



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3731

Objector: An individual

Admission authority: Avanti Schools Trust for Avanti House Primary School, Harrow

Date of decision: 24 September 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by the Avanti Schools Trust for Avanti House Primary School, Harrow.

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 an individual (the objector), about the admission arrangements (the arrangements) for Avanti House Primary School (the school), an academy free school for children aged between 4 to 11, for September 2021. The school is designated as having a Hindu religious character. The objection is that the school does not have faith-based admission arrangements; and that the oversubscription criteria give priority to children with a sibling attending Avanti House Secondary School.
2. The local authority (LA) for the area in which the school is located is Harrow Council. The parties to the case are the Avanti Schools Trust (the Trust), Harrow Council and the objector. The Laxmi Narayan Temple was added as a party later.

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 free school are in accordance with admissions law as it applies to maintained schools. These arrangements

were determined by Avanti Schools Trust, which is the admission authority for the school, on that basis. The objector submitted objections to these determined arrangements on 13 and 14 May 2020. Two separate objection forms were submitted by the objector but, as they both apply to the school, I have decided to consider them together and they have been brigaded under the same case number. The objector has asked to have their identity kept from the other parties and has 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 name and address to me. 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.

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 objector's emails of objection dated 13 and 14 May 2020, supporting documents and further correspondence;
 - d. the Trust's response to the objection, supporting documents and further correspondence; and
 - e. correspondence with the Laxmi Narayan Temple.

The Objection

6. One element of the objection is that the school, although designated as a school with a religious character, does not include faith-based oversubscription criteria in its arrangements. Linked to this, the objector contends that the Trust has not consulted Hindu religious bodies including the Hindu Council in setting its arrangements and he considers that this is not fair to the Hindu faith community and to other schools locally. The second main element of the objection is that the oversubscription criteria give some priority to children who have siblings at the Avanti Trust Secondary School. The objector contends that this priority is unfair as it disadvantages children who do not have siblings at the secondary school.

Background

7. The school is situated in Stanmore in the London Borough of Harrow. Avanti House School was originally an all-through school, established in 2012. In 2017, following the appropriate process for making changes to academy schools, Avanti House School became

a secondary school and Avanti House Primary School a primary school. They are now accordingly two stand alone schools, but both remain part of the Avanti Schools Trust. Avanti House School has now moved to a different site, some 2.02 miles from the school (based on the Get Information about Schools government website). The school is an academy free school and has a Published Admission Number (PAN) of 60. The school has been designated by the Secretary of State for Education as having a Hindu religious character.

Consideration of Case

8. There are two main elements to the objection, and I shall consider each in turn. I shall first look at the objection that the school does not have faith-based oversubscription criteria and that it has not consulted the Hindu Council. The Schools Admissions Code (the Code) sets out, so far as is relevant here, in paragraph 1.36:

“Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.”

The school’s oversubscription criteria can be summarised as follows:

1. Looked after and previously looked after children.
2. Children with a sibling attending Avanti House Primary School or Avanti House Secondary School at the time of application.
3. Children of a member of the school’s staff.
4. All other children.

9. Although some of the schools in the Avanti Schools Trust have faith-based admission arrangements, this school does not. It is the Trust, as the admission authority for the school, which determines the arrangements, but there is no requirement for an admission authority where it is responsible for more than one school to determine the same or similar arrangements for them all. In this case, the Avanti Schools Trust has determined faith-based arrangements for the Avanti House School which is the secondary school referred to above but not for the school which is the subject of the objection. The objector said that the Hindu community had supported the setting up of the school, but the Trust had not engaged with the community, Hindu temples in the area or the wider community of the Hindu faith so far as the admission arrangements were concerned.

10. I deal with this last point first. The Code sets out which bodies and persons must be consulted about admission arrangements and when consultation must take place. The Trust was not changing the admission arrangements for 2021 so no duty to consult arose. I have jurisdiction to consider consultation only when this was required for the year the arrangements for which are also within my jurisdiction – in this case those for 2021. I have not therefore considered this matter further. I note that when the duty to consult does arise

there is no specific requirement to consult individual places of worship or specific faith bodies other than the body representing the faith (and I deal with what is meant by this below). There are requirements, set out in paragraph 1.44 of the Code, to consult parents and a range of bodies. There is, as part of this, a requirement to consult “other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions” and this is a matter the Trust (as all other admission authorities) needs to keep in mind when it does consult.

11. As I carried out my investigations in this case, the objector expressed concern that the body representing the Hindu faith was not playing a role in the case. At the time the school was designated with a Hindu religious character, the body representing the Hindu faith for all state funded schools with a Hindu religious character was the iFoundation. For maintained schools, any relevant faith body is set out in regulations but for academy schools, such as the school, any relevant faith body is named in the school’s funding agreement and the iFoundation is the body named there for the school. I should also emphasise that there is no provision which requires a school with a religious character to have a faith body. The Chief Executive of the Trust told me on 3 July 2020:

“iFoundation was some time ago renamed to the Hindu Education Authority [HEA]. However, it is currently being wound down as it has not, for some time, played the admissions role of a religious authority. I believe most of the directors have now resigned in preparation for the winding-up, but there are of course still some non-executive directors who need to remain on there until the day the company is closed.”

I contacted one of the remaining non-executive directors of the HEA on 8 July 2020 who confirmed that the HEA was in the process of winding down.

12. Where there is a faith body for a school with a religious character, paragraph 1.38 of the Code comes into play. This provides, so far as is relevant here, that:

“Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.”

13. In this context, the objector drew my attention to two emails from the Laxmi Narayan Temple (the Temple). The Temple, the Hindu Temple and Cultural Trust Centre, was formed in 1994 and registered with the Charity Commission in 1995. It is one of a number of temples in the Harrow and Hounslow area but is not as it happens the nearest such temple to the school. Dr Dharam Paul Sharma, General Secretary of the Temple, wrote:

“Despite huge demand from the Hindu community & Hindu parents, Avanti House Primary School, Stanmore, has not given any priority or allocation to children of Hindu denomination families in their admission Oversubscription criteria. Laxmi Narayan Temple and Cultural

Trust Centre is a Hindi temple and a body representative of the Hindu faith. As a Hindu religious body, we are entitled to give guidance towards School's oversubscription criteria with immediate effect...." The correspondence continued with proposed oversubscription criteria.

14. In short, it seemed to me that the Temple was arguing that it should be able to act as the school's religious authority and I should treat it as such. The objector told me that in his view paragraph 1.38 of the Code did not limit the "body or person representing the religion or religious denomination" to a body named in the funding agreement made by the Secretary of State for Education when the school was established. He too felt that if the HEA was winding down the Temple was entitled to act as the school's religious authority and provide advice on faith-based admission arrangements.

15. In fact, the Temple is wrong in its view that it is "entitled to give guidance towards School's oversubscription criteria". As he shares that view, the objector is also wrong. The provision in paragraph 1.38 of the Code applies to all publicly funded schools which have been designated by the Secretary of State for Education as having a religious character. Not all schools with a religious character have a body representing the religion and there is no requirement for them to do so. There is only ever one body for each school other than where a school is designated by the Secretary of State as having more than one religious or denominational character in which case there can be a body for each religion or denomination but still no more than one per religion or denomination for each school. In all cases the body is the body set out in regulations or in academy funding agreements.

16. All of this means that the Temple cannot, in effect, designate itself as the religious authority for the school. That is in the gift of the Secretary of State for academies and Parliament via regulations for maintained schools. As the Temple is not the school's religious body it cannot issue guidance to which the Trust would have to have regard. I note in passing that the role of any body which is a religious authority is, in any case, limited in this context to being consulted as part of any required consultation on admission arrangements, providing guidance to which admission authorities must have regard "when constructing faith-based admission arrangements" and, under paragraph 1.9i of the Code, laying out religious activities which admission authorities may use. An admission authority is required to have regard to any such guidance from the relevant religious body "when constructing faith-based admission arrangements". However, the Trust has decided not to have faith-based arrangements. For the sake of completeness, I should add that where a school does have faith-based arrangements and has had regard to any guidance from its faith body it can depart from that guidance if it has a clear and proper reason for doing so.

17. Paragraph 1.36 of the Code provides that schools designated by the Secretary of State as having a religious character, may use faith-based oversubscription criteria and allocate places with reference to faith where the school is oversubscribed. But there is no obligation for a school with a religious character to use faith-based oversubscription criteria. The Trust as admission authority has not determined faith-based arrangements for the school and it is within its power to make that decision. I do not uphold this aspect of the objection.

18. I turn now to the second element of the objection; that the oversubscription criterion giving priority to children who have a sibling at Avant House Secondary School is not fair as it discriminates against children who do not have a sibling at the secondary school. In support of his argument, the objector comments on the scale of the difference in sizes of each school. The secondary school has a PAN of 180 compared to a PAN of 60 for the primary school. The objector contends that with more children at the secondary school, there are more chances that applicants for the primary school will have a sibling at the secondary school and commented that “this cross-school reverse sibling connection is unfair, unjustified & **unbalanced**.” The objector asserted that the difference in PAN increases the chances that a sibling at the secondary school will gain access to a place at the primary school and could encourage parents to move to the area near the secondary school “as getting admission in Secondary school for elder child guarantees a place in Primary School.” The objector proposed that the sibling connection to the secondary school should be removed or ring-fenced to those pupils on the school roll at the time of the demerger.

19. The chair of the Trust told me:

“The initial reason for giving priority to siblings in the oversubscription criteria, was due to the demerger of the all-through school in 2017. The two schools are approximately two and a half miles apart, and therefore it was felt to be justifiable to give preference to children who have siblings in the secondary school. The Admission Code does provide at Clause 1.12: “Some schools give priority to siblings of pupils attending another state funded school with which they have close links (for example, schools on the same site, or close links between two single sex schools). Where this is the case, this priority must be set out clearly in the arrangements.”

20. Lawyers representing the Trust wrote on its behalf to the OSA stating “The existence of the sibling connection clause assists our Client in maintaining a consistent and holistic ethos and vision between the two schools, and it provides a mechanism, for example, to support transition arrangements from a pastoral perspective. This common heritage is why the oversubscription criteria for Krishna Avanti Primary [also a linked feeder school for the secondary school] does not also contain the sibling connection clause to Avanti House Secondary School: there is nothing ambiguous about it.” They also said “Avanti House Primary School and Avanti House Secondary School have their own distinct history, ethos and unique ‘feel’. It is crucial that this school context is taken into account when determining whether the sibling connection clause is fair and reasonable. Our client strongly feels that for the reasons above the clause is fair, unambiguous, does not need to be rectified on account of the current effect it has on the admission of children to Avanti House Primary School who can’t rely on the sibling connection clause to gain admission to that school. It does not unfairly prejudice first born or only children from obtaining a place at that school. It therefore does not need to be rectified or removed. Indeed, removal of the clause would seriously overlook the difficulty parents of primary age children have on taking them to different schools, which in itself would result in an outcome that is not fair or reasonable.”

21. I asked for information about the number of children who applied to the school and had siblings at the secondary school. I was told the number of children who gained admission to the school through reliance on a sibling being at Avanti House Secondary School, “shows that this has a minimal disadvantageous effect on pupils applying to Avanti House Primary School as first born or only children. In respect of applications for the academic year 2017 to 2018, only 4 pupils out of 60 children who were admitted obtained a place at Avanti House Primary School on account of the sibling connection link with Avanti House Secondary School. Every year since, the numbers admitted on the basis of this connection have been less, and in respect of applications for the academic year 2020 to 2021, only 1 pupil gained admission to Avanti House Primary School on the basis of the sibling connection link with Avanti House Secondary School.” I was told that about two thirds of pupils obtain a place at the school without relying on the sibling criterion, which includes, of course, siblings at the school as well as at Avanti House Secondary School.

22. The Chair of the Trust wrote:

“Avanti Trust is always mindful of the needs of the school community. The Avanti Trust Board will duly discuss the oversubscription criteria arrangements to ensure they are fair, clear and objective at the next meeting scheduled for July 15 2020. In addition, we will further consult with parents/carers to seek their views on the oversubscription criteria arrangements and to ensure they understand how the criteria will be satisfied.”

23. It is altogether unsurprising that few children actually benefit from this criterion by virtue of having a sibling at the Avanti House Secondary School compared with having a sibling at the school itself. I note that the objector raises no concern about priority for siblings of children at the school. A child at secondary school will be seven years older at least than a sibling beginning Reception. Not many families have children spread so far apart in age, although some do as the figures given above show. By contrast it would be expected that rather more children would benefit from priority on the basis of having an older sibling at the same primary school and this is an extremely common oversubscription criterion.

24. All oversubscription criteria benefit some children and in doing so disadvantage others; indeed, that is their purpose. The questions for me is whether the arrangements are reasonable and whether they create unfairness as well as disadvantage.

25. So far as reasonableness is concerned, the Trust has explained its wish to preserve the close connection which has always existed since the time when the schools were one school. Some families do have large age gaps between children, and it is reasonable for families to want all of their children educated in schools run on the same ethos. I find that the Trust’s approach is reasonable.

26. I turn now to the question of whether the criterion is fair. The objector’s argument is that it operates unfairly to local children who are ‘deprived’ of a place at their local (Hindu culture) school, particularly first born and only children. To the extent that a small number of children will gain a place at the school because they have an older sibling at Avanti House Secondary School, the same number of other children will not be able to go to the school. I

have been provided with no evidence that those children will face a particularly long or difficult journey to another school. It may not be the school their parents or carers would most prefer (whether or not they prefer it because it is a Hindu school) but that is inevitable when schools are oversubscribed. If the Trust has the reasonable objectives of reflecting in its arrangements the links between the schools and educating children of the same family together, I consider that this outweighs any disadvantage to first born, only children and other applicants who live close to the school. This is particularly the case as there would be very few such children affected and because there is no evidence that securing a school place would be made more difficult or travel to such a school more arduous for any child. I do not consider that unfairness arises because of this criterion. I do not uphold this aspect of the objection.

27. By way of clarification, when the objection was submitted, I identified a number of matters in the admission arrangements that did not appear to conform with the requirements of the Code: the descriptions about the home address, the children of staff at the school and the identification of the place of residence. The Trust has told me that it intends to make amendments to the arrangements in line with my concerns and consequently I have not had to exercise my power under 88I(5) to consider the arrangements.

Summary of Findings

28. The objector has drawn attention to two aspects of the school's oversubscription criteria with which they do not agree. However, the Trust has acted in line with the law and the Code and I do not uphold the objection.

Determination

29. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by the Avanti Schools Trust for Avanti House Primary School, Harrow.

Dated: 24 September 2020

Signed:

Schools Adjudicator: Lorraine Chapman