



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3426, ADA3427, ADA3428

**Objector:** Two parents and a member of the public

**Admission Authority:** The Archer Academy Trust for the Archer Academy, Barnet

**Date of decision:** 16 August 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 the Archer Academy Trust for The Archer Academy, Finchley.**

**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.**

**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), three objections have been referred to the adjudicator by two parents and a member of the public, (the objectors), about the admission arrangements for September 2019 (the arrangements) for The Archer Academy (the school), an academy free school for children aged 11 to 16. The objections relate to the fairness of the oversubscription criteria including the choice of feeder schools and the catchment area and that the school made no changes to the arrangements following earlier determinations made by the adjudicator. The objectors also raised concerns about the tie-breaker used in the arrangements.

2. The local authority for the area in which the school is located is the London Borough of Barnet. The local authority is a party to this objection.

Other parties to the objection are the objectors, the Archer Academy Trust (the trust) and the governing board of the school.

### **Jurisdiction**

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined on 28 December 2017 by the academy trust, which is the admission authority for the school, on that basis.

4. The objectors submitted their objections to these determined arrangements on 13 and 14 May 2018. Two of the objectors are parents and have asked to have their identities kept from the other parties. They have met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) by providing details of their names and addresses to me.

5. Determinations ADA3204, ADA3205, ADA3206, ADA3207 and ADA3208 were published on 30 September 2016. I have considered regulation 22 of the Regulations which says *“no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those arrangements within two years of the decision by the adjudicator.”*

6. I have concluded that I am not able to consider the parts of the objection concerning feeder schools under section 88H of the Act as these issues were considered in the determinations made less than two years before the date of these objections. The parts of the objections concerning the catchment area and the tie-breaker are however new issues and fall within my jurisdiction under section 88H of the Act.

7. I have also used my power under section 88I of the Act to consider the arrangements as a whole including the fairness of the feeder schools. I have chosen to use this power for two reasons. Firstly, because the previous determinations found that the feeder schools led to the arrangements not complying with the School Admissions Code (the Code) and it would appear that the arrangements may not have been revised to comply with the determinations as required by section 88K of the Act and so may continue not to comply with the Code. Secondly, because it would not be possible to consider questions about the catchment area, which I am under a statutory duty to consider under section 88H, without considering feeder schools as residence in the catchment area and attendance at a feeder school is linked in the arrangements.

8. Complaints about the local authority set out in the objection are not within my jurisdiction.

### **Procedure**

9. In considering this matter I have had regard to all relevant legislation and the Code.
10. The documents I have considered in reaching my decision include:
- a. the objectors' forms of objection dated 13 and 14 May 2018 and subsequent emails;
  - b. the admission authority's response to the objection and to my other enquiries together with supporting documents;
  - c. the comments of the local authority and supporting documents;
  - d. determinations ADA3204, ADA3205, ADA3206, ADA3207 and ADA3208;
  - e. maps of the area identifying relevant schools together with information from the Department for Education (DfE) interactive tool Get Information About Schools and the on-line Schools Atlas published by the Mayor of London;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. copies of the minutes of the meeting at which the trust determined the arrangements; and
  - h. a copy of the determined arrangements.

### **The Objection**

11. The two objections from parents were worded identically saying "*Our objections are made under paragraph 14 of the Introduction, paragraphs 1.8, 1.15 and 1.42 and that they have failed to comply with any of the points the Adjudicator made in the 2016 determination against the exact same policy. Its definition in terms of three post code areas breaches the terms of the "Greenwich Judgement."*" The third objection included additional wording linking the part of the objection concerning the use of post codes to paragraph 1.14 of the Code.

12. Two of the objections also referred to the tie-breaker saying the second paragraph in the section in the arrangements concerning the tie-breaker was "*both redundant and misleading*" and the arrangements did not comply with paragraphs 1.34 and 1.35 of the Code.

### **Other Matters**

13. When I read the arrangements I noted two points where it appeared they did not, or may not comply with the Code. The first of these was that the wording of the section on waiting lists did not state as it is required to by paragraph 2.14 of the Code that "*each added child will require the list to be ranked again in line with the published oversubscription criteria.*" The second matter was that the arrangements continued to refer to statements of special

educational need. Following the Children and Families Act 2014, such statements have been replaced with Education, Health and Care Plans (EHCP). Not referring to EHCPs may render the arrangements unclear and therefore they would not comply with paragraph 14 of the Code which requires admission arrangements to be clear.

14. When I raised these matters with the school, it undertook to address them both and I will not refer to them further in this determination.

## **Background**

15. The school opened as a free school in September 2013. The application to establish the school said it was to address “*a significant lack of secondary school provision in East Finchley, West Finchley, Hampstead Garden Suburb and surrounding communities in N2, N3 and NW11.*” The school takes its name from a statue on East Finchley underground station.

16. The school is located on two sites in East Finchley. The Stanley Road campus is in a new building while the Beaumont Close campus is in a refurbished building less than one kilometre away. Both campuses have a postcode of N2.

17. The admission arrangements are easily found on the school’s website. The school has a published admission number (PAN) of 162 and it is oversubscribed receiving 179 first preference applications for September 2018. The first 122 places are allocated according to oversubscription criteria which I have summarised below:

- i) Looked after and previously looked after children.
- ii) Founders’ children.
- iii) Siblings of children at the school.
- iv) Children of members of staff.
- v) Children living in postcode areas N2, N3 and NW11 which is described as the priority catchment area. Children living closest to the Stanley Road site receive highest priority.

18. Priority for the remaining 40 places is given to children who attend four named feeder schools and who live in the priority catchment area with priority within this group being given to those living closest to the Stanley Road site. Two of the feeder schools have a quota of 15 places and the other two each have five places available. If the quota is not reached from any one school, the places are offered to children at the other named schools. If any of the 40 places are not taken up, they are allocated to other children living in the priority catchment area on the basis of proximity to the school.

19. If any of the places are not filled by children from the priority catchment area, they are offered to other children with those living closest to the school having priority. Random allocation is used as the tie-breaker.

20. The four named feeder schools are Brookland Junior School, Garden Suburb Junior School, Manorside Primary School and Tudor Primary School. Fifteen places are allocated to each of the first two schools and five to each of the last two.

## **Consideration of Case**

### Definition of catchment area in terms of post code

21. The objectors said *“we believe that, as presently defined, the catchment area for the school is inconsistent with paragraph 1.14 of the School Admissions Code. This is because its definition in terms of three post code areas breaches the terms of the ‘Greenwich judgement.’ In addition we would argue that an adoption of oversubscription criteria addressing three subdivisions of this unlawful catchment area is equally inappropriate and has led to complexities, uncertainties and unfairness that are, in themselves, inconsistent with the general principles underpinning the code.”*

22. The objectors argued *“Although the ‘Greenwich’ case was specifically about the use of a local authority boundary to define a school catchment, the legal principle was that it should not be used if it cut across a natural community excluding some people who had a reasonable expectation of accessing the school. So, the key point is that catchment areas should have a rationale related to the people on the ground and should not be based on arbitrary administrative boundaries. Post codes were devised solely to facilitate postal deliveries and are unrelated to any other considerations – certainly there is even less relevance to school admissions than LA boundaries in the original case which did, after all, relate to a local authority with education functions. Those boundaries should not therefore be used unless they can be independently justified on other grounds. It follows on from this that using the ‘internal’ boundaries of the three post codes to subdivide the overall area of the school to inform and justify some of the oversubscription criteria is equally inappropriate.”*

23. Neither the school nor the local authority commented on this part of the objection.

24. Paragraph 1.14 of the Code says *“Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.”* A footnote to the first sentence of paragraph 1.14 says *“R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469 held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated Section 86(8) of the SSFA 1998 places an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary.”*

25. The Greenwich judgment in 1989 concerned a maintained secondary school, Thomas Tallis, that was on the Greenwich side of the Greenwich/Lewisham border. The argument that succeeded in the Court of

Appeal was based on the (now repealed) section 6 of the Education Act 1980 which placed a duty on every local authority to allow parental preference for schools which are outside their own authority area, and in particular section 6(5)(a) which was set out in the judgment:

*(1) Every local education authority shall make arrangements for enabling the parent of a child in the area of the authority to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions and to give reasons for his preference.*

*(2) Subject to subsection (3) below, it shall be the duty of a local education authority and of the governors of a county or voluntary school to comply with any preference expressed in accordance with the arrangements.*

*(3) The duty imposed by subsection (2) above does not apply --*

*(a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources;" [then I can omit (b)].*

*(c) if the arrangements for admission to the preferred school are based wholly or partly on selection by reference to ability or aptitude and compliance with the preference would be incompatible with selection under the arrangements." [Then I can omit (4)].*

*(5) The duty imposed by subsection (2) above in relation to a preference expressed in accordance with arrangements made under subsection (1) above shall apply also in relation to --*

*(a) any application for the admission to a school maintained by a local education authority of a child who is not in the area of the authority; and (b) any application made as mentioned in section 10(3) or 11(1) below; and references in subsection (3) above to a preference and a preferred school shall be construed accordingly.*

26. I note that essentially the same duty is to be found now in section 86 of the Act. The 'principle' that arises from *Greenwich* was, as set out in *R v Wiltshire County Council ex p Razazan* [1997] ELR 370: "*the court held that the Greenwich policy of giving priority to children within their own area was unlawful since it breached their duty under s 6(5)(a) to comply with express parental preferences without distinguishing between children resident and children non resident within their own area.*" There was no wider principle set out in *Greenwich*, nor in subsequent cases such as *Razazan* or *R v Rotherham MBC ex p T* [2000] ELR 76.

27. Given the specific point in issue in the *Greenwich* case, it follows I do not consider it gives rise to a legal principle that a catchment area "*should not be used if it cut across a natural community excluding some people who had a reasonable expectation of accessing the school*". I note I have been presented with no evidence as to what the "*natural community*" referred to comprises, and who precisely has a "*reasonable expectation of accessing the school*". I do not accept that the *Greenwich* judgment means that post codes cannot be used to define catchment areas, provided that the catchment areas so defined are reasonable.

28. Therefore, I will now look at whether the catchment area is "*reasonable*

*and clearly defined*". The use of post codes to define catchment areas is common practice. Parents will know whether or not they live in a particular post code without needing to refer to a map, a list of roads or other means of defining a catchment area such as historical parish boundaries. In this case, the reason for the selection of the postcodes is clear and is for a rational reason: to provide a school, with certain characteristics, in an area which those who established the school considered the area to need. I consider that the use of post codes does clearly define a catchment area and it is reasonable to use the three post codes of N2, N3 and NW11 which are set out in the arrangements as being the catchment area because that is the area which the school was established to serve. I find that the catchment area complies with paragraph 1.14 of the Code.

29. In summary, I consider the use of the three postcodes as the school's catchment area to be lawful and reasonable. I do not uphold this part of the objection.

### Tiebreaker

30. The arrangements have a section about the tie-breaker. It reads "*In the event of two or more applicants tying when any of the admission criteria is applied, positions will be determined by random allocation. This may include when two or more applicants are from the same block of flats or the same address, or if the distance between the home and school is exactly the same.*" There is then a heading "*Method of random allocation*" which reads "*After places have been allocated under criteria 1 to 7, the remaining applications will be put into rank order by random allocation, using a computer programme. Places will be offered strictly in accordance with the rank order.*"

31. The objection was that "*The first paragraph is clear and unproblematic. However the second does not actually make sense. Criterion 7 is in fact for 'any other applicant ranked on proximity'. As such it covers all possible applicants so there will be none that fall outside criteria 1- 7 to be dealt with by random allocation. The paragraph is therefore both redundant and misleading. However it would be desirable to have some different words under that second heading. It doesn't actually say much about the 'method of random allocation' apart from 'using a computer program'; but in order to comply with paragraphs 1.34 & 5 [sic] of the Code it ought, at least, to confirm that the process will be supervised by an 'independent' person.*"

32. Neither the school nor the local authority commented on this part of the objection. Paragraph 1.8 of the Code requires that "*Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*" Random allocation is a common method of separating two or more children who live at the same distance from the school. Paragraph 1.34 of the Code says that "*Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent*". The following paragraph says "*The random allocation process **must** be supervised by someone independent of the school, and a fresh round of random allocation **must** be used each time a child is to be offered a place from a waiting list.*"

33. Criterion 7 reads “*After places have been filled under the first six criteria, any remaining places will be offered on a geographical basis with priority given to children who live closest to the school, based on measuring distance in a straight line from the front gate of the Stanley Road campus to the front door of the applicant’s home.*” This criterion would rank any child who did not fall into a higher criterion no matter where they lived. It is therefore unnecessary to have any method of ranking “*remaining applications*” beyond the use of distance and random allocation if two or more children are equally ranked by distance. I find that this part of the arrangements is unclear.

34. Because this part of the arrangements is unclear they do not comply with paragraph 14 of the Code which says “*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*”. Paragraphs 1.34 and 1.35 require that “*Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate*” and “*The random allocation process **must** be supervised by someone independent of the school*”. The arrangements do not refer to independent supervision and so have not set out clearly how the random allocation process will operate. I therefore uphold this part of the objection.

#### Feeder schools

35. Determinations ADA3204, ADA3205, ADA3206, ADA3207 and ADA3208 found that the determined admission arrangements for the school for September 2017 were unfair to some children due to the choice of feeder schools and the proportion of places allocated to each feeder school. The determinations allowed the school time to consult on new arrangements to ensure that the revision of the arrangements required by section 88K of the Act did not introduce any new unfairness which might not be apparent without testing alternative options in public. After consultation, the school decided to leave its admission arrangements unchanged and the arrangements for 2019 are the same as those for 2017 with the exception that the PAN has been increased from 150 to 162.

36. I need to determine whether, in the circumstances that exist today, the criterion in relation to feeder schools is “*transparent and made on reasonable grounds*”. It is possible, given the admission arrangements remain unchanged since my previous determinations, that the use of feeder schools in the arrangements remains unfair. These circumstances, however, are different. In particular in 2016 there were three other state-funded secondary schools with post codes of N2, N3 or NW11. One of these was a selective girls’ school, one a Catholic school and one a boys’ school. Archer offered the only non-denominational and non-selective coeducational provision in the area. This situation has changed, the boys’ school, Christ’s College, is becoming coeducational and offered places to girls for the first time for September 2018. Data is also now available showing where children admitted under the arrangements in 2017 and 2018 live, which was not available for consideration in the previous determinations.

37. The objectors said “*The feeder schools criterion within the current*



*arrangements is fundamentally flawed and should be dropped altogether because:*

- *It is linked to the unlawful use of quotas in respect of post-code related sub-catchment areas.*
- *The specific choice of schools remains tainted by unfairness and unlawful discrimination - the same feeder schools have been included and the new justification deployed in the 2016 consultation did nothing to redress this.*
- *It is an ineffective mechanism for delivering its intended outcomes.*
- *The polarisation of views revealed by the 2016 consultation is unlikely to be resolved by any conceivable alternative re-configuration of the same basic approach.*
- *The feeder school criterion is allowed within the Code because there are certain specific circumstances in which it is important and necessary. For example a linked pair of infant and junior schools in an area of mixed provision without a general transfer at that stage. But there are a number of potential problems that will always need to be avoided:*
- *Anything short of a guarantee of feeder priority can lead to parents feeling misled about what 'feeder school' status actually amounts to.*
- *The 'halo' or 'curse' effect caused by the reputation of a secondary school can distort parental preferences for primary schools with an illegitimate adverse effect on them.*
- *The argument that the criterion facilitates educationally beneficial links between primary and secondary schools is spurious. Secondary schools should develop and maintain links with all its de-facto feeder primaries. Being named as a feeder in admissions arrangements is neither a necessary nor a sufficient condition for this to happen.*
- *Those attending de facto feeder schools will often gain places at the secondary on other criteria, meaning that priority within the admissions arrangements is unnecessary and merely serves to add redundant complexity.*
- *Where secondary schools do want to use this criterion it is best placed as a relatively low priority; for example so that it can give a degree of priority over other out-catchment applicants after all in-catchment demand has been satisfied."*

38. In its comments on this matter, the school said "*earlier this year (2018) and in compliance with its ongoing obligation to review and determine its admission arrangements, the Trust identified a number of developments, including changes to the admissions arrangements at several local schools and a growing body of evidence around parental preferences, which led it to*

*conclude that a change to its admission arrangements may be appropriate. It therefore announced its intention to consult on its admission arrangements for September 2020. Crucially for present purposes, the Trust’s intention is to remove feeder schools from its admissions arrangements.”*

39. The school also said *“The decision it [the trust] took in 2017 not to change its admission arrangements was taken after very careful consideration of the new information obtained from the consultation exercise and most recent round of admissions, as well as with the benefit of legal advice on their lawfulness. In any event, this ongoing review of data as they become available has subsequently led it to conclude that its principal aim will be better served without feeder schools featuring in its admission arrangements.”*

40. It would therefore appear that the objectors and the admission authority all have concerns with the use of feeder schools in the arrangements. I asked the school why, if it considered that the use of feeder schools may not be appropriate for its arrangements in 2020, why it considered them to be appropriate for 2019? The response was *“although ideally it would revise the current arrangements for 2019, the consultation requirements in the Code do not allow for this. The Trust’s decision that the current arrangements require revision was taken in December 2017 followed the annual consideration it is obliged to give to this issue. Paragraph 1.42 of the Code requires consultation for a minimum of 8 weeks and paragraph 1.43 requires this to take place between 1 October and 31 January. As such it can be seen that this does not enable the Trust to alter the admission arrangements for September 2019. If the adjudicator considers that this is incorrect and it would be possible lawfully to revise the arrangements for 2019 entry then we should be very grateful to be told.”*

41. The length of consultation required by paragraph 1.42 of the Code between 1 October and 31 January is in fact six weeks and not the eight stated by the school. Admission authorities are required by section 88K(2) of the Act to revise their arrangement to comply with an adjudicator’s determination; in such cases no consultation is necessary. Admission authorities may also seek the adjudicator’s consent to a variation to their arrangements following a major change in circumstances as explained in paragraph 3.6 of the Code. My role in this case is, however, not to broker any alternative set of arrangements, but to consider whether or not the determined arrangements conform with the Code.

42. The school said *“The starting point to be kept in mind is the Trust’s founding aim of providing places for children living in N2, N3 and NW11”*. I will begin by considering if this aim is still appropriate for 2019, six years after the school opened. The table below shows that demand from within the three post codes continues to grow compared to demand from other areas.

Table 1

Year	2016	2017	2018
Applications from N2, N3 and NW11	467	526	637

Applications from other post codes	440	383	404
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43. It may be helpful to describe where the three post codes are and how they relate to each other. The school is situated near the centre of N2, this post code area extends north from Hampstead Heath until it reaches the North Circular Road, its eastern boundary is between East Finchley and Muswell Hill while its western boundary skirts around Lyttelton Playing Field and East Finchley Cemetery. The other two post codes lie to the west of N2. NW11 extends south from the North Circular encompassing Golders Green stopping north of Childs Hill. The western boundary mainly follows Hendon Way. The third post code, N3 lies to the north of the North Circular encompassing Church End and Finchley. The three post codes appear to be of similar area on a map and meet at a point near the junction of the North Circular and the A1. All of the area covered by the post codes fall within one and a quarter miles of this point.

44. As noted above there are now two non-denominational, non-selective, coeducational state-funded secondary schools within the three post codes; they are Archer and Christ's College. Christ's College is situated near the point at which the three post codes meet. Christ's College offered places for girls for the first time for September 2018, the main oversubscription criterion being home to school distance.

45. I have used the Department for Education database 'Get Information About Schools' (GIAS) to identify other mixed, comprehensive, non-denominational secondary schools within two miles of each post code. These are tabled below.

Table 2

	N2	N3	NW11
The Archer Academy	Y	Y	Y
Christ's College Finchley	Y	Y	Y
Hendon School	-	Y	Y
The Compton School	Y	Y	-
Friern Barnet School	Y	Y	-
Highgate Wood Secondary School	Y	-	-
Fortismere School	Y	Y	Y
Whitefield School	-	-	Y
Alexandra Park School	Y	-	-

Hampsted School	-	-	Y
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46. I have considered a two mile radius because the statutory home to school walking distance used to assess entitlement to free home to school transport is three miles, taking a two mile radius allows for walking distances not being in a straight line and for the width of the post code areas leading to schools being closer to one part of a post code area than to other parts of it.

47. This shows that N2 now has seven mixed, comprehensive, non-denominational schools within a reasonable distance, with N3 having six and NW11 also having six. Consulting the on-line Schools Atlas published by the Mayor of London, however, shows that only two of these schools, Archer and Christ's College, are within 30 minutes travel by foot, or public transport from a point near where the three post codes meet. The other schools are within a similar travel time from the edges of the priority catchment area as defined by the post codes.

48. While there are other mixed, comprehensive, non-denominational schools within a reasonable distance of all three post codes I am of the view that there is a need for schools of this type to serve the area and that Christ's College starting to take girls as well as boys does not undermine the principle of Archer giving priority to children living in all of the three post codes.

49. I will now turn to considerations about the feeder schools themselves. Leaving aside infant schools, from which children do not transfer to secondary school, GIAS identifies 22 primary schools within one mile of the three post codes; ten of these have no religious character, six of them are Jewish and three each are Church of England and Roman Catholic.

50. Within the three post codes there are 13 primary schools. These are listed in the table below together with their location and the PAN for 2018, taken from the local authority's website, to give an indication of the number of places available in each post code.

Table 3

	School	Faith	PAN	Totals
N2	Holy Trinity	CE	30	120
N2	Martin	-	90	
N3	St Mary's	CE	60	410
N3	Moss Hall	CE	120	
N3	Pardes	Jewish	50	
N3	Manorside	-	30	

N3	Tudor	-	30	230
N3	Akiva	Jewish	60	
N3	St Theresa's	RC	30	
N3	Chalgrove	-	30	
NW11	Brookland	-	90	
NW11	Garden Suburb	-	90	
NW11	Menorah	Jewish	50	

51. The primary school places are not evenly distributed between the three post codes, which as noted above are of similar area. The locations of the several primary schools are close to the boundary of the post codes. For example, Brookland is most central to the area as it is located near the point at which the three post codes meet. In 2017 children from up to 0.738 miles away (figures from the local authority's composite prospectus for 2018) were allocated places at Brookland Infant school; a circle of this radius covers almost all of the three post codes. I conclude that children from any of the post codes are likely to be found attending a school in a different post code. This conclusion is bourn out by the school's response to one of my enquiries below.

52. The feeder schools and number of places available for them in the arrangements are shown in the table below.

Table 4

NW11	Brookland	15
NW11	Garden Suburb	15
N3	Manorside	5
N3	Tudor	5

53. The school told me that the number of places allocated to each feeder school reflects the relative sizes of the two schools. I asked the school whether there were any curricular or other formal links between the named feeder schools or any additional liaison activities undertaken with those four schools prior to secondary transfer which did not exist with other schools. In its response to this question the school described many good activities promoting liaison with primary schools, such as a community literacy project in the area, this project was said to include both feeder and "core" schools. Martin and Holy Trinity Schools were referred to as "core" schools in this correspondence. None of the activities described appeared to be specifically

targeted at the four named feeder schools. I conclude that the only purpose of naming the four feeder schools is to give priority for admission to children living in N3 or NW11.

54. I also asked the school in which post codes the children admitted under the feeder school criterion lived. In 2017, 20 of the 40 children admitted under this criterion lived in N2 and in 2018, 12 of them were from N2. With 50 per cent and 30 per cent of places targeted at children from N3 and NW11 being taken by children from N2 who attend schools outside of the post code in which they reside, the feeder school criterion does not appear to be effective at promoting the admission of children from N3 and NW11.

55. I will now consider how the admission arrangements distribute places to children living in the three postcodes. The table below shows the number of applications the school told me applied from the three post codes in the last three years.

Table 5

	N2	N3	NW11	Total
2016	198 (42%)	167 (36%)	102 (22%)	467
2017	249 (47%)	157 (30%)	120 (23%)	526
2018	269 (42%)	242 (38%)	126 (20%)	637

56. The next table shows the number of places offered to children from each post code in those years. The totals do not equal the PAN for the school because some children are admitted from other post codes as, siblings, founders' children or children of members of staff or because an EHCP or statement of special needs has named the school, or they are looked after or previously looked after.

Table 6

	N2	N3	NW11	Total
2016	112 (81%)	15 (11%)	11 (8%)	138
2017	90 (72%)	21 (17%)	14 (11%)	125
2018	93 (68%)	22 (16%)	22 (16%)	137

57. Combining these two tables shows the probability that an application from any one of the three post codes has of being offered a place at the school.

Table 7

	N2	N3	NW11
2016	57%	9%	11%
2017	36%	13%	12%
2018	35%	9%	17%

58. For September 2018, the farthest from the school a child offered a place under the fifth criterion (living within the priority post codes) was 0.43 miles. A circle drawn on a map of this radius does not cover the southernmost extent of N2 and only overlaps with a very small part of N3 and NW11 by at most 200 metres.

59. From the data which I have seen and set out in the tables above, it would appear that before the introduction of a feeder school criterion the admission arrangements favoured the residents of N2 because the school, intended to serve all three post codes, was located in N2. I emphasise that the location was selected not through design, but through the availability of a site and it is hardly necessary to point out that sites large enough for secondary schools are scarce in London. I have considered the locations of nearby mixed, comprehensive, non-denominational schools and can see no reason why residents of any one of the three post codes should be favoured in the school's admission arrangements. Nor has any such argument been put to me by the school. On the other hand, the objectors are from N2 and consider they have fewer alternative schools available to them than residents of the other post codes, although this does not appear to be supported by Table 2 above.

60. The proposal to introduce a feeder school criterion in 2017 drew criticism from residents of N2 as it reduced the number of places available to them as they had been the key beneficiaries of allocation on the basis of distance from the school given its location in N2. In the event, residents of N2 are still at least twice as likely to be offered a place at the school if they applied for one compared to residents of N3 or NW11. I think that any change to the arrangements which increased the likelihood of children from N3 and NW11 being offered places and so reducing the number of places offered to children living in N2 may have led to an objection.

61. The use of feeder schools to promote the admission of children from N3 and NW11 has proved ineffective. The unfairness identified in ADA3204, ADA3205, ADA3206, ADA3207 and ADA3208 remain.

62. Firstly, some children living in N2 are in the pool for a place on the basis of where they live and in the pool for a place on the basis of which primary school they attend. The school has said "*There is nothing inherently unfair in admission arrangements that have more than one criterion a child can satisfy, and indeed this is in fact the case with all admission arrangements*". Here a child could be considered for one of the first 122 places on the basis of one set of oversubscription criteria including where they live and if not offered one of those 122 places, they are considered for the

remaining 40 on the basis of other oversubscription criteria if they attend one of the named primary schools.

63. There are some other situations, where a child could be considered for two types of place at a school on the basis of different oversubscription criteria. One example is where a school offers 10 per cent of its places on the basis of aptitude for music to attract children who would benefit from the school's strengths in that curriculum area. This situation is different, to be considered for a music place, the child must specifically apply for it, children do not specifically apply for feeder school places. A child may be offered a music place who would have been offered a place under the oversubscription criteria for other places at the school; however, they would not have been offered a music place unless they were a member of the target group.

64. The school has explained that it did not include Martin or Holy Trinity Schools as feeder schools because "*pupils from these schools and others in N2 were able to secure places under the proximity criterion.*" This reaffirms that the feeder school places are intended to allow places to be offered to children living in N3 and NW11 who live too far from the school to be offered places on the basis of home to school distance. Children living in N2 were able to secure 50 per cent of the feeder school places in 2017 and 30 per cent in 2018 which I consider unfair to children living in N3 and NW11 given the stated aim of serving the three post codes.

65. Secondly, the proportions of places offered to children from these schools does not reflect the pattern of parental preference from these post codes. The school has said that "*Data from the consultation responses and subsequent admissions round, not previously available to the adjudicator, indicates that the allocation of places as between the feeder schools in N3 and NW11 does in fact reflect the pattern of parental preference between these two postcodes*". The number of applications from each post code can be seen in Table 5. The average number from N3 over the last three years is 189 and from NW11 is 116, the places allocated to schools in those post codes are 10 and 30 respectively. Places allocated under these criteria in the last two years have averaged at 10 from N3 and 14 from NW11. I cannot accept the school's argument. There are clearly many more applications from N3 than NW11 but priority for fewer places is given to children from N3 and fewer places allocated to children from N3.

66. I also consider the choice of these primary schools unfair to children living in N3 or NW11 who attend other primary schools. This is because parents would have chosen a primary school some years ago on the grounds of its reputation, faith or for practical reasons such as proximity to grandparents' home for after school childcare, not progression to secondary school. Such children do not have access to the feeder school places and are as much part of the N3 and NW11 communities as children attending them. Having considered the current circumstances and the data provided by the school I find that the way places are allocated to children attending named feeder schools in these arrangements is unfair and in breach of paragraph 14 of the Code. I note that it is also ineffective in ensuring children from N3 and NW11 have a fair opportunity of being offered a place at the school which is one of the school's stated aims.



## **Summary of Findings**

67. For the reasons set out above I do not uphold the part of the objection concerning the use of post codes to define the school's catchment area. I do uphold the part of the objection concerning the use of random allocation.

68. I have used my power under section 88I of the Act to consider the use of feeder schools in the arrangements now that another school in the area has become coeducational and in the light of recent admissions data. I find that is reasonable for the school to set admission arrangements that allow access to the school for children living in N3 and NW11; however, for the reasons set out above the use of feeder schools is both ineffective and unfair, and therefore unreasonable.

69. I have considered how long I should allow the school to revise these arrangements. The school has said it would like to revise its arrangements for 2019, but has missed the opportunity to undertake the required consultation process. I have therefore decided to require the school to revise these arrangements within the two month period set in paragraph 3.1 of the Code. This will enable the school to make necessary changes to the arrangements for 2019 and subsequently consult on its arrangements for 2020.

## **Determination**

70. 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 the Archer Academy Trust for The Archer Academy, Finchley.

71. 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.

72. 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: 16 August 2018

Signed:

Schools Adjudicator: Phil Whiffing