



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3463

**Objector:** Leeds City Council

**Admission Authority:** The Gorse Academies Trust for Hillcrest Academy, Leeds

**Date of decision:** 22 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 by The Gorse Academies Trust for Hillcrest Academy, Leeds.**

**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), an objection has been referred to the Office of the Schools Adjudicator (OSA) by Leeds City Council, (the objector), about the admission arrangements for September 2019 (the arrangements) for Hillcrest Academy (the school), an academy school for children aged 4 to 11. The objection is to the clarity of the arrangements and the priority given within the arrangements for children attending or with a sibling at a nursery school within The Gorse Academies Trust (the trust).**
- 2. The local authority for the area in which the school is located is Leeds City Council which is also the objector. Other parties to the objection are the trust and the governing board of the school.**

## **Jurisdiction**

3. The terms of the Academy agreement between the academy multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis.
4. The objector submitted the objection to these determined arrangements on 8 May 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 8 May 2018;
  - b. the admission authority's response to the objection and to my other enquiries together with supporting documents;
  - c. confirmation of when consultation on the arrangements last took place;
  - d. copies of the minutes of the meeting at which the trust determined the arrangements; and
  - e. a copy of the determined arrangements.

## **The Objection**

7. The objector identified three aspects of the arrangements which it considered were not clear. The objector also objected to the priority in the oversubscription criteria given to children if they had attended or had a sibling at a nursery within the trust. Without referring to any specific sections of the Code the objector said such criteria would breach the Code. I consider that the relevant sections of the Code are paragraph 14, regarding fairness and clarity and paragraphs 1.9e and 1.39B of the Code regarding priority for children attending nursery schools.

## **Other Matters**

8. When I considered the arrangements as a whole I noted the following provisions which I considered did not, or may not, comply with the Code:
  - a. The fifth oversubscription criterion is for children for whom the school is the nearest. This may not be clear because parents may not know

if this is their nearest primary and it is not stated how the distance to other primary schools is measured. Paragraph 1.8 of the Code requires that oversubscription criteria are clear.

- b. Section 1.5 of the arrangements did not appear to satisfy the requirements of paragraph 2.17 of the Code concerning the admission of children outside of the normal age group.
- c. The fourth oversubscription criterion gave priority to children who are attending "*any academy within the Trust*". Paragraph 1.9b of the Code prohibits taking into account any previous schools attended unless such schools are named.
- d. Section 2.21 of the arrangements concerns waiting lists. This did not state as required by paragraph 2.14 of the Code that "*that each added child will require the list to be ranked again in line with the published oversubscription criteria*".
- e. The definition of a previously looked after child given in section 3.1 of the arrangements referred to residence orders. Residence orders were replaced with child arrangements orders by the Children and Families Act 2014. Continuing to use an obsolete term could render the arrangements unclear when paragraph 14 of the Code requires that arrangements are clear.
- f. Section 3.3 of the arrangements referred to Year 7 admissions, referring to Year 7 admissions in the arrangements for a primary school may make the arrangements unclear.
- g. The requirements for supplementary information forms are set out in paragraph 2.4 of the Code. The supplementary information form asked for information that may be beyond what is permitted by paragraph 2.4 of the Code.

## **Background**

9. The school is one of ten schools, both primary and secondary, in the multi-academy trust all of which are in Leeds. The school has a published admission number (PAN) of 60 and the oversubscription criteria can be summarised as:
  1. Looked after and previously looked after children
  2. Children whose medical or mobility needs can only be met at this school
  3. Children with siblings on roll at an academy within the trust
  4. Children on roll at an academy within the trust
  5. Children for whom the school is the nearest primary school

6. Other children.

10. Children living nearest to the school are given priority within each criterion and random allocation is used as a final tie-breaker.

## Consideration of Case

### Clarity of the arrangements

11. Paragraph 14 of the Code 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*

12. The objector said that the arrangements implied that they had been approved by the local authority and the Office of the Schools Adjudicator [OSA]; that the arrangements did not state who was the admission authority and that paragraph 1.4 of the arrangements would not be understood by parents.

13. The first paragraph of the arrangements says in bold type *"The Local Authority, as required by the School Admissions Code and Part 3 of the SSFA 1998, has considered the legality of this admissions policy which has been submitted for scrutiny to the Office of the Schools Adjudicator. Any wording determined to be a breach of the School Admissions Code has been corrected prior to the allocation of school places."*

14. Paragraph 3.2 of the Code says *"Local authorities must refer an objection to the Schools Adjudicator if they are of the view that the admission arrangements that have been determined by other admission authorities are unlawful."* Paragraph 3.6 of the Code says *"Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements"*.

15. These arrangements were determined by the trust on 10 November 2017. In its response to the objection the trust said *"On 29 January Leeds City Council (LCC) contacted The GORSE Academies Trust (TGAT) with recommendations and comments regarding its primary school policies. The recommendations in the communication were not actioned, as a result of which LCC raised objections with the OSA on 14 May."*

16. The role of the adjudicator in relation to objections to admission arrangements is to consider whether or not any admission arrangements referred to him or her comply with the requirements relating to admissions and if not to what extent they do not. The OSA is the term used to refer to the adjudicators and their secretariat staff collectively. At the time the arrangements were determined, they had

not been submitted for scrutiny by the OSA and nor would the OSA carry out such scrutiny of undetermined arrangements as this is not part of the statutory function of the adjudicators or their staff. In addition, the local authority had not considered the legality of the arrangements prior to their determination and nor is it the local authority's role to do so. The opening paragraph of the arrangements is therefore untrue and consequently unclear and I uphold this part of the objection.

17. The code contains no requirement for the name of the admission authority to be stated in the arrangements. As the trust's name and logo appear on the cover of the arrangements, I think it is clear that the trust is the body responsible for them and so do not uphold this part of the objection.
18. In section 1.4 of the arrangements, headed "*Infant Class Size*" there is paragraph 1.4.1 which says "*The Education (Infant Class Sizes) (England) Regulations 1998 (SI1998/1973) as amended by SI 2006/3409 prescribed that infant classes must not contain more than 30 pupils with a single qualified teacher. (The School Admissions (Infant Class Sizes) (England) Regulations 2012 – introduces certain exceptions relating to children of multiple births and children of UK service personnel). Required to attend term following 5<sup>th</sup> birthday.*"
19. Until the last sentence this is factually correct. I cannot understand the purpose of the last sentence or how it relates to the previous statement of regulations concerning infant class sizes. This is unclear and I uphold this part of the objection.

Priority for children or siblings of children attending nursery at a school within the trust

20. The full text of the third oversubscription criterion is "*Children with siblings who are on the roll at an academy within The GORSE Academies Trust (the "Trust") at the time that the place was applied for (see note 3). This priority will not apply where the older sibling joined a post-16 or alternative provision academy within the Trust from a school outside the Trust. (If your child has a sibling within the Trust at the time of application, which includes attending a nursery within the Trust, please complete an Additional Information Form; this can be found on the Academy's website).*"
21. The full text of the fourth oversubscription criteria is "*Children who, at the time of application, are on the roll at any academy within the Trust. This does not include an alternative provision academy within the trust. (If your child is attending an academy within the Trust at the time of their application, which includes attending a nursery within the Trust, please complete an Additional Information Form; this can be found on the Academy's website).*"
22. The objector said that, by including nursery provision within the trust, these oversubscription criteria were "*indirectly allowing priority for parents who pay for nursery provision to be more able to secure a*

*school place” and “indirectly discriminating against summer born children if the nursery becomes full in September”. The objector also said these criteria would “disadvantage families who have recently moved to the area and local families who have opted for other nursery providers or who do not use nursery provision.”*

23. In its response to the objection the trust said it accepted the objector’s points and would revise the arrangements to remove priority based on attendance at nursery. While I welcome the trust’s response I am still required by section 88H of the Act to form a view on the matters contained in the objection.
24. The Code does not prohibit giving priority to children who have attended a nursery. However, where the Code refers to giving priority to children attending a nursery it is within narrow parameters and any such priority must meet the requirement of paragraph 14 of the Code, which is quoted above, to be fair.
25. In paragraph 1.9e the Code says *“It is for admission authorities to formulate their admission arrangements, but they **must not**: ... e) give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority. The exception to this is where parents pay optional nursery fees to the school or school-run nursery, for additional hours on top of their 15-hour funded early education, where children from the school nursery class or school-run nursery are given priority for admission to Reception”*. Paragraph 1.39B says *“Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium or the service premium who: a) are in a nursery class which is part of the school; or b) attend a nursery that is established and run by the school. The nursery must be named in the admission arrangements and its selection must be transparent and made on reasonable grounds.”*
26. These permissions only apply to a nursery at, or run by the school concerned as that is what the Code says and not to any nursery within the trust. This in turn means that the two criteria which give priority to children based on attendance at any nursery within the trust do not fall within these permissions.
27. I turn now to the position of children who have not attended the nursery at the school. Parents are free to make decisions about childcare and education for children below school age. I do not consider it fair that a parent who chooses either not to send their child to a nursery in the trust, or not to send their child to nursery at all, is disadvantaged by these oversubscription criteria.
28. Because admission to the trust’s nurseries is not governed by the Code, it is possible that a child may (perfectly lawfully) have been attending one of the nurseries on grounds which would not be lawful under the Code for admission to a primary school. Having priority then for a place for themselves, or a sibling, at the school on the basis of having gained

a place at a nursery in such a way might well be considered unfair except in the case of children entitled to the early years premium as allowed in paragraph 1.39B of the Code.

29. I uphold the part of the objection concerning the priority given to children or siblings of children attending a nursery school within the trust.

### Other Matters

30. The fifth oversubscription criterion is "*Children for whom Hillcrest Academy is the nearest primary school (see notes 4, 5 and 6)*" Paragraph 1.8 of the Code says "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and ...*". For some parents it may not be clear if the school is the nearest school to their home. While Note 4 says how the distance to the school will be measured, and refers to the Royal Mail Postcode Address File, nowhere in the arrangements does it say how the distance to other schools will be measured. If it is the same method, then parents will need access to the Royal Mail Postcode Address File to find out whether the school is in fact their nearest school or if another is nearer. Clearly, they will also need to be aware of such other local schools.
31. When I raised this matter with the trust it said "*Whilst we make clear the way in which we measure distance, we do not believe that we can make clear how others do this, as this could vary and is at the discretion of each admissions authority. Consequently, our position is that families would need to check the admissions arrangements of the other schools to determine how distance would be measured. Alternatively, families could approach the local authority on this. We are happy to include an amended statement that suggests as such, but we are not sure that this is really required.*"
32. I have two concerns with this response. It does not matter how other admission authorities measure distance. In order to apply this oversubscription criterion in its own arrangements, the trust will need to measure the distance that all applicants, other than those who meet one of the first four criteria, live from other schools. This is the only way in which any one (whether a parent deciding which schools to apply for or the trust as admission authority seeking to apply its admission arrangements), can establish if the school is the nearest primary school to any given address. The trust will need a method of doing this and this method must be stated in the arrangements.
33. My second concern is that the Code requires that oversubscription criteria are clear and says "*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*" I do not see how a parent would understand easily if the school was their nearest if, for example, they lived almost equidistant from this and another school.
34. Paragraph 2.17 of the Code says "*Admission authorities **must** make clear in their admission arrangements the process for requesting*

*admission out of the normal age group.*” The arrangements say in section 1.5.2 *“If a child has a fifth birthday during the summer term and parents/carers wish to defer entry until the September, they can opt to miss the Reception year. School places cannot be reserved in these circumstances and parents/carers would have to either apply for a Year 1 place during the summer term, or request that the admissions authority consider the child or a place in the following Reception year i.e. the child drops down a year group.”* The arrangements do not say what the process of making such a request is as required by the Code. Parents may request that their child is admitted to another year group for reasons other than their date of birth, for example illness, and this is not made clear in the arrangements.

35. The fourth oversubscription criterion gave priority to children who are attending *“any academy within the Trust”*. Paragraph 1.9b of the Code prohibits taking into account any previous schools attended unless it is named and no schools are named in this criterion. As these arrangements concern admission to Reception and I have found above that priority on the basis of attending a nursery is unfair, it is difficult to see which schools could be named as feeder schools.
36. Section 2.21 of the arrangements concerns waiting lists. It says *“Children’s position on the waiting list will be determined solely in accordance with the published oversubscription criteria. Where places become vacant they will be allocated to children on the waiting list in accordance with the oversubscription criteria.”* This appears to state the same thing twice, but does not state as required by paragraph 2.14 of the Code that *“that each added child will require the list to be ranked again in line with the published oversubscription criteria”*.
37. The definition of a previously looked after child given in section 3.1 of the arrangements referred to residence orders. Residence orders were replaced with child arrangements orders by the Children and Families Act 2014. Continuing to use an obsolete term renders the arrangements unclear when paragraph 14 of the Code requires that arrangements are clear.
38. Section 3.3 of the arrangements referred to Year 7 admissions, referring to Year 7 admissions in the arrangements for a primary school makes the arrangements unclear.
39. The school uses what they refer to as an *“Additional Information Form”* to collect information about applicants. This appears to me to be what is referred to in the Code as a supplementary information form (SIF) and must comply with paragraph 2.4 of the Code which says *“In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for: a) any personal details about*



*parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates); b) the first language of parents or the child; c) details about parents' or a child's disabilities, special educational needs or medical conditions; d) parents to agree to support the ethos of the school in a practical way; e) both parents to sign the form, or for the child to complete the form."*

40. The Additional Information Form is for applicants who are currently being educated at a school within the trust, or have a sibling currently being educated at a school within the trust. This form asks for the child's current school, details of any sibling, the address of the parent or carer and their relationship with the child. Asking for the relationship of the parent or carer is beyond what is permitted by paragraph 2.4 of the Code. It also seems unnecessary, and in most cases pointless, to ask about the child's current school if they are applying for a place in the Reception Year.

### **Summary of Findings**

41. For the reasons set out above I partially uphold the objection and I find that the arrangements do not comply with the Code in the other ways set out above.

### **Determination**

42. 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 Gorse Academies Trust for Hillcrest Academy, Leeds.
43. 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.
44. 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: 22 August 2018

Signed:

Schools Adjudicator: Phil Whiffing