



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: REF3489

Referrer: A parent

Admission Authority: The Collaborative Learning Trust for Otley
Prince Henry's Grammar School, Leeds

Date of decision: 12 December 2018

Determination

I have considered the admission arrangements for September 2019 for Otley Prince Henry's Grammar School, Leeds in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the clarity of the third oversubscription criterion, the arrangements do not conform with the requirements. I have also found that 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 this determination unless an alternative timescale is specified by the adjudicator. In this case, I specify a deadline of 28 February 2019.

The referral

1. Under section 88H (2) of the School Standards and Framework Act 1998, (the Act), a objection has been referred to the Office of the Schools Adjudicator (OSA) by a parent, (the referrer), about the admission arrangements (the arrangements) for Otley Prince Henry's Grammar School (the school), a non-selective academy school for children aged 11 to 18. The date of the objection is 8 October 2018. The School Admissions Code (the Code) requires objections to admission arrangements for 2019 to be made to the OSA by 15 May 2018. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to the attention of the OSA, I have decided to use the power conferred under

section 88I (5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements. I am therefore treating the objection as a referral.

2. The referral relates to the clarity of the oversubscription criterion giving priority to children for whom the school is the nearest.
3. The parties to the case are the referrer, the school's governing board, the Collaborative Learning Trust (the trust) and the local authority which is Leeds City Council.

Jurisdiction

4. The terms of the Academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy governing board on behalf of the trust, which is the admission authority for the school, on that basis. The arrangements were originally determined on 5 December 2017; however, when it received a copy of the arrangements the local authority drew the school's attention to two aspects of the arrangements which it considered did not conform with the Code. Subsequently the governing board varied its determined arrangements on 22 May 2018 addressing the issues raised by the local authority as it is permitted to do by paragraph 3.6 of the Code.
5. I am satisfied the referral has been properly referred to me in accordance with section 88I of the Act and it is within my jurisdiction. I have used my power under section 88I of the Act to consider the arrangements as a whole as well as the matter drawn to my attention by the referrer.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. the referrer's referral dated 8 October 2018;
 - b. the admission authority's response to the referral and to my further enquiries together with supporting documents;
 - c. the comments of the local authority on the referral and supporting documents;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2019;
 - e. maps of the area identifying relevant schools;

- f. confirmation of when consultation on the arrangements last took place;
- g. copies of the minutes of the meetings at which the governing board of the school determined the arrangements; and
- h. a copy of the determined arrangements.

The Referral

- 8. The referral concerned the third oversubscription criterion. This gives priority to “*Children for whom Prince Henry’s is the nearest High School*”. The referrer said “*The Policy states that your nearest school is calculated using a national computer system. It does not explain how you can find out which is your nearest school.*” She said that the maps which she found on the local authority’s website were out of date and did not show sufficient detail or show schools in neighbouring authorities.
- 9. The referrer considered the nearest school boundary to form a catchment area and therefore thought this oversubscription criterion did not meet the requirements of paragraphs 1.8 and 1.14 of the Code as they were not clear and the catchment area was not reasonable or clearly defined.

Other Matters

- 10. The Code requires, in paragraph 1.7, that looked after and previously looked after children together have highest priority for school places unless the school meets certain criteria which this one does not. The first oversubscription criterion, labelled 1a, does not refer to previously looked after children; they are only referred to in an associated note. This may not be sufficiently clear.
- 11. Paragraph 1.8 of the code requires a clear and effective tie-breaker to decide between two applications which cannot be otherwise separated. The arrangements do not make provision for situations where two children live the same distance from the school.
- 12. The section of the arrangements about waiting lists does not appear to conform with paragraph 2.14 of the Code.
- 13. The definition of home address in note 6 does not appear to conform with paragraph 1.13 of the Code which says “*This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.*”
- 14. Paragraph 2.17 of the Code says “*Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.*” The arrangements did not appear to do this.

Background

15. This comprehensive secondary school became an academy in December 2011 and in August 2018 agreed a variation to its funding agreement with the Secretary of State for Education to become a multi-academy trust. A primary school in a nearby village is expected to join the multi-academy trust in the near future.
16. The school is situated in the market town of Otley to the north of Leeds adjacent to the southern edge of the Yorkshire Dales National Park. It serves the town and surrounding villages. There is only one other state funded secondary school within three miles of the school, which is a Catholic school. Extending the search to a radius of five miles finds three more state-funded secondary schools.
17. The school has a published admission number (PAN) of 255 and its oversubscription criteria can be summarised as:
 1. a) Looked after and previously looked after children
b) Children whose needs can only be met at the school
 2. Siblings of children attending the school
 3. Children for whom it is the nearest school
 4. Children of school staff
 5. Other children.

Within each criterion, children living closest to the school have priority.

18. Information on the local authority's website shows that the school was oversubscribed in each of the last four years. It reached and exceeded its capacity in criterion 5 in each year and in 2018 the last child admitted under this criterion lived just over two and a half miles from the school and in the previous three years they had lived over five miles from the school. The school has consulted on some changes to its arrangements for 2020 proposing the introduction of a feeder school criterion.

Consideration of Case

19. The third oversubscription criterion reads "*Children for whom Prince Henry's is the nearest High School. (See notes 4, 5 and 6)*". Note 4 reads "*The distance between home and the school is measured as a straight line between the centre of the school and the home. For this purpose, we shall apply the distances provided by a national computer system, which is the method of measurement used by the local authority.*" Note 5 refers to the unlikely situation where the school has to move to a temporary site and note 6 concerns the definition of a prospective pupil's address.

20. The referrer provided some maps which she had found in the local authority's website and said *"The problem is working out which is your nearest school. Our house looks on Google maps to be equidistant between the 2 schools. I therefore had to do some digging and looked at the Location Map provided on the Leeds City Council website for PHGS. This shows a line going through Pool-in-Wharfedale which you can only assume (as it isn't clear and there is no distance priority dashed line in this location), is the line that defines whether or not PHGS is your nearest school.*

Unfortunately, the Ordnance Survey background on this map is at least 13 years out of date. Our house (and the whole estate) which was built in 2002 is not shown and therefore you cannot see which side of the line we live. You cannot zoom in at all to see the map in any more detail. This out of date map also doesn't show further development in the village and that the line is cutting the village of Pool-in-Wharfedale almost in half.

The map does also not show that a lot of the area around the school are in neighbouring councils — Bradford and North Yorkshire. They also fall into the "nearest school" category for PHGS but this is not shown on the map.

You cannot therefore see whether PHGS is your nearest school and the oversubscription criteria 3 is not "reasonable, clear, objective".

21. The referrer continued to say that the nearest school boundary shown on the maps was *"an unofficial catchment area"* and that a catchment area boundary would not cut a village in two and would be revised when new housing was built. She concluded that the criterion did not conform with paragraphs 1.8 and 1.14 of the Code.

22. Paragraph 1.8 of the Code says *"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated"*

23. Paragraph 1.14 of the Code says *"Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."*

24. In its response to the referral the school said *"The Admissions Policy clearly states that the school will use the method of measurement used by the Local Authority and that Prince Henry's Grammar School signs up to the Leeds City Council Admissions Service. To emphasise this,*

reference is made to the Leeds City Council / Local Authority Composite Prospectus for Parents/Carers: "Starting Secondary School in Leeds" information booklet on the school's website, next to the Admissions Policy."

25. The school pointed out to me that in the composite prospectus parents were told how they could find out what their nearest school was and that *"Representatives from the Admissions Team attend the school's Open Evening each year to advise parents of Year 6 students and answer any questions regarding 'nearest school' calculations."* It said *"It is clear in the Admissions Policy that the school uses a 'nearest school' criteria and does not operate a 'catchment area'. The nearest school criteria is an objective way of allocating places in the event of oversubscription. As with any oversubscription criteria, whether based on 'nearest school' or a catchment area, there may always be families that live just outside of the 'dividing line'. This is especially the case in areas similar to northwest Leeds where suburban villages are growing quite rapidly."*
26. In its response to the referral, the local authority told me that *"As there are a number of schools in the city who include a priority for applicants who have the school as their nearest, we provide many ways for parents to understand which is their 'nearest priority' school. The Local Authority writes to all parents with children due to start school the following year, to invite them to apply and advise them of this process. This letter includes reference to the composite prospectus and all the available information on the LCC website. The letter also lists the 5 schools closest to their address, in distance order, advising parents to review each policy to understand how their application will be considered / prioritised. Page 14 of our composite prospectus also describes how parents can contact us to find out which is their closest school."*
27. With regard to the maps included in the referral, the local authority noted that the school's arrangements did not include a map and said *"The map on the Leeds City Council (LCC) website which the objector refers to, is published by LCC to show the furthest distance that a Leeds child lived who was allocated a place, on the basis of distance, in the last round of admissions. This is not intended to be a map to demonstrate the area where priority admission is offered and is provided solely to help parents understand their likelihood of gaining a place at the school. As the school offer a priority for those applicants who have the school as their 'nearest' school, this is based on a distance measurement between schools and not a defined area on a map."*
28. The local authority noted that the area around Pool-in-Wharfedale mentioned in the referral had been affected by recent changes in preference and allocation patterns. The local authority said that as part of the recent consultation undertaken by the school on its admission arrangements for 2020 it had asked the school to reconsider the priority given to children in this area.

29. The local authority also thought that the description of how distance is measured could be "*strengthened to describe which schools are taken into consideration when determining the nearest school (for example whether faith schools are included in this measurement).*"
30. In considering this matter I think it important to remember that the admission authority for the school is the trust, not the local authority. It is therefore the responsibility of the trust, discharged through the governing board as appropriate, to comply with the requirements of the Code concerning admission arrangements. Admission arrangements are defined in footnote 4 of the Code as "*the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*"
31. Paragraph 1.47 of the Code requires the admission authority to publish its arrangements on its website once they have been determined and to send a copy to the local authority by 15 March. This enables the local authority to meet the requirement set in paragraph 1.49 to publish on their website "*details of where the determined arrangements for all schools, including Academies, can be viewed*" by that date. The local authority is not required to publish its composite prospectus containing the admission arrangements of all state-funded schools until 12 September as explained in paragraph 1.51 of the Code.
32. It follows from these requirements that the only place where a parent or anyone else can be sure of finding the admission arrangements between 15 March and 12 September is on the school's website. Furthermore, what is published there must provide all of the information set out in footnote 4.
33. Paragraph 14 of the Code 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 how from the arrangements alone a parent living approximately equidistant from the school and any other school would know if they met the third criterion, particularly when distances are measured by an unspecified "*national computer system*" which a parent would not have access to even if it is the one used by the local authority.
34. I have noted the local authority's comments on the purpose of the maps that it publishes and that it is not the local authority's responsibility to make clear the area covered by the school's third criterion. I have also considered the point raised by the local authority that the arrangements are not clear about which schools are taken into account when determining the nearest. The local authority suggested the inclusion or not of faith schools needed clarifying. I have noted above that the nearest school is a Catholic school and this is regularly oversubscribed from baptised Catholics. If this school was taken into account in determining the area covered by the third criterion, then a case could be made that this criterion was unfair as well as unclear.

35. Parents should be able to understand easily how places at a school will be allocated. It should not be necessary for a parent to be required to look at another document (which may not yet be published), another website unless this is made convenient for example by means of a one click link on the school's website, or speak to the local authority to understand whether or not their child meets the third criterion. I find that the third criterion is not clear and consequently the arrangements do not conform with paragraph 1.8 of the Code.
36. The referrer argued that using a nearest school criterion defined a catchment area. Both the school and the local authority argued that giving priority to children for whom the school was their nearest was not the same as giving priority to children living in a catchment area. Using an Ordnance Survey map, ruler and compasses, or the digital equivalent, it is possible to construct a polygon encompassing the area for which this school is the nearest school. While the publication of such a map would be very helpful in clarifying the third criterion I do not think that the shape created is the same as a catchment area. This is because catchment areas may and often do take into account factors other than whether a school is the nearest to some addresses falling within its catchment area. These include, for example, transport routes and community links as well as the capacity of the school to accommodate the children who live within it.
37. While the local authority may have, in the consultation on admission arrangements for 2020, encouraged the school to consider adopting a catchment area, the 2019 arrangements do not have one. Therefore I cannot find that the arrangements do not meet the requirements of paragraph 1.14 of the Code relating to catchment areas as suggested by the referrer.

Other Matters

38. The Code requires, in paragraph 1.7, that looked after and previously looked after children have highest priority in oversubscription criteria. The Code also provides in the footnotes to that paragraph a full definition of children who must receive highest priority as looked after or previously looked after children. The first oversubscription criterion, labelled 1a, reads "*Children in public care or fostered under an arrangement made by the local authority. (see Note 1)*" and note 1 reads "*Looked after children and children who were previously looked after but immediately after being looked after became subject to adoption, a child arrangements' order, or special guardianship order will be included within the higher priority for looked after children. (Criteria [sic] 1a).*"
39. In my view to meet the requirements of paragraph 1.7 and the clarity required in paragraph 1.8 of the Code it is necessary to refer to previously looked after children explicitly in the criterion and not just in a note to it. When I raised this matter with the school it provided me with a proposed redrafted version of the criterion and the note. While the revised criterion did explicitly refer to previously looked after

children, the redrafted note did not fully reflect the definition given in the Code, for example referring to residency orders which have now been replaced with child arrangements orders. I find that the arrangements do not conform with paragraph 1.7 of the Code.

40. Paragraph 1.8 of the code requires a clear and effective tie-breaker to decide between two applications which cannot be otherwise separated. Under the heading of "*Tie break*" the arrangements say "*Within each criterion, if there is oversubscription, remaining places available will be allocated according to distance. Children living closest to the school will, therefore, be allocated a place before those who live further away.*" No provision is made for situations where two children live the same distance from the school.
41. When I raised this matter with the school it proposed introducing a ballot should this situation arise. If adopted this would meet the requirements of the Code.
42. The section of the arrangements about waiting lists said "*A waiting list will be drawn up from unsuccessful applicants, giving priority in accordance with the tie break arrangements. Any places which become available will be filled from the waiting list. Criteria for updating and applying the waiting list will be those as outlined by the Admissions Team in their booklet "Starting Secondary School in Leeds – a guide for parents and carers 2019 – 2020". If a child has been placed on the waiting list, parents will be informed and in September asked to confirm that they wish to leave their child's name on the list, which will be retained until the end of the summer term in July 2020.*"
43. The requirements for waiting lists are set out in paragraph 2.14 of the Code. "*Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.*"
44. When I drew the disparity between the arrangements and this paragraph of the Code to the attention of the school, it proposed to revise the section of the arrangements about waiting lists in a way that would meet the requirements of the Code.
45. Paragraph 1.13 of the Code says "*Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.*" Note 6 in the arrangements

set out how the home address would be determined, but did not include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.

46. When I raised this matter with the school it proposed a revised version of Note 6 which if adopted would comply with this requirement.

47. Paragraph 2.17 of the Code says "*Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.*" The arrangements did not do this, however once the matter was raised with the school it proposed adding a section to the arrangements which would address this omission if adopted.

Summary of Findings

48. For the reasons set out above I find that the third oversubscription criterion "*Children for whom Prince Henry's is the nearest High School*" is not clear and so does not conform with paragraph 1.8 of the Code.

49. I also find that the arrangements do not conform with requirements in the other ways identified above.

Determination

50. I have considered the admission arrangements for September 2019 for Otley Prince Henry's Grammar School, Leeds in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the clarity of the third oversubscription criterion, the arrangements do not conform with the requirements. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

51. 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 this determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of 28 February 2019.

Dated: 12 December 2018

Signed:

Schools Adjudicator: Phil Whiffing