



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3610

Objector: Rochdale Borough Council

**Admission authority: Bamford Academy Trust for Bamford Academy,
Rochdale**

Date of decision: 13 November 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 Bamford Academy Trust for Bamford Academy, Rochdale.

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), an objection has been referred to the adjudicator by Rochdale Borough Council about the admission arrangements for September 2020 (the arrangements) for Bamford Academy which is an academy primary school for pupils aged 4 to 11 (the school). The objection is that the consultation to changes in the arrangements were flawed, the arrangements were not determined by 28 February 2019 and the admission authority did not provide a copy of the full, determined arrangements to the local authority before 15 March 2019.

2. The parties to the objection are:
 - 2.1. Rochdale Borough Council which is the objector and the local authority for the area in which the school is located (the local authority); and
 - 2.2. Bamford Academy Trust (the trust) which is the admission authority for the school.

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 by the trust on that basis. The local authority submitted its objection to these determined arrangements on 15 May 2019. The local authority's objection included objecting to an increase in the published admission number (PAN) for 2020 and to the trust not informing the local authority in good time that it had decided to admit above the PAN in 2019. The Code does not permit objections to an increase to the PAN to a school for which the admission authority is not the local authority. On the second point my jurisdiction is for the 2020 and not the 2019 arrangements and my jurisdiction does not include the application of arrangements.

4. I therefore cannot and do not consider these matters in this determination although the local authority's concern about the number of places to be added to the local supply of school places is relevant as it explains in large part the basis for its objection. Otherwise I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

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 local authority's form of objection together with supporting documentation; its responses to communications from the trust sent during the course of my enquiries; and further information provided at my request;
- b) the trust's response to the objection and further information provided in response to my enquiries;
- c) information on the most recent consultations on the arrangements;
- d) information available on the websites for Bamford Academy, Bamford Pre-school and the Department for Education;

- e) copies of the minutes of the meeting at which the arrangements for the school were determined and other relevant meetings; and
- f) a copy of the determined arrangements.

7. I have also taken account of information received during a meeting I convened on 24 September 2019 at the school with representatives of both parties present (the meeting). I undertook a short tour of the school site prior to the meeting with representatives of both parties and am grateful for the opportunity to view the school in operation.

The Objection

8. The local authority raised several matters in its objection. As discussed above some of those matters were not within my jurisdiction. The matters which were in my jurisdiction were (most relevant paragraphs of the Code in brackets) that:

- 8.1. the consultations on changes to the arrangements did not comply with the Code (1.42 to 1.45);
- 8.2. the admission authority had not determined its arrangements for 2020 by 28 February 2019 (1.46); and
- 8.3. the admission authority did not provide a copy of the full, determined arrangements to the local authority as soon as possible before 15 March in the determination year (1.47).

Other Matters

9. When I considered the arrangements, I found other matters which I thought might not meet the requirements of the Code. These are listed below (with the most relevant paragraphs of the Code in brackets):

- 9.1. The priority in the oversubscription criteria for looked after children and previously looked after children may not be clear (14 and 1.7).
- 9.2. The priority for those attending the pre-school provision may not be clear (14).
- 9.3. The arrangements may not make it clear what priority is given to “*Children with a Medical/Psychological condition that warrants placement at the school.*” (14, 1.6, 1.9 and 1.16).
- 9.4. The definition of distance in the arrangements may not be clear in several ways (14 and 1.13).
- 9.5. The information on children of service personnel may not be clear (14 and 2.18).

Background

10. The school converted to academy status in September 2011 and its trust is a single academy trust. It is situated in the town of Rochdale. Bamford Pre-school (the pre-school) an independent pre-school operates partly from the school site. The PAN for the school was 45 for 2019 and previous years. It is not necessary to consult on increases in PAN but the school consulted on increasing its PAN to 60 for 2020. I comment on this consultation (which I call the PAN consultation) below in the context of the school's separate and required consultation on other changes to its admission arrangements. The local authority expressed its concerns in response to the PAN consultation saying the "*extra places are not needed and would create too much spare capacity and create financial difficulties for neighbouring schools.*" The trust increased the PAN to 60 for 2020 and determined the oversubscription criteria in the arrangements, in summary, as:

- 1) Looked after and previously looked after children
- 2) Children with siblings attending the school
- 3) Children of staff at the academy
- 4) Children attending Bamford Pre-school (this was added for 2020 following consultation as discussed below)
- 5) Other children ranked by distance of the child's home from the school.

Consideration of case

11. I have found understanding the steps in the trust's decision making process when it set its admission arrangements for 2020 essential in this case and so will summarise these as explained to me by the trust before I consider the specific parts of the objection.

11.1. The trust told me that it had delegated authority to its admissions committee on all matters to do with admissions including determination of the arrangements. The admissions committee met on 5 October 2018 and the minutes record a decision to increase the PAN to 60 for admissions in 2020 "*due to the Nursery demand that is already being created, and will be needed by then.*"

11.2. The trust then consulted from 15 October 2018 on its proposed 2020 arrangements. The proposed change to the arrangements was the introduction of a priority in its oversubscription criteria for children attending the pre-school. It is beyond doubt and not disputed that this consultation was required because of the proposed changes to the oversubscription criteria. However, in this consultation the proposed PAN was shown as 45 and not as 60.

- 11.3. There were no responses to the consultation. The minutes provided to me of a meeting on 15 February 2019 of the admissions committee record a decision to set the PAN at 60 for 2020. The trust and the local authority have told me that these minutes are not accurate but the trust has not provided me with a correct copy despite my requests. Both parties agree that the minutes provided to me record matters that did not occur until May 2019.
- 11.4. The minutes of the meeting of the trust on 28 February 2019 show considerable discussion of a potential increase in the PAN to 60 and record an agreement to set the PAN at 60. However, these minutes do not say whether that agreement related to the arrangements for 2020 or whether they concerned the possibility of raising the PAN to 60 for some other year.
- 11.5. The trust sent an email to the local authority on 20 March 2019 with the arrangements for 2021. The trust explained that this was done as the headteacher was going on maternity leave and there were no plans to change the arrangements for 2021 from those which applied for 2020.
- 11.6. The trust commenced a second consultation on 9 April 2019, that is the PAN consultation on a proposed increase in the PAN to 60 for admissions in 2020. The local authority responded on 14 May 2019 and objected to the increase on the grounds that that there were sufficient places in the area. No other responses were received. I did not ask for any details of this consultation as it did not have to comply with the Code as I explain above.

12. I will now consider the three parts of the objection starting with the elements relating to the consultation. Paragraphs 1.42 to 1.45 are the main paragraphs of the Code relating to consultation. They cover the circumstances in which a consultation must be held, when it must take place and for how long, who must be consulted and other related matters.

13. The consultation relating to the introduction of a priority for those who had attended the pre-school commenced on 11 October 2018. Emails sent out by the trust on that date said, *“This consultation will start on 11th October 2018 and will last for six weeks until 22nd November 2018. If you have any comments, please ensure they are sent to [the headteacher] no later than 15th November 2018.”* The Code says that the consultation **must** be for a minimum of six weeks. There were six weeks between 11 October and 22 November and this would have complied with the requirements of the Code. However, the use of the sentence: *“If you have any comments, please ensure they are sent ... no later than 15th November 2018,”* means that in reality the consultation ended on 15 November 2018. This would make the consultation only five weeks and so not in conformity with the requirements of the Code.

14. The local authority said at the meeting that the relevant area for consultation was the local authority area. It is for the local authority to determine the relevant area for this purpose in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999. The local authority also stated that not all admission authorities for schools, some very close to the school and in the local authority area,

received the email alerting schools to the consultation. The trust did not dispute this and explained at the meeting that the local authority had undertaken a consultation and the trust had used the same addresses on the assumption that this would include all the addresses needed to comply with the Code. This was not the case. The consultation therefore did not comply with paragraph 1.44c) which says that admission authorities **must** consult “*all other admission authorities within the relevant area.*”

15. Paragraph 1.44a) of the Code says that admission authorities **must** consult “*parents of children between the ages of two and eighteen.*” The email sent to schools (as above) asked that “*Headteachers are requested to bring this to the attention of their governing boards and parents.*” Asking schools to bring consultation to the attention of their parents is an effective way to consult even though it depends on others acting on the request. It also depends on including all the relevant schools, including those for whom the local authority is the admission authority. Thus, the trust failed not only to reach all admission authorities but by not reaching them (and schools for which the local authority is the admission authority), not all parents of children of primary school age could have been informed of the consultation.

16. The emails sent said that “*The change proposed is to give priority to pupils attending Bamford Academy Pre School. The reason for the change is to support pre school parents with admission to Bamford Academy.*” Naturally the admission arrangements for primary schools are mainly of interest to those whose children do not yet attend a primary school, that is, parents of children under school age, many of whom will not have older children already at primary school. I asked the trust how it had consulted with these parents. The trust explained that it had sent the consultation to those attending the pre-school provision referred to in the consultation. The nature of the proposed change meant that those with children already attending the pre-school were not likely to disagree with the proposal. No means were used to alert parents whose children did not attend the pre-school, and therefore may have an interest in the proposal, to the consultation. As there was such limited consultation with “*parents of children between the ages of two and eighteen,*” the consultation did not meet the requirements of the Code in this regard.

17. The consultation did not meet the requirements of the Code as it lasted for less than the minimum of six weeks and not all those who were required to have been consulted were consulted. In particular, some admission authorities in the relevant area; parents of some children of primary school age; and most parents with children under school age, were not consulted. I therefore uphold this part of the objection.

18. The second part of the objection was that the trust did not determine the arrangements for 2020 by the deadline of 28 February 2019. There was some confusion on this matter as the trust was not consistent in its responses to me over whether or not it had delegated authority to the admissions committee to determine the admission arrangements. The trust confirmed on 18 October 2019:

- 18.1. The trust had delegated authority to the admissions committee to determine arrangements.
- 18.2. The admissions committee determined the arrangements prior to the consultation, subject to any responses, at its meeting 5 October 2018.
- 18.3. As part of the consultation the trust provided the arrangements on which it was consulting and which it intended (subject to any responses) to the local authority on 11 October 2018. On this basis, the trust considered it had provided its arrangements to the local authority prior to 15 March 2019.
- 18.4. At the meeting of the governing board on 28 February 2019 the decision was made to increase the PAN to 60.

19. It is possible to determine arrangements subject to the responses to a consultation. The trust told me that the arrangements were determined on 5 October 2018. The PAN was set at 45 at this point as this is what was stated in the consultation document. As the arrangements were determined on 5 October 2018 this was before the date of 28 February 2019 as required for the arrangements for 2020. I do not therefore uphold this part of the objection.

20. I do note, however, that the local authority was not informed that the arrangements provided to it as part of the consultation were the determined arrangements subject to any responses to the consultation. It is accordingly unsurprising that the local authority was expecting to receive a separate, later, version of the arrangements and I will return to this point. Rather more fundamentally, moreover, the trust made the decision to vary its arrangements for 2020 to increase the PAN to 60. The trust says that this was at its meeting on 28 February 2019. I assume that the trust was again determining the PAN subject to any responses to the consultation which it then held. I have already explained that the trust is free to increase its PAN and that there is no requirement for any consultation beforehand. However, while it is within the trust's power to vary its determined arrangements to increase its PAN without consultation, there is a requirement on it to notify certain bodies of such a variation. Paragraph 3.7 of the Code requires that "*Admission authorities must notify the appropriate bodies of all variations.*" This reflects a provision of the primary legislation, namely section 88E of the Act. The local authority is one of the appropriate bodies and was not informed of the variation when it took place. The trust did not comply with the Code in this respect.

21. The third part of the objection was that the final version of the arrangements was provided to the local authority on 20 March 2019, which is after 15 March, the date required by the Code. Following the meeting it became apparent that the arrangements provided on 20 March 2019 were in fact the arrangements for 2021 and so not relevant to the question of the provision of the 2020 arrangements. The trust said, as above, that it provided the arrangements to the local authority on 11 October 2018 as part of its consultation. I consider that it was unreasonable for the trust to expect the local authority to know that the arrangements sent to it as part of a consultation were the determined arrangements.

Moreover, as explained above, the arrangements for 2020 were subsequently varied and this happened before 15 March 2019. I do not uphold this part of the objection as the local authority was provided with a set of determined arrangements, but I repeat my finding that the trust failed to meet the requirements of the Act and Code by not notifying the local authority of the variation.

Other Matters

22. When I considered the arrangements, I found other matters which did not meet the requirements of the Code. Paragraph 14 of the Code 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.”* I do not consider the arrangements to be clear in several respects as I will discuss below.

23. 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.”* Paragraph 1.7 and its footnotes define looked after and previously looked after children. The oversubscription criteria in the arrangements say that the first priority is given to looked after children. The further information provided includes previously looked after children but the definitions of looked after and previously looked after children in the arrangements use different terms from those provided in the Code. These matters make the arrangements unclear and so do not comply with the Code.

24. The fourth priority in the oversubscription criteria is for *“Children attending Bamford Academy Pre-School.”* The definition for this priority says, *“In order to claim this priority, the child must have attended Bamford Academy Pre-School or Kindergarten for over a term prior to January 2020. Children not meeting this criteria (sic) who attend Bamford Academy Pre School will be considered under Section 5.”* Section 5 refers to the fifth priority in the oversubscription criteria which is *“Proximity to the Academy.”*

25. At the meeting it was clarified that the wording of this oversubscription criterion included errors. The pre-school provision is called Bamford Pre-school, not Bamford Academy Pre-School. The reference to the *“Kindergarten”* implies that this is a separate provision to the pre-school which, I was told at the meeting, it is not. These errors make the arrangements unclear and so do not comply with the Code.

26. The arrangements refer to *“Children with a Medical/Psychological condition that warrants placement at the school.”* The Code permits the use of social and medical need in oversubscription criteria. The arrangements explain what evidence must be provided to substantiate such a condition and refers to the possibility of giving a child priority for admission for this reason. There is, however, no criterion for this in the oversubscription criteria. Any priority in the admission arrangements must be in the oversubscription criteria.

This means that it is not clear if such children have a priority for admission or not. The arrangements are unclear and so do not meet the requirements of the Code in this regard.

27. Paragraph 1.13 of the Code says, *“Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.”* The arrangements do not make it clear how distance is measured as they do not make it clear from what point in the school distances are measured. In addition, the arrangements say, *“Proximity to school is not considered to be a simple measure of distance radiating out from the school either as the crow flies or as a walking route.”* The language and the information provided in the arrangements obscures the trust’s intention, as agreed at the meeting, that the distance was measured based on the shortest safe walking route.

28. Furthermore, the arrangements say, *“The home address is the address of the parents/carers and their child; this is assumed to be the address at which the child spends the majority of their time, even if he or she lives at a different address for some days of the week. If child benefit is received, the home address is taken to be the address of the parent who receives this benefit.”* This is potentially contradictory and may not give an accurate indication of where the child lives for the *“majority of their time.”* This is because it is possible that the child might spend the majority of his or her time at one address and the child benefit be received by a parent who resides at another address. There is no requirement for child benefit to be paid to the parent with whom the child lives during the school week or for most of his or her time; the only requirement is that the child lives with the parent in receipt of child benefit some of the time. This could be exclusively the school holidays or weekends. The arrangements unclear in this regard and so not in conformity with the Code.

29. Paragraph 2.18 of the Code says, *“For families of service personnel with a confirmed posting to their area, or crown servants returning from overseas to live in that area, admission authorities **must**: allocate a place in advance of the family arriving in the area provided the application is accompanied by an official letter that declares a relocation date and a Unit postal address or quartering area address when considering the application against their oversubscription criteria. This **must** include accepting a Unit postal address or quartering area address for a service child. Admission authorities **must not** refuse a service child a place because the family does not currently live in the area, or reserve blocks of places for these children.”* The arrangements provide information on how children of UK service personnel will be considered and conclude, *“it will not be possible to guarantee a place at Bamford Academy if the school is oversubscribed and places are available at a reasonable alternative school.”* It is not at all clear what this means. The requirement on the trust (as on all admission authorities) is to act in accordance with paragraph 2.18. No school can guarantee a place to any applicant; all they can do is apply their oversubscription criteria while acting in accordance with, in this case, the requirement to treat service children and children of crown servants as if they already lived in the area in certain

circumstances. The arrangements are unclear and thus do not comply with the requirements of the Code.

30. When I looked for the arrangements on the school's website in May 2019, I found the arrangements for 2021 also published. Paragraph 1.46 of the Code says, "*All admission authorities **must** determine (i.e. formally agree) admission arrangements every year, even if they have not changed from previous years and a consultation has not been required.*" The trust must determine the arrangements annually. The arrangements for 2021 must be determined in the determination year and to purport to determine them and then publish them in the year previous to the determination year was to no purpose and could potentially make the arrangements unclear.

31. In relation to these matters the trust is required to revise its arrangements within two months of the date of this determination.

Summary of Findings

32. The consultation to introduce a priority for children who attended the local pre-school did not meet the requirements of the Code as responses were required in less than the minimum of six weeks set by the Code and the consultation was not sent to all those set out in paragraph 1.44 of the Code. I uphold this part of the objection.

33. The arrangements were determined by 28 February 2019 as they were determined on 5 October 2018 prior to the consultation. I do not uphold this part of the objection. The trust said it provided the arrangements on 11 October 2018 as part of the consultation without an explanation that these were the determined arrangements. I do not uphold this part of the objection.

34. There are other matters as described above which do not comply with the Code which mainly relate to a lack of clarity. The Code requires the trust to revise the arrangements to address these matters.

Determination

35. 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 Bamford Academy in the local authority area of Rochdale Borough Council.

36. 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.

37. 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: 13 November 2019

Signed:

Schools Adjudicator: Deborah Pritchard