the admission arrangements of the school which were relevant only when they joined the school at YR or a later primary age group. So far as the children joining at Y7 are concerned, nothing the referrer has said persuades me that the arrangements for the entrance exam for the Grammar Stream form part of the school's admission arrangements. Whether or not a child takes the exam and his or her performance in the exam does not affect the availability of a place in Y7 or the priority afforded to any application for a place at the school. Taking the exam and performance in the exam make no difference to the question of whether a child will have a place at the school come September 2018. I conclude that the school has not introduced any selection by ability.

36. In its letter dated 7 September 2017, the referrer made a number of additional arguments which I consider in the following paragraphs. The referrer notes that the exam for the Grammar Stream takes place on a Saturday saying: "*this would seem to discriminate against pupils whose parents are less likely to take them for a test on a weekend date*". Elsewhere in the same letter the referrer said: "*I also note that there appears to be no provision in Swindon Academy's admission policy for children admitted outside the normal entry dates for the school year. Do such children have access to the entrance exam for the Grammar Stream? If not, are they being*

*discriminated against?” This could only be a matter for me if I concluded that the entrance exam for the Grammar Stream did form part of the school’s admission arrangements and as explained above, I have concluded that it is not. I note, however, that the school has explained that there is scope for children to join the Grammar Stream after the beginning of Y7 and has described how this has happened since the instigation of the Grammar Stream in September 2016.*

37. The referrer has drawn attention to a statement on the Grammar Stream pages of the website: *“If Swindon Academy is not currently your first preference, you have until Thursday 15<sup>th</sup> March to change your preference by contacting Swindon Borough Council’s admissions department”* The referrer says *“Surely this statement is encouraging parents to apply for a place at Swindon Academy in preference to other local schools in the expectation that their child may get a place in the Grammar Stream – even to the extent of encouraging them to change their preferences after they have been submitted? If so, this supports the case that it is part of an unwritten admissions procedure, part of the admissions arrangements taken as a whole.*

*...[the Grammar Stream pages of the school’s website “includes the information “We strongly advise any parents who are interested in the Grammar Stream to select Swindon Academy as their first choice...”*

The referrer goes on to cite paragraph 1.9 of the Code which provides that an admission authority **must not**:

*“a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;*

*c) give extra priority to children whose parents rank schools in a particular order, including “first preference first” arrangements.”*

38. The referrer continues: *“I consider the information on the website indicates an inducement or lure to parents to place the school as their first ranked choice with the possibility that their child may then get a place in the Stream. This information is part of the admission arrangements for the school considered as a whole.”*

39. It is not in any doubt and not disputed by the school that it is keen that parents who have accepted a place should consider entering their child for the entrance exam for the Grammar Stream. Where – as this school has been for a number of years – a school is undersubscribed, any parent who puts the school as first preference will be allocated a place there.

40. In order to show how I have addressed these arguments, I need to say a little about co-ordinated admission schemes which are mandatory across England. As part of co-ordination, all admission authorities know who has expressed a preference for their school, so they know how many preferences have been expressed and by whom. However, they do not know whether an applicant made the school, their first, second or third preference. “First

preference first” arrangements would give additional priority for a place at a school to applicants who have – as the wording suggests – put that school first on the Common Application Form. Given the way co-ordination works, it would in fact be difficult for an admission authority actually to use first preference first as it simply would not know whether it had been made an applicant’s first preference. Indeed, the only way it could know would be by – unlawfully – asking for such information on a supplementary information form (SIF). Swindon Academy has no SIF and I conclude that it is not using first preference first as an oversubscription criterion. The referrer has not suggested in what way he considers the prohibition on conditionality is being breached. Conditionality is defined in the Code as follows:

*“Oversubscription criterion that stipulates conditions which affect the priority given to an application, for example taking account of other preferences or giving priority to families who include in their other preferences a particular type of school (eg where others school are of the same religious type.”*

41. I have been given no evidence and can myself find no indication that the arrangements of the school include conditionality. As with first preference first, an admission authority would not – unless using a SIF seeking prohibited information – know what other preferences had been expressed by parents.

42. A key purpose of a co-ordinated admissions scheme is to ensure that an offer of one place and one place only is made to every child. There is no scope for a child to “hold” more than one offer. This means that a parent who accepted a place for his child at the school and then tried to change that place if his child did not pass the exam for the Grammar Stream would not and could not have a “reserve place” at another state funded school. Such a parent could decide on learning that his child was not be given a place in the Grammar Stream decide to seek a place elsewhere. However, he would know that the initial allocation of places for all publicly funded schools would have taken place by then. At oversubscribed schools there would be few if any places available.

43. The composite prospectus published by the local authority does make clear to parents that changing their preferences after the closing date for applications can have significant consequences. It says:

*“After the closing date*

- If you wish to change your application after the closing date e.g. if you wish to change the schools you have requested this will make your application late and your application will be considered after ontime applications have been allocated.*
- You are strongly advised to consider the implication of doing this before submitting your change.”*

44. A parent could enter his child for the Grammar Stream test having it in mind that if the child is offered a place in the Grammar Stream he will send the child to the school but if the child is not offered such a place, he will send

the child to a fee paying school or home educate the child. The scope for a parent to make such choices does not make the entrance exam for the Grammar Stream part of the admission arrangements for the school.

45. I do, however, consider that it might be helpful to parents if the school were to include information on its website setting out the implications of late changes of preference.

46. I now come to the elements of the referrer's arguments based on the view and concern that children will not move into and out of the Grammar Stream during their school career. In the original referral quoted above, the referrer asserted that:

*"The clear impression given in available material on the school's website is that the "Grammar Stream" is separate from the "main academy" and that once a pupil has gained a place "in the Grammar Stream", they will remain within the Stream throughout their time at the school. The further clear implication of this is that pupils in the "main academy" will not have the opportunity to enter the Grammar Stream at a later point.....*

For example, the document describing the launch of the scheme in 2015 explained that the Grammar Stream (also called the Academic Stream in that document) would "provide places for up to 30 highly able 7 year pupils each year and continue throughout their secondary schooling." [emphasis added by referrer]

47. The referrer had written to the school in April 2017 and the school had replied on 10 May 2017. In this letter the school had set out its reasons for introducing the Grammar Stream. The school also said in that letter: *"While we guarantee pupils their place in the Grammar Stream for a year, we keep movement into and out of the stream under review year on year, as we would under any other form of setting or streaming."* The original referral stated: *"if [the Principal's] new characterisation of the Stream were accurate then this would also mean that the school's website does not accurately represent the nature of the Grammar Stream and applicants are being misled by the information that the school has provided".* This is on the basis, the referrer argues that *"[the school's argument] is clearly not supported by (and indeed contradicts) the Academy's published documentation: none of the publicly available information which parents are able to access supports these claims about the nature of the Grammar Stream. On the contrary, it is clear that the information on the school's website gives the impression that pupils gain a place in the stream and that they remain within it until they leave the school."* The referrer concludes: *"That itself would be in breach of the Admissions Code"*. The referrer does not say what provision of the Code is thought to be breached. As the referrer suggests parents are being misled, I have considered this argument against the core requirements of the Code that admission arrangements (paragraph 14) and oversubscription criteria (paragraph 18) **must** be clear.

48. I have reviewed the school's website – including the pages specifically devoted to the Grammar Stream. The quote from the launch document which

is given above is the only reference I can find to the issue of whether children joining the Grammar Stream will or will not be expected or able to remain there for the duration of their secondary schooling. I note that the quote does not address the question of children joining the Grammar Stream after the beginning of Y7 either as a result of joining the school or, in the case of children already at the school, because their academic performance warrants this. It therefore gives no suggestion either way as to whether or not this is possible. I do not consider that the “clear impression given” is that children cannot join or, indeed leave, the Grammar Stream or that it is separate from or the main academy. In relation to this latter point, I note that the launch document states also that *“Other than in the curriculum they study, Academic Stream students will be exactly the same as everyone else at Swindon Academy.”*

49. I have also tested whether the information relating to the Grammar Stream could be seen to be at odds with or inconsistent with other information about admissions, and, indeed, with the admissions policy document. If this were the case, irrespective of whether or not the information about the Grammar Stream were part of the admission arrangements, it might have the effect of rendering those arrangements unclear and hence in breach of paragraph 14 of the Code. The referrer has argued in this context that parents are being misled. However, I do not find that the material about the Grammar Stream is inconsistent with material about admission to the school. It is at worst incomplete rather than misleading. The information on the school’s website about its Grammar Stream therefore does not make the admission arrangements unclear.

50. All this said, I can see that it would be helpful to parents if the material about the Grammar Stream were to explain that children do join the Grammar Stream other than at the beginning of Y7. This would be consistent with the practice described by the school. Similarly, there would be no harm in explaining that some children may move out of the Grammar Stream if that is appropriate for them.

51. In the letter of 7 September, the referrer made some further points which I should address here in the interests of dealing with all the material put before me. First, the referrer argued on the basis that children would not be moving into or out of the Grammar Stream that *“This is completely different from well established “setting” and “streaming” arrangements carried out on a subject by subject basis where the pupils may go “up” or “down” particular classes depending on their rate of progress in the particular subject.”* Whether this school’s organisation of its pupils is or is not different from what happens in other schools is not part of its admission arrangements and hence not a matter for me. However, I note that in fact setting is the term generally used for grouping by ability by particular subject or curriculum area (so an individual could be in the top set for, say, English, and a lower set for, say, mathematics). Streaming is the term generally used for grouping by ability across the curriculum so a pupil is in one stream or another. Finally, the referrer also says that the school failed to carry out an equality impact assessment before the introduction of the Grammar Stream. Again, that is not a matter for me to consider.

52. I turn now to the matters which when I reviewed the arrangements myself, I considered might not conform with the Code and which are set out above. I raised these matters with the school. The school acted swiftly and expressed itself very keen to remedy any breaches of the Code. The varied arrangements have addressed some but not all of these breaches. The varied arrangements have unfortunately also introduced a further breach of the Code.

53. In the arrangements as originally determined, the definition of previously looked after children had not been updated to refer to “child arrangements orders” which have replaced “residence orders.” This meant that the arrangements did not reflect the definition of previously looked after children set out in paragraph 1.7 of the Code. The varied arrangements have the up to date definition and the school need take no further action in relation to this point.

54. Paragraph 1.13 of the Code says that “*Admission authorities **must** clearly set out how distance from home to school will be measured.... This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parents*”. The arrangements as originally determined said

*“i. for secondary admissions distance will be measured between the door of the student’s permanent address and the entrance of the main gate of the academy secondary site*

*ii for primary admissions distance will be measured between the door of the student’s permanent address and the entrance of the main gate of the nearest academy primary site.”*

55. The arrangements thus did not set out how distance would be measured (for example, as the crow flies or by road) and made no provision for children living part of the week with each parent. The varied arrangements as set out above do state how distance will be measured. However, they continue not to make any provision for cases where a child lives for part of the week with each parent. Unfortunately, in varying its arrangements, the school has introduced a further breach of the Code. The school operates from two sites and offers primary provision at both. The arrangements as originally determined said that distance would be measured to the “*entrance of the main gate of the nearest academy primary site*”. The varied arrangements omit the word of “nearest.” This makes the arrangements potentially confusing and unclear and they do not conform with paragraphs 1.4 and 1.8 of the Code which require that admission arrangements and oversubscription criteria respectively must be clear. In correspondence the school said that it would vary its arrangements further to remedy this. The Code requires it to amend its arrangements.

56. The school uses random allocation as a final tie breaker should it need to distinguish between two applicants who tie for the final available place. A final tie breaker is a requirement of paragraph 1.8 of the Code. Paragraph 1.35 of the Code makes clear that where random allocation is used it **must** be supervised by someone independent of the school, but the school’s arrangements were silent on this point. The varied arrangements now make clear that there will be independent supervision and the school need take no further action in relation to



this point. However, I note that in varying its arrangements, the school has changed from listing criteria by letters to listing them by number (so criterion a) has become 7.1.1.). Unfortunately, this change has not been followed through in the cross references to explanatory notes which still refer to “*criteria b) to d)*”. This renders the arrangements and the oversubscription criteria unclear in breach of paragraphs 14 and 1.8 of the Code and the Code requires that they be amended.

57. Paragraph 2.17 of the Code states that: “*Parents may seek a place for their child outside of their normal admissions age group.... Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.*”. The school’s arrangements as originally determined and as subsequently varied are silent on this matter. They do not conform with the requirements relating to admissions and the Code requires that they be amended so that they do comply.

58. Paragraph 2.16 of the Code is concerned with the admission of children below school age and deferred entry to school. Paragraph 2.16c states “*The [admission] authority **must** make it clear in their arrangements that where they have offered a child a place at a school ....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 [which is the start of the term following the term in which the child’s fifth birthday occurs]*”. The school’s arrangements as originally determined do not explain that children may attend part-time until they reach compulsory school age. The varied arrangements say that parents may request that their child attends part-time until the child reaches compulsory school age. The right in the Code is a right for the child to attend part-time; it goes further than a right to ask for part-time attendance. The arrangements therefore fail to comply with what the Code requires and the Code requires that they be amended.

59. As noted above, some provisions of the arrangements do not conform with the Code. The Code provides at paragraph 3.1 that arrangements must be varied in order to give effect to a determination by the adjudicator within two months of the decision unless an alternative timescale is specified by the adjudicator. In this case, the necessary changes can be made within two months of the date of this determination.

## **Summary of Findings**

60. I have considered all the material and arguments put before me. I have concluded as set out above that the school’s entrance exam for a place in its Grammar Stream is not part of its admission arrangements and it has not introduced new selection by ability by the operation of its Grammar Stream. I have concluded that the material about the Grammar Stream on the school’s website has not made its admission arrangements unclear. I have found a number of other ways in which the arrangements do not conform with the requirements relating to admissions. Some of these have been remedied; others have not and the Code requires that the arrangements be varied accordingly.

## **Determination**

61. I have considered the admission arrangements determined by the Local Governing Body of Swindon Academy on behalf of the United Learning Trust for September 2018 for Swindon Academy, Swindon, in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to the selection of pupils by ability, the arrangements conform with the requirements relating to admissions. I also find that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

62. 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: 23 November 2017

Signed:

Schools Adjudicator: Shan Scott