



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3669

Objector: Two parents

Admission authority: The academy trust for Rawlins Academy

Date of decision: 9 July 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the consultation in respect of the admission arrangements for August 2021 determined by the academy trust for Rawlins Academy, Quorn, Leicestershire.

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 two parents (the objectors), about the admission arrangements (the arrangements) for Rawlins Academy (the school), an academy school with a Church of England religious character for boys and girls aged 11 to 18, for August 2021. The objection is to the consultation undertaken by the admission authority prior to the determination of the arrangements.

2. The local authority (LA) for the area in which the school is located is Leicestershire County Council. The LA is a party to this objection. Other parties to the objection are the

academy trust (the trust) for the school, the Diocese of Leicester (the diocese), which is the religious authority for the school, and the objectors.

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 objection to these determined arrangements on 22 April 2020. 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

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 trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objectors' form of objection dated 22 April 2020 and supporting documents;
- d. the school's response to the objection, including details of the consultation undertaken prior to the determination of the arrangements;
- e. details of the allocation of places for admission in August 2020;
- f. the local authority's responses to the objection and my enquiries; and
- g. the diocese's response to the objection and the general guidance on admissions it provides for schools.

The Objection

6. The objectors argue that the consultation carried out by the admission authority prior to the determination of the arrangements for admission in August 2021 did not meet the requirements for consultation. These requirements are laid out in Regulations 12 to 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and paragraphs 1.42 – 1.45 of the Code. Specifically, the objectors say that arrangements that were determined differed very

significantly from those that were the subject of consultation. This, they believe, constitutes a breach of paragraph 1.45 of the Code, which states:

*“For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website”.*

Other Matters

7. The objection to the consultation brought the arrangements to my attention. I have used my power under section 88I of the Act to review the arrangements as a whole. In particular, I felt it was appropriate for me to consider whether the revised order of the oversubscription criteria is fair. Paragraph 14 of the Code states that,

“admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”

8. In addition, there are two matters in the determined arrangements that appeared to me not to conform with specific requirements relating to admissions, namely:

- children with a medical need have highest priority in the oversubscription criteria (paragraph 1.7 of the Code stipulates that the highest priority **must** be given to looked after children and previously looked after children); and
- the arrangements make reference to “residence orders” (residence orders were replaced by child arrangements orders in 2014).

Background

9. The Published Admission Number (PAN) for admission to year 7 in August 2021 is 240. The academic year in Leicestershire begins in August, rather than September as it does for the vast majority of schools in England. The school was oversubscribed for admission in August 2020, with 65 applicants refused a place. In December 2019, the governing board initiated a consultation on revising the oversubscription criteria. Following the consultation, the trust determined the admission arrangements for August 2021. The oversubscription criteria in the determined arrangements are significantly different both to those for admission in August 2020 and those that were the subject of the consultation. The table below summarises the three sets of oversubscription criteria.

Table One: Summary of oversubscription criteria

	A: Determined arrangements 2020	B: Arrangements Consulted on for August 2021	C: Determined arrangements 2021
1	LAC / PLAC	LAC / PLAC	LAC / PLAC / Medical need
2	Sibling	Feeder	Catchment + Feeder + Sibling
3	Catchment	Sibling	Catchment + Feeder
4	Feeder	Social or medical need	Catchment + Sibling
5	Children of staff	Children of staff	Catchment
6	Others	Catchment	Sibling + Feeder
7		Others	Feeder
8			Sibling
9			Social need
10			Children of staff
11			Others

Priority within each criterion is established by distance from the school.

Notes

LAC / PLAC – Looked after children and previously looked after children

Sibling – Siblings of children attending the school

Catchment – Children living in the school's catchment area

Feeder – Children attending a named feeder school

*Social / medical need – Children with a specified need requiring attendance at the school
+ – Children must satisfy all of the requirements. For example, "Catchment + sibling" means a child who lives in the catchment and has a sibling attending the school*

Consideration of Case

10. The objectors do not argue specifically that the determined arrangements for admission in August 2021 themselves contravene the Code. Their objection relates to the consultation that preceded the determination of those arrangements and the decisions made by the academy trust following the consultation. Therefore, I will consider the consultation in some detail, before turning to the determined arrangements themselves.

11. On 13 December 2019, the trust informed parents of children attending the school of a consultation on the arrangements for admission in August 2021. The trust also informed its feeder primary schools, head teachers of local secondary schools, the diocese and the

LA. It arranged for information about the consultation to be published in the village magazine and local church notices.

12. Before looking at the consultation itself, I must mention that the trust did not meet a requirement laid out in legislation. The diocese confirmed that the trust,

“did not submit their proposals to the DBE [Diocesan Board of Education] prior to or following the formal consultation.”

Paragraph 1.38 of the Code draws attention to the following requirement:

*“Church of England schools **must**, as required by the Diocesan Board of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation.”*

This requirement was not satisfied.

13. As the central column of Table One shows, the key change proposed was to give children attending feeder schools the highest priority for a place (after looked after children and previously looked after children), ahead of siblings and children living in the catchment area, who had a higher priority in the 2020 arrangements. In information on the school’s website, to which consultees’ attention was drawn, the rationale for the proposed change was explained:

“An increasing number of children in our feeder primary schools are disadvantaged in their application by placing the distance from school so high up the oversubscription list, therefore we have changed the current order of our oversubscription criteria to try to ensure that we can offer places as fairly as possible across all of our feeder primary schools.”

14. The consultation lasted for the required six weeks, until 24 January 2020. 14 responses were received. The trust has supplied me with a summary of each response. My analysis of the responses is as follows:

- four supported the proposed changes;
- five opposed the changes, including two that made the point that families who lived in the catchment area but had been unable to obtain a place at feeder schools that were full would be disadvantaged;
- two supported the higher priority for children attending feeder schools but felt that siblings should have the second priority; and
- three made specific points relating to the nature of the consultation, children with special educational needs and children of staff, respectively.

15. The objectors did not respond to the consultation, *“as we had no issues with the proposed changes as they were.”* They explained that their own situation (living outside the

catchment with an older sibling at the school and a younger one at a feeder school) appeared not to be affected by the proposed changes, as the second highest priority would become children attending feeder schools rather than children with siblings, both of which applied to their younger child.

16. The school's principal issued a report to the trust board summarising the responses to the consultation. She suggested, "*based on the feedback*", that equal priority should be given to some of the categories, for example, siblings and those attending feeder schools. At its meeting on 10 February 2020, the trust board rejected this suggestion. After a detailed discussion, the board asked for consideration, amongst other matters, to be given to children living in the catchment area who were unable to attend a feeder school, and whether it was appropriate that siblings who lived outside the catchment area should have a higher priority than children without siblings who lived in the catchment area. Particular concern was expressed for children living in the south of the catchment area, at the furthest points from the school. It was also recommended that children with serious medical conditions have a higher priority. The principal was asked to draw up a revised set of oversubscription criteria, which took into account these matters. They were subsequently approved and determined by the trust board.

17. The objectors say that the new arrangements are "*drastically different to the proposed and draft versions that were consulted on*" and that the revised set of criteria "*bears no resemblance to the **proposed** admissions policy in the consultation.*" They continue,

"At no point have we been consulted on or communicated to about the differences in the proposed changes and the actual changes that have been published... It makes a mockery of the entire process and is why we didn't raise any objections at the time."

I note, as far as the objectors are concerned, that the effect of the determined arrangements is that their child now has a lower priority for a place than children living in the catchment area. This was not the case under both the arrangements for admission in August 2020 and the arrangements that were the subject of consultation. The objectors conclude,

"We believe therefore that the changes should be overturned."

18. Paragraphs 1:42-1:45 of the Code specify such matters as the timing and duration of the consultation and who should be consulted. As I mentioned in paragraph 6 above, it is paragraph 1.45 to which the objectors draw attention, that is, that the proposed arrangements should be published for the duration of the consultation. The trust met this requirement in that the set of proposed arrangements were published on the school's website. However, the point made by the objectors is that the arrangements that were actually determined were very different from those that were the subject of consultation, and consultees had no opportunity to comment on them.

19. The consultation requirements are based on the principle that an admission authority will consult on a proposed change to its arrangements, on which consultees will be invited to express their views. Indeed, the trust asked one simple question of consultees:

“Do you agree with the reordering of the current oversubscription criteria?”

Although admission authorities are not bound by the outcomes of a consultation, and it is not in any sense a referendum, in my view it would be a reasonable expectation of consultees that if there were widespread support expressed for the proposed change, it may well be implemented and if there were overwhelming opposition, it would be much less likely to be taken forward.

20. In fact, what happened was that the admission authority proposed to replace its current arrangements (I call these arrangements “A” in Table One) with new ones (arrangements “B”), about which it consulted, and then determined a set of arrangements (“C”) that were very significantly different to both A and B. Arrangements A gave first priority to siblings, followed by children living in the catchment area and then those attending feeder schools. Concern about the position of children attending feeder schools led to the proposed changes to the arrangements (“B”), which give the highest possible priority to children attending feeder schools, followed by siblings, with residence in the catchment area given a lower priority. Arrangements C, the determined arrangements, are different again, this time with children living in the catchment area given the highest priorities.

21. I consider that it must be possible, following a consultation, for an admission authority to determine a set of arrangements (“C”) that are neither those consulted on (“B”) or its current arrangements (“A”). Such an outcome might be appropriate if a consultation reveals overwhelming support for the rationale underpinning C from a very high proportion of consultees and those arrangements are not, in fundamental respects, different to either A or B. However, I also consider that there must be a limit to the extent that arrangements C can differ from A and B when, by definition, consultees have had no opportunity to comment on them.

22. In the case of Rawlins Academy, it cannot be said that the consultation did reveal significant support for the arrangements that were determined. A total of 14 responses is a very low proportion of the consultees for an oversubscribed secondary school with a PAN of 240. Some important points were made by those who did comment but, as paragraph 14 above shows, even amongst the small number of responses, there was no clear consensus.

23. Furthermore, in my view, the determined arrangements go beyond the limit that it is acceptable for them to differ from A and B in the absence of consultation upon them. The objectors comment that,

“at no point was it mentioned that catchment and non-catchment children would be separated out of the admissions priority order.”

I take this to mean that the giving of the higher priorities to children living in the catchment area necessarily results in a lower priority for siblings or children attending feeder schools who live outside it. For these children, arrangements C represent almost an exact reversal of what was proposed in the consultation (B). For siblings living outside the catchment area and not attending a feeder school, their position is changed from an almost guaranteed place under the 2020 arrangements (A) to a very much lower priority. I consider it very likely that if parents had been made aware that this outcome was a possibility, many more would have responded to the consultation.

24. I am in no doubt that the trust board reflected in detail on the points made in the consultation and engaged conscientiously in drawing up a set of oversubscription criteria that it believed best meets the needs of the school and its local community. However, paragraph 1.45 of the Code states,

“Failure to consult effectively may be grounds for subsequent complaints and appeals.”

I consider that on this occasion the admission authority failed to consult effectively. Significant changes have been made to the priority for places of certain groups of children, changes that were not even hinted at in a consultation to which relatively few stakeholders responded. Parents and other consultees had no means of knowing that such changes were being considered and therefore no opportunity to express their views about them. Therefore, I uphold the objection. The consultation did not meet the Code’s requirement for effective consultation.

25. The objectors suggest that the changes should be “*overturned*.” I take this to mean that I should oblige the trust to revert to the arrangements determined for admission in August 2020. I am not able to do so. If a consultation has not been conducted in accordance with the requirements of the Regulations and the Code, an adjudicator can neither require the admission authority to reinstate the previous year’s arrangements nor to re-consult after it has determined the arrangements. I am, however, able to review the arrangements that have been determined and, as I mentioned in paragraph 7 above, to consider whether they meet the Code’s requirements, particularly the requirement in paragraph 14 that the practices and criteria used to decide the allocation of places **must** be fair in their effect. It is to this consideration that I now turn.

26. Table Two shows how places were allocated for admission in August 2020, in accordance with the set of oversubscription criteria determined for that year.

Table Two: Allocation of places for admission in August 2020.

Children with an Education, Health and Care Plan naming the school	13
1. Looked after and previously looked after children	3
2. Siblings	110
3. Children living in the catchment area	114
4. Children attending a feeder school	0
5. Children of staff	0
6. Other children	0
TOTAL (PAN)	240

27. I asked the LA to establish how places would have been allocated at the school for admission in August 2020 if the determined arrangements for admission in August 2021 had been used. Table Three summarises this information.

Table Three: How places would have been allocated for admission in August 2020, if the oversubscription criteria determined for August 2021 had been used.

Children with an Education, Health and Care Plan naming the school	13
1. Looked after and previously looked after children	3
2. Catchment + Feeder + Sibling	86
3. Catchment + Feeder	98
4. Catchment + Sibling	3
5. Catchment	14
6. Sibling + Feeder	9
7. Feeder	3
8. Sibling	11
9. Social need	0
10. Children of staff	0
11. Others	0
TOTAL (PAN)	240

28. A comparison of the two tables indicates that, as far as the intake in August 2020 is concerned, there would be very little difference to the pattern of admissions if the order of oversubscription criteria determined for August 2021 had been in place. In particular, I considered the position for siblings, the group that appears to be most significantly affected by the changed arrangements. Using the 2021 criteria, a total of 109 siblings (86+3+9+11) would have been allocated places, compared to 110 under the 2020 criteria. Therefore, one sibling who lives outside the catchment area and does not attend a feeder school would not have received a place under the 2021 criteria.

29. It is, of course, not certain that an identical pattern of admissions will take place in 2021 using the new criteria. Indeed, data provided to me by the trust and the LA indicate that there are around ten more children attending the school's feeder schools who will be transferring to secondary education in August 2021, compared with the total in the August 2020 transfer group. This may well mean that fewer siblings will be allocated places under the eighth criterion in the determined arrangements for admission in August 2021, that is, siblings who neither attend a feeder school nor live in the catchment area.

30. I appreciate that comparisons such as these are imprecise, as other factors, for example, the number of children living in the catchment area but not attending a feeder school whose parents make the school a high preference, will affect the allocation of places and these numbers are unknown for admission in 2021. Nevertheless, I consider that it does appear that the children most likely to be negatively affected by the change are indeed siblings living outside the catchment area who do not attend a feeder school, probably in relatively small numbers as a proportion of the PAN.

31. Admission authorities are required to determine arrangements every year and have the power to alter these as they believe best meet the needs of the school and its community. When schools are oversubscribed, it is an inevitable consequence that the ordering of oversubscription criteria will disadvantage some groups in relation to others. The school has elected to alter its arrangements by, amongst other changes, prioritising children living in the catchment area over siblings living outside it. As catchment areas interlink across Leicestershire, by definition, those siblings will be in the catchment area of another school. Although it may well be distressing for some families if their children cannot attend the same school, it is not of itself unfair that they cannot. Indeed, although I am not called upon to make a judgment about the arrangements themselves (as the objection is specifically to the consultation), in my view, the determined arrangements for 2021 appear to be an improvement on both those for 2020 and the arrangements that were consulted upon. In a district where schools have catchment areas, it generally makes sense to give a high priority to groups of children who live in the catchment area. It was certainly not right that families were not able to express their views about this change, but that does not mean that the determined arrangements themselves are unfair in their effect. My conclusion is that they do not contravene the requirement of paragraph 14 of the Code relating to fairness. While I have upheld the objection on the point of consultation, my finding about the arrangements means that no changes are required to be made to the order of the oversubscription criteria.

Other Matters

32. The trust explains that governors,

"Did not want pupils who had serious medical conditions to be disadvantaged. It was decided to combine this group of pupils with those who need to have the highest priority (Children who are looked after and those children who were previously looked after)."

The governors' thinking may well be laudable, but, in this respect, the arrangements breach the Code. Paragraph 1.7 requires "*the highest priority*" to be given to looked after and previously looked after children. It is plain from this wording that it is not a priority that can be shared with children who are not looked after or previously looked after. The arrangements must be amended, as the Code requires.

33. The out of date reference to residence orders must be rectified.

Summary of Findings

34. Following consultation on a revised set of admission arrangements (to which there was a small number of responses putting forward a range of views) the admission authority determined a set of arrangements that was significantly different both to the previous arrangements and those that were consulted on. Consultees had no opportunity to comment on the changes that were actually made to the arrangements. This represents a failure to consult effectively.

35. Nevertheless, the determined arrangements meet the Code's requirement for fairness and my findings do not require any changes to be made as a result.

36. Notwithstanding paragraph 35 above, however, there are specific ways in which the arrangements do not comply with the Code. The arrangements must be revised in accordance with my findings in paragraphs 32 and 33 above; no other changes are required.

Determination

37. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the consultation in respect of the admission arrangements determined by the academy trust for Rawlins Academy, Quorn, Leicestershire.

38. 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.

39. 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: 9 July 2020

Signed:

Schools Adjudicator: Peter Goringe