



Office of
the Schools
Adjudicator

Determination

Case references: ADA3797, ADA3798, ADA3803, ADA3810, ADA3844, ADA3845, ADA3846, ADA3857, ADA3858, ADA3880

Objectors: Parents, grandparents and local councillors,

Admission authority: Twynham Learning for Twynham School, Bournemouth Christchurch and Poole,

Date of decision: 05 August 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold these objections to the admission arrangements for September 2022 determined by Twynham Learning for Twynham School, Bournemouth, Christchurch and Poole. These objections concern the order of the oversubscription criteria and consultation on the arrangements.

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 by 31 October 2021.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), ten objections have been referred to the adjudicator by a parents, grandparents and local councillors (the objectors) about the admission arrangements for September 2022 (the arrangements) for Twynham School (the school), an academy school for children aged 11 to 19. The objections concern the position of feeder schools in the oversubscription criteria and consultation on the arrangements.

2. The local authority for the area in which the school is located is Bournemouth, Christchurch and Poole (BCP). BCP is a party to this objection. Other parties to the objection are the objectors, Twynham Learning which is the multi-academy trust (the trust) for the school and school's governing board.

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, which is the admission authority for the school, on that basis.

4. The objectors submitted their objections to these determined arrangements between 20 April 2021 and 14 May 2021. One of the objectors asked for her identity to be 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 (the Regulations) by providing details of her name and address to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

5. When I read the arrangements, it appeared to me that there were other ways in which they did not, or may not, conform with requirements. However, I have addressed those matters in a separate determination on an objection concerning the catchment area published on 9 July 2021 under reference ADA3760. That determination remains binding on the admission authority. However, these objections concern other aspects of the arrangements, and I will not therefore refer to those matters in this determination.

Procedure

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

7. 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' forms of objection dated from 20 April to 14 May 2021, documents attached to them and subsequent correspondence;
- d. the admission authority's response to the objections and its answers to my enquiries;
- e. comments from BCP on the objection and its answers to my enquiries; and
- f. maps of the area identifying relevant schools.

The Objection

8. The objectors said that the oversubscription criteria introduced for September 2022 reduced the priority for children living in the school's catchment area. They said that this

was unfair and did not conform with paragraphs 14 and 1.8 of the Code. Some objectors questioned whether the use of feeder schools in the oversubscription criteria conformed with paragraph 1.15 of the Code and others questioned the consultation undertaken before the new oversubscription criteria were introduced.

Background

9. The school is one of six schools in the trust with one other secondary school and four primary schools, all in the BCP area. The school itself is in Christchurch and, according to the Department for Education (DfE) website “Get Information About Schools” (GIAS), there are five other state-funded secondary schools within three miles of its postcode.

10. The school is oversubscribed with a PAN of 264. Its oversubscription criteria can be summarised as:

1. Looked after and previously looked after children
2. Children living in the school’s catchment area with siblings at the school
3. Children living in the school’s catchment area and on roll of one of three named feeder schools
4. Children of members of staff
5. Children living outside of the school’s catchment area with siblings at the school
6. Children attending one of the three named primary schools who live outside of the catchment area
7. Other children living in the catchment area
8. Other children.

11. Within each category, priority is given to children living closest to the school with random allocation being used as a final tie-breaker.

Consideration of Case

12. Before setting out the requirements of the Code which are pertinent to this case, I think that it will be helpful to see the oversubscription criteria which were in place for September 2021, so they can be easily compared to those for 2022 set out above which are the subject of these objections. The oversubscription criteria for 2021 can be summarised as follows:

- a. Looked after and previously looked after children
- b. Children living in the school’s catchment area with siblings at the school
- c. Children living in the school’s catchment area

- d. Children living outside of the school's catchment area with siblings at the school
- e. Children attending one of the three named feeder schools
- f. Children of members of staff
- g. Other children.

13. As can be seen from the summary above, prior to 2022, all children living in the catchment area had priority for places at the school over all children who lived outside of it (with the limited and universal exception of looked after and previously looked after children). The 2022 arrangements promote some children who live outside of the catchment area over children who live in it but who do not already have a sibling at the school or attend one of the feeder schools.

14. 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."

Paragraph 1.8 of the Code says:

"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation."

Paragraph 1.15 of the Code says:

"Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds."

15. Paragraphs 1.43, 1.44 and 1.45 set out when and for how long consultation on changes to admission arrangements must be, who must be consulted and how consultation should happen. Paragraph 1.43 says that "Failure to consult effectively may be grounds for subsequent complaints and appeals."

16. Before considering the oversubscription criteria themselves I will deal with the parts of the objection concerning consultation. In doing so I note that an admission authority can undertake consultation which goes above and beyond the requirements of the Code yet determine arrangements which do not conform with the Code. It is also possible for an admission authority to fail to consult at all yet set arrangements which entirely conform to the Code. Consequently, if I find that consultation did not conform with the Code, it does not in itself render the arrangements unlawful or require further consultation.

Consultation

17. Among the objections were comments from parents such as “I have not seen the school publicly advertise the change of admissions policy and believe that the bare minimum was done to make people aware.” One of the local councillors said that they had been contacted by many parents who were unaware of the consultation. She said that the school did not use local media and did not contact town or parish councils or residents’ associations. My attention was drawn to the timing of the consultation during an epidemic and just before Christmas. Objectors said this meant that parents would not have been looking out for any consultation and more effective methods would have been necessary to make parents aware of it.

18. The school had little choice over when it consulted on the arrangements. Paragraph 1.43 of the Code requires that consultation is within the period 1 October to 31 January in the determination year. Why the school chose to make changes to its admission arrangements during a pandemic is another question, but outside of my remit and I note that the emergency legislation put in place to deal with the pandemic did not rule out changes to school admission arrangements and there was no guidance from the DfE advising that schools should not change their arrangements at this time.

19. The school told me that BCP administered the consultation on its behalf. The trust is the admission authority for the school and is responsible for ensuring the requirements of the Code are met even if it contracts with another body to administer the consultation. I was told that BCP consulted between 9 November and 18 December 2020. This is from a Monday to a Friday, a period of 40 days. The requirement in the Code is for six weeks which is 42 days. However, the school told me that the arrangements were publicised on its own website throughout the second half of the autumn term, a period greater than six weeks. That may be the case, but this time period is vague; parents and others need to know when they should start looking for the proposal and by when any comments on the proposed policy should be sent to the admission authority, so I do not think this mitigates the shortfall of two days in the consultation period.

20. Paragraph 1.44 of the Code lists who **must** be consulted. They are:

- a) parents of children between the ages of two and eighteen;
- b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- d) whichever of the governing body and the local authority who are not the admission authority;
- e) any adjoining neighbouring local authorities where the admission authority is the local authority; and

f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.

For a school which is an academy without religious character such as this, the requirement is therefore to consult with parents of children aged between two and eighteen, all academy trusts in the relevant area, the governing boards of all voluntary aided and foundation schools in the relevant area and BCP. The school may also choose to consult other persons.

21. When providing details of the consultation process to me the school did not mention any steps which it took itself to consult with parents; it only referred to making the feeder schools aware of the consultation. The school relied on BCP to do the consultation on its behalf. I therefore asked BCP who it had consulted.

22. In response BCP provided me with a list of governing boards, trusts, dioceses and local authorities that were consulted. This appears to me to be comprehensive. BCP also told me that it had informed early years settings, "Early Help, Family Hub and Youth Access Points". It told me that the consultation was placed on several pages on its website, on social media and subscription email lists. The email sent to the various bodies asks them to "inform other interested parties within your organisation where appropriate, including parents of children attending your school or setting if applicable."

23. I do not think that it can be argued that, through BCP, efforts were not made to consult all of the appropriate people. That many local parents and some local councillors appear to have been unaware of the consultation suggests that the methods used were not effective particularly in the circumstances existing at the time. One potential weakness in the process described is the reliance on other schools to inform parents of the consultation. With the pressures they were under at the time, they may not have done so, or they may only have done so in a cursory way. Providing a document for them to send out would be one way of assisting other schools to inform parents. Other channels such as the local press or notices in doctors' surgeries, libraries and shops could also be considered. The school could have promoted the consultation more vigorously itself within its own catchment area which was most affected by the proposals.

24. I am sympathetic to the difficulties of consulting during a pandemic. However, it was the trust that decided to propose changes to the admission arrangements of this school at this time. It engaged BCP to undertake the consultation for them and BCP failed to consult for the full six-week period required by paragraph 1.43 of the Code. While BCP did attempt to inform parents of the consultation, no consideration appears to have been given by the trust as to whether additional channels were required in the particular circumstances of the year to make the consultation with parents effective. I uphold this part of the objection.

The oversubscription criteria

25. Several of the objectors referred to the statement in the arrangements that the admissions policy is based on the principles of "Serving a traditional area/community identified as a catchment area" and "The social and educational advantages of children

attending their local schools". The objectors said that to give priority to some children living outside of the catchment area over some children living within it was inconsistent with these principles.

26. Objectors also gave examples of perceived unfairness which could arise from the new oversubscription criteria. One being that younger siblings of families who moved into the catchment area temporarily to get their first child into the school before moving away took priority over children who were long term residents of the area. Others pointed out that a child living in the catchment area who could not be offered a place at the school because of the increased priority for out of catchment area children would not live in the catchment area of another school and so would have low priority for places at other schools. Some objectors who had moved into the catchment area in recent years reported being unable to find a place for their children at one of the feeder schools. Concerns were expressed by some objectors about the potential for increased travel congestion if some children were being driven into the catchment area while others were being driven out of it.

27. In response to the objections the school said that it was oversubscribed and as a consequence there will always be families who will be disappointed. The school said that it invested "heavily" in pupils at the three feeder schools and enabling them to transfer to the school gave them continuity of education. This investment includes support with sports, music and modern foreign language teaching. It argued that if a child from a feeder school could not transfer to secondary school with their peers it would be "unfair and detrimental to their well-being". I was told "Twynham Learning considers its community to be those with which it engages on a regular basis and not just a geographical boundary."

28. Although there were objections from individual councillors, BCP did not as a body submit an objection to these arrangements. It did however express concern about the proposed arrangements to the trust at the end of the consultation period.

29. In its response to me BCP highlighted a potential shortfall of places in the Christchurch area in September 2022 and concern about the alternative schools available for children living in the east and north of the catchment area if places could not be offered at their catchment area school, that is at Twynham.

30. The catchment area in this case is more than an administrative creation and takes account of significant geographical features. It is bounded on the south and west by the River Stour and to the east by the River Avon. To the north the boundary passes through Bournemouth Airport before following the BCP boundary back to the River Avon. The northern part of the catchment area is relatively sparsely populated with most housing being in the southern third of the catchment area. The school itself is found close to the southern edge. Access into and out of the catchment area is constrained by the limited number of points at which the rivers can be crossed. The three named feeder schools are all located in the residential southern part of the catchment area; there are no other primary schools in the catchment area. The catchment areas of the primary schools all fall within the catchment area of the school; two of the primary schools are in the same trust as the school.

31. I can deal in short order with the part of the objections relating to paragraph 1.15 of the Code. The feeder schools are named, their catchment areas fall within the school's catchment area and two of the feeder schools are in the same trust. The selection of them is transparent and made on reasonable grounds and so meets the requirements of the Code. I do not uphold that part of the objections. However, the level of priority given to children attending feeder schools must also conform with the wider requirements that oversubscription criteria be reasonable. Admission arrangements must also be fair. It is to these questions that I now turn.

32. There are two state-funded secondary schools across the River Avon to the east and three across the River Stour to the west. With one exception, to reach other secondary schools in Bournemouth it is necessary to cross the main trunk road into the town as well as the river. The exception is an all-through free school situated on a corner of Bournemouth airport which does offer 28 places to children joining in Year 7.

33. I asked the school what modelling had been undertaken before proposing the new oversubscription criteria and for information about the number of children admitted under each oversubscription criterion in the last three years.

	2019	2020	2021
Named school on EHCP	4	3	6
Looked after or previously looked after	3	11	5
In-area sibling	58	63	69
In-area	126	147	146
Out-area sibling	22	33	38
Feeder school	11	7	0
Staff	1	0	0
Out-area	39	0	0

34. From these figures it is apparent that there are over 200 children living in the catchment area in most years. The school has sufficient capacity for all children living in its catchment area who apply and for some out of catchment area children too. In 2021, the last child offered a place was an out of area sibling who lived 4.1 miles from the school. Had the 2022 criteria been in place, other siblings living further away could have been offered places and children from out of area attending a feeder school. These would have displaced some of the children living in the catchment area. These children would have needed to find alternative schools.

35. With regard to any modelling undertaken before determining these arrangements, the school told me that there were 180 Year 5 (the year due to start school secondary school in 2022) pupils attending the three feeder schools of which six lived outside of the BH23 postcode. It recognised that the catchment area and the BH23 postcode were not coincident and said there were a further seven children living in that postcode, but not in the catchment area. However, as I will address below, there appears to have been no modelling of the number of siblings of children already attending the school who live outside of the catchment area who do not attend one of the three feeder schools. Nor does the school appear to have given any consideration to the alternative schools which displaced catchment area children might be able to access and the affect of this on their “well-being”. To me, these are significant considerations not taken into account by the school.

36. I also asked BCP to provide me with relevant data. The data showed that the number of Year 7 places required at secondary schools across the local authority area had increased from 3990 in 2020 to 4007 in 2021 and it was expected that 4154 places will be needed in 2022 when 4266 places will be available. Within Christchurch itself BCP expect 652 places to be required with 579 available at the three schools in the town. Those are the school and the other two other secondary schools east of the River Avon. The closest of those schools, The Grange, is in the same academy trust. The trust has reduced the PAN at that school for 2022 from 120 to 75.

37. With over 97 per cent of places expected to be filled across BCP in 2022 and the increased local pressure in Christchurch itself, many schools will be oversubscribed and the availability of places at alternative schools for any child living in the catchment area will be limited. As priority within each criterion is given to those living closest to the school, it will be children living farthest from the school to the north of the catchment area who would need to find places elsewhere. These children live farthest from all other schools apart from the free school situated on Bournemouth airport. Catchment area children who cannot be offered a place at the school do not live in the catchment areas of other schools and their distance from the next nearest schools would lead to their having low priority for places at them, so if those schools are oversubscribed even longer journeys will be required. As noted above, routes out of the catchment to other schools are constrained by rivers.

38. BCP told me that there were 186 children in Year 5 at the three feeder schools rather than the 180 referred to by the school. It is therefore possible that there are more than 13 children in the feeder schools who live outside of the catchment area. BCP had modelled the effect of the new oversubscription criteria using the 2021 intake and had found that 10 children living in the catchment area would be refused places. More children are expected to require Year 7 places in 2022 in the area.

39. As I note above, it is not only children living outside of the catchment area who attend a feeder school who have gained priority for places over children living in the catchment area. It is also children living outside of the catchment area who have an older sibling at the school who take precedence in these criteria. From the table listing admissions in the last three years, there were 93 out of area siblings, 18 out of area children attending a feeder school and 39 other out of area children admitted. Children

admitted in the two previous years to those will also still be on roll and there is a sixth form. These year groups will also contain children living outside of the catchment area. While not all of these children will have younger siblings due to start Year 7 in 2022, some will. This factor does not appear to have been taken into account in the modelling undertaken by the school.

40. In deciding this case I am faced with balancing the benefits which the school says accrue to out of catchment area children attending the feeder schools from continuity of education and transferring to secondary school alongside their classmates with the problems which children living in the catchment area may face in finding alternative school places near to their homes. A similar balance needs to be considered between catchment area children and siblings of those already attending the school who live outside of the catchment area. I have come down on the side of the catchment area children for the reasons set out below.

41. One purpose of using catchment areas in oversubscription criteria, as opposed to relying mainly on just distance or feeder schools, is to ensure that children who live somewhere that would lead to them having low priority for all other schools have a high degree of priority for one school. While there can be no guarantee of a place for every child living in the catchment area every year, parents would expect that in most years it will be possible for them to be offered a place. These oversubscription criteria work against that principle. I should pause here to note that there are circumstances where a catchment will contain significantly more children than can be admitted to the school. Examples include selective schools, schools with a religious character which give priority to children from a relatively large area or where a single sex school is the only such school in a large town or part of a city and wishes to ensure that girls or boys as the case may be from a wider geographical area have the chance to attend that school. None of those circumstances apply here. Rather, this is a case of a school serving a geographical area bounded to a significant extent by geographical features.

42. While an out of catchment child at a feeder school may have to transfer to a different secondary school to their classmates, they will have the same priority for places at schools as other children whom they live near and may well already socialise with outside of school. As the catchment area child would have low priority for all other schools, they may find themselves placed at a school where they know no other pupils (their address may mean that they have low priority for the school which most of their classmates transfer to) and the journey to it could make it difficult for them to engage in extracurricular sporting or other activities and to socialise with classmates outside of school.

43. Parents cannot expect that the admission arrangements of the local secondary school will be the same as they were when their child started at primary school seven years earlier and few will take them into consideration when choosing a primary school. However, a parent in the catchment area who may be thinking of placing their child at a primary school outside of the area for a good reason such as proximity to a grandparent's home for after school care could find their choice of primary school fettered by these criteria if they hope for a place at the local secondary school in the future. It may also be that the three

feeder schools do not always have sufficient places for all children in the catchment area to attend them.

44. Some families will have moved into the catchment area after their child had started at primary school. Some may have found that there were no places available at any of the three feeder schools and had to find places at other primary schools. Others, if they were moving locally may have decided to leave their child at their former primary school for continuity until the end of Year 6. It seems fairer to me that families in those situations should take precedence over those who have moved away (and so can more easily access other secondary schools) and left their children at one of the feeder schools.

45. No justification was given by the school for the level of priority given to out of catchment area siblings. The arguments about the continuity of education which have some validity for the feeder school children cannot be made for these children. While it may be more convenient for parents to have children at the same school, children of this age are capable of travelling independently to school and may have been doing so for some years while parents escorted the younger child to primary school. From the table above, it can be seen that out of area siblings will potentially displace more in area children than those from the feeder schools would do. I do not think it fair that a child living in the catchment area whose parents wished them to attend their local school should be prevented from doing so when they would have a more difficult journey to another school than a child living outside of the catchment area would have.

46. I find that the trust did not undertake a full analysis of the effect of the proposed changes to the oversubscription criteria, because it omitted an assessment of the number of out of area siblings that might displace catchment area children and did not consider the impact on those displaced children. While the trust set out some rationale for the priority given to feeder school children, no rationale was presented for the priority given to out of area siblings. Giving both groups priority over children living in the catchment area is not consistent with the first two principles set out by the trust in the arrangements which I repeat here, "Serving a traditional area/community identified as a catchment area" and "The social and educational advantages of children attending their local schools". I find the order of the oversubscription criteria are not reasonable and so they do not conform with paragraph 1.8 of the Code. I uphold the objections on this point.

47. I also find that the disadvantage that may accrue to a child living in the catchment area, from not being able to attend their local school is greater than any disadvantage that would accrue to a child from outside of the area from not being able to attend the school where most of their classmates will be transferring to or where an older sibling is already attending. The arrangements are therefore unfair and do not conform with paragraph 14 of the Code.

Summary of Findings

48. I find that the consultation did not meet the requirements of the Code in that it did not last for six weeks. Furthermore, consultation with parents does not appear to have been effective. I uphold this part of the objections.

49. I find the selection of the feeder schools to be transparent and reasonable and that it conforms with paragraph 1.15 of the Code. I do not uphold this part of the objections.

50. I find the oversubscription criteria to be clear and objective but not reasonable, they also could lead to unfairness. The arrangements do not conform with paragraphs 1.8 and 14 of the Code. I uphold these parts of the objections.

51. Paragraph 3.1 of the Code says:

“The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator. An Adjudicator’s determination is binding and enforceable.”

Given that this determination is being made during August 2021 when the school is on holiday, I have considered by which date I will require the arrangements to be revised. The trust will also need to revise its arrangements to give effect to mandatory requirements of the new Code which comes into force on 1 September 2021. I have therefore decided to set 31 October 2021 as the date by which the arrangements must be revised.

Determination

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold these objections to the admission arrangements for September 2022 determined by Twynham Learning for Twynham School, Bournemouth, Christchurch and Poole. These objections concern the order of the oversubscription criteria and consultation on the arrangements.

53. 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 by 31 October 2021.

Dated: 5 August 2021

Signed:

Schools Adjudicator: Phil Whiffing