



## **DETERMINATION**

**Case reference:** ADA3383

**Objector:** A parent

**Admission Authorities:** The Governing Board of Hummersknott Academy School for Hummersknott Academy, Darlington, Darlington Borough Council

**Date of decision:** 24 July 2018

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by the Governing Board of Hummersknott Academy School for Hummersknott Academy, Darlington.**

**I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform to 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 a parent about the admission arrangements for September 2019 (the arrangements) for Hummersknott Academy School (the school), a non-selective academy for girls and boys aged 11 to 16.
2. The objection relates to the definition of a child's home address for the purposes of making an application for a place at the school.
3. The local authority for the area in which the school is located is Darlington Borough Council (the LA). The LA is a party to this objection.

Other parties to the objection are the objector and the governing board of Hummersknott Academy School, which is the admission authority for the school.

4. The objector has submitted a similar objection to the admission arrangements determined by the LA for the schools for which it is the admission authority. I have dealt with this objection in a separate determination (ADA3469). The definition of “*home address*” in the LA’s admission arrangements differs to the definition in the school’s arrangements, but the objection relates to the same issue – the linking of this definition to receipt of Child Benefit in relation to parents who are separated.

## **Jurisdiction**

5. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined on 29 June 2017 by the governing board on behalf of the Hummersknott Academy Trust on that basis.
6. The objector submitted an objection to these determined arrangements on 11 March 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.
7. The objector has provided details of his personal family circumstances in relation to an application made to the school. I have explained to the objector that my jurisdiction is limited to determining whether the school’s admission arrangements comply with the Code and other relevant legislation. I cannot deal with any alleged maladministration, or require the school to offer a place to an individual child.
8. The objector also claimed that the school’s policy of determining a child’s home address as the address of the mother unless there is evidence to the contrary is not compliant with equalities legislation. I could not find any such provision in the school’s arrangements, and indeed the school has confirmed that there is no such provision. I have not therefore considered this matter further.
9. There is one further element to the objection and my jurisdiction. The objector provided a copy of an email sent to him on 17 November 2017 by the LA. This email, among other things, purported to highlight the definition of “home address” published in the LA’s secondary admission guide for parents and. The email said the definition included the following: “*Where parents/carers are separated and the child lives for periods with both, the home address will be that of the parent that receives the Child Benefit. Where childcare arrangements are shared jointly between both parents, the council will consider the mother’s home address to be the relevant address when considering the application unless legal documentation is provided to the contrary*”. The

email is not part of the admission arrangements for entry to the school in September 2019. As such, it is not within my jurisdiction and I have not taken it into account. The admission arrangements for Hummersknott do not refer to mother's home address in this way.

10. When I reviewed the arrangements in the course of considering the objection, I considered that other aspects of the arrangements may not conform with the requirements relating to admissions. I have accordingly used my powers under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

11. In considering this matter, I have had regard to all relevant legislation and the School Admissions Code (the Code).
12. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 11 March 2018, documents attached to that form and subsequent emails;
  - b. the admission authority's response to the objection and supporting documents;
  - c. the comments of the LA on the objection and supporting documents;
  - d. maps of the area identifying relevant schools;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meeting at which governing body of the school determined the arrangements;
  - g. a copy of the determined arrangements; and
  - h. information relating to eligibility for Child Benefit on the [www.gov.uk](http://www.gov.uk) website, relevant provisions in the Social Security Contributions and Benefits Act 1992 and the Child Benefit (General) Regulations 2006, as amended.

## **The Objection**

13. The objector states that under the school's arrangements, where parents/carers are separated and the child lives for periods with both, the home address for the purposes of admission arrangements will be that of the parent receiving child benefit. Paragraph 14 of the Code states: "*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.* The objector argues that some parents are not eligible to claim Child Benefit, and that "*using a criterion that an individual is not able to claim is*

*neither fair or objective”.*

## **Other matters**

14. I have also given consideration to the admission arrangements for the school as a whole. When I reviewed the arrangements I was concerned that some provisions might not conform to the Code, and I set this out here with the relevant Code provision in brackets:
- a. the definition of “*public care*” (paragraphs 14 and 1.7);
  - b. the medical oversubscription criterion (paragraphs 14 and 1.8); and
  - c. the clarity of the map of the Heighington and Coniscliffe ward, which is an “Associated Area” for the purposes of gaining priority for a place at the school (paragraphs 14, 1.8 and 1.14).
15. I also have an additional concern relating to the definition of “*home address*” which is different to the concern raised by the objector. I consider that it may breach paragraph 14 of the Code because it is capable of creating an outcome which is neither fair nor reasonable in some cases. I wrote to the parties advising them of these concerns, and requested comments from the school.

## **Background**

16. The school began life as the Darlington High School for Girls in 1955. In 1968 it was reorganised to form one of six 11-16 co-educational comprehensive schools, with the boys' grammar school becoming a Sixth Form college. The school remains a co-educational non-selective school for pupils aged 11 – 16. It became an academy on 1 July 2011. The school has a published admission number (PAN) of 240. There were 417 applications for admission to the school in September 2018, of which 228 were first preferences.
17. I have set out below the oversubscription criteria; the note on the medical criterion: and the definition of home address.

*“(i) **Public Care** For definitions see Section 22(1), Section 8, Section 14A of the Children’s Act 1989 and Section 46 of the Adoption and Children Act 2002.*

### ***(ii) Medical Reasons***

*Children with very exceptional medical factors directly related to school placement. Applications under this criterion should be supported by written evidence from a doctor (see explanation below).*

### ***(ii) Family Links***

*Children who have a sibling already attending the school/Academy and who are expected to be on roll at that school/Academy at the time of admission (see explanation below).*

### ***(iii) Children of Staff***

*Children of staff members who have worked at Hummersknott Academy for at least two years at the time at which application for admissions to the school is made.*

**(iv) Associated Areas**

*Children living within the rural ward of Heighington and Coniscliffe within the Borough of Darlington and children living within the ward of Park East (Skerne Park and the Pastures estates) (see Appendix 1 Associated Area explanation)....*

**(v) Distance**

*Students who live nearest the preferred school/Academy measured from the front door of the home address (including flats) to the main gate by the shortest walking route judged to be safe (lit at regular intervals and paved/tarmacked). This will be based on the child's permanent home address (to be consistent the Authority uses Geographical Information System to measure all distances.)"*

**Medical Criterion**

*If a parent states a preference for Hummersknott Academy and indicates their reason for doing so is 'medical', then they will be required to send a supporting letter from a professional practitioner. The supporting evidence should set out the particular reasons why Hummersknott Academy is the most suitable choice and the difficulties it would cause if their child had to travel to another school. The Governing Body reserves the right to make contact with the District Medical Officer for independent information regarding the child's condition. The Governing Body may also seek advice from other qualified professionals, e.g. Psychologists or other specialists where necessary.*

**Home address**

*This is the child's permanent address where he/she generally resides. Temporary addresses may not be used in the application for admission to the Academy. For parents/carers who have more than one property, reference should only be made to the property in which they and the child(ren) mainly reside. Where parents/carers are separated and the child lives for periods with both, then the home address will be that of the parent that receives the child benefit .....*

18. As can be seen from the arrangements, a significant element of priority derives from residence in the "Associated Areas". I am satisfied that the Associated Areas fall within the scope of what the Code refers to at paragraph 1.14 and in its glossary as catchment areas. The Associated Areas must accordingly meet the requirements on catchment areas set out in the Code.

## Consideration of Case

19. As above, the objector considers that determining a child's home address by using receipt of child benefit is "*neither fair or objective*", and fails to comply with paragraph 14 of the Code.
20. The response sent on behalf of the admission authority was received on 4 May 2018. This referred to the fact that the objector had complained separately to the school about the definition of "*home address*" set out in the admission arrangements, and that the school's response had been that it was necessary to apply the definition in a consistent manner. To remove the provision determining a child's home address as being that of the parent in receipt of child benefit would not allow the school to apply this consistent approach.
21. The school sent a further email on 25 June 2018 in response to the representations made by the objector, and in response to my request for their comments on the other matters I had drawn to the school's attention to. The email made the following points which are relevant to the objection:
  - the school agreed to amend the definition of "*home address*". The suggested re-wording was "*Where shared care arrangements are in place, the home address shall be as directed by the Court or the address where the child lives for the majority of the school week.*"
  - the school confirmed that the Hummersknott Academy Trust keeps its policies and procedures under review in accordance with the Equality Act 2010.
  - the school confirmed that the admissions arrangements have been approved by the governing board in accordance with the school's admissions policy and that, in accordance with the policy, the arrangements have also been reviewed by the Hummersknott Academy Trust board.

## Analysis

22. I am aware that many schools are careful about defining what is meant by a child's home address. Where living in a particular area gives priority for a place, it is obviously important to all that there is clarity as to how this will be assessed. Concerns by schools and references in the media about parents providing false addresses, or moving to an address on a temporary basis for the sole purpose of improving their chances of being offered a place at the school of their first preference are not uncommon. It is understandable that the school would wish to have a definition of home address which is clear and can be applied consistently. This is also in the interests of parents applying for a place at the school.
23. To some degree, I can understand why the school chose to link the determination of home address to the receipt of Child Benefit in the case of a child whose parents are separated. There is no doubt that this

provision is clear. A person is either in receipt of child benefit, or they are not. There is no room for doubt, and there is a link to residence. A person can only claim Child Benefit for a child who lives with them.

24. Where parents separate, either parent can claim Child Benefit but only one parent will be entitled to receive it. In some cases, a child will live with one parent and have contact with the other, the position is then straightforward. The parent with whom the child lives is the only parent entitled to claim. Where a child lives with both parents, the parents can agree between them who should claim. Where they cannot agree, both can apply and HMRC will award the benefit to the parent with whom the child spends most of his/her time. It is also possible for neither parent to be in receipt of child benefit, and I say a little more about where this is likely to happen below. Because it is a condition of receipt of Child Benefit that the child lives with the applicant, it may be that the school had assumed that the person receiving Child Benefit will be the person who the child lives with most of the time. But this does not necessarily follow.
25. A person who earns £50,000 or more before tax each year can claim Child Benefit, but they would then have to start paying a Child Benefit tax charge. The tax increases the more the person earns over £50,000. If the person's income goes above £60,000, the extra tax payable will cancel out what the person receives in Child Benefit. It is not correct, as the objector has argued, that a person who earns above the £50,000 threshold is not eligible to claim Child benefit. But the fact is that, if a person in this position did claim, this would lead to them paying more tax and the additional tax payable may exceed the value of the benefit. In these cases, it is entirely reasonable where one parent earns above £50,000 and the other earns below this level for the parent who is not earning more than £50,000 to claim the benefit. That parent will be eligible to claim and receive the benefit as long as the child lives with him/her for some of the time. It is also possible for both parents to be in a situation where it is not worth their while financially to make a claim. In these circumstances, a child with separated parents would not have a home address which met the definition in the arrangements.
26. I appreciate that the school was looking to have a clear definition of home address which could be applied consistently. However, the effect of the definition in some circumstances will be for the school to ascribe a home address to a particular child which is probably not where the child lives for most of the time, and is not the address where the child lives on the days that he/she attends school.
27. There are other ways of achieving certainty and consistency in defining the home address of a child who lives with more than one parent. For example, where a child has two homes, both are his or her home address, so an admission authority could accept either address, and the parents could decide between them where the child should live on school days so that he or she could have a reasonable daily journey to and from school. Alternatively, an admission authority could define

“*home address*” as the address where the child lives during the week whilst he or she is attending school. The daily living arrangements for any child are a question of fact, and so the definition must arrive at the relevant facts. The definition in the school’s arrangements does not do this. As I have said above, I do understand the school’s reasons for adopting this definition; however, on balance I do not consider the definition to be a reasonable one.

28. There will be cases where the definition will arrive at the wrong address for children who genuinely do live in one of the Associated Areas or reasonably close to the school. Also, in cases where parents are separated and neither parent claims Child Benefit, the child will be deemed to have no home address. That simply cannot be a result of reasonable arrangements.
29. I consider that the operation of the definition creates an unfairness to separated parents who may agree between themselves which of them should claim Child Benefit. It is also unfair to separated parents who do not claim Child Benefit. I therefore uphold this objection on the basis that the determined arrangements are not reasonable or fair.
30. The school has agreed to remove the reference to Child Benefit in the definition. The amended definition suggested by the school appears to me to be clear and reasonable, and will eliminate the unfairness caused by the operation of the current definition. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority has undertaken to vary its arrangements in accordance with the Code. I am grateful to the school for their cooperation in this, and other matters.

## **Other matters**

31. I had some concerns over other aspects of the school’s arrangements. The first related to the oversubscription criterion entitled “*Public care*”. Paragraph 1.7 of the Code requires that “*All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements or special guardianship order). Further references to previously looked after children in this Code means such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements*”.
32. My concern was that the oversubscription criterion entitled “*Public Care*” is not clear on its face. What it should do is refer to “*looked after and*



*previously looked after*” children. These terms are defined in the Code. The definitions are concise, and should be set out in full in the arrangements. Parents should not have to look up legislation in order to understand what is meant by a term adopted in a set of admission arrangements. Paragraph 14 of the Code, which I have set out above, requires that admission arrangements must be clear. This aspect of the arrangements is not compliant with paragraph 14 of the Code.

33. In light of these concerns, the school agreed to amend the arrangements to adopt the terms “*looked after and previously looked after*” children, and to set out the definition in the Code in full. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority has undertaken to vary its arrangements in accordance with the Code.
34. My second concern related to the note which explains the oversubscription criterion based upon a child’s medical condition. Paragraph 1.8 of the Code requires that “*Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation*”. Whilst it is entirely reasonable to seek supporting evidence from a professional practitioner who is aware of a particular child’s medical problems, I cannot see that it is reasonable to make contact with a separate medical professional for independent information regarding a child’s condition, except in circumstances which are reasonable and explained clearly in the arrangements. I searched the terms “*District Medical Officer for Darlington*” and “*District Medical Officer for County Durham*”, and there did not appear to be such a post. The LA has subsequently confirmed that the post no longer exists. The school, in its response, says that it proposes to update the admission arrangements to provide that it may make referrals to a consultant paediatrician in Community Child Health, Ward 22, Darlington Memorial Hospital. (I note that the LA intends to make a parallel provision in the arrangements for the schools for which it is the admission authority and I address this point also in ADA3469).
35. The school has now explained that the purpose of any referral will be to seek independent information regarding a child’s condition. The arrangements will also provide that the admission authority may also seek advice from other qualified professionals (for example psychologists or other specialists) where necessary. The school says the reason for reserving these rights in the arrangements is to make provision for the school’s governing board to consult another professional on the condition generally in order to better understand how it can affect a child and their admission to school
36. I did not understand from reading the arrangements why there would be any reason to distrust evidence from a professional who knows the child, or why it would be reasonable to test this evidence by obtaining the opinion of a professional who has no knowledge of the child in question, and who may not be a specialist in the relevant area of

medicine. Many serious issues arise from this in terms of data protection and privacy rights under Article 8 of the European Convention on Human Rights. The arrangements do not state clearly the circumstances in which it would be necessary for a paediatrician to give an opinion; whether he/she would be required to examine the child; or that this could only be done with the child, or parents' consent.

37. Paragraph 14 of the Code requires that admission arrangements must be reasonable. I do not consider it to be reasonable for the governing body to "*reserve the right*" to refer a child's personal and sensitive personal data to a professional who has no knowledge of the child other than in wholly exceptional circumstances which must be specified in the arrangements. It may be reasonable to seek further information from other professionals who are working with the child – for example psychologists and other specialists. But again, the circumstances where this can be done must be set out explicitly, and the fact that consent is necessary must be made clear. Because the arrangements are both unreasonable and unclear in this respect, I have concluded that this aspect of the arrangements is not compliant with paragraph 14 of the Code.
38. In order to be clear, the arrangements would need to explain the circumstances when it will be necessary to seek **independent** advice. This is different to seeking **specialist** advice, and would suggest that there is some reason to doubt the opinion given. The school will also need to ensure that it has a legal power to share the child's personal data, or the consent of the child's parents to do so. If the school is not in a position to share personal data legally, then the arrangements cannot lawfully say that this can be done as this would make them misleading and hence unclear.
39. The school proposes to amend the admission arrangements to make clear that the admission authority reserves the right to seek an opinion from other qualified professionals (e.g. psychologists or other specialists) where this is necessary to know more about a particular child's condition. The purpose of seeking the opinion of a specialist is in order to better understand how the relevant condition can affect a child and their admission to school. Provided the arrangements make clear the circumstances in which it will be considered necessary to seek a specialist view, the amended arrangements should comply with paragraph 14 of the Code. Presumably this would be where the letter from the health professional submitted with the application does not contain enough information for the admission authority to determine the effect of a particular condition. Again, the school will wish to consider the point about its powers to share a child's personal data in this way.
40. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority has undertaken to vary its arrangements in accordance with the Code. I am grateful to the school for its cooperation and willingness to consider

amendments.

41. The definition of “*home address*” states that temporary addresses may never be used. Whilst I understand that this is intended to prevent people from moving into an address in an Associated Area or an address close to the school on a temporary basis purely to gain admission to the school, and then moving back to a permanent address once a place is obtained, my view is that it does more than this. There are sections of our community – travellers, refugees, women fleeing domestic violence to name but a few examples – who do not have permanent addresses. My view is that it is both unreasonable and unfair not to treat the temporary address of a child as his or her home address where this is the only home address the child has, or could have. To treat a child’s only home address as not being his or her home his would not only be unreasonable, it may also be indirectly discriminatory on the basis of race and therefore unlawful in some circumstances. I do not suggest that it was the intention of the school to act in a discriminatory way; however, it is sometimes the case that a policy can have the unintended effect of operating in a way that discriminates against persons who have the protected characteristics under the Equalities Act 2010. Because the arrangements are unreasonable in this respect, I have concluded that this aspect of the arrangements is not compliant with paragraph 1.8 and 14 of the Code.
42. The school helpfully confirmed that it agrees with my concerns about the exclusion of all temporary addresses from the definition of “*home address*” and will update the arrangements. Suggested amended wording was requested from me, which the school would be happy to approve. It is not within my jurisdiction to suggest a form of words. It is for the admission authority to formulate its arrangements and, in doing so, to make clear the circumstances in which temporary addresses will and will not be accepted. This could, of course, include situations where a child is living in temporary accommodation because this is the only accommodation available for the child.
43. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority has undertaken to vary its arrangements in accordance with the Code.
44. Finally, in terms of other matters, the map of the Heighington and Coniscliffe Ward, (one of the school’s Associated Areas), which is displayed on the school’s website as part of the admission arrangements is not sufficiently clear. It would not be possible for a parent to know whether their home address falls within this Associated Area simply by looking at the map. This is in contrast to the map of Park East Ward (the school’s other Associated Area), which shows clearly the areas and street names. It may be that there is a more detailed description set out elsewhere of the addresses falling within the Heighington and Coniscliffe Ward, which could be incorporated into the arrangements. But, if a map is being used to explain to parents where

the boundaries of this area fall, it should be a more detailed map. The Associated Areas are catchment areas for the purposes of the Code. Paragraph 1.14 of the Code states that “Catchment areas **must** be designed so that they are reasonable and clearly defined”. Because the arrangements are unclear in this respect, I have concluded that this aspect of the arrangements is not compliant with paragraphs 1.8, 1.14 and 14 of the Code.

45. The school has confirmed that it will publish a clearer, more detailed map of the Heighington and Coniscliffe Ward (similar to the scale of map used for the Park East Ward) as part of the arrangements. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority has undertaken to vary its arrangements in accordance with the Code. As stated above, I am grateful to the school for its consideration of the points raised by the objector and the other matters raised by me, and willingness to make amendments to the admission arrangements.

### **Summary of Findings**

46. The objection is based upon the argument that the definition of “*home address*” set out in the arrangements, as it applies to separated parents, is both unreasonable and unfair in its effect. My findings are that that the definition is one which no reasonable admission authority could have adopted having taken into account all relevant circumstances, and that the operation of the definition results in an unfairness. Therefore, the arrangements do not comply with paragraph 14 of the Code, and I uphold this part of the objection.
47. I do not uphold the part of the objection relating to alleged discrimination because the definition of “*home address*” referred to by the objector is not the definition in the school’s determined arrangements for admission in September 2019. For the reasons explained above, this is not a matter within my jurisdiction.
48. Because the arrangements for this school have come to my attention, I also find that there are other matters which do not comply with paragraphs 1.7, 1.8, 1.14 and 14 of the Code. These relate to the definition of “*public care*” and the map of the Heighington and Coniscliffe Ward which are unclear; the paragraph entitled “*Medical Criterion*” which is both unclear and unreasonable; and an aspect of the definition of “*home address*” which is unreasonable.

### **Determination**

49. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by the Governing Board of Hummersknott Academy School for Hummersknott Academy, Darlington.

50. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

51. 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: 24 July 2018

Signed:

Schools Adjudicator: Marisa Vallely