



## Determination

<b>Case reference:</b>	<b>ADA3600, ADA3601 and ADA3602</b>
<b>Objector:</b>	<b>Three members of the public</b>
<b>Admission authority:</b>	<b>Wycombe High School Academies Trust for Wycombe High School, Buckinghamshire</b>
<b>Date of decision:</b>	<b>10 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 Wycombe High School Academies Trust for Wycombe High School, 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 Wycombe High School (the school), a selective academy school for girls aged 11 – 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 Wycombe High School Academies Trust (the trust).

## Jurisdiction

3. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board on behalf of the trust which is the admission authority for the school, on that basis. The objectors submitted the objections to these determined arrangements on 7, 13 and 14 May 2019. I am satisfied the objection has 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 7, 13 and 14 May 2019 and subsequent correspondence;
- b) the admission arrangements;
- c) minutes of the meeting at which the governing board determined the arrangements;
- d) the admission authority's response to the objection;
- 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 extension of the school's catchment area to include the town of Maidenhead and the surrounding 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 also referred to DfE advice on catchment area changes and made similar points to the first two. In addition, he set out details of some problems he thought would accrue to girls living in Buckinghamshire from the extension of the catchment area. This objector provided some data and other documents to support his objection.

## Other Matters

8. When I considered the arrangements as a whole it appeared to me that they did not, or may not, conform with the Code in two other ways.

9. Paragraph 1.8 of the School Admissions Code (the Code) requires that oversubscription criteria are clear. Criteria (b), (e) and (h) refer to “*qualified disadvantaged girls*”. Note 3, found four pages later in the arrangements, gives the definition of this term, but there is no link to that note in the criteria themselves.

10. Paragraph 2.14 of the Code sets out what admission authorities must include in their arrangements concerning waiting lists. The arrangements refer the reader to the “*County Scheme*”. A link is given at the end of the arrangements to a page on Buckinghamshire County Council’s website for details about the “*County Scheme*”. On this page there is a link headed “*Waiting Lists*”. However, the page that this link takes the reader to does not include everything required by paragraph 2.14 of the Code and refers to action required by 15 March 2018 which cannot satisfy requirements for admissions in 2020.

## Background

11. The school, which became an academy in 2011, is situated in the south of High Wycombe near the junction of the M40 and the A404. The school is part of the selective grammar school system that operates across the whole of Buckinghamshire. In this system, all children attending 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. All parts of Buckinghamshire fall into the catchment area of one or more grammar schools.

12. The arrangements for 2020 are different to those in use for 2019. The published admission number (PAN) remains at 192, but the catchment area has been extended and split into two parts labelled A and B, and the oversubscription criteria changed. The new oversubscription criteria for 2020 can be summarised as follows.

- a) Looked after and previously looked after children.
- b) Up to 12 “*qualified disadvantaged girls*” who live in the catchment area.

Criteria c to e then apply to girls living in part A of the catchment area and then to girls living in part B.

- c) Girls living in the catchment area.
- d) Sisters of current students.
- e) Other “*qualified disadvantaged girls*” living in the catchment area.
- f) Daughters of members of staff.

- g) Sisters of students at other secondary schools in the trust.
- h) Other “*qualified disadvantaged girls*”
- i) Girls living closest to the school.

13. If the school is oversubscribed in any one of the criteria, subsequent criteria are used to give priority with random allocation being the 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. The catchment area is in two parts labelled “*Catchment Area A*” and “*Catchment Area B*”. Part A is almost entirely the same as the catchment area used in 2019. It stretches from just south of Princes Risborough in the north to the county boundary in the south and from the county boundary in the west to Loudwater in the east. A small area around Bourne End is the only addition to the former area and no part of the former area has been removed. High Wycombe and Marlow are the main centres of population in this part of the catchment.

16. The boundary of the other part of the catchment area, part B, follows the boundary between the Royal Borough of Windsor and Maidenhead (the Royal Borough) and Buckinghamshire in the north and for most of the east until just before Windsor when it cuts across to the southern boundary of the Royal Borough and follows that boundary round to the west and back north to the border with Buckinghamshire. I estimate this area to be in excess of 25 square miles surrounding and including the town of Maidenhead.

17. When considering the objection I have noted that, apart from in oversubscription criteria (a) and (b), priority is given in the oversubscription criteria to any girl living in the former catchment area before girls living in the new part of the catchment area based around Maidenhead.

18. As well as referring to paragraph 1.14 of the Code quoted above, 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 on the School Admissions Code in 2009 which related to the School Admissions Code dated 2010, guidance to free schools, guidance on home to school travel and research on school partnerships. 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 are also relevant to my considerations.

19. 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”.*

20. 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. In *R v Rotherham Metropolitan Borough Council, ex parte LT and others [2000] ELR* the court found that it was permissible for local authority boundaries to be used as part of a catchment area boundary. This is known as the Rotherham Judgement.

21. The objectors said that the catchment area was clear, but not reasonable saying *“The school has provided no reason or explanation for the proposed change to its catchment area, or why the Maidenhead area has been chosen for out-of-county admission preference over any other out-of-county area.”* They referred to paragraph 1.9d of the Code which prohibits the introduction of any new selection by ability and 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.”*

22. In its response to the objections the school said that in the recent years it had taken as many as 38 children each year from Maidenhead, a level not seen from other neighbouring local authority areas. The school said that there are established transport routes from Maidenhead to High Wycombe and *“Changing our catchment puts current practice into our admissions policy and makes the position regarding admissions and priorities in cases of oversubscription clearer for potential applicants and parents.”* The school said that parents did not have to apply to the school if they did not want to, and quoted the response from the Royal Borough when consulted on the new catchment area *“the Royal Borough supports measures that will increase choice for borough residents. We note that most Maidenhead residents wanting a place at your school in recent years have got in. We agree that, if the designated area is to be extended into Maidenhead, it should cover the whole of the Maidenhead area.”*

23. The objectors argued that alleged low standards in non-selective schools in Buckinghamshire would lead to lower standards in comprehensive schools in Maidenhead. From its response to consultation quoted above, the Royal Borough clearly has no concerns that these arrangements will undermine the standard of education offered by schools in Maidenhead. While the objectors have set out their clear concerns about what might happen as a result of the changes introduced to the school's admission arrangements they have provided little evidence or argument to support why and how this might happen and there is very little weight or evidence in the objectors' argument that it will. The objectors 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.*" There is no requirement that changes to the school's admission arrangements should lead to benefits for Maidenhead schools or address what the objectors refer to as "*any explained anomaly or education deficit in Maidenhead*". The test for me is whether the arrangements are or are not in conformity with the Code.

24. The fact that as many as 38, nearly 20 per cent, of the girls being offered places at the school live in Maidenhead tells me two things. The first is that there were not enough girls living in the former catchment area who both meet the qualifying standard for a grammar school and who want a place at this grammar school to fill all of the places available. Secondly, that there is demand for places at the school from girls in the Maidenhead area and these girls live closer to the school than others in Buckinghamshire or other local authority areas, otherwise previous oversubscription criteria would not have led to them being offered places. This is supported by the most recent data on the local authority's website which shows that for 2018, less than 70 per cent of places were offered to children living in Buckinghamshire. It does not seem unreasonable to me for a school to wish to formalise a relationship with an area that it serves, particularly in the light of comments about focusing access strategies for disadvantaged children contained in the school's response to the objection.

25. The objectors said that the cost of travel between Maidenhead and High Wycombe would prohibit low-income families from taking up places. The school said that it was investigating solutions to this issue. However, as the objectors have said, if the cost of transport to High Wycombe is a problem for low-income families in Maidenhead there are a range of good schools closer to children's homes.

26. Reference was also made by the objectors to paragraph 1.9d of the Code which prohibits the introduction of any new selection by ability. One objector said "*once a grammar school is permitted to extend its catchment into a comprehensive area then that area becomes selective. A comprehensive school can no longer be comprehensive if the high achieving children no longer attend it.*" 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. And, as noted above, girls from Maidenhead already attend the school and there is absolutely no reason in law why they should not do so.

27. One of the objectors was concerned about the effect of these arrangements on children living in Buckinghamshire and other parts of adjacent local authorities. His argument was that by including the area around Maidenhead in the catchment area, this discriminated against children living in Buckinghamshire, but outside of the catchment area, and other children living outside of that county.

28. Admission arrangements are intended to discriminate between children giving priority to some at the expense of others. They must do so fairly and reasonably. The Courts have held that it is unlawful to discriminate against children for admission to schools solely on the basis of the local authority area in which they live, although where it is sensible to do so, local authority boundaries can be used to define part of a catchment. The school has explained that the reason it has extended its catchment area to encompass Maidenhead is to reflect the fact that when it does not fill from within its previous catchment area, this is the area from which it fills its places. The school says that it wishes to develop links with primary schools in this area. This extension is therefore reasonable.

29. The school has not filled from its catchment area in recent years; however, if it did, the only way a girl from the new part of the catchment area would be given a place ahead of a girl in the former catchment area would be if she was offered a place under the second criterion for "*qualified disadvantaged girls*". There are 12 places available for allocation against this criterion and if there are more than 12 "*qualified disadvantaged girls*", the arrangements say that priority is given after taking into account the next criterion. The subsequent criteria (c) to (e) are applied to girls living in the former catchment area before they are applied to girls living in the new part. There would, therefore, have to be less than 12 "*qualified disadvantaged girls*" living in the former catchment area before any "*qualified disadvantaged girl*" from the new area was offered a place. Few if any girls living in the former catchment area would lose out because of this and if they did, I do not consider it unfair that they lose out to "*qualified disadvantaged girls*".

30. The objector referred to oversubscription criterion (g) as "*an unknown priority*". It is for sisters of girls at other secondary schools in the trust "*as shown on the school's website*". Neither the school's website nor the DfE database show any other schools in the trust. It may be that there are plans for another school to join the trust between now and when places are allocated using these arrangements which are not yet in the public domain and this criterion may be in place in preparation for that event. If that is the case it would have been more appropriate not to have included this criterion and to have sought a variation to the arrangements from the adjudicator when and if another school joined the trust, so that the impact of this criterion could be assessed. As it stands, no girls would meet this criterion and so no unfairness arises at this time, although it does distract from the clarity of the arrangements.

31. 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.

32. 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.

33. When the school consulted on these arrangements prior to their determination, the local authority expressed “*some slight concerns*” about the extension of the catchment area to include Maidenhead rather than another part of Buckinghamshire, called “*Area19*” which is north of Slough. Had the local authority considered that the catchment area as determined by the school did not comply with the Code, then the local authority would have been able to refer it to the adjudicator itself. In its response on this objection the local authority said “*we understand that there were no adverse comments received by the school to their proposal from residents living in Area 19.*”

34. Having considered the objections and the information provided by the school and the local authority I have formed the view that the catchment area is reasonable. I do not think that it will adversely affect the quality of education in Maidenhead and it is not unfair to girls living in the former catchment area or elsewhere in Buckinghamshire. I do not uphold the objection.

## Other Matters

35. The first matter which I raised with the school concerned the clarity of the term “*qualified disadvantaged girls*” used in criteria (b), (e) and (h). In response to my concern the school proposed to amend the arrangements so that there was a clear link from each criterion in which the term is used to the note which explains that such girls are those eligible for the pupil or service premium. This will address this matter.

36. The second matter concerned waiting lists. Paragraph 2.14 of the Code says “*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.” The arrangements said “If any vacancies arise between National Offer Day on 1 March, and 31 December of the same year, first priority will be given to those on the waiting list managed by BCC through the County Scheme” before describing the process from 1 January.

37. While an admission authority may engage a local authority to manage the waiting list for them, the Code requires the admission authority to make a statement about waiting lists in the arrangements which conforms paragraph 2.14. The section on waiting lists in the arrangements did not say where details of the “*The County Scheme*” could be found. It is not until five pages later in the arrangements is there a note, the final note in the arrangements, with a hyperlink to “*The County Scheme*”. This took the reader to a page on the Council’s website where a heading “*Waiting Lists*” could be found. However, the page that this second link took the reader to did not include everything required by paragraph 2.14 of the Code and referred to action required by 15 March 2018.

38. When I drew this matter to the school’s attention it acknowledged that the information on the local authority’s website was incorrect and that the local authority would be updating it at the end of August 2019. The local authority is not required to publish a composite prospectus until 12 September each year; however, admission authorities are required to publish their arrangements once they are determined and this requirement extends to the information required by paragraph 2.14.

39. The school has sent me a version of the arrangements with an amended section on waiting lists. Once these arrangements are formally adopted by the admission authority, this matter will be addressed.

## Summary of Findings

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

## Determination

41. 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 Wycombe High School Academies Trust for Wycombe High School, Buckinghamshire.

42. 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.

43. 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

Dated: 10 July 2019

Signed:

Schools Adjudicator: Phil Whiffing