



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3827

Objector: Two parents

Admission authority: Kenilworth Multi Academy Trust for Kenilworth School and Sixth Form, Warwickshire

Date of decision: 22 July 2021

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 2022 determined by Kenilworth Multi Academy Trust for Kenilworth School and Sixth Form, Warwickshire.

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 for September 2022 (the arrangements) for Kenilworth School and Sixth Form (the school), an academy school for children aged 11 to 19.
2. The objection is about three issues.
 1. Consultation on the published admission number (PAN) and the catchment area.
 2. The catchment area itself.

3. Waiting lists.

3. The local authority for the area in which the school is located is Warwickshire County Council. The local authority is a party to this objection. Other parties to the objection are Kenilworth Multi Academy Trust (the trust) and the objectors.

Jurisdiction

4. 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 governing board on behalf of the trust, which is the admission authority for the school, on that basis.

5. The objectors submitted their objection to these determined arrangements on 11 May 2021. The objectors have asked to have their identity kept from the other parties and have met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

6. On the objection form the objectors listed 18 paragraphs of the School Admissions Code (the Code) which they considered were contravened by the arrangements. They also referred to five provisions in the School Admissions Appeals Code and one in the General Data Protection Regulation which they considered the arrangements breached. It appeared to me that many of the issues referred to on the objection form and described in an accompanying document were not in my jurisdiction under section 88H of the Act. My jurisdiction is solely for the determined arrangements for 2022 (and in some cases for any consultation taken prior to the determination of those arrangements). My jurisdiction does not extend to actions taken or not taken by the trust, the local authority or other bodies in relation to the admission arrangements or the application of those arrangements in previous years.

7. In order to clarify the parts of the objection that were in jurisdiction I asked the Office of the Schools Adjudicator to write to the objectors. After an exchange of letters in which the objectors referred to more parts of the Code, I formed the view that three of the matters raised by the objectors were in jurisdiction. These are listed above.

Procedure

8. In considering this matter I have had regard to all relevant legislation and the Code.

9. The documents I have considered in reaching my decision include:
- a. a copy of an email exchange through which the governing board determined the arrangements;
 - b. a copy of the determined arrangements;
 - c. the objectors' form of objection dated 11 May 2021, supporting documents and subsequent correspondence;
 - d. the school's response to the objection, supporting documents and subsequent correspondence; and
 - e. maps of the area showing relevant schools.

The local authority was invited to comment on the objection but did not do so. However, the trust instructed the local authority's legal services to act for it in this matter.

The Objection

10. The objectors stated that the PAN had been changed without consultation and there had been no consultation on the catchment area. They considered that the catchment area itself was drawn to exclude the village in which they lived because it contained a travellers' site and that the rationale for it had not been explained. The concern about the waiting list was whether it provided for children eligible for consideration under the fair access protocol.

Other Matters

11. When I considered the arrangements as a whole it appeared to me that there were two other aspects of the arrangements which did not, or may not, conform with the Code.

- i) The arrangements say that when a child lives at two addresses, the address used to determine priority for admission will be the address of the parent who receives child benefit. This may not be fair and so not conform with paragraph 14 of the Code.
- ii) The arrangements may not make clear the process for requesting admission outside of the normal age group as required by paragraph 2.17 of the Code.

I therefore decided to use my power under section 88I of the Act to consider these matters.

Background

12. As its name suggests, the school is situated in the town of Kenilworth. It is the only state-funded secondary school in the town although there are three other such schools within a three miles radius of its postcode, two in Coventry and one in Royal Leamington Spa. One of two secondary schools in its multi-academy trust, the school has a PAN of 270. The oversubscription criteria can be summarised as follows.

1. Looked after and previously looked after children
2. Children living in the catchment area with a sibling at the school
3. Other children living in the catchment area
4. Other children with siblings at the school
5. Children of members of staff
6. Other children.

13. Within each of the oversubscription criteria, priority is given to children attending one of seven named primary schools, proximity to the school and finally random allocation are used as tie-breakers if necessary.

14. The arrangements use the term “priority area” to describe an area from which children are given priority for places at the school. The Code uses the term “catchment area” for such an area and that is the term I will use in this determination.

Consideration of Case

Consultation

15. The objectors said that in 2018 and 2019 the school offered 300 children places at the school although the PAN at the time was 270. They argued that this constituted an increase in the PAN and that to set a lower PAN in a subsequent year required prior consultation.

16. Paragraph 15b of the Code says: “Where changes are proposed to admission arrangements, the admission authority must first publicly consult on those arrangements.” There are exceptions to this requirement concerning changes to the PAN. These are set out in paragraph 1.3 of the Code: “Own admission authorities are not required to consult on their PAN where they propose either to increase or keep the same PAN.”

Paragraph 1.4 of the Code says:

“Admission authorities must notify their local authority of their intention to increase the school’s PAN and reference to the change should be made on the school’s website. If, at any time following determination of the PAN, an admission authority decides that it is able to admit above its PAN, it must notify the local authority in good time to allow the local authority to deliver its co-ordination responsibilities effectively. Admission authorities may also admit above their PAN in-year.”

17. This clearly states that admission authorities can at any time decide to admit above its PAN and must notify their local authorities in good time. The admission of 300 children in 2018 and 2019 is therefore entirely consistent with the Code and did not alter the PAN. Therefore, the PAN remained at 270 and it would only have been necessary for the trust to

consult on its PAN in any subsequent year if it wished to reduce it from that figure. It has not, and so no consultation has been required on the school's PAN.

18. Responding under the instructions of the trust, Warwickshire Legal Services (the school's legal advisers), told me that trust did not propose any change to the catchment area from 2021 to 2022. Therefore, the trust did not have to consult on the catchment area. They told me that the trust did decide to consult on another aspect of the arrangements saying: "the PAN and catchment area were not specifically highlighted in correspondence as these details were remaining unchanged, but of course the full admission arrangements were subject to the consultation". I note that paragraph 1.45 of the Code says that consultation must set out the areas on which comments are not sought. The consultation letter did not exclude any areas of the arrangements.

19. The consultation was on a change to the wording of the fifth oversubscription criterion concerning priority for children of members of staff. The wording for 2021 admission had been "Children whose parent (or parents) are employed by Kenilworth School or Kenilworth Multi Academy Trust." It was proposed in the consultation to change this to "Children whose parent (or parents) are employed by Kenilworth School and Sixth Form and who have been so employed for two or more years at the time at which the application is made and/or have been recruited to fill a vacant post for which there is a demonstrable skills shortage."

20. In my view it was not necessary for the trust to consult on this change. This is because the criterion in 2021 did not conform to the requirements of the Code. Paragraph 1.39 is clear that it is only children of staff employed "at the school" who can be given priority, not of those employed more widely by the trust. Paragraph 3.6 of the Code allows admission authorities to revise the arrangements to give effect to a mandatory requirement of the Code. However, the trust did choose to consult, and I will consider whether that consultation met the requirements of the Code as set out in paragraphs 1.42 to 1.45.

21. The school's legal advisers told me "The Admissions Arrangements for 2022 were agreed by the Local Board of Governors on 20 October 2020, following a six-week consultation during which the arrangements were published on the website of Kenilworth School and the website of the Multi Academy Trust." I was concerned by this because paragraph 1.43 of the Code states that "consultation **must** last for a minimum of 6 weeks and **must** take place between 1 October and 31 January in the determination year." It would be impossible to agree arrangements on 20 October following a Code compliant consultation as 20 October is less than six weeks from 1 October. With the same letter, the legal advisers provided me with a copy of a letter dated 19 November 2020 asking for responses to the consultation by 31 December 2020

22. In information provided earlier by the trust it was explained that it was draft arrangements which were agreed on 20 October 2020 for consultation with final determination on 18 February 2021. I am prepared to give the benefit of the doubt to the trust and am satisfied that consultation took place for six weeks from 19 November 2020.

23. However, I am less satisfied that all of the appropriate bodies were consulted. The school's legal advisers told me that letters were sent to local primary schools and "Consultation took place with parents of children at the school, with all other admission authorities within the relevant area and with the local authority." The requirement in paragraph 1.44 of the Code is for consultation with "parents of children between the ages of 2 and 18". I have not been told of any consultation with parents beyond those at the school.

24. While the consultation may have been flawed in this way, it is possible for an admission authority to determine arrangements which conform entirely with the Code following a consultation that does not meet the Code's requirements. It is also possible for an admission authority to consult perfectly and then determine arrangements which do not conform with the Code. The objection was that the school did not consult on the PAN or the catchment area. It was not required to consult on them, but did so even if not perfectly, therefore, I do not uphold this part of the objection.

The catchment area

25. The objectors raised the question of compliance with the Greenwich Judgement (*R v Greenwich London Borough Council, ex parte John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469). I can dismiss this in short order. That judgement held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. It does not mean that catchments cannot be used or that they must always include parts of another local authority area. A child who does not live in the catchment area, whether in Warwickshire, Coventry or other local authority area is given priority for a place at the school on the same basis.

26. The objectors said:

"Catchment areas can be wholly contained within administrative boundaries, and even coincide with administrative boundaries, provided the area is clearly defined and there is some additional justification for the choice of area that is considered reasonable, such as distance from the school or ease of access. If the distance from the furthest point within the administrative boundaries is measured and used the applicants [sic] village would fall within a higher category, and thus higher position in ranking for school and/or waiting list."

They also said: "Given the presence of a Traveller's camp within the applicants [sic] village, we believe that this is a factor of consideration in avoiding the use of a set distance."

27. The requirements for catchment areas are set out in paragraph 1.14 of the Code which says:

"Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."

In addition, paragraph 1.8 of the Code says:

“Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group”.

28. In response to the objection, the school’s legal advisers said:

“The catchment areas, determined on the advice of the Local Authority, have been designed to be reasonable and are coordinated equitably by Warwickshire Admissions on behalf of the school. These do not prevent parents who live outside the catchment, or indeed outside of the local authority area, of a particular school from expressing a preference for the school.”

29. I note that no map or other definition of the catchment area was included in the arrangements sent to me, nor could I find any map or other definition on the school’s website. The school’s legal advisers did send me a link to the local authority’s website where a map could be found; however, it is the responsibility of the trust to publish its arrangements and within them to make any catchment area used clear. I find that the arrangements do not conform with paragraph 1.14 of the Code as the catchment area is not clearly defined in the arrangements. This was acknowledged by the school’s legal advisers. However, that is not the subject of the objection.

30. The objection is that the catchment area does not include the objectors’ village and the objectors claim that reason for this is the presence in that village of a travellers’ camp. These matters were not addressed in the initial reply from the school’s legal advisers, and I sought further comment from them.

31. The school’s legal advisers noted that as the objectors’ address had been withheld they could not identify and comment on the question about the travellers’ site. I was told that the catchment area system in Warwickshire aimed to ensure that all children could access a local school and the catchment area for the school “meshed” with those for other comprehensive schools in the county. I was told that there have not been changes to the catchment area for at least 14 years and the history behind its evolution had been lost. The response said:

“... we do believe that the admission arrangements give a good opportunity for all those who live in or near Kenilworth to gain a place at the school, whilst also taking account that the town has only one secondary school with limited space and as such schools with more capacity in other towns may be in a better position to take children who live in the areas between Kenilworth and those towns. As such the school has been provided with no compelling reasons to alter the Priority Area as it currently stands which if done without consequent changes to the Priority Areas of other children, risks destabilising the admissions for a number of schools and potentially leaving children in the county outside of a Priority Area.”

32. I asked how many children had been offered places at the school for September 2020 and for September 2021 against each oversubscription criterion and how far from the

school those children lived in miles. From this information it would appear that all children living in the catchment area could be offered a place if they want one and as the PAN was not reached in either of the two previous years, it is likely that children from outside of the catchment area will be offered a place in 2022 if they apply.

	2020		2021	
Criterion	Number	Greatest distance	Number	Greatest distance
EHCP	4	7.015	3	1.305
Looked after	4	3.002	3	3.94
In area sibling	104	3.264	95	3.365
In area	149	3.494	145	2.436
Out area sibling	2	2.66	-	-
Staff	3	4.65	-	-
Other	2	4.487	-	-
Total	268	-	246	-

33. The objectors would appear to prefer that the catchment area was different, or not used at all, with places being offered on the grounds of distance from the school alone. The trust has chosen over many years to use a catchment area and is entitled to do so. The tests in the Code are whether that catchment area is reasonable and fair. I have already found that it is not clear.

34. As the school's legal advisers have said, the purpose of a system of catchment areas is to ensure that every child has a high degree of priority for a place at at least one school. In my view, this is particularly important in rural and semi-rural areas where children can live some distance from all schools and if distance was the only factor taken into account could find that they do not have priority for any schools. The catchment area appears to me to serve the purpose set out by the school's legal advisers.

35. The DfE database "Get Information About Schools" (GIAS) indicates that the objectors' postcode is 5.43 miles from the school. The objectors' postcode falls into the catchment area of another school, although that school is a little further away at 5.8 miles. However, there are another 14 state-funded secondary schools nearer to their home, but in Coventry rather than Warwickshire. I can see no unfairness arising to children in the objectors' village from not being in the school's catchment area as there are other schools which they could reach as easily or would have priority for. This includes children living on

the travellers' site in the village. While the catchment area may disadvantage them, it does not do so unfairly which is the relevant test set out in paragraph 1.8 of the Code.

36. For the reasons set out above, I do not uphold the part of the objection concerning the catchment area. However, I do find that the arrangements do not conform with the requirements of paragraph 1.14 of the Code as the catchment area is not clear in the arrangements.

Waiting list

37. The objectors said that the arrangements did not make clear that the Fair Access Protocol takes precedence over the waiting list. Paragraph 2.14 of the Code requires:

“Each admission authority **must** maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must** not be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.”

38. Under the heading “Waiting list”, the arrangements say:

“Following allocation of Year 7 places the Local Authority will retain a waiting list until the end of the first full week of the autumn term, as per the secondary co-ordinated admissions scheme.

Following that, the school will retain the waiting list, in partnership with the Warwickshire County Council Admissions Team. Waiting lists will be kept in order of the oversubscription criteria above.

The local authority will continue to operate the coordinated scheme, in relation to processing new applications and allocating places, where this is appropriate, up to and including 31 August annually.”

39. The school's legal advisers told me:

“We believe that the Admissions arrangements for Kenilworth School comply with the requirements of 2.14 of the Code in the following sections of the policy: ‘Waiting lists’ ‘Late Applications’ ‘Fair Access Protocol’, ‘Oversubscription Criteria’ and ‘Notes’. The School adopts the Fair Access Protocol and complies with the process used by Warwickshire when coordinating admissions on behalf of the school. Looked after Children are allocated places as top priority over all others on a waiting list, in line with the coordinated admissions scheme for Warwickshire schools.”

40. Nowhere in the sections of the arrangements referred to by the school's legal advisers does it say when the waiting list will be kept until. It must be until at least

31 December. As nothing is said about an end date, the conclusion must be that it is held forever. If that is not the case, then the arrangements must be clear about how long the waiting list is kept for. Nor is it stated in the arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria which is a requirement of the Code. For these reasons the arrangements do not meet the requirements of the Code and must be revised accordingly. However, the objection concerned another matter.

41. The objection was that the arrangements do not state that those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on a waiting list. Careful reading of paragraph 2.14 shows that this it is not a requirement of the Code for the arrangements to state this. I therefore do not uphold this part of the objection.

Other matters

42. In the section of the arrangements which defines a child's home address it says: "Where a child resides through shared custody, the address will be with the parent who receives child benefit." I find that this is unfair and so does not conform with paragraph 14 of the Code. This is because it is not necessary for a child to live with the parent who receives child benefit for all or any of the school week or term for them to receive it. This provision in the arrangements could lead to a child being given priority for a school place based on an address where they do not live during the school week. Furthermore, there are some families where no child benefit is claimed or received, further making child benefit unsuitable as the sole and determinative indicator of where a child lives.

43. There is a section in the arrangements about the admission of children outside of their normal age group. Paragraph 2.17 of the Code requires that "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." The arrangements did not explain how or when such applications should be made.

44. The school's legal advisers recognised that the arrangements did not conform with the Code in these ways and said that the school would revise the arrangements accordingly.

Summary of Findings

45. I found that much of the objection was to matters outside of my jurisdiction which is solely for the admission arrangements for 2022. There were three parts of the objection within my jurisdiction. The first concerned consultation on the PAN and the catchment area. There was no requirement for the school to consult on either of these aspects of the arrangements, or to consult at all but it did so. Therefore, I do not uphold this part of the objection although I found no evidence that parents of children aged 2 to 18 had been consulted as required by the Code.

46. The second part of the objection was to the catchment area. I find the catchment area does conform with the Code and I do not uphold this part of the objection. However, because there is no definition of the catchment area in the arrangements the requirements of paragraph 1.14 of the Code are not met.

47. The final part of the objection concerned there being no reference in the waiting list to the Fair Access Protocol. I do not uphold this part of the objection. I did find that while the objection could not be upheld, the arrangements did not meet other requirements of paragraph 2.4 of the Code concerning waiting lists.

48. I also find that the arrangements do not conform with the Code in the two ways set out above concerning the definition of home address and admission outside of the normal age range.

Determination

49. 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 2022 determined by Kenilworth Multi Academy Trust for Kenilworth School and Sixth Form, Warwickshire.

50. 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.

51. 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: 22 July 2021

Signed:

Schools Adjudicator: Phil Whiffing