



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3465

**Objector:** Member of the public

**Admission Authority:** Holy Trinity School Academy Trust

**Date of decision:** 4 September 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 Holy Trinity School Academy Trust for Holy Trinity School, Kidderminster, Worcestershire.**

**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 unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised as soon as possible and by, at the latest, 30 September 2018.**

### **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 member of the public, (the objector), about the admission arrangements (the arrangements) for Holy Trinity School (the school), a free school for 4 to 18 year olds for September 2019. The objection concerns the non-publication of the admission arrangements on the school website; the publication of the published admission number (PAN) and the inclusion in the oversubscription criteria of children of members of staff of the Little Trinity Nursery.

2. The local authority for the area in which the school is located is Worcestershire County Council. The local authority is a party to this objection. Other parties to the objection are the school and the objector.

### **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 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. The objector submitted her objection to these determined arrangements on 15 May 2018. The objector has asked to have her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me. 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**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 15 May 2018;
  - b. the admission authority's response to the objection and supporting documents;
  - c. the comments of the local authority on the objection and supporting documents;
  - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meeting at which the Holy Trinity School Trust determined the arrangements; and
  - g. a copy of the determined arrangements.

### **The Objection**

6. The objection is in three parts.

- The objector says that the admission arrangements for 2019 are not published on the school website and this is contrary to paragraph 1.47 of the Code which states that *“Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year”*.
- The objector says that the arrangements are non-compliant with paragraph 1.48 of the Code which states that *“Where an admission authority has determined a PAN that is higher than in previous years, they must notify the local authority that they have done so, and make specific reference to the change on their website”*,
- The objector suggests that the oversubscription criterion which gives priority to children of members of staff and associated family members is non-compliant with the Code as ‘associated family members’ are not defined and their inclusion within this criterion is contrary to paragraph 1.39 of the Code which states that *“Admission authorities may give priority in their oversubscription criteria to children of staff at the school in either or both of the following circumstances; a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage”*.

## Other Matters

7. I have looked at the admission arrangements as a whole and note four issues which may be in breach of the requirements relating to admissions;
  - a) paragraph 14 of the Code states that *“In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places is fair, clear and objective”*. The arrangements are not clear as they describe the School admissions code and the School admissions appeals code as ‘Codes of Practice’. These Codes are not Codes of Practice but documents which impose mandatory requirements in relation to the discharge of functions by admission authorities;
  - b) the arrangements state that they are for the school year 2019-2020 and all subsequent years, this is non-compliant with the Code at paragraph 15b) which states that *“Admission authorities **must** set (determine) admission arrangements annually”*. A set of arrangements is for one year only.

- c) the section of the arrangements which covers waiting lists does not provide a time frame and this is contrary to paragraph 2.14 of the Code which states that “*Each admission authority **must** maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission*”.
- d) oversubscription criterion three refers to children of members of staff including those employed at The Little Trinity Nursery and this is contrary to the Code. The nursery is a separate company and runs independently from the school. Staff at the nursery are not members of staff employed at the school and are therefore not covered by paragraph 1.39 of the Code. This allows only those children of staff employed at the school to be given priority within the oversubscription criteria.

## **Background**

8. The school is a small mixed school for 4 to 18 year olds with 551 pupils currently on roll. It is an academy school which was previously an independent fee paying school and its academy trust (the trust) is Holy Trinity School Academy Trust. The school is oversubscribed and there are extensive waiting lists for each year group. The arrangements for admission to Y7 in September 2017 included a PAN of 25. The trust decided that from September 2018 there would be no normal point of admission at Y7 and therefore the arrangements for 2018 admission make no reference to entry at Y7. It was intended that pupils from Y6 would make the natural progression to Y7 in September 2018 but there would be no specific provision for Y7 to be normal year of entry for children to join the school for the first time and with a dedicated PAN for that purpose.
9. However, the school’s position then changed again. In October 2017, following discussions with the Department for Education (DfE) and The Education and Skills Funding Agency (ESFA), the trust approached the local authority to discuss the possibility of increasing the numbers on roll at the school by admitting pupils into Y7 from September 2018 onwards. The school was able to reassure the local authority that no additional capital funding was required for this increase and the local authority was content to allow it to happen. In order to admit children into Y7 in 2018 the school agreed to admit pupils from their waiting list. The school in parallel proposed a change in the admission arrangements for admission in September 2019 to include a normal point of admission at Y7 with a PAN of 25. To put it another way, the school decided to return to the position which had applied for entry in September 2017. With the two classes (50 children) already in Y6, this would mean there would be three classes in Y7 and a total of 75 children in the cohort. Proposals were put together and a consultation exercise was conducted between November and December 2017. The local authority confirms that the consultation was conducted in line with the Code. It should be noted here that the letter which accompanied

the consultation document refers to changes in admission arrangements for 2018 when in fact they were for admission in 2019. The attached arrangements within the consultation documents state the correct date. I assume that the date in the letter was an error although it prompted a letter of objection from a local secondary school to which the school responded, explaining that the proposed changes were for 2019 admissions.

10. Oversubscription criteria within the arrangements for 2019 can be summarised as follows:
- 1) Looked after and previously looked after children
  - 2) Siblings
  - 3) Children of members of staff
  - 4) Fifty per cent of remaining places to local catchment of one mile
  - 5) Fifty per cent of remaining places to larger catchment of three miles
  - 6) Other children by distance

### **Consideration of Case**

11. At the time of the objection, 15 May 2018, the objector says that the 2019 arrangements were not published on the school's website. The local authority agreed a week later that the arrangements were still not published on the school's website. The local authority confirmed that the trust had determined the arrangements in February 2018 and sent a copy to the local authority who published the arrangements on its own website on 15 March 2018. The Code at paragraph 1.47 requires admission authorities to publish the arrangements on the school's website. As the arrangements were not published on the school's website this is non-compliant with paragraph 1.47 of the Code and I therefore uphold this element of the objection. The school wrote to me on the 25 May 2018 confirming that the arrangements had been posted on the school's website. I can confirm this to be the case.
12. The objector suggests that the published PAN of 25 does not conform to the requirements of the Code at 1.48. The objector suggests that the 50 children who will be moving from Y6 to Y7 should be included in the PAN and that the correct PAN, which should be published is 75. This is not the case. The Code defines the PAN as "*The number of school places that the admission authority must offer in each relevant age group of a school for which it is the admission authority.*" This means that the PAN is the number of pupils admitted at a particular normal point of entry and does not include the pupils who are already on roll at the school and who, in this case, are simply moving from one year group to another. This school has two PANs: one for Reception (which is 50) and one for Y7 which can only concern children joining the school at that point. Therefore the Trust is correct in its published PAN of 25 and I therefore do not uphold this element of the objection.
13. In the published arrangements, oversubscription criterion three reads "*Children of members of school staff (part time and full time), including*

*members of the administration team and the Little Trinity Nursery and associated family members including members of the administrative team, where these members of staff have been at the school for two or more years and/or the member of staff has been recruited to fill a vacant post for which there is a demonstrable skill shortage*". I have already dealt with the inclusion of staff from Little Trinity Nursery at paragraph 7d above and explained why these staff cannot be included in the priority given to children of staff in the arrangements. The objector is concerned about the use of the term "*associated family members*" and suggests that this is not clear and therefore non-compliant with paragraph 1.39 of the Code. In its response to the objection the school states that "*The reference to 'associated family members' is aimed to include step-parents and partners (to include same sex). The school agrees that this is ambiguous and can be clarified, though is seeking advice as to the wording*". In its response, the local authority also agreed that this was unclear. I am of the view that the use of the term "*associated family members*" is undefined and unclear and is therefore non-compliant with the Code at paragraph 14 which requires the arrangements to be fair, clear and objective and with paragraph 1.8 which requires oversubscription criteria to be reasonable, clear and objective. I therefore uphold this element of the objection.

### **Other matters**

14. I consider that the following do not conform with the Code as explained in paragraph 7:

- The incorrect use of the term 'Codes of Practice in reference to the Admissions Code and the Appeals Code.
- The references to the years to which the admission relate.
- The clarity of the dates for which a waiting list is held.
- The inclusion of staff at the Little Trinity Nursery in criterion giving priority to children of staff in the arrangements.

The Code requires that these aspects of the arrangements be amended so that they do conform with the Code.

### **Summary of Findings**

15. The Trust had not published the arrangements on the school's website at the time of the objection and this is non-compliant with the Code. The arrangements include reference to "*associated family members*" in the oversubscription criterion which gives priority to children of members of staff and this is not properly defined or explained. This makes it non-compliant with the Code and I therefore uphold these two elements of the objection.
16. The published arrangements contain a PAN of 25 and this is correct, contrary to the view of the objector who believes that the PAN should include those pupils who will be moving into Y7 from Y6 and are already on the roll at the school. PANs indicate those pupils who will

be admitted from outside the school for each relevant age group. I therefore do not uphold this element of the objection.

17. In addition I have drawn to the attention of the school four areas of the arrangements which are non-compliant with the Code. These elements also need attention and amendment. Paragraph 3.6 of the Code states that admission authorities can revise their arrangements to give effect to a mandatory requirement of the Code, admission law or a determination of the Adjudicator. The arrangements require amendment before the process for the allocation of places begins for admission in September 2019 and therefore I have set a date of the end of September for the revisions.

### **Determination**

18. 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 Holy Trinity School Academy Trust (admission authority) for Holy Trinity School, Kidderminster, Worcestershire.

19. 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.

20. 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 unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised as soon as possible and by, at the latest, 30 September 2018.

Dated: 4 September 2018

Signed:

Schools Adjudicator: Ann Talboys