



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3439

**Objector:** Dorset County Council

**Admission Authority:** The academy trust for Wey Valley School,  
Dorset

**Date of decision:** 7 September 2018

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for Wey Valley School in Dorset for admissions in September 2019.**

**I have also considered the arrangements for 2019 in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.**

**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 arrangements within two months of the date of this determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised within two months.**

### **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 Dorset County Council (the objector), about the admission arrangements (the arrangements) for September 2019 for Wey Valley School (the school), an academy school for which the academy trust is the Wey Valley School Trust (the trust). The school provides for pupils aged 11 to 16. The objection is that the school has reduced its published admission number (PAN) and the objector as the local authority (LA) for the school considers that this is prejudicial to its ability to secure adequate places for the expected future pupil numbers in the area.

2. The LA for the area where the school is located is Dorset County Council. The parties in this objection are the LA as the objector, the academy trust and the school's governing board.

### **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 by the governing board of the school on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 14 May 2018.
4. 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 reviewed the arrangements as a whole using my power to do so under section 88I of the Act as the arrangements had been brought to my attention by the objection.

### **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 14 May 2018, supporting documents and subsequent submissions;
  - b. the school's response to the objection and subsequent submissions and supporting documents;
  - c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2018;
  - d. confirmation of when consultation on the arrangements last took place;
  - e. copies of the minutes of the meeting at which the governing body determined the arrangements; and
  - f. a copy of the determined arrangements.

### **The Objection**

7. The LA is objecting to the decision that the Wey Valley School has made to reduce its PAN from 210 to 180 for September 2019.

### **Other matters**

8. In reviewing the arrangements, I was concerned that the school's admission arrangements and, in particular, its oversubscription criteria appeared not to comply with the requirements of the Code in a significant number of ways. My

primary concern is that there appear to be two sets of oversubscription criteria which are not consistent with each other and make it impossible for any person to understand how the arrangements operate if the school is oversubscribed. I am also very concerned that the requirement for the highest priority to be given to looked after children and all previously looked after children is not being met. I set out my concerns in detail in a letter to the school and set them out below:

9. The arrangements need to clarify that all applicants will be given a place if there is a place available in order to conform with paragraph 1.6 of the Code. If the school has places available then the Code at paragraph 15d says that all applicants “**must be offered a place**”.

10. The determined arrangements begin by saying that

*“All students naming The Wey Valley School will be considered for a place. Applicants are admitted to the school each year in the following priority order:-*

*i. Children living in the area normally served by the school.*

*ii. Children wishing to attend on parental preference grounds.*

*iii. Where there are spare places available and the number of preferences is equal to or fewer than the places available, those children living in the area of another school but wish to attend on parental preference grounds can be admitted.”*

11. It is currently unclear what the status of these priorities are in the arrangements since there are a further set of priorities listed below. The priorities as written are themselves unclear since the “*area normally served by the school*” is not defined. Applications for a place at the school in Year 7 are made as a result of parents expressing a preference so it is unclear what the second criterion means. The third point is not a criterion and I have already pointed out that if there are available spaces, all applicants **must** be given a place. This section of the arrangements appears to serve no purpose and confuses the arrangements. It should be removed.

12. The Code is quite clear in paragraph 1.7 that “*the highest priority **must** be given to looked after and all previously looked after children*”. This is not the case in these arrangements since they come after the priorities listed above.

13. The next part of the arrangements goes on to say:

- *“Children who are in the care of the local authority and / or with educational reasons which are supported by the Schools SENCo or an Educational Health Care Plan will be admitted in line with statutory guidance.*

*Where there are more places available but there is a greater number of preferences, children will be offered places in the following order:*

- *applicants who have a brother or sister attending the school at the time of the admission.*

- *the child's proximity to the school.*
  - *any other reasons addressed by parents which, in the Principal's view, deserve priority"*
14. Children with an Education, Health or Care Plan (EHCP) naming the school must be admitted and should not be included as one of the oversubscription criteria in order to comply with the Code in paragraph 1.6 of the Code. Some schools choose to make a reference to such admissions in an introductory part of the arrangements before any consideration is given to oversubscription criteria.
  15. The arrangements refer to priority given to children with educational reasons supported by the school's special educational needs coordinator. This is a different matter and paragraph 1.16 of the Code is relevant and admission authorities "**must set out in their arrangements how they will define this need....**".
  16. If the reference to educational needs is removed from the criterion and the first set of priorities referred to above are removed, it will leave looked after and all previously looked after children as the highest priority as required.
  17. In addition to being made the first criterion, the description of looked after and all previously looked after children needs to be changed to refer accurately to the requirements of paragraph 1.7 of the Code and its associated footnotes.
  18. The arrangements then refer to applicants who have a brother or sister attending the school at the time of the admission. There is no definition of what the school means by a sibling. Paragraph 1.11 of the Code sets out the further information that is required in this respect.
  19. The next criterion refers to a child's proximity to the school. Further clarification is required to set out clearly how this is measured in order to comply with paragraph 1.13 of the Code.
  20. The arrangements then contain a criterion that says "*Any other reasons addressed by parents which, in the Principal's view, deserve priority*". The previous criterion ranks children on the distance that they live from the school. If the school is oversubscribed, then all the remaining places will be allocated in the distance criterion. Therefore, if the school wishes to have a criterion that gives some priority for social and medical need as described in paragraph 1.16 of the Code, such a priority will only have any effect if it comes with a higher priority than children admitted on the grounds of distance. Children admitted on the basis of distance are effectively all other children who are ranked on the basis of distance
  21. In addition to this point, the criterion as it is written is unclear and lacks objectivity and in these respects the criterion does not comply with paragraph 1.8 of the Code. The admissions authority is responsible for considering applications for places against the oversubscription criteria and it is inappropriate to refer to the "*principal's view*".

22. After the oversubscription criteria, the school makes reference to the PAN in different year groups in the school. The school needs to remove this link between its PAN and admissions into Years 8 – 11. The Code in paragraph 1.2 says that the PAN is only applicable in the relevant age group which in this case is Year 7 (Y7).
23. Paragraph 1.8 of the Code states “*admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*” I was unable to find such a provision in these arrangements.
24. Lastly, the school must comply with paragraph 1.46 of the Code and ensure that, for this year, it is displaying the 2018 and the 2019 admission arrangements on the school’s website. When I looked at the website this was not the case.

## **Background**

25. The school became an academy in 2012 and is the only school in the Wey Valley School Trust. The school seeks to be an inclusive school that serves the community of Weymouth and Portland. The school has been undersubscribed in recent years. There are three secondary schools that serve the Weymouth area, these are All Saints School (PAN 180), Budmouth College (PAN 260) and Wey Valley School (PAN 210). For admissions in 2018, the area received a total of 672 first preferences against a combined school capacity of 650. Some of these applications were from the Portland area. As a result of these applications and other preferences expressed, All Saints School and Budmouth College were fully subscribed and Wey Valley College was allocated 195 students.
26. Wey Valley was then allocated further students in the late admissions round bringing a total of 204 places for September 2018 which is six below its PAN. The LA considers that the remaining six places may be allocated to late applicants moving into the area.
27. The school has admitted between 144 and 179 students in the six years up to 2018. In each of those years PAN was 210. The school has a basic capacity calculation of 1156 with a maximum number of workplaces of 1285. A maximum workplace calculation of 1285 places would allow a PAN of up to 240 for an 11 – 16 school such as this.
28. During 2017 the school consulted on reducing its PAN from 210 to 180 for 2019. Following consultation it determined to reduce the PAN. For admissions in 2019 the PAN is 180 and this is the subject of the objection which is discussed below.
29. The school’s admission arrangements state that:

*“All students naming The Wey Valley School will be considered for a place. Applicants are admitted to the school each year in the following priority order:-*

- *Children living in the area normally served by the school.*
- *Children wishing to attend on parental preference grounds.*

- *Where there are spare places available and the number of preferences is equal to or fewer than the places available, those children living in the area of another school but wish to attend on parental preference grounds can be admitted.*
- *Children who are in the care of the local authority and/or with educational reasons which are supported by the Schools SENCo or an Educational Health Care Plan will be admitted in line with statutory guidance.*

*Where there are more places available but there is a greater number of preferences, children will be offered places in the following order:*

- *applicants who have a brother or sister attending the school at the time of the admission.*
- *the child's proximity to the school.*
- *any other reasons addressed by parents which, in the Principal's view, deserve priority."*

### **Consideration of Case**

30. The Wey Valley School consulted during 2017 on reducing its PAN to 180 from September 2019. During the consultation period, the LA says that it shared data with the school. The LA says the data showed that feeder primary schools would be producing at least 650 students for September 2018 needing places across the three local schools and that these numbers were projected to continue at similar levels. The LA pointed out that if the Wey Valley School reduced its PAN to 180, even if the other two schools in Weymouth continued to admit to capacity and take 440 pupils, there would be insufficient places to meet the demand in the area. In this case the LA would be unable to fulfil its duty to provide local spaces for local children. The LA provided the table below that sets out the pupil number projections for the Weymouth area. It shows that the numbers across the area are projected to be sustained until 2023.

	Weymouth Pyramid Secondary						
	Year group						
Forecast Year	7	8	9	10	11	12	13
2017/18	614	608	590	585	549	190	172
2018/19	642	622	599	586	575	195	178
2019/20	641	648	613	596	576	204	184
2020/21	645	647	638	610	586	204	192
2021/22	692	651	637	635	599	208	193

Weymouth Pyramid Secondary							
Year group							
Forecast Year	7	8	9	10	11	12	13
2022/23	643	699	641	634	624	212	196
2023/24	638	649	689	638	623	221	200
2024/25	626	644	639	685	627	221	208

31. If the Weymouth schools are at capacity, the next nearest school in the wider area is Atlantic Academy in Portland. This school has a PAN of 120 which has been reduced from 150. Even with the reduced PAN, this school is projected to have some spare capacity. However, the LA has said that it does not think that it is appropriate to consider using this spare capacity to provide places for the Weymouth area given the distance of more than seven miles between the schools and the requirement that it would then need to provide transport. The LA provided the projections for the Portland area as follows:

Portland Pyramid							
Year group							
Forecast Year	7	8	9	10	11	12	13
2017/18	75	91	78	72	80		
2018/19	84	72	86	77	70	1	0
2019/20	102	81	68	85	75	1	0
2020/21	88	98	76	67	82	1	0
2021/22	97	84	92	75	65	1	0
2022/23	85	93	79	91	73	1	0
2023/24	92	82	87	78	88	1	0
2024/25	83	88	77	86	76	1	0

32. The school responded to these arguments about pupil numbers by saying that the school has been admitting below capacity for a long time and this has had a negative impact because the fluctuating numbers make budget, staff and curriculum planning difficult. This in turn has a negative impact on school improvement as schools funds do not meet the curriculum and staffing plan, the school has to plan for potential students within PAN.

33. The governors have expressed frustration that other Weymouth secondary schools admit up to their PAN and then take additional pupils if appeals are successful which acts to the detriment of Wey Valley School numbers. I note that if appeals are successful for any of the schools then the appropriate school has no choice but to admit the applicant. For 2018, the governors say that at one point they were asked by the LA to increase their PAN to 240 as this is what the numbers indicated but in the end, the number allocated in March 2018 was 210. Six of these children then gained places on appeal at one of the other schools with a further round of appeals still to be held at the other secondary school with a further reduction in pupil numbers anticipated. The governors argue that it is difficult to plan pupil numbers each year and this significantly reduces the school's budget. As this is driven by pupil numbers it adversely affects its ability to secure school improvement on which it has been expected to make rapid progress through recent Ofsted reports and visits. The governors are concerned that this uncertainty does not support the education of those students attending the Wey Valley School. The governors also expressed their concern that Atlantic College in Portland had been allowed to reduce its PAN from 150 to 120.
34. The LA responded to these points by saying that it has had regular dialogue with the school and the wider education community on growing levels of demand. It understands the challenges that the school has faced and is supporting the school financially with additional funding for 2018 so that the school can accommodate the 210 Y7 students. Up until now the numbers have not exceeded 180, and have been generally lower than this at the point of entry, this has allowed the schools to organise its provision with six forms of entry in Year 7. The LA points that there have been fewer admission appeals in the area this year and that the other schools have attempted to defend these more robustly. In previous years under different leadership, other local schools had not been so robust but this position has changed. The LA also said that both the other two high school in the area have received unfavourable Ofsted judgements recently and this is likely to have an impact on the number of high preference applications they receive. I infer that the LA expects greater numbers to seek places at the Wey Valley in the future.
35. In respect of the issues concerning pupil numbers in Portland, the LA said that its figures show that there are sufficient places for pupils in that area. Although Portland parents may attempt to gain places in Weymouth, given the geography of the area it is not appropriate for the LA to use any surplus capacity in Portland to deal with under capacity in Weymouth because of the distance involved.
36. I have considered the arguments from the LA and the school concerning the pupil numbers. The Wey Valley School's decision to move to a PAN of 180 will provide the governors with more certainty on student and curriculum planning. I can see that this makes a PAN reduction attractive for the school. However, having looked at the LA's pupil number projections for the area I can see that pupil numbers are projected to increase in the area, if the PAN is reduced there will be insufficient places in years to come.
37. On the basis of all the information provided about the organisation of the school, the fact that the school has the capacity for 210 in each year and in the light of the demographic forecasts provided I therefore uphold this objection.



38. I turn now to the other matters which I identified when I reviewed the arrangements in the course of considering the objection. As noted above, the school has not been oversubscribed in recent years so has not had to apply its oversubscription criteria. However, that does not affect the importance of determining arrangements which conform with the law and Code and, which are, in particular, reasonable, clear and objective.
39. The arrangements appear to contain two different sets of oversubscription criteria. They say first that priority will be given to children living in the area, then to children attending on parental preference grounds, then to children living in the area of another school. These first criteria serve no apparent purpose since the area referred to is not defined. All applicants will by definition be applying for a place on parental preference grounds and it is quite unclear what living in the area of another school means.
40. It is possible that the first list is intended to be used if the school is oversubscribed, and it is then possible that the second list is intended to deal with the situation when the PAN is reached and exceeded within one of the criteria in the first list but this is not clear. The Code in paragraph 14 says that *"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."* I cannot see that a parent looking at these arrangements would understand how places are allocated in this school.
41. The arrangements then say that priority will be given to children in the care of the local authority and children with educational reasons supported by the school's special needs coordinator or with an Educational, Health or Care Plan. Then children with a sibling in the school; then children admitted in order of the distance they live from the school. Lastly there is a criterion giving priority to children for whom it is the principal's view that there is any other reason for admission.
42. I am deeply concerned that the arrangements do not give the highest priority to looked after and previously looked after children as required by paragraph 1.7 of the Code. Instead, these children appear in the second list of priorities in the arrangements.

### **Summary of case**

43. I have looked carefully at the arguments made by both the school governors and the LA in relation to the reduction of the PAN at this school from 210 to 180. I have noted that the LA has provided support to the school in order to create a class in 2018 and admit up to its PAN of 210. The LA has acknowledged the difficulties faced by the school when the number of pupils does not reach its admission number and leaves available places during the year. However, I am convinced by the figures that the LA has provided that show that the available places will be required in the approaching years. As a result I uphold the objection made about the PAN reduction and determine that the school must not reduce its PAN from 210 for admissions in 2019.
44. I reviewed the arrangements using my power under section 88I of the Act. The arrangements need some significant work to ensure that they conform with the Code. My main concerns are that there appear to be two sets of oversubscription criteria which make it impossible for any person to understand

how places would be allocated. I am also very concerned that looked after and all previously looked after children are not given the highest priority within the arrangements.

45. The school has not been oversubscribed so the determined oversubscription criteria have not been tested. The trust has a responsibility to ensure that the local governing body revises the arrangements so that they comply fully with the Schools Admission Code. I set out above the areas where the governors must revise their arrangements on behalf of the trust. I wrote to the school about these issues and I am reassured that the governing body has confirmed that it will make the necessary changes.
46. The Code requires the governing body to revise its arrangements within two months of the date of this determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised within two months of the date of publication of this determination. This applies both to the restoration of the PAN to 210 and to the necessary changes to rectify breaches of the requirements relating to admissions I have identified using my powers under section 88I.

### **Determination**

21. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for Wey Valley School in Dorset for admissions in September 2019.
22. I have also considered the arrangements for 2019 in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.
23. 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 arrangements within two months of the date of this determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised within two months.

Dated: 7 September 2018

Signed:

Schools Adjudicator: David Lennard Jones