



## Determination

<b>Case reference:</b>	<b>ADA3590, ADA3591 and ADA3592</b>
<b>Objector:</b>	<b>Three members of the public</b>
<b>Admission authority:</b>	<b>Marlow Education Trust for Sir William Borlase's Grammar School, Marlow, Buckinghamshire</b>
<b>Date of decision:</b>	<b>4 July 2019</b>

### Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2020 determined by the governing board for Sir William Borlase's Grammar School, Marlow, Buckinghamshire.**

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

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

### The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the adjudicator by three members of the public (the objectors) about the admission arrangements (the arrangements) for Sir William Borlase's Grammar School (the school), a selective academy school for pupils aged 11 to 18 for September 2020. The objections concern the catchment area.
2. The local authority for the area in which the school is located is Buckinghamshire County Council (the local authority) which is a party to the objection. Other parties to the objection are the objectors, the governing board of the school and Marlow Education Trust (the trust).

## Jurisdiction

3. The terms of the academy agreement between the 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 18 March 2019 by the governing board of the school on behalf of the trust, which is the admission authority for the school, on that basis. I note that this date is after 28 February 2019 by when the Code requires that arrangements for 2020 were determined. The objectors submitted the objections to these determined arrangements on 13 and 14 May 2019. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

- a) the objectors' forms of objection dated 13 and 14 May 2019, supporting documents and subsequent correspondence;
- b) the admission arrangements;
- c) minutes of the meeting of the governing board at which the arrangements were determined;
- d) the admission authority's response to the objections and supporting documents;
- e) the comments of the local authority on the objection; and
- f) maps of the area identifying relevant schools;

## The Objection

6. Two of the objectors used almost identical wording to argue that the inclusion of part of the neighbouring local authority, the Royal Borough of Windsor and Maidenhead, in the school's catchment area was not reasonable as required by paragraph 1.14 of the Code and was not in line with advice from the Department for Education (DfE) on catchment area changes.

7. The third objector said that the arrangements were "*unclear in how they were intended to work.*" He went on to argue that the arrangements would be unfair to some pupils living in Buckinghamshire and "*other out-of-county pupils who do not live in the*

*Maidenhead catchment zone.*” This objector provided data and other documents in support of his arguments.

## Other Matters

8. Having considered the arrangements as a whole it appeared to me that the following matters also did not, or may not, conform with requirements.

- a. Paragraph 1.7 of the Code requires that “*All schools **must** have oversubscription criteria for each ‘relevant age group’*”. A published admission number (PAN) was set in the arrangements for Year 9 pupils but the oversubscription criteria to be applied if more than 25 applications are received for those places were not clear.
- b. The arrangements did not appear to meet the requirement of paragraph 2.17 of the Code to “*make clear in their admission arrangements the process for requesting admission out of the normal age group.*”
- c. The minutes of the meeting at which the arrangements were determined referred to advice being awaited from the DfE on one aspect of the arrangements. In response to my enquiries on this issue, I was told that this concerned the priority given in the oversubscription criteria to children eligible for the pupil premium for whom a lower pass mark in the selection test was set. The school has told me that they, and the DfE, would like me to consider the priority given to children eligible for the pupil premium for whom a lower pass mark is set.

9. I have therefore decided to exercise my power under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions.

## Background

10. The school dates from 1624 and became an academy in 2011. It is one of two schools in the multi-academy trust, the other being a primary school. It is situated in the centre of Marlow less than 600 metres from the river Thames which at this point forms the boundary between Buckinghamshire and the neighbouring local authority, The Royal Borough of Windsor and Maidenhead.

11. The school is part of the selective grammar school system that operates across the whole of Buckinghamshire. In this system, all children in Buckinghamshire state funded primary schools (unless withdrawn by their parents) take the eleven plus test in Year 6 and those achieving a score of 121 or more are deemed eligible for admission to one of the grammar schools.

12. The school has recently made a successful bid to the DfE for capital funding to increase the size of the school from September 2020. This bid required the school to take measures to increase the number of children eligible for the pupil premium who are admitted to the school.

13. The PAN for Year 7 in 2020 is 150, an increase from 120 in 2019, and the oversubscription criteria for Year 7 can be summarised as follows:

1. Looked after and previously looked after children.
2. Up to 10 places for children eligible for the pupil premium who score at least 110 in the test.
3. Children eligible for free school meals living in the catchment area.
4. Up to 15 places for children who live in the school's "*priority admission area*", allocated by a lottery.
5. Children of staff.
6. Children living in the "*catchment area*".
7. Siblings of children who will be on roll when the child starts.
8. Children with exceptional medical or social needs.
9. Children living closest to the school.

The "*priority admission area*" and "*catchment area*" are described below. If the PAN is reached and exceeded in any one of these criteria, priority is decided by using the subsequent criteria. Random allocation is used as a final tie breaker.

## Consideration of Case

14. The requirements for catchment areas are set out in Paragraph 1.14 of the Code which 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.*"

15. I was initially unable to find a map or other definition of the catchment area for 2020 on the school's website. Paragraph 1.47 of the Code requires that admission authorities "***must** publish a copy of the determined arrangements on their website displaying them for the whole offer year*". When I drew this the school's attention this matter was immediately rectified although the map continues at the time of completion of this determination to be marked as "*Proposed catchment area*".

16. The catchment area for 2020 is more extensive than it was for 2019. The additional area is to the west of High Wycombe where the catchment area now extends to the north of the M40 including Stokenchurch, previously the boundary had been about one mile to the south of the motorway. The part of Windsor and Maidenhead included in the catchment area is for the most part bounded by the river and the A4. It contains Cookham and the northern part of the town of Maidenhead. I note that this area was included in the catchment area in and before 2019 and that this part of the catchment area has not changed. The

catchment area is now shown in two parts, one labelled A which includes the western half of the former catchment area and new area. The other part is labelled B and covers Marlow and the parts of Maidenhead and Windsor described above. Although a note on page 9 of the arrangements goes some way to clarifying how these two parts of the catchment area related to the terms “*admission priority area*” and “*catchment area*” used in the oversubscription criteria, I sought further clarification from the school. In response I was provided with a map showing a single border around both areas A and B labelled as the catchment area and the area previously labelled A marked as the admission priority area. Thus the “*admission priority area*” is area A and forms part of the wider “*catchment area*” which is area A and B together.

17. As well as referring to paragraph 1.14 of the Code quoted above, two of the objectors referred to “*The Department for Education’s advice on catchment area changes*”. I am not aware of specific advice from the DfE about catchment area changes and so asked the objectors for a reference to this advice. I was told that the list of factors included in the objection was based on consultation in 2009 which related to the version of the School Admissions Code dated 2010 together with DfE guidance to free schools and DfE guidance on home to school travel. The School Admissions Code has been revised more than once since 2009 and it is the current version published in 2014 against which I am charged with assessing these arrangements. In addition to paragraph 1.14 I think that paragraphs 14 and 1.8 of the Code are also relevant to my considerations.

18. Paragraph 14 says “*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” Paragraph 1.8 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*”.

19. I have also borne in mind *R v Greenwich London Borough Council, ex parte John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469 it was held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. This is known as the Greenwich Judgement.

20. The local authority provided helpful background information concerning the extension of the catchment area. A previous determination by the adjudicator had identified the possibility that in some parts of Buckinghamshire children who had qualified for a grammar school place could find that they had low priority for a place at any grammar school. The extension to the catchment area to include the area north of the M40 including

Stokenchurch was added to address this issue with the precise area and number of places being discussed between the local authority and the school during consultation on the arrangements.

21. The objectors say that the catchment area is clear, but not reasonable. Saying "*The school has provided no reason or explanation for why part of the Maidenhead area has been chosen for out-of-county admission preference over any other out-of-county area.*" The school responded by saying that Maidenhead had always been part of the catchment area continuing to say that as the school was very close to the boundary "*we have retained our historic catchment to serve local children*".

22. Looking at maps of secondary schools in the area, places such as Cookham Dean and Bisham, both in Windsor and Maidenhead, are closer to schools in Marlow than they are to schools in Maidenhead. There is also a river crossing near to the school making walking or cycling from that area to schools in Marlow as feasible as going to schools in Maidenhead. There are two other points where the river can be crossed within the catchment area. The next upstream river crossing is about 10 kilometres away at Henley-on-Thames and downstream it is between Maidenhead and Slough neither of which facilitate access to the school from out-of-county areas. The Greenwich Judgement said that schools may not discriminate in relation to admission to the school simply because a child lives outside the local authority area in which the school is situated. These factors, along with the fact that it has been for many years, seem to me to be good reasons for retaining part of Maidenhead in the catchment area.

23. Objectors said that "*Extending the catchment of a selective school into a comprehensive system in Maidenhead will effectively impose a selective education system into the whole of the town, over-riding the wishes of parents to send their children to a fully comprehensive school.*" They argued that alleged low standards in non-selective schools in Buckinghamshire would lead to lower standards in comprehensive schools in Maidenhead. They went on to say "*There is no evidence that the proposed additional catchment area will realise any educational benefits for Maidenhead schools*". They said "*The proposals do not address any explained anomaly or education deficit in Maidenhead. There are none. All of Maidenhead's schools are good or outstanding.*"

24. The catchment area is not being extended into Maidenhead; it already covers part of that town and has done so for a number of years. When the Royal Borough of Windsor and Maidenhead was consulted on these arrangements it said "*The Royal Borough supports measures that will increase choice for borough residents, and believes that, overall, these proposals will be broadly neutral in terms of the ability of borough residents to get a place at Sir William Borlase's.*" The Royal Borough clearly has no concerns that these arrangements will undermine the standard of education offered by schools in Maidenhead and there is very little weight or evidence in the objectors' argument that it will.

25. Reference was also made by the objectors to paragraph 1.9d of the Code which prohibits the introduction of any new selection by ability. To my point of view, this is not the introduction of new selection by ability of the sort prohibited by the Code and the Act. The

Act and Code are here concerned with the issue of whether or not a school which is not a selective school may introduce selection. It is not concerned with where pupils who may be admitted to an existing selective school live. Moreover, as noted above, the school has not changed its catchment area insofar as it includes part of Maidenhead.

26. Objectors said that there is no need for additional secondary school places in Maidenhead as there was already an expansion programme for schools in place for that area. The school is being physically enlarged to accommodate an additional form of entry (which is 30 places in each year group) and alongside this, the catchment area is being extended but only within Buckinghamshire. The admission arrangements have also been changed giving priority to 15 children living in the "Admission Priority Area", which is entirely within Buckinghamshire, ahead of any child living in Maidenhead. This leaves 15 additional places which Maidenhead children could meet the criteria for. However, 10 of those places are for children eligible for the pupil premium who may score less than the usual 121 in the selection test. These may not all be taken up and some may be taken up by children living in Maidenhead. Consequently, there could be as few as five, and no more than 15, new places which children living in Maidenhead could be eligible for. These places would be allocated on the basis of distance from the school and concentric circles centred on the school include far more of Buckinghamshire, than they do of Maidenhead. I have quoted above views of the Royal Borough on the expansion and I think that few additional children will cross the river from Maidenhead to Marlow as a result of the expansion.

27. Objectors themselves suggested that the cost of travelling from Maidenhead to Marlow could prevent low-income families from taking up places at the school. If travel costs from Maidenhead prevent low-income families from taking up places at the school, then, as the objectors have said, there are schools nearer to their homes which offer good educational opportunities.

28. I have formed the view that continuing to include the same part of Maidenhead in the catchment area as has historically been the case is entirely reasonable. Any increase between 5 and 15 in the number of children who might cross the river for a grammar school place will be small when compared with year groups of around 800 currently in state-funded secondary schools in Maidenhead and will not adversely affect the quality of education provided in Maidenhead.

29. One of the objectors was concerned with possible unfairness to children living in Buckinghamshire. He said "*These arrangements are confusing, unfair and unreasonable. The basic question a Bucks parent would ask is: Why is this school limiting admissions of PAA [Priority Admission Area] pupils whilst allowing unrestricted admissions of out-of-county pupils?*" I have considered the rationale for retaining part of Maidenhead in the catchment area above; I will now consider any adverse effect on children living in Buckinghamshire.

30. Of the 30 additional school places which the school is creating, priority is given for 15 of them to children living in the priority admission area which is entirely in Buckinghamshire. Previously, the opportunity for qualified children living in this area to attend a grammar

school depended on where they lived in relation to the other applicants, Under this arrangement it would have been possible for no children from this area to be offered a place. The reservation of places, and the use of random allocation if there are more than 15 applicants from this area, ensures that places will be offered to children living across the area, not just to those living in that part of it nearest the school.

31. Children living in this area who were not successful in the ballot are still resident in the catchment area, and therefore take precedence over all out-of-county pupils other than those who live in the part of Windsor and Maidenhead which is also in the catchment area. Some parts of the admission priority area are closer to the school than some parts of Windsor and Maidenhead which are within the catchment area. Children living in these areas would have priority on the basis of distance over children from parts of the Maidenhead area.

32. It appears to me that children living in the admission priority area have a greater likelihood of being offered a place under the 2020 arrangements than they did previously. The local authority is of the view that 15 places will be sufficient to address the issue that these provisions were put in place for.

33. It was also argued by one objector that the inclusion of out-of-county children was unfair to children in Buckinghamshire because it led to "*pass mark inflation*". His argument was that out-of-county primary schools "*encourage and/or facilitate Transfer Test tutoring*" and that "*state schools in Bucks are forbidden to provide any preparation for the Transfer Test beyond a single familiarisation session.*" He provided some anonymous quotes from school websites to support this view and data to show that out-of-county children did better in the test than children from Buckinghamshire. He argued that these higher scores led to the standardised pass mark of 121 representing a higher level of ability than it would if just the Buckinghamshire pupils were taken into account and so it was more difficult for in-county pupils to qualify for a grammar school place.

34. I do not dispute the data or the logic in this argument. I do, however, think that rather than the effect of tutoring, the higher performance of out-of-county children may be as much to do with them being a self-selecting group of high attaining children rather than the full ability range who take the test in Buckinghamshire primary schools. The data, also, is for the whole county, not specifically for the school subject to this objection. It remains the case that the law does allow parents to apply to schools in other local authorities and does prohibit admission authorities from discriminating on the basis of the local authority in which a child lives.

35. Having considered the arguments put forward by the objectors I find that the catchment area is reasonable. I find that the catchment area will not have an adverse effect on secondary schools in Maidenhead and does not unfairly disadvantage any child in Buckinghamshire. I do not uphold the objection.



## Other Matters

### Year 9 Admission

36. The arrangements state a PAN for Years 7, 9 and 12. These are the “*relevant age groups*” for the school. A relevant age group is defined in the Code as “*the age group at which pupils are or will normally be admitted to the school*”. Paragraph 1.7 of the Code requires that “*All schools **must** have oversubscription criteria for each ‘relevant age group’*”.

37. The PAN for Year 9 is stated as 25. While oversubscription criteria can easily be found in the arrangements under appropriate headings for Year 7 and Year 12, it was not clear to me what the oversubscription criteria would be applied if there were more than 25 applications for a place in Year 9.

38. When I raised this matter with the school I was referred to the section of the arrangements headed “*3.5 Late Transfer Oversubscription Criteria*”, which I was told contained the oversubscription criteria for Year 9. This section was within part of the arrangements headed “*3. Late Transfer Procedure*” concerning admission to Years 8, 9, 10 and 11, and Year 7 from January each academic year.

39. There is a fundamental difference between admission to a relevant age group and admission at the beginning of other year groups (or indeed during any year group). Section 86 of the Act says that the only grounds for refusing admission to a school is prejudice to “*the provision of efficient education or the efficient use of resources*”, and for a selective school, incompatibility with selection. For relevant age groups the PAN sets the number at which the admission authority believes such prejudice arises and is required to have a set of oversubscription criteria to decide which children will be offered places if the number applying is above the PAN. Arrangements for admission to Year 9 must meet the same requirements set out in the Code as those for Year 7. If an admission authority wishes to keep a list of children who it has refused admission to in other year groups it may do so, and it may use criteria to decide which child would be offered a place if one became available. These however would not be ‘oversubscription’ criteria because there is no PAN for year groups other than the relevant age groups.

40. I find that including the oversubscription criteria and other details of the admission arrangements for a relevant age group, Year 9, with the arrangements for other age groups is unclear.

### Admission outside of the normal age group

41. Paragraph 2.17 of the Code requires that admission authorities “*make clear in their admission arrangements the process for requesting admission out of the normal age group.*” I could not find where in the arrangements the process for requesting admission outside of the normal age group was explained. The school referred me to section “*3.3 Admission out of the normal age group*”. Like the oversubscription criteria for Year 9, this is a subsection of “*3. Late Transfer Procedure*” and does not explain, for example, how the

parent of an exceptionally bright child who has been taught in primary school in a class of older children should go about applying for a Year 7 place alongside their classmates.

42. The local authority said that it explained the process for Year 7 on its website, however, the requirement in the Code is for the admission authority to explain, not the local authority. I find that the arrangements do not meet this requirement.

#### The lower pass mark for children eligible for the pupil premium

43. Paragraph 1.7 of the Code says “*All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.*” The other provision in the Code is in paragraph 1.19 which says “*Where arrangements for pupils are wholly based on selection by reference to ability and provide for only those pupils who score highest in any selection test to be admitted, no priority needs to be given to looked after children or previously looked after children.*” Although this school is a designated grammar school, it does not provide only for those pupils who score highest on the test to have priority. By this I mean that, for example, a child scoring 140 in the test has no greater priority than a child scoring 121 because of that higher score. For any child who has scored 121 or more the chances of a place depend up factors which are not related to their score. Because the school takes this approach (and I should make clear that is entirely legitimate for it to do so) it is required to give highest priority for looked after and previously looked after children who reach the relevant standard wherever they live.

44. The score in the test at which children normally become eligible for admission, and subject to the oversubscription criteria is 121. The first oversubscription criterion, as it is required to do by the Code, gives priority to looked after, or previously looked after children who have qualified for the school, that is have scored of 121 or more in the selection test. The second criterion reads “*Up to 10 places for children eligible for pupil premium, living in catchment, who have not qualified but who have achieved a score of at least 110 in the Admissions Test. In the event of more than 10 pupils qualifying under this rule the distance tie –breaker will apply i.e. places will be offered to the ten children living closest to the school.*”

45. Looked after children and previously looked after children are eligible for the pupil premium. A looked after, or previously looked after child who scores above 121 will have been admitted under the first oversubscription criterion. There could be looked after and previously looked after children scoring between 110 and 120 and some of these may not live in the catchment area. In my view paragraph 1.7 of the Code requires those children to have highest priority within the second criterion, no matter where they live.

46. On the face of it, the second criterion does not conform with the Code. However, on the previous page of the arrangements there is a section explaining the second criterion in more detail, it says “*Children falling under category ‘2’ [in a definition of eligibility for pupil premium] above are looked after and previously looked after children and so, under the Code and admissions regulations, must be prioritised before other children eligible for Pupil Premium who are not looked after or previously looked after children.*”

47. This note addresses my concern that looked after and previously looked after children must have priority within the second criterion, but leaves my concern that this criterion is restricted to children living in the catchment area. While this is acceptable if eligibility for the pupil premium is based on the child's history of free school meals, it is not acceptable if eligibility is based on being, or having been, looked after as the Code makes it clear that all such children must have highest priority. This would mean that if there were more than 10 looked after, or previously looked after children scoring 110 or more, all would have to be offered places.

48. I find that the second oversubscription criterion does not conform with the Code, however, it would be a simple matter to reword it, the associated note or both of the first two criteria to meet the requirements of the Code.

## Summary of Findings

49. For the reasons set out above I find that the catchment area is reasonable and is not unfair to any groups of pupils and so I do not uphold the objections. However, it is necessary for the admission authority to clarify which part of the catchment area is the admission priority area.

50. I also find that the arrangements do not conform with the Code in the other ways set out above.

## Determination

51. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2020 determined by the governing board for Sir William Borlase's Grammar School, Marlow, Buckinghamshire.

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

Dated: 4 July 2019

Signed:

Schools Adjudicator: Phil Whiffing