



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3603, ADA3604, ADA3605 Oxted School, Surrey

Objector: Two individuals and Kent County Council

Admission authority: Surrey County Council

Date of decision: 29 August 2019

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 2020 determined by the Howard Partnership Trust, which is the admission authority, for Oxted School, Surrey.

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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 27 September 2019.

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 two individuals and Kent County Council (the objectors), about the admission arrangements for Oxted School, a secondary academy for pupils aged 11 to 18 for September 2020.
2. The local authority for the area in which the school is located is Surrey County Council. The LA is a party to this objection. Other parties to the objection are the other objectors and the Howard Partnership Trust (the Academy 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 Academy Trust, which is the admission authority for the school, on that basis. The objectors submitted their objections to these determined arrangements on 8 and 14 May 2019. The objectors have met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and addresses to me. 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. a copy of the minutes of the meeting of the Academy Trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objectors' forms of objection and supporting documents;
- d. the responses of Academy Trust and Surrey County Council to the objections;
- e. maps of the area identifying relevant schools;
- f. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it; and
- g. further information provided by the parties.

The Objection

6. The following issues arise from the objections:

1. Whether the distance priority applied where there is oversubscription in criterion 6 of the oversubscription criteria in the admission arrangements for Oxted School is compliant with the provisions of the School Admissions Code 2014 (the Code).
2. Whether the School's catchment area is compliant with the requirements of Paragraph 1.14 of the Code.

3. Whether the consultation carried out prior to determining the admission arrangements for 2020 was compliant with the requirements of Paragraphs 1.42 to 1.45 of the Code.

Other Matters

7. The following issues arise under Section 88I of the Act:
 1. In Note 1, first bullet point (the definition of looked after child), the wording does not exactly follow the definition in the Code. It is not required to do so but must not depart in meaning from the definition in the Code. The words "...registered as being..." appear to be unnecessary and may be misleading as there is no formal process by which such children are registered. The wording may not be compliant with the requirements for clarity set out in Paragraphs 14 and 1.8 of the Code.
 2. It is not clear what is meant by "logistically possible" in the second paragraph of Note 5 which is concerned with children of multiple births. The wording may not be compliant with the requirements for clarity set out in Paragraphs 14 and 1.8 of the Code.

Background

8. Oxted School is an academy secondary school, for pupils of both sexes aged 11 to 18 with a published admission number (PAN) of 335. It is part of the Howard Partnership Trust, a multi-academy trust of ten academies. The school was found to require improvement at its last Ofsted inspection in May 2018. The school was maintained by Surrey County Council prior to conversion to academy status in 2015.

9. The objections are each concerned with a change to the admission arrangements from 2019 and previous years to 2020. The admission arrangements for 2019 are identical to those for 2020 save for the provisions for oversubscription within each of the oversubscription criterion which are (in brief) as follows:

1. Looked after and previously looked after children
2. Exceptional social/medical need
3. Siblings
4. Children living in catchment and attending a feeder school
5. Children living in catchment and not attending a feeder school
6. Any other children.

10. The provision for oversubscription in all criteria for 2019 is "*priority will be given to children who live furthest from their nearest alternative school*". This remains in 2020 for

criteria 1 to 5. However, for criterion 6 only, it has been changed to “*priority will be given to children according to the distance from their permanent home address to the school, as measured in a straight line*”.

11. The priority given to pupils within catchment and attending feeder schools remains. The catchment area in the west follows the county boundary between Surrey and Kent and all the feeder schools bar one lie within Surrey, with one in Kent. I note that in order to benefit from the feeder school priority an applicant must also live within the catchment area. Children attending Crookham Hill Church of England Primary School, which is in Kent, must thus live in catchment over the border in Surrey in order to benefit from the feeder school priority. Objections cover the provisions for catchment areas and the consultation undertaken by the admission authority. The primary objections are to the change to the distance provision for criterion 6. Under previous arrangements it did not matter for the application of criterion 6 where a pupil lived, whether near or far, whether in Surrey or not. The only issue was distance to the “*nearest alternative school*” (meaning, as I understand it, any school that is not Oxted School) so those pupils who would have to travel furthest if unable to gain a place at Oxted School would have the highest priority.

Consideration of Case

Whether the consultation carried out prior to determining the admission arrangements for 2020 was compliant with the requirements of Paragraphs 1.42 to 1.45 of the Code.

12. An adjudicator has no power to compel an admission authority to revert to the admission arrangements determined for a previous year or to compel an admission authority to carry out a further consultation and determine again the arrangements for the year in question, even were that possible within the time remaining. If an objection to the consultation is upheld by an adjudicator it is binding on the admission authority (section 88K(1)-(2) of the Act). Paragraph 3.1 of the School Admissions Code (the Code) provides that “*The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator*”. A finding by the adjudicator that the consultation requirements have been breached does not of itself lead to any requirement that the arrangements be altered, which will be to a very great extent a matter to be determined by reference to whether or not the arrangements themselves conform to the requirements set out in statute or the Code. An adjudicator has no power to require further consultation on the arrangements for the academic year in question.

13. I do not uphold the objection regarding the consultation. Kent County Council were consulted but due to an unfortunate administrative error the relevant education officers were unaware until too late and so were unable to comment. However, the key point made in all the objections, and considered in this determination, is that the proposed changes disadvantaged those living outside catchment and not attending a feeder school who live a significant distance from their nearest alternative school. That point was made, with specific

reference to Kent families, in response to the consultation by a parent with a child currently at Oxted School and is set out in the report following the consultation provided by the admission authority and so was considered by the admission authority in reaching its determination decision. I would observe that the report itself, and the emails between its author and Surrey County Council when it was being drafted, do suggest that greater consideration was given to the responses of a concerned Surrey primary school than was given to the response regarding Kent residents. This suggests that the focus of decision making was unduly on Surrey children rather than those living nearby but out of county. This is, in my view, reflected in the decision to change the distance provision only for those living outside catchment not, as originally proposed in the consultation, for all oversubscription criteria.

Whether the distance priority applied where there is oversubscription in criterion 6 of the oversubscription criteria in the admission arrangements for Oxted School (the School) is compliant with provisions of the Code.

14. Although the objections referred only to paragraph 1.8 of the Code I have also looked at paragraph 14 of the Code which 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 fair, clear and objective*". I am satisfied that the determined admission arrangements for 2020 are clear and objective. The question I need to consider is whether they are fair.

15. **Do the admission arrangements disadvantage an identifiable group?** I am satisfied that the admission arrangements do leave at a disadvantage those for whom Oxted School is their nearest school but who live outside catchment (whether or not they attend one of the identified feeder schools). This is so whether they live in Surrey or in a neighbouring authority, including the parts of Kent close to the Surrey border referred to in the objections. The evidence I have shows that there are children resident in Kent, for example in and around Edenbridge, whose nearest school is Oxted and whose nearest alternative school, if they do not gain a place at Oxted, is significantly further away. The admission arrangements for 2019 and preceding years addressed this issue in the oversubscription criteria by giving priority to this group (as well as those for whom Oxted was not their nearest school) according to distance to the nearest alternative school. Surrey County Council have helpfully modelled the effect that the 2020 admission arrangements would have if applied to the 2019 applications. The model shows that ten Kent children would have been offered places under the 2019 criteria but not under the 2020 criteria. Of these ten, five named Oxted School as a first preference. It may be that others, not resident in Kent, would have been similarly affected.

16. **Is the disadvantage fair?** Where a school is oversubscribed any change to the oversubscription criteria, if it is material, will give an advantage to some applicants and disadvantage others. In many cases this will be fair, in some it will not. Whether it is fair will depend on the impact on those disadvantaged weighed against the issues the changes have been designed to address. I will consider what seem to me to be the key points below.

Admission numbers in previous years.

1. The figures provided by Surrey County Council (who are contracted by the admission authority to administer the admissions process) show that there has been a steady decline in first preferences for Oxted School from 298 in 2017 to 254 in 2019. The Published Admission Number for Oxted School is 335. For 2019 admission 41 children were offered places under criterion 6 on national offer day. This left 24 children falling within criterion 6 who had not been offered a higher preference, all of whom have now been offered a place from the waiting list. On Surrey County Council's modelling of the 2020 oversubscription criteria to the 2019 applications 10 fewer children resident in Kent would have gained a place in the initial allocation on national offer day. It seems likely that at least some of these would be offered places from the waiting list. The figures will vary from year to year but it seems likely that the number of children displaced by the 2020 arrangements (whether living in Kent or otherwise) will be between zero and ten, of which some zero to 5 would have put Oxted as a first preference¹. My conclusion is that impact in terms of numbers will be significant but low.

The problem with the previous distance criterion.

2. The relevant distance provision for oversubscription criterion 6 in 2019 and previous years does produce the odd result that children living out of catchment and not attending a feeder school will gain priority simply by reference to distance to their nearest alternative school to Oxted, regardless of where they actually live. Theoretically, this could lead to a child living in a remote corner of Northumberland gaining a place and a child living much nearer Oxted School not gaining a place. I am not convinced that in practice this is a significant issue. The evidence is that it was first noticed by Surrey County Council following errors in the application of criterion 6 in 2017 and did not lead to an actual allocation of a place to a child living at some great distance from the school. The reality is that parents are unlikely to apply to Oxted School, and even less likely to take up an offer of a place, if they live far away.
3. Surrey County Council have had difficulties applying the "*nearest alternative school*" criterion. In 2017 errors led to erroneous offers being made to some 31 children and a similar number being told they did not have a place who should have had one. Although I am told that all children affected who wanted a place at Oxted School eventually got one this is, of course, very unfortunate.

¹ Kent County Council say that a number of parents in Kent allege that they were discouraged from putting Oxted School as a first preference for 2019 as they were told they would not get in due to living outside the catchment area. As the figures for 2020 are in any event hypothetical and will not be accurate I do not consider this, even if the case, alters my conclusion.

Surrey County Council say that the error arose because they maintain a database of in-county schools but have difficulty maintaining a database of out of county schools. In addition, their staff are familiar with in-county schools and not with out of county schools, so errors are less likely to be noticed for out of county applicants. This has led to Surrey being unwilling to rank applicants falling within criterion 6 on a “*nearest alternative school*” basis or being willing to do so for a higher fee. I accept that Surrey County Council are likely to be the only provider able to carry out this ranking process on behalf of Oxted School.

What could be done to address these difficulties?

4. It is not for the Adjudicator to interfere with how a school choose to allocate their budget nor with the terms of a service level agreement between a school and a provider. Kent County Council have suggested that the difficulties could be for the most part resolved by adding a new criterion 6 to the effect that it applies only to any other children for whom Oxted is the nearest school (and it would be necessary to make the current 2019 criterion 6 an additional criterion 7 to cover all other applicants). This would remove the issue of applications from very distant addresses and only oblige Surrey County Council to maintain a slightly enlarged database including only local schools, albeit some that are outside Surrey. There are probably other ways to address the issue. My conclusion is that the issues which the change to the distance provision for criterion 6 is meant to address can be remedied without creating the unfair disadvantage referred to above.

Would reverting to the 2019 distance provision be fair to those who would gain places only under the 2020 distance provision?

5. It is difficult to assess this as obviously no admissions process has been run using the 2020 distance provision. Surrey County Council’s modelling suggests that of the 10 places which would no longer go to Kent residents eight would go to Surrey residents and two to Bromley residents. I have not been presented with evidence to suggest that those who would gain by the 2020 distance provision would be unfairly disadvantaged by the 2019 provision. The objectors suggest that those who would gain come from the more densely populated areas to the north of the catchment area where there are more alternative schools available nearby and this seems likely to be correct. I find that there is no unfair disadvantage to those who would gain by the 2020 distance provision if it is changed as a result of this determination. I have already satisfied myself as noted above that there is unfairness to some children in Kent flowing from the change introduced for 2020.

17. My conclusion is that the admission arrangements for 2020, regarding the distance provision for criterion 6, do unfairly disadvantage those who live outside the catchment area and for whom Oxted School is the nearest secondary school and for whom the nearest

alternative school is significantly further away. I uphold the objections on this issue. The issue which the provision for “*nearest alternative school*” was intended to address remains an issue and the changes to the distance provision for criterion 6 removes that protection for those whose nearest alternative school is distant. The issues that the 2020 distance provision is intended to address could be addressed in other ways, such as, the amendments I refer to above. It is, of course, for the admission authority to decide what changes it wishes to make in light of my determination.

Whether the School’s catchment area is compliant with the requirements of Paragraph 1.14 of the Code.

18. Paragraph 1.14 of the Code reads: “*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*”.

19. The catchment area is, in the East, coterminous with the county boundary. Oxted School lies to the north of the catchment area, roughly in the centre between its eastern and western boundaries. The boundary is clearly defined and shown on a map easily accessible from Oxted School’s website. I find that the catchment area is reasonable. It does not contravene the law relating to admissions simply because it is, to some extent, coterminous with the county boundary. Those living inside the catchment have priority over those living outside the catchment area whether they live in Surrey or in Kent. I do not uphold the objection in relation to the catchment area.

Other Matters

In Note 1, first bullet point (the definition of looked after child), the wording does not exactly follow the definition in the Code. It is not required to do so but must not depart in meaning from the definition in the Code. The words “...registered as being...” appear to be unnecessary and may be misleading as there is no formal process by which such children are registered. The wording may not be compliant with the requirements for clarity set out in Paragraphs 14 and 1.8 of the Code.

20. Both the admission authority and Surrey County Council (the wording derives from Surrey County Council’s standard wording) have helpfully agreed to review this wording and I consequently find as a formality that the wording referred to above does not meet the requirements of the Code.

It is not clear what is meant by “logistically possible” in the second paragraph of Note 5 which relates to children from multiple births. The wording may not be compliant with the requirements for clarity set out in Paragraphs 14 and 1.8 of the Code.

21. Both the admission authority and Surrey County Council (the wording derives from Surrey County Council’s standard wording) have helpfully agreed to review this wording and I consequently find as a formality that the wording referred to above does not meet the requirements of the Code.

Summary of Findings

22. I uphold the objections in relation to the distance provisions relating to criterion 6 of the oversubscription criteria determined as part of the admission arrangements for 2020.

23. I do not uphold the objections in relation to the consultation and the catchment area.

24. I find that there are two other matters which do not comply with the provisions of the Code as set out above.

Determination

25. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements determined by the Howard Partnership Trust for Oxted School Surrey.

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

27. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 27 September 2019.

Dated: 29 August 2019

Signed:

Schools Adjudicator: Tom Brooke