



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3367

Objector: A parent, carer or other person with parental responsibility for a child who will be the right age to join the school in September 2019.

Admission Authority: The Waldegrave Trust for Waldegrave School, Richmond

Date of decision: 27 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 governing board of Waldegrave School on behalf of the Waldegrave Trust for Waldegrave School, in the London Borough of Richmond.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination, or such other date specified by the adjudicator.

The arrangements must be revised within two months of the date of this determination to ensure that the boundaries of the catchment area and the location of the dividing line between Areas A and B are made clear to parents. If this is done by way of a map, the map must be published as part of the admission arrangements.

The arrangements for admission to the sixth form must be revised with effect from 28 February 2019 to ensure that they comply with the requirements of the Equality Act 2010 and paragraphs 1.1 and 1.8 of the Code.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent, carer or other person with parental responsibility for a child who will be the right age to join the school in September 2019, (the objector), about the admission arrangements for September 2019 (the arrangements) for Waldegrave School (the school), a non-selective academy school for girls aged 11 to 18, with a co-educational sixth form. The objection is that the school failed to consult adequately when proposing to change its arrangements for admission to the sixth form in September 2019, and that the catchment area for admission to the school in year 7 (Y7) is both unclear and unreasonable.
2. The local authority for the area in which the school is located is the London Borough of Richmond (the LA). The LA is a party to this objection. Other parties to the objection are the objector and the governing board of the school on behalf of the Waldegrave Trust (the trust) which is the admission authority for 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 academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined on 27 February 2018 by the governing board of the school on behalf of the trust on that basis.
4. The objector submitted an objection to these determined arrangements on 17 March 2018. The objector has asked to have his 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 (the Regulations) by providing details of his/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 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 17 March 2018, documents attached to the form and subsequent emails;
 - 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. a map of the area identifying relevant schools;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting at which the governing board of the school determined the arrangements; and
- g. a copy of the determined arrangements.

The Objection

7. The objector's view is that, when consulting upon changes to the arrangements for admission to its sixth form in September 2019, the governing board did not take adequate steps to inform local parents that this consultation was taking place. The objector claims that this was in breach of paragraph 1.44 of the Code which sets out requirements as to who must be consulted about admission arrangements.

8. The objector considers that the catchment area for admissions to the school in Y7 is neither clearly defined nor reasonable, and therefore does not comply with paragraph 1.14 of the Code. This paragraph states: "*Catchment areas must be designed so that they are reasonable and clearly defined*". The objector later raised the point that the catchment areas for Y7 operate to disadvantage applicants from deprived areas. Paragraph 1.8 of the Code is therefore relevant as it requires that oversubscription criteria must not disadvantage unfairly either directly or indirectly a child from a particular social group.

Other Matters

9. The LA, in response to the school's proposal to change its sixth form arrangements, had commented that the proposal to lower the number of admissions to external applicants from 40 to 20 and yet seek to offer 40 places to boys contravenes equalities legislation. The LA drew this to my attention in the context of this objection. Paragraphs 1.1 and 1.8 of the Code are relevant to the question of whether the sixth form admission arrangements comply with equalities legislation.

Background

10. The school is a single sex non-selective school with a co-educational sixth form. It became an academy in September 2012. The school was rated as outstanding by Ofsted in 2007. It has a published admission number (PAN) of 216 for Y7, and for Y7 admissions to the school in September 2018, 981 applications were received, of which 418 were first preferences.

11. The oversubscription criteria for entry to Y7 can be summarised as:
- 1) Looked After and previously Looked After Children.
 - 2) Girls with exceptional social or medical needs.
 - 3) Siblings of children at the school.
 - 4) Daughters of staff directly employed by the school for 2 years before the application for admission.
 - 5) Girls living within the halves of a rectangular catchment area, with 85% of places given to priority area A, and 15% to priority area B.
 - 6) Other girls in distance order from the school.

Distance from home to school is used to rank girls within each of the oversubscription criteria.

The arrangements give significant priority to those who live in the school's catchment area which is described as comprising priority area A and priority area B. Note 2 in the arrangements states: *"The shape of the priority areas for Waldegrave was originally determined by the link primary school furthest away in each direction in 1998 (i.e North – John Betts, Hammersmith; South – St John's School, Kingston; East – St Faith's School Wandsworth; and West – Forge Lane Hounslow). These points were used as a basis for the boundary of the priority areas. Waldegrave is therefore not the central point of the priority areas"*.

12. The arrangement for the sixth form state that the school has capacity for 150 pupils in each of year 12 and year 13. The arrangements say that:

"Entry to the sixth form is subject to minimum entry requirements for both internal and external candidates, and available places within subject areas. Existing Waldegrave School students have priority over external applicants. The school will accept a minimum of 20 students from external academic institutions in each cohort. If the sixth form is oversubscribed with applicants, the following criteria will be used to determine which applicants are admitted:

1. Young people who are, Looked After Children or previously Looked After Children.

2. 40 places allocated to boys in each cohort, in the order of criteria 3-4 below, before other applicants are considered. (If any of those 40 places are unfilled, existing Waldegrave School students will have priority over external applicants.)

3. Children (by which is meant full, step, half and adopted children living in the same household) of staff directly employed by Waldegrave School for two years or more before the admission application and

employed at the point of admission.

4. Any other young people on the basis of distance from home to Waldegrave School, measured by the shortest route by road and/or maintained footpath from the property to the nearest pedestrian school gate used by the relevant year-group."

Consideration of Case

Consultation

13. In the form of objection dated 17 March 2018, the objector states that the school did not comply with the consultation requirements set out in paragraph 1.44 of the Code when proposing to change its arrangements. I note that the only changes proposed were to the arrangements for admission to the sixth form. In particular, the objector argues that local parents were not consulted.

14. The objector has children at two local schools – a secondary and a primary - and says that she did not receive any information about the proposed changes. The objector suggests that the school may have informed families at schools that will benefit, that is "*the ones in the same academy trust*", but it did not inform families who will lose out, that is "*every other local school*". In the objector's view, the school has made "*a big change that will disappoint people who were hoping for their boys to go to the 6th form and they should have made it more public*". The change that was made to the sixth form arrangements was to reduce the guaranteed number of places available to external applicants from 40 to 20.

15. The response from the school to the objection was set out in a letter from the Co-Chairs of governors dated 4 April 2018 which attached the following documents: the email sent out to Waldegrave parents; the letter emailed to Richmond primary and secondary schools dated 13/12/2017; and the consultation letter that went out to Waldegrave parents, the London Borough of Richmond upon Thames, all neighbouring local authorities, and the governing boards of every primary and secondary school in Kingston/Richmond. There is no request contained in that letter for it to be circulated to the parents of pupils attending these local schools. I was also sent details of the consultation responses and details of further action taken by the school in light of these responses.

16. There followed further correspondence from the objector and the school, including on the question of whether the school should or should not have used its Twitter account to publicise the consultation. The question for me is simply whether or not the school complied with the requirements relating to consultation which are set out in the Code. Paragraph 1.44 of the Code provides that:

*"Admission authorities **must** consult with:*

a) parents of children between the ages of two and eighteen;

- b) *other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;*
- c) *all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);*
- d) *whichever of the governing body and the local authority are not the admission authority;*
- e) *any adjoining neighbouring authorities where the admission authority is the local authority; and*
- f) *in the case of schools designated with a religious character, the body or person representing the religion or religious denomination”.*

17. In the case of this school, e) and f) are not relevant as the admission authority is not a local authority and the school does not have a religious character. I have seen evidence that the school consulted other admission authorities and the local authority. However, at no point in my consideration of this case has the school explained what steps it took in order to comply with the specific requirements in paragraph 1.44 of the Code highlighted by the objector – namely the requirement to consult with parents of children between the ages of two and eighteen and other persons with an interest.

18. Comments on the objection were received by email on 10 April 2018, which were said to be on behalf of Achieving for Children (AfC) and Richmond Council. AfC is the LA's education and children's services provider. AfC confirmed on behalf of the LA that a consultation did take place with all neighbouring local authorities in relation to changes to the arrangements for admission to the sixth form in September 2019. The email states that *“It would be for the school to confirm how it consulted with the wider parents community”*.

19. Having considered all of the representations, I now set out my conclusion on this part of the objection. The legal requirements imposed upon the school are set out in paragraphs 1.44 and 1.45 of the Code. Paragraph 1.44 sets out who must be consulted, and paragraph 1.45 of the Code sets out requirements as to the manner of consultation as follows:

*“For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought....”*

20. The objector drew attention to the low number of responses received to the consultation. There were only ten responses, which is a very low number indeed. Three were clearly from parents of children attending the school, one was from the LA and one was from the Children's Centre Management Group. The fact that the number of responses was so low lends support to the objector's contention that local parents affected by the proposed change were not aware of the consultation.

21. In order to satisfy the requirements set out in paragraph 1.44 (a) and (b) of the Code, the school would have needed to make a reasonable attempt

to bring the consultation to the notice of parents of children between the ages of two and eighteen who are resident in the relevant area, and such other persons in the relevant area who, in the opinion of the admission authority, would have had an interest in the proposed admission arrangements.

22. In response to the objection, the school has set out how it conducted the consultation but has not answered the specific points made by the objector, although they are articulated clearly. I have seen no evidence of any reasonable attempt to bring the proposals to the attention of parents of children between the ages of two and eighteen who are resident in the relevant area, or such other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admission arrangements.

23. The school sent letters addressed “to whom it may concern” to local schools setting out its proposals as part of its consultation. Sending such a letter is not the same as notifying *parents*, still less undertaking any attempt to consult with parents of children in a meaningful way. Had the letter requested that it be forwarded to the parents of pupils at those schools, I might have been inclined to consider that this went some way towards an attempt to comply with the requirement to consult these parents, but the letter did not contain such a request. The school was not entitled to assume that the letter would be forwarded to parents – indeed the school has not even said that it had made this assumption when sending the letter. The school has not commented upon the objector’s point that he, as a local parent, was not consulted, nor on the fact that the number of responses was so low indicates that local parents were not, in fact, consulted as they should have been.

24. The objector has children at two local schools – a secondary and a primary - and did not receive any information about the proposed changes, nor any notice of the consultation; the school has not suggested that any methods other than writing to local schools were used in order to ensure compliance with the requirements in the Code and the Regulations. The view of the school appears to be that it consulted properly, and complied with the relevant requirements. This was not the case. The consultation did not comply with the requirements in paragraph 1.44 (a) and (b) of the Code, and I therefore uphold this aspect of the objection.

25. As noted above, the Code, and its underpinning Regulations namely the School Admission (Admission Arrangements and Coordination of Admission Arrangements) (England) Regulations 2012, impose requirements as to consultation. These are all framed in terms of changes to admission arrangements and, indeed, paragraph 1.45 refers to the requirement to publish the “**full proposed arrangements** [emphasis added]...” Section 88(2) of the Act provides that an admission authority, before determining the admission arrangements that are to apply for a year, must carry out such consultation about the arrangements as may be prescribed. “*Admission arrangements*” for the purpose of this section means “*the arrangements for admission to the school, including the school’s admission policy*”. Regulation 13(2) of the Regulations states that: “*subject to regulations 14 and 15, consultation must relate to the arrangements (including any supplementary*

information form) which the admission authority propose to determine as the admission arrangements for the particular school year...”.

26. Accordingly, the consultation must relate to the school’s arrangements as a whole, and not simply to any proposed changes to the arrangements. Consultees may comment on any aspect of the arrangements. Schools are required by virtue of regulation 15(2) of the Regulations to consult on their admission arrangements when changes are proposed and, in any case, at least once every seven years.

Whether the school’s catchment area is clear

27. The objector has also raised the question of whether the catchment area for admissions to Y7 breaches paragraph 1.14 of the Code because it is not clearly defined. She states that there is no map on the school website. Paragraph 1.14 requires that catchment areas must be designed so that they are reasonable and clearly defined. In the case of this school, satisfying the requirements of paragraph 1.14 means that it needs to be possible to tell from the arrangements both whether an address is within the overall catchment area and, if so, whether it is within priority area A or priority Area B. The objector said *“The admissions policy notes say how the area was defined originally using a rectangle but I wonder if it has changed since then because the map in the council admissions brochure shows the borough boundary with a line through it instead. It’s not possible to zoom in to see which roads are in or out of catchment – people living near the line have to phone the council to check. When I tried to search for more information I found a freedom of information request online which helped me to understand the catchment area a bit better but it also shows that even the council can’t explain it very well. It does say that the council use a bigger version of the map, with the boundary between the two areas marked on it, and they use that for checking addresses, but it’s not available to parents to easily check.”*

28. I clicked on the link to the freedom of information request, which was a request for the geographical coordinates of the four out of borough schools that define the corners of the Waldegrave priority admissions area. I have set out below in full below the dialogue between the requester and the LA because I have taken this information into account. As will become apparent, despite requesting clarification from the school and the LA, the catchment area itself, the location of the A/B bisecting line and the rationale for the catchment continuing to be drawn as it is remain unclear to me.

29. The initial response to the FOI request from the LA was as follows:

*“There are two areas used for prioritising admissions to Waldegrave School: Area A and Area B, which together make a large rectangle covering a swathe of South-West London.
As set out on page 41 of the Council’s Admission to Richmond’s Secondary Schools 2017 brochure, the four corners of the rectangle were originally determined, in 1998, by the ‘link’ primary school furthest away in each direction: North – John Betts, Hammersmith; South – St John’s, Kingston; East – St Faith’s, Wandsworth; and West – Forge*

Lane, Hounslow. (Forge Lane has since been renamed as St Richard's Church of England Primary.)

The grid references of the four corners are as follows:

John Betts – TQ22564 79028

St John's – TQ18330 68634

St Faith's – TQ26041 74953

St Richard's – TQ12117 71041

Areas A and B are established by bisecting that rectangle from north to south. As the points do not have postcodes which we can readily identify, we are unable to give exact grid references for them; however, the approximate eastings and northings coordinates of the northerly point and southerly point of the bisecting line are as follows:

Northerly point – easting: 5161820; northing: 1768110.

Southerly point: - easting: 5200240; northing: 1694490.”

30. The requestor then followed up the request stating she had plotted out the co-ordinates, which actually form an irregular polygon that is not bisected by the A/B boundary line which the LA had provided coordinates for. The requestor also plotted out using the four primary schools which are said to form the north, south, east and west boundaries, and found that the A/B boundaries do not bisect that rectangle either. The requestor again asked for the corner coordinates used to define the rectangular area which is purported to be the Waldegrave catchment area.

31. The response from the LA to the requestor was: *“You are quite right, the rectangle's corners are not the four schools, but are guided by them. When the school's admissions policy was changed for 2006 entry from four areas (known as 'Quadrants') to two, the policy was defined as follows: “Girls living within the halves (priority area A and priority area B) of a rectangular catchment area based around link primary schools (i.e those that established a link in 1998 with Richmond Borough's mixed community schools).”* The “approximate” coordinates for the four corners of the rectangle were set out. It was then said that *“the 'Quadrants' were originally introduced to enable girls living on both sides of the Thames, within Richmond Borough and beyond, a chance of gaining admission as Waldegrave, being the only state-funded single sex school in the borough, was considered to be a 'whole-borough resource'. That principle was retained when the Quadrants were rationalised into two priority areas for 2006 admissions. Apart from the introduction of the 'daughters of staff' criterion, the school's admissions policy has been substantially unchanged since it became an academy in 2012.”*

32. The requestor then asked why the coordinates had been described as “approximate”, and had calculated the bisector of the “approximate” rectangle as slightly offset from the LA's “approximate” A/B line. Her conclusion was that it was unclear which line, if any, is actually being used. Her point was that, although the difference is very small (about the width of a single house) that difference could be significant for families trying to work out which side of the line they live. Again, the requestor asked how the boundary line is being defined.

33. The LA's further response was that the coordinates of the A/B bisecting line were described as "approximate" because the LA does not have full postcodes for the two end-points. The LA also said that the boundary line is not defined within its Geographical Information System (GIS), and that geographical maps were used to determine whether an address falls into either priority area. The LA then refers to a physical map. The final comments of the requester are: *"I started this FOI because I wanted a clear definition of the Waldegrave priority areas, as they aren't clearly defined on the school website or the council website, and the admissions brochure just has a very low-resolution map that greys out everything outside the borough boundary, including parts of Isleworth that appear to lie within the Area B cut-off distances for 2016."* The requester concluded that the FOI had not clarified matters, and that the only way to find out whether a person lives in Area A or B is to phone the council.

34. The letter from the Co-Chairs of governors in response to the objection dated 4 April 2018 enclosed the determined admission arrangements for September 2019. These did not include a map of the catchment area, and there is no map published alongside the arrangements on the school's website. The letter provided no explanation of how the parent of a child applying to the school could understand where the boundaries of the catchment area or the dividing line between Areas A and B would fall.

35. AfC sent an email on behalf of the LA dated 10 April 2018 which stated as follows: *"There are two areas used for prioritising 'distance' admissions to Waldegrave School: Area A and Area B, which together make a large rectangle covering a swathe of South-West London, which includes the whole of Richmond Borough. When the school became an academy in 2012, it inherited the oversubscription policy, including the two areas, from the Council, and has retained the areas since then."*

As set out on page 41 of the Council's Admission to Richmond's Secondary Schools 2018 brochure, the four corners of the rectangle were originally determined, in 1998, by the 'link' primary school furthest away in each direction: North – John Betts, Hammersmith; South – St John's, Kingston; East – St Faith's, Wandsworth; and West – Forge Lane, Hounslow. (Forge Lane has since been renamed as St Richard's Church of England Primary.) From 1998 to 2005, the rectangle was divided into four areas, known as 'quadrants', within which places were allocated by proximity to the school on a formula based on historical take-up percentages. The quadrants were then amalgamated for entry in 2006 and subsequent years: the old North-West and North-East quadrants were combined to become Area A and the South-East and South-West quadrants became Area B.

Richmond Borough is unique in London in being bisected by the Thames. If places were allocated at the school by using a straightforward home-to-school proximity criterion, then no girls living in the eastern half of the borough would be offered places there because Waldegrave is situated in the middle of the western half of the borough. The rectangle catchment area, and its quadrants, was therefore introduced as a way of ensuring that some girls living in the eastern half of the borough would have a chance of obtaining a place at what

was, and remains, a whole-borough resource, as it is the borough's only single-sex state-funded secondary school. 85% of the 'distance' offers are made to girls living in Area A and 15% to those living in Area B. 15% usually equates to c.26 girls.

That means that there are some anomalies like the East Twickenham one which the objector has highlighted. Nevertheless, allocating the 'distance' places across the two areas does still enable 15% of those places to be offered to girls living in the eastern half of the borough.

The two priority areas do not fit exactly with the urban parts of the borough for two reasons: because the rectangle extends significantly beyond the borough boundary (so as not to fall foul of the Greenwich Judgement); and because the path of the Thames through the middle of the borough does not run straight but meanders.

We do, also, appreciate that the method of allocation is confusing; therefore, it may be prudent for the school's Governing Body to re-evaluate the clarity of the school's oversubscription criteria for 2020 entry and, in so doing, consider other ideas, such as retaining the rectangle but using the Thames as the way of dividing it into two areas, as the objector has suggested. But the Council would be deeply concerned if there were any suggestion that places should be offered simply on the basis of proximity to the school, as the c.26 places offered each year to girls living within the eastern half of the borough plays a helpful part in distributing places across the borough - eight of the 11 state-funded secondary schools within the borough are situated in the western half of the borough, and both this year and last year a number of children in the eastern half of the borough were unplaced on National Offer Day”.

36. Having read the representations from all parties, I requested that the Office of the Schools Adjudicator (OSA) contact the school to ask whether it had any further representations to make about its catchment area for admissions to Y7, particularly in light of the email from AfC dated 10 April 2018. This request was sent to the school by email on 16 April 2018. No response was immediately forthcoming, and so I reiterated the request via the OSA on 1 May 2018.

37. A reply was received the same day from the school's headteacher as follows: *“Waldegrave has a history of working closely with local schools and the Richmond Council to ensure that any changes Waldegrave makes to the admissions policy does not have a detrimental effect on other local schools. To this end Waldegrave have undertaken to strictly maintain the historical catchment area (‘the rectangle’) as defined by the local authority. There are no plans to change this policy although we will consider whether the situation can be clarified by further explanation in our documentation for 2020. Please note that we will not be considering other ideas such as using the Thames as a way of dividing the two areas as we believe that this has the potential to destabilise admissions in our local schools”.*

38. I have set out these exchanges at some length for two reasons. First, they make clear that the catchment area is of longstanding and, in effect, was inherited by the school when it became an academy. Second, these

exchanges serve to make abundantly clear that the admission arrangements do not set out clearly what the catchment area is. What may or may not be included in the LA's admissions booklet and the background to the drawing up of the catchment area are, frankly, beside the point. The legal requirement is that the catchment area used in the school's admission arrangements (in the words of the Code) must be "clearly defined" in those arrangements and published as part of them. This may be by means of a map which is clear enough so that a parent looking at it can see where his or her address falls or by a list of roads or postcodes. The precise method does not matter but the clarity does. I note that the response from the school of 1 May 2018 does at least acknowledge that further clarification will be considered.

39. As it happens, having looked at the maps in the LA's admissions brochure, I was unable to discern where the boundaries of the school's catchment area fall or the names of the streets falling within it. Areas A and B are marked on separate maps set out on different pages. The maps would need to be printed off and placed side by side in order to make sense of them. Presumably the boundary line is the black line cutting across, which appears on both pages, though it is not actually marked as such. The maps are said to be the Waldegrave priority areas, and there is a note saying that these are further explained on page 41. On that page, there is the note about the four linked schools, which I have referred to above. It is not possible to determine the extent of the boundaries of Areas A and B from these maps. There is another note on the map which states that it provides a link to a more detailed map. Clicking on the link leads to the general website for Richmond Council. I searched on maps of secondary schools, which led to a page on Google Maps on which the secondary schools are marked, but this provided no help with Waldegrave School's catchment area. As noted above, there was no map at all on the school's website.

40. As also noted above, where a school has a catchment area, it is part of the admission arrangements and must be published as part of those arrangements. Above all, the Code requires that it must be clearly defined. Where an admission authority uses a map to determine its catchment area, it must be included in the arrangements and it must be a map from which parents are able to comprehend the boundaries of the catchment. In the case of these arrangements, as I have already said, parents need to be able to determine whether they live in the catchment and, if so, whether they live in area A or area B. It is not possible to do this from the determined and published arrangements. This is also in my view not clear from the local authority's admissions booklet. I have no hesitation, therefore, in determining that this aspect of the arrangements fails to conform to the requirements in paragraph 1.14 of the Code.

41. Paragraph 14 of the Code requires 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 are clear. Because there is no clear map of the catchment published as part of the arrangements, I have concluded that this aspect of the arrangements also fails to conform to paragraph 14 of the Code.

42. Because the arrangements fail to conform to paragraphs 1.14 and 14 of the Code, I uphold this part of the objection. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority must now vary its arrangements in accordance with the Code. I have set a deadline of two months for this change in accordance with paragraph 3.1 of the Code.

43. The objector has suggested using the Thames as the dividing line between Areas A and B. In relation to the clarity of the arrangements, this is not a matter for me to consider. I am concerned in this part of the determination only with finding that the catchment area has not been clearly defined. I go on to consider the reasonableness and fairness of the catchment area. That is a separate issue from ensuring that the catchment area is made clear now so that parents applying for places can understand exactly where the boundary of the catchment and the A/B dividing line fall.

Whether the school's catchment is a reasonable one and operates in a way that does not unfairly disadvantage applicants from a particular social group

44. The objector argues that, in addition to not being clear, the catchment area is also not reasonable. She argues the point as follows: *"...the council says the two catchment areas were designed to cater for both sides of the Thames, so why are Morley Road and other East Twickenham streets included in Area B? They could use the river as the dividing line between the two areas instead. As it stands the policy favours a very affluent area around Richmond bridge, but if it used the river as the dividing line instead then other bridges like Teddington Lock might be closer and less wealthy areas might benefit."*

45. As mentioned above, the school said that it would not consider using the Thames as the boundary between areas A and B because this would disrupt the admission arrangements for other local secondary schools. The objector disagreed with this statement suggesting that all the schools in the affected areas are very oversubscribed, and would barely notice. The objector also argued that there is a shortage of places on the Richmond side of the borough, so more places for that side would be a good thing, saying:

"The families in the few streets in East Twickenham that would lose access to Waldegrave might be upset, but they would still have access to outstanding Orleans Park. Benefit would go to families on the Richmond side of Richmond Bridge & Twickenham Bridge, who at the moment only have access to church school places at Christs. The change would also be good news for the Riverside Drive area of Ham which has high deprivation.

The admissions policy would also be much easier to understand".

46. The LA, having previously suggested that the school should consider using the Thames as the boundary, then said: *"AfC supports and works closely with the school to review the effectiveness and impact of its catchment*

areas. The pattern of admissions to the school has changed in the last five years, in that the cut off distances for the furthest home to school distance offers have been reducing consistently for Areas A and B. During that period, three new schools have opened in the west of the boroughs, creating diversity and greater choice of schools for families in Richmond.

Whilst we previously suggested that the school could look at the objector's view that the river could be used as the boundary between Area A and B, that was solely on the basis of seeking to provide greater clarity for parents and would have to be modelled carefully to assess its impact. The objector's views on the impact on the few streets in East Twickenham (i.e from Morley Road to Richmond Bridge) does not take into account that an applicant living in that area which is Area B for Waldegrave, would, if they applied, gain a place at Ofsted-rated 'outstanding' Orleans Park School on home to school distance, in addition to options created by the positive knock-on effect of the three new schools which have increased capacity and choice for parents.

With regard to the need for places on the Richmond side of the river, the recently approved Livingstone Academy West London will provide an extra 180 Year 7 places in due course, subject to planning permission being given for its proposed site in Mortlake.

.... Christ's ...offers 150 places for entry in Year 7, of which 75 places are Foundation places offered under the faith criteria and the remaining 75 are offered as open places. In addition, from 2018 entry, the school has changed its admissions criteria so that it no longer uses a linked primary school criterion for its Open places, which is more inclusive and fairer for all applicants.

From 2019 onwards, the school has determined a further change to their admissions criteria to adjust the split of Foundation and Open places to offer 50 Foundation and 100 Open places, which is more reflective of the pattern of admissions in recent years, when more Open places have been offered on home to school distance.

With regard to the Riverside Drive area of Ham, nearly all families in that area send their children to their closest secondary school, Grey Court, which is also rated by Ofsted as 'outstanding'."

47. On 6 June 2018 the OSA sent out a letter which asked the parties to comment upon the continued rationale for using the catchment area; whether the catchment operates to disadvantage children from deprived backgrounds; and the exact nature of any adverse effect that would be caused by using the Thames as the boundary between Areas and B.

48. The objector expressed the view that the current catchment area may not be reasonable because the original rationale no longer exists. The objector said: "*The LA's rationale that they want 2 catchments because there is an under-supply of places on the "eastern" side of the borough - meaning the Surrey side of the River Thames - makes some sense, but their Waldegrave catchment maps... show a big proportion of the Area B places go*

to families on the Twickenham side of Richmond bridge which is actually the "western" side of the borough. So if 2 catchments really are still needed to help with their under-supply issues on the eastern side then the only reasonable way forward would be to use the Thames as the divider, not the current A/B line.

49. *The catchment is said to operate unfairly because "Area B selects exclusively from a very wealthy part of the borough near Richmond Bridge. Richmond Borough is generally wealthy but it has areas that have much more of a mix of rich and poor than the part around Richmond Bridge, and also it has some pockets of deprivation. If Waldegrave adjust the boundary to follow the river then I think one of the areas of deprivation - on the Ham side of Teddington Lock - would be included in the Area B catchment. The Area B catchment would then be split between a wealthy area and a deprived area, giving access to a mixture of social groups. I think that would be fairer. Or if they don't like that idea, then there are other ways of making it more fair, such as using a lottery system, or prioritising families on free school meals.*

However I don't think they should get rid of the Area B catchment altogether, because local people always complain that other schools on the western side of the borough area have a lot more boys than girls, and I think increasing the number of Waldegrave places in Area A would only make that worse. If the Local Authority really do have problems with under-supply on the eastern side, then I think they should ask Waldegrave to increase the percentage of places in Area B to help out, and that would help to even out the gender-balance problem in other local schools too".

50. *In its response to the objection, the school said: "In the opinion of the school the catchment does not disadvantage applicants in deprived areas of the borough. Data suggests that disadvantaged students attend Waldegrave from deprived areas across the Borough notably the Heathfield, West Twickenham and Whitton wards. The school's intake is already more mixed than the objector perhaps realises. Any change to the catchment to prioritise children from areas of disadvantage, may only serve to displace disadvantaged children living nearer to the school. The journey from Ham is more difficult and unhelpful on account of the river.*

Waldegrave is the only all-girls' school in the borough, the arrangements were designed to ensure that girls from both halves of the borough would stand some chance of admission. On becoming an Academy we made the decision to support and honour the previous admission arrangements. Any change has the potential to destabilise the patterns of admissions that have been established and those which schools rely on to plan. The schools likely to be directly affected would be Grey Court, Christs, Orleans Park, RPA, Teddington although it is possible that all schools in the LA could be affected indirectly."

51. *In relation to what the exact effect of using the river as a boundary between areas A and B would be upon Waldegrave School, the school said that this would need further investigation and modelling of data that they don't hold. The letter concluded that the school did not feel able to answer any*

further queries regarding this matter unless is legally bound to do so.

52. The objector submitted Free School Meal statistics to illustrate that Waldegrave has the lowest number of eligible pupils in the borough. I have set the figures out in a table. Waldegrave's figures are lower, even than the average figure for the west of the borough which itself has a low figure (with the exception of Twickenham Academy). The figures for the schools in the east of the borough are generally higher and more in line with the England secondary school average.

Waldegrave (West)	12.10%
St Richard Reynolds RC School (West)	12.20%
Teddington (West)	15%
Orleans Park (West)	15.30%
Turing House (West)	19.10%
Grey Court School (East)	20.50%
Christ's CofE School (East)	24.90%
Hampton High (West)	29.60%
Twickenham Academy (West)	35.50%
Richmond Park Academy (East)	38.80%

Borough Average 22.30%
Borough Average - East 28.07%
Borough Average - West 19.83%
England Secondary School average 29.10%

53. AfC's response to the OSA letter of 6 June 2018 on behalf of the LA was as follows: *"We consider that the catchment arrangements remain fair. As previously explained, as Waldegrave is the only all-girls' school in the borough, the arrangements were designed to ensure that girls from both halves of the borough would stand some chance of admission, i.e. to safeguard the school's role as a 'whole-borough resource' – albeit that it couldn't, of course, accommodate all the girls in the borough (and beyond) whose parents/carers would like places at the school. Although the school academised in 2012 and thenceforth set its own admission arrangements, the Council continues to support the retention of that principle...If the river were used as the dividing line, then the pattern of admissions to the school which has been in place for two decades would change in the following ways: girls from the East Twickenham area who are currently in Area B would be in Area A and no longer stand any realistic chance of admission to the school; and Ham would move into Area B but that does not necessarily mean that girls living there would stand a greater chance of admission, although if it did, then it might destabilise the gender balance at Grey Court School, which serves the Ham area.*

In reality, though, the number of places available for Area B girls would still be on average about 25 per year and the distance from Ham to the school is roughly the same as from central Richmond (town) to the school, so it is unclear as to whether many, if any, places would actually be available for

Ham girls. In any case, the journey from Ham to Waldegrave would be difficult for girls to undertake and would involve taking two buses, as we suspect that few, if any, parents would be happy for their daughters to use the secluded footpaths which lead from Ham to the Teddington Lock footbridge. In all the years that officers in the Admissions and School Place Planning Team of Achieving for Children/the Council have been implementing the school's admission arrangements, none of us can recall any clamour at all from Ham residents for a greater opportunity of access to places at Waldegrave.

Beyond that, without a proper modelling exercise which we do not have the time to undertake at present, it is difficult to know what the full impact would be.

At present, girls from more disadvantaged areas of the borough, notably the Heathfield, West Twickenham and Whitton wards, can and do obtain places at the school each year so the school's intake is already more mixed than the objector perhaps realises. There is no requirement for a school to change its catchment to prioritise children from other areas of disadvantage, if that only serves to displace children living nearer to the school in question.

We are unclear as to why the objector thinks using the river would have a net improvement in terms of fairness; and in the absence of there being a considerable net gain in terms of fairness, there appears to be no clear rationale for making the objector's proposed change."

54. Final comments from the objector in relation to the LA's response to the jurisdiction letter were as follows: *"I've looked online and the shortest travel distance from Lockmeade Road in Ham (TW10 7YT) is about 3.5km, while the area B cut off distances from the council admissions brochures are more than 5km, so Ham girls would get places if they were in area B. If they don't apply now it's because they're in area A and they know they don't stand a chance. There's never been any consultation so they can express an opinion about that.*

If Ham is about the same distance as Richmond town centre, then the 25 places would be split fairly evenly between Richmond town centre and Ham, so around 12 places each, which isn't going to impact Grey Court very much when it's so oversubscribed anyway. What they say about the gender balance at Grey Court is a bit silly too because even if there were a few less girls then it would mean a better balance for Christs and Grey Court. Also, about the travel, the route over the river is a safe route that is used by Teddington children going to Grey Court so there's no reason why Waldegrave girls couldn't come across that way, and they can get door-to-door to Waldegrave in about 25 minutes if they get the 281 bus.

Anyway, the river boundary is just a suggestion for if the adjudicator says the East Twickenham catchment area isn't reasonable. I gave some other suggestions too, in an earlier letter. I suppose it's not the adjudicator's job to say what an unreasonable catchment area should be replaced with, but just to say whether it's unreasonable or not".

55. The basis for this part of the objection is twofold. Firstly, that the school's catchment is based upon a historical rationale which no longer exists since the school is no longer a linked school. Secondly, that the catchment operates to disadvantage applicants from deprived areas of the borough.

56. I consider firstly whether, on balance, the catchment area for the school continues to be a reasonable one. This is a requirement of paragraph 1.8 of the Code, which I consider to be the relevant paragraph as it provides that oversubscription criteria must be reasonable. The test I have applied in reaching a conclusion on this point is whether the catchment area in question is a catchment area which no reasonable admission authority would operate. This is an objective test. In considering whether a catchment area is reasonable, it is necessary to consider the reasons for adopting it, its practical operation and the effect of that operation. Based on the evidence before me, my conclusion is that the drawing of the catchment boundary was done many years ago based upon a linked schools arrangement which no longer exists. There has been no recent consultation in relation to the operation of the catchment. It can be the case that a catchment which was drawn up for logical reasons may cease to be a reasonable one over time as circumstances change.

57. The continuing rationale for the reasonableness of the catchment area advanced by the school and the LA is firstly that changing it would be detrimental to other schools, and secondly that the Area A/Area B divide ensures that places are available for girls across the whole of the borough of Richmond.

58. The first is not a reasonable argument, given that both of these parties have also said there is no available information about what the actual effect of any change would be. If there is no evidence of the effect of change, it follows that there can be no evidence of any potential adverse effect. Furthermore, any change in the school's catchment area would not mean that fewer children would be offered places at this school, or any other affected school, it would simply mean that those children may come from different areas. Reasonableness, in this context, relates to pupils.

59. There is, however, some merit in the second argument. Providing the opportunity of a single sex girls' school place to girls in both the east and west of the borough is a reasonable objective, and the objector acknowledges this. There are flaws in this argument insofar as it does not support the reasonableness of the Area A/Area B divide continuing to be where it is. It simply provides an argument that there should continue to be such a divide.

60. The objector says that the catchment is said to be based upon catering for both sides of the Thames, but if this is the case there is no logical reason for not including Morley Road and other East Twickenham streets in Area B. The school has said that it has undertaken to maintain the historical catchment area in order not to have a detrimental effect upon other schools, and that to change the catchment would destabilise the arrangements for these other schools.

61. On balance, although I have concerns about the operation of the Area A/Area B divide being situated as it is, I do consider that there is a continuing justification for having such a divide, and that the catchment does achieve the objective of ensuring that places at a single sex school are available for girls across the whole of the borough of Richmond. Therefore, I have concluded that this is not a catchment that no reasonable admission authority would operate.

62. The discussion between the parties has been side-tracked to a degree because it has focused upon the effect of using the Thames as the dividing line between Areas A and B, which is not, in fact, a matter for me. However, the discussion has highlighted the issue of whether the school is complying with its obligation under paragraph 1.8 of the Code to ensure that the arrangements must not disadvantage unfairly either directly or indirectly a child from a particular social group. I now move on to consider whether the arrangements conform to this aspect of paragraph 1.8 of the Code. My view is that deprived children are a social group, and the obligation upon admission authorities to ensure that deprived children are not disadvantaged is an ongoing one. Paragraph 1.8 requires what has been called a “*dual finding*”, namely a finding **both** as to the disadvantaging of a social group, **and** a finding that the disadvantaging is unfair *R (London Oratory School) v The Schools Adjudicator* [2015] EWHC 1012 (Admin) at [76].

63. The first question then is to consider whether the catchment area, as drawn, disadvantages deprived children. The bisecting line currently used between Areas A and B does appear to mean that girls from a very affluent area around Richmond Bridge are able to gain places at the school. The objector has produced statistics relating to eligibility for Free School Meals which have not been disputed by the other parties. These statistics indicate that there is a very low number of eligible pupils attending the school, however the figures also show that St Richard Reynolds School had almost the same percentage and three other schools (Teddington, Orleans Park and Turing House) had percentages only slightly higher. The statistics also show – although not invariably – that schools on the east side of the borough tend to have higher percentages of children entitled to Free School Meals than schools on the west side. It would appear to follow, therefore, that increasing the number of applicants from the east side would ensure that deprived children are not disadvantaged. The description of the catchment area in the arrangements refers to “the Halves”, which is misleading of itself since a half is either of two equal parts, whereas 85% of places are available to girls living on the west side of the borough, with only 15% of places available to those living on the east side.

64. The second question is whether any disadvantage to deprived children is also unfair. Fairness is a Protean concept. The key question for me to consider is to whom might the operation of the catchment be unfair and in what way? In considering fairness, I must focus on the effect, or the consequence, of the arrangements on any relevant group – in this case deprived children. It then falls to me to weigh the advantage said to accrue to children who would be offered places at the school in consequence of the arrangements, against any disadvantage or unfairness caused to any other

relevant group of children who would not be offered places.

65. In this case, I am simply not able to reach a conclusion on whether any disadvantage to deprived children is also unfair. This is due to the lack of available information. It is possible that, whilst the current catchment means that relatively few deprived children gain places, it is the fairest catchment overall. It is possible that requiring the school to revise the catchment may result in the school devising a different catchment which is less fair than the current one.

66. The school suggests that any change to the catchment will upset the catchment arrangements for other local schools. It is also said that revising the arrangements to prioritise deprived children from particular areas may only serve to displace deprived children living nearer to the school. The LA says something similar, namely that at present, girls from more disadvantaged areas of the borough, notably the Heathfield, West Twickenham and Whitton wards can, and do, obtain places at the school each year. The LA's view is that there is no requirement for a school to change its catchment to prioritise children from other areas of disadvantage, if that only serves to displace children living nearer to the school in question. It might be possible, for example, to use the river Thames as the boundary between Areas A and B; to extend the catchment area to include more of the east side of the borough; to enlarge it; or to move it eastwards in some way, but I am not able to determine whether any of these options would disadvantage unfairly applicants who would have been offered places under the current arrangements. Because I am unable to reach a conclusion as to whether the catchment areas operate unfairly, I cannot find that the arrangements fail to conform to this aspect of paragraph 1.8 of the Code. I do not uphold this aspect of the objection.

Other matters

67. In reviewing the arrangements, I have considered the question raised by the LA of whether the arrangements for admission to the sixth form are compliant with the requirements in the Equality Act 2010. Paragraph 1.8 of the Code requires that oversubscription criteria must comply with equalities legislation. Paragraph 1.1 of the Codes is also relevant. This states: *“Admission authorities... must act in accordance with this Code, the School Admissions Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation.”*

68. The school purports to have set a PAN of 150 for years 12 and 13. However, girls who are pupils at the school who choose to stay on in the sixth form are not admitted to the school in year 12. They simply remain on the school roll. The PAN for the sixth form must be set as the minimum number of external applicants admitted to the school through the application process. This must be a fixed number. The school probably should have set a PAN of 20 as it states in its arrangements that a minimum of 20 external applicants will be admitted in year 12.

69. Where it is the case that there are fewer, or the same number of

external applicants as places available to them due to the number of Waldegrave girls staying on, there appears to be no issue of discrimination because the external places may be filled by either girls or boys. However, if the sixth form is oversubscribed, (by which the school appears to mean that the number of girls staying on is lower than the capacity of the year but the number of external candidates is greater than the number of remaining places) then, after the admission of looked after children, 40 places are given as next priority to boys before any girls are offered a place.

70. In this respect, the oversubscription arrangements directly discriminate against girls because they include a criterion by which external girl applicants are treated less favourably than external boy applicants as to who should be admitted to the school. Put simply, the 40 places are allocated to external applicants because they are boys. Paragraph 1(1) of Schedule 11 to the Equality Act 2010 provides an exemption from the duty not to discriminate on grounds of sex for single sex schools in relation to admissions, but this does not allow a single sex girls school to discriminate against girls. This is a case of direct discrimination, as opposed to indirect discrimination, accordingly there can be no justification for it even though the school may have been aiming at the laudable objective of having a more balanced sixth form.

71. Accordingly, since the sixth form arrangements directly discriminate against girls who are external applicants they are unlawful and do not conform to paragraph 1.8 of the Code. Furthermore, the school, in determining its arrangements for admission to its sixth form has not complied with paragraph 1.1 of the Code because it has not complied with relevant equalities legislation.

72. I have considered how long the school should have to revise this aspect of its arrangements in accordance with my determination. I consider that it is right to allow the school time to consult on such changes. I have accordingly set a deadline of 28 February 2019 for such changes which is also the deadline for determining the arrangements for 2020.

Summary of Findings

73. The objection relates to a failure by the school to consult in accordance with paragraph 1.44 of the Code on changes to the arrangements for admission to the sixth form. I have upheld this part of the objection.

74. The objection also relates to the catchment oversubscription criterion for admission to the school in Y7. This is on the basis that the catchment area is unclear. I have upheld this part of the objection, and the school must revise the arrangements within two months of the date of this determination in order to ensure that a parent reading the arrangements will be clear as to where the boundaries of the catchment area fall, and where the dividing line falls between Area A and Area B. This breach of the Code can be remedied quickly and easily by publishing a clear map as part of the school's arrangements. Paragraph 3.6 of the Code enable an admission authority to revise its determined arrangements to give effect to a mandatory requirement of the Code, admissions law, or a determination of the Adjudicator.

75. The objector also argues that the catchment area is unreasonable, and that it operates unfairly to disadvantage applicants from deprived areas. I have not upheld this part of the objection. The catchment area was drawn up many years ago on the basis of a linked school arrangement which no longer exists, therefore the original rationale for the catchment area no longer exists. However, because there is a continuing rationale for the operation of the catchment area insofar as it affords the opportunity of a place at a single sex school to applicants across the east and west of the borough, I do not consider that the arrangements are such that no reasonable admission authority would continue to operate. There is evidence that the catchment area operates to disadvantage deprived children, however on the basis of the limited information available to me I have not been able to conclude that the arrangements operate to create an overall unfairness. I have therefore not upheld this part of the objection.

76. I have also considered other aspects of the arrangements for admission to the sixth form, and have concluded that the school has set the PAN incorrectly. Also, the sixth form admission arrangements discriminate unlawfully against external applicants who are girls. The arrangements will need to be revised by 28 February 2019. This should provide adequate time for the school to consult in accordance with the Regulations and the Code in relation to any proposed revisions to the admission arrangements for the sixth form, and on the arrangements as a whole.

Determination

77. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by the governing board of Waldegrave School on behalf of the Waldegrave Trust for Waldegrave School, in the London Borough of Richmond.

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

79. 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, or such other date specified by the adjudicator.

80. The arrangements must be revised within two months of the date of this determination to ensure that the boundaries of the catchment area and the location of the dividing line between Areas A and B are made clear to parents. If this is done by way of a map, the map must be published as part of the admission arrangements.

81. The arrangements for admission to the sixth form must be revised with

effect from 28 February 2019 to ensure that they comply with the requirements of the Equality Act 2010 and paragraphs 1.1 and 1.8 of the Code.

Dated: 27 September 2018

Signed:

Schools Adjudicator: Dr Marisa Vallely