



Determination

Case reference:	REF3617
Referrer:	A member of the public
Admission authority:	Outwood Grange Academies Trust for Outwood Academy Newbold, Derbyshire
Date of decision:	12 September 2019

Determination

I have considered the admission arrangements for September 2019 and September 2020 for Outwood Academy Newbold, Derbyshire in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that there are 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), a member of the public has referred the admission arrangements for Outwood Academy Newbold (the school), a mixed 11 to 18 academy school in Chesterfield, Derbyshire for September 2019 to the adjudicator. The referral relates to the definition of siblings, the method of calculating home to school distance and whether schools with more capacity than the Published Admission Number (PAN) should admit pupils above the PAN.
2. The parties to the case are Outwood Grange Academies Trust (the trust) and Derbyshire County Council, the local authority in which the school is located.

Jurisdiction

3. The terms of the Academy agreement between Outwood Grange Academies 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 under section 88C of the Act by the Academy Council of the school, by delegated powers from the trust, on 25 January 2018 (for admissions in September 2019) and 24 January 2019 (for admissions in September 2020) on that basis.

4. The School Admissions Code (the Code) required objections to admission arrangements for 2019 to have been made to the adjudicator by 15 May 2018. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements for 2019 have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements for 2019 and those for 2020 conform with the requirements relating to admission arrangements and I am treating the objection as a referral. The referrer sought clarity about a number of matters about the application of the arrangements to applicants for places. A letter was sent explaining that these matters are not within the adjudicator's jurisdiction and I do not deal with them further in this determination.

Procedure

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

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

- a) the referrer's email dated 6 June 2019;
- b) copies of the minutes of the meetings of the Academy Council of the school at which the arrangements were determined;
- c) a copy of the determined arrangements for September 2019 and September 2020;
- d) comments from the trust on the matters raised and supporting documents; and
- e) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2019.

The Referral

7. The elements of the referral within my jurisdiction concern an alleged lack of clarity about the definition of sibling (paragraph 1.11 of the Code) and whether the measurement of distance from home to school is clear (paragraph 1.13 of the Code).

Other Matters

8. When I considered the arrangements, I noted a number of ways in which they appeared not to conform with requirements relating to admissions.

- a) The introduction to the school's admission arrangements state "*All admissions to Outwood Academy Newbold are managed by the Local Authority. Derbyshire County Council (DCC). Full details of the Authority's policy on admissions are given in the 'Guide for Parents'. This is available in all schools and through the Department for Education.*" It is not made clear that Outwood Grange Academies Trust is the admission authority for the school and determines its admission arrangements (paragraph 1.1 of the Code).
- b) Paragraph 1.47 of the Code sets out that admission arrangements "**must**" be published on the school's website. When I checked on 14 June 2019, the school's website had a title "*Year 7 places for September 2019*" and a link titled "*Admission Procedure 2019-20*". I could not find the arrangements for 2020/21. The deadline for determining the arrangements for 2020 was 28 February 2019.
- c) The arrangements refer to "*admission limit (AAL)*" but the Code sets out the term "*Published Admission Number (PAN)*" which is used in all schools' admission arrangements. The failure to use the correct term may render arrangements unclear and contrary to paragraph 14 of the Code.
- d) Paragraph 1.6 of the Code says "*All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must be admitted.***" This requirement is absolute and reflects a requirement of the school's funding agreement. The school's arrangements qualify the provision so that it relates to "*children who live in the catchment area*" and so the arrangements do not conform with the Code.
- e) Paragraph 1.7 of the Code requires that admission authorities give the highest priority in oversubscription criteria to all looked after children and previously looked after children (with some small exceptions relating to selective schools and those with a religious character which do not apply here). The Code further sets out the definitions for these groups. The school's arrangements make no reference to this extremely important requirement and so fail to conform to the Code.
- f) The oversubscription criteria refer a number of times to the "*Academy's catchment area*" but there is no map setting out the catchment area or any other definition of the catchment such as a list of postcodes or streets in the admission arrangements and, thus, they do not meet the requirements of paragraph 14 of the Code to be clear or the requirement of paragraph 1.14 that catchment areas be clearly defined.
- g) Oversubscription criterion b) III refers to "*brothers and sisters on roll at the academy*". The statement is not clear as it does not define siblings as set out in paragraph 1.11 of the Code nor does it make clear whether the children need to be on roll at the time of admission although oversubscription criterion b) I referring to siblings, does qualify that the siblings need to be on roll at the time of admission (paragraph 14 of the Code).

- h) Paragraph 2.14 sets out that admission authorities **must** maintain a waiting list until at least 31 December of each school year of admission. This information is not included in the arrangements.

Background and consideration of case

9. The school is a mixed academy for pupils aged 11 to 18 in Chesterfield, Derbyshire. It is a member of the Outwood Grange Academies Trust and has a PAN of 180. At the time the referral was made to the OSA I had access to the school's 2019 arrangements but not the 2020 arrangements although the trust later forwarded them to me. Consequently my initial consideration of this case related to the 2019 arrangements. The school's oversubscription criteria for September 2019 can be summarised as follows:

- a) Children who live in the catchment area and who, at the time of admission, have a Statement of Educational Need or an Education, Health and Care Plan (EHC), and/ or are in the care of the Social Services Department.
- b) I. Children who live in the academy's catchment area who have a sibling attending the Academy at the time of submission.
II. Other children who live in the academy's catchment area.
III. Children who have brothers or sisters on roll at the academy.
IV. Children whose needs can, for specific reasons (e.g. medical, social) be met only at the academy.
- c) Other children, with priority being given to those living nearest to the academy.

10. The 2020 arrangements sent to me by the trust on 10 July 2019 were the same as the 2019 arrangements. However, since that date, the trust has made some changes to the 2020 arrangements and put them on the school's website. Paragraph 3.6 of the Code explains that it is open to admission authorities to vary their determined arrangements in certain circumstances and for certain reasons. I shall say more about the revised 2020 arrangements later in this determination.

11. In its response of 10 July 2019, the trust acknowledged that *"It is immediately obvious that these [the admission arrangements] are not in line with the School Admissions Code in a number of areas."* Further, *"it appears that whilst the academy council (through delegated authority from the Board) approved the use of the same criteria as the Local Authority, the academy continued to use a set of criteria approved by the Authority's Admission Team [f]or 2018/19."*

12. The local authority confirmed that the trust was responsible for the school's admission arrangements and also wrote that the local authority had allocated places for pupils with an EHC Plan regardless of the home address of the applicant.

13. When the trust received the letter from the OSA setting out my concerns, it acted promptly to make changes to the arrangements and they should receive credit for that. The trust made a number of revisions to its determined arrangements for 2020 in order to ensure that the arrangements conformed with the requirements relating to admissions. Revised arrangements for 2020 are now on the school's website. The revised 2020 arrangements have addressed some of the issues I raised: the arrangements are clear that the trust is the admissions authority for the school (paragraph 8a); the qualification about children with an Education, Care and Health Plan has been deleted (paragraph 8d); the priority for children who are looked after or previously looked after has been included (paragraph 8e); there is clarity about references to siblings (paragraph 8g); and information about the waiting list has been included (paragraph 8h). I also wrote to the trust on 5 September 2019 about two additional areas of concern that did not comply with the requirements of the Code. The trust responded quickly and has now addressed the issues I raised. The trust has added information about cases where parents have shared responsibility for a child who lives part of the week with each parent (paragraph 1.13 of the Code) and the arrangements now include a tie-breaker (paragraph 1.8 of the Code sets out that "*Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*")

14. However, some matters remain in the revised arrangements which I consider do not conform with the requirements of the Code.

15. First, I address the issues raised by the referrer. The definition of sibling in the arrangements was not sufficiently clear and the trust has included a definition in the revised 2020 arrangements which meets the requirements of the Code. The information about measuring the distance from home to school uses the postal address file which is clear and I am content with that definition. The issue about whether admission authorities can or should admit above PAN, if they have the capacity to do so, is outside my jurisdiction as I have explained above. Paragraph 1.2 of the Code requires admission authorities to set an admission number and to publish that number for each relevant age group. The school's arrangements include a PAN for Year 7 as required and the PAN has not changed between 2019 and 2020.

16. I have reviewed the revised 2020 arrangements. There remain a number of provisions which the trust needs to amend as they do not meet the requirements of the Code.

17. The arrangements follow closely those of Derbyshire County Council's arrangements for community and voluntary controlled schools. In several places, the arrangements refer to Reception year, summer born children, primary phase schools and voluntary controlled schools. The references, which apply to all Derbyshire schools, are not relevant to this school which does not admit to Reception, and they may not be clear to parents. Paragraph 14 of the Code says "*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*"

18. The admission arrangements for 2019 (summarised in paragraph 9) refer, in three oversubscription criteria, to the academy's catchment area. I expressed concern, as

outlined in paragraph 8f above, that it was not clear, either by a map or post codes or other means, which area was covered by the term “*catchment area*”. The revised admission arrangements for 2020 have changed the term “*catchment area*” to “*the normal area served by the school*”. This is defined further “Living in the normal area is defined as the child having settled residence in a property which is the child’s only or main residence.” The definition goes on to set out proof of residence is required with documentary evidence. The expression “normal area” is used by Derbyshire Council’s admission arrangements and is used to mean what the Code calls a catchment area. There is nothing intrinsically wrong with using this term rather than the term catchment and the same rules would apply so far as the need for the area to be defined clearly and to be reasonable. However, the school’s arrangements for 2019 do not use the term normal area in its arrangements; they use the term catchment area. To use one term and then define it by means of another term is to say the least to risk confusing the reader.

19. I looked at the arrangements for Derbyshire local authority schools which also use the term “*normal area*”. On the local authority’s website it is defined as “*the geographical area, made up of the area around the school, which the school serves*”. There is also a tool called “*find your normal area school*” where you can input your postcode and you are told which school or schools serve your area. However, there was no map to show your location more clearly. The school’s arrangements make no comment about how parents can find out more about normal areas. This is not clear and thus does not comply with paragraph 14 of the Code. The trust is the school’s admission authority and if the trust wishes to use a catchment area (or normal area in the trust’s term) then it is responsible for making clear what that area is and publishing this on its or the school’s website.

20. In response to one of my concerns about clarity in the terms used (paragraph 8c above), the trust has amended the expression “*admission limit (AAN)*” and instead uses “*places*” but they do not use Published Admission Number which is the expression familiar to parents and set out in the Code.

21. As described in paragraph 8b above, I raised with the trust my concern that the arrangements for 2020 had not been published. The trust has now published the 2020 arrangements but appears to have removed the 2019/20 arrangements. The Code, at paragraph 1.47, says “*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made).*” The arrangements for 2019/20 should be on the school’s website for the whole of the academic year.

Summary of Findings

22. I have considered the referrer’s concerns earlier in this determination and the trust has amended the definition of siblings in line with the Code. The trust was keen to make amendments to the areas I told them did not comply with the Code. However, there remain a number of issues which still need to be amended for the 2020 arrangements. Paragraph

3.6 of the Code states that *“Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements.”* By virtue of this paragraph, the Board of Directors of the trust may amend the arrangements in line with my comments above.

Determination

23. I have considered the admission arrangements for September 2019 and September 2020 for Outwood Academy Newbold, Derbyshire in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

24. 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: 12 September 2019

Signed:

Schools Adjudicator: Lorraine Chapman