



Office of
the Schools
Adjudicator

Determination

Case reference: REF3885

Admission authority: Transforming Lives Educational Trust for Ashlawn School, Warwickshire

Date of decision: 13 October 2021

Determination

I have considered the admission arrangements for September 2022 for Ashlawn School, Warwickshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out below the arrangements do not conform with the requirements.

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 28 February 2022.

The referral and jurisdiction

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections were referred to the Office of Schools Adjudicator (OSA) by two parents and a member of the public about the admission arrangements for 2022 (the arrangements) for Ashlawn School (the school) for September 2022. The dates of the objections were 26 March 2021 and 10 May 2021. At that time the arrangements had not been determined by the admission authority and therefore the objections could not be considered under section 88H of the Act and the cases were closed.

2. The terms of the academy agreement between the Transforming Lives Educational Trust (the trust) which is the admission authority for the school 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. The OSA wrote to the trust to remind it of the need to determine admission arrangements for 2022 and to request a copy of the arrangements when they had been determined. The trust determined the arrangements on 24 August 2021 and sent a copy to the OSA on 26 August 2021.

Because it appeared to me that the arrangements did not, or may not, conform with the requirements of the School Admissions Code which came into force on 1 September 2021 (the Code) I decided to use my power under section 88I(5) of the Act to consider them.

3. It appeared to me that the arrangements may not have been published on the school's website as required by paragraph 1.50 of the Code. Aspects of the arrangements appeared to me to be unclear when paragraph 14 of the Code requires them to be so. Other requirements of the Code did not appear to have been met as set out below.

4. The parties to the case are the trust and governing board of the school and Warwickshire County Council (the local authority) which is the local authority for the area in which the school is located.

Procedure

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

6. The documents I have considered in reaching my decision include:

- a) confirmation that the trust determined the arrangements;
- b) a copy of the determined arrangements;
- c) comments from the admission authority on the matters raised; and
- d) comments from the local authority on the matters raised.

7. I have also taken account of information received during and after an on-line meeting (the meeting) which I convened on 22 September 2021. The meeting was attended by representatives of the school's trust and governing board and the local authority.

Background

8. The school is an oversubscribed partially selective school for boys and girls aged 11 to 18 in Rugby. It uses the same selection test as the two grammar schools in the town. The same test is also used by three other grammar schools in Warwickshire and those in Birmingham. In addition to being permitted by section 100 of the Act to select a proportion of pupils by ability, the school also offers 10 per cent of its places on the basis of aptitude for modern foreign languages (MFL).

9. The school has a published admission number of 256. After offering places to looked after and previously looked after children, 31 places are offered on the basis of ability with priority being given to children meeting a required standard living in two geographical areas in the order of their score in the selection test. The 25 places offered on the grounds of aptitude for modern foreign languages are allocated to children in the order of their scores in the aptitude test. Priority for the remaining 200 places at the school, which it calls

“community places” is given in the following order: various categories of siblings, children living in a geographic area, children of members of staff, other siblings and then other children. If two or more children meet the same criteria, the child living nearest the school has priority.

10. If children do not meet the required academic standard for a selective place (or do meet it but are not ranked sufficiently highly by the oversubscription criteria) they may still have the required aptitude in MFL to be offered one of those places, or they may meet one of the remaining oversubscription criteria for a community place. Unlike in a designated grammar school, failure to reach the required academic standard does not preclude admission to the school. The academic standard operates as any other oversubscription criterion as does showing aptitude in MFL. Also, unlike designated grammar schools, a partially selective school may not keep places empty if there are insufficient children meeting the academic standard to fill them and if there are other children seeking places at the school.

Consideration of Case

11. In the following paragraphs I will address the issues identified in correspondence and discussed with the parties at the meeting in the order they arise in the arrangements. Paragraph 14 of the Code says, “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.” Most of issues that I will consider concern the clarity of the arrangements.

Publication

12. Paragraph 1.50 of the Code requires that admission authorities publish their arrangements on their website. These arrangements could be found on the school’s website under the heading “Ofsted Requirements”. The publication of admission arrangements is not an Ofsted requirement, it is a requirement of the statutory Code approved by Parliament. In discussion the trust agreed that this was not an appropriate place for the arrangements to be published and explained that the website was undergoing a revision and that this matter would be addressed as part of that process

Published Admission Number

13. The arrangements state in paragraph 9 that “Ashlawn School will admit its allocated Published Admission Number (PAN) to Year 7 in 2022-2023.” A school will only admit the number of children stated in the PAN if there are sufficient applicants who cannot be offered a school ranked higher by their parents on the common application form (CAF). It may be unlikely in this case that there will not be a sufficient number of applicants to reach the PAN, but the arrangements could be clearer on this point.

14. Under the same heading in paragraph 10 the arrangements state “up to 31 places will be allocated to selected pupils who have successfully completed the 11+.” It is not clear what “successfully completed” means. In the meeting it was explained by the trust that this means reaching the required academic standard in the selection test as opposed to an alternative interpretation of simply finishing the test.

Late Applications

15. The closing date for the submission of the CAF is 31 October 2021. This is a national date which applies across England. There will, however, be exceptional and compelling reasons why a small number of parents may miss this date, and other families may discover that they are moving house after it. Local authorities’ schemes of co-ordination usually include some form of safety net for families in those situations and I would consider it unfair if they did not. However, there must be a limit to how long this safety net can be used as thousands of applications must be processed in time for places to be allocated on 1 March 2022. In Warwickshire the scheme of co-ordination states that this safety net date is 31 December 2021.

16. For this school there is an added complication from the need to organise tests for both academic ability and aptitude in MFL if children are to be considered against those criteria. The deadline for registering for the academic selection test is given in paragraph 57 of the arrangements as 11 June 2021. The arrangements do not set a deadline for registering for the MFL assessment, simply stating in paragraph that forms will be available from 1 June 2021 and the assessment will be on 18 September 2021.

17. Again, it may be that there are exceptional and compelling reasons why a parent may not be able to register their child for the academic selection test or the MFL aptitude assessment by the stated date. Furthermore, the child may be prevented from attending the test by events outside of their, or their parents’ control such as transport failure on the day. If admission to the school was solely dependent on achieving the required standard in the assessments, then not to have a safety net for these circumstances would in my view be unfair. However, because children could meet other oversubscription criteria without being tested this may not be the case at this school. In these circumstances, I make no finding on whether a safety net for assessment is necessary for the arrangements to be fair but would ask that the trust considers this issue and makes the position clear in the arrangements.

18. The section of the arrangements about late applications includes paragraphs 16 to 18 with further references to late applications in paragraph 57 and 58. Paragraph 16 states “Applications received after 31 October 2021 but before 31 December 2021 will only be considered after all on-time applications have been processed.” This is inconsistent with the local authority’s scheme of co-ordination quoted above and with the following paragraphs 17 and 18 which say “Exceptions to paragraph 13 will only be made if there is written evidence of exceptional medical, pastoral or compassionate grounds for the lateness of the application” and “Applications received after 31 October 2021 but before 31 December 2021 will be classed as late transfers or late preferences, unless evidence is provided of moving into the area by 31 December 2021” respectively. The reference to paragraph 13

appears to be a misprint for 16. I find that the arrangements are not clear concerning late applications.

19. In paragraph 57 there is a statement that “Late applicants are given a lower priority in this school's oversubscription criteria than on-time applicants. If your application is late it will therefore affect the likelihood of your child being offered a place at this school” and in paragraph 58 “Applications received after this date [31 October 2021] will be considered late and will be given a lower priority for places. An exception will be made for children moving into the priority area where independent evidence can be provided by 31 December 2021.”

20. The oversubscription criteria listed in the arrangements do not give lower priority for late applicants. If they did so they may fall foul of paragraphs 14 and 1.8 of the Code because it may not be fair or objective to do so. While it may be true that applications which are not made by a given deadline will not be processed until after on-time applications have been processed and this will make it less likely that late applicants could be offered a place, it is not the case that the oversubscription criteria give lower priority to late applicants. The statements in these paragraphs are not consistent with earlier parts of the arrangements and make them unclear.

Waiting List

21. The arrangements state that “all applicants will be placed on the Waiting List”. Clearly, it would only be the unsuccessful applicants who would need to be placed on a waiting list. The arrangements also say, “Vacancies arising between 1 March 2022 and 31 December 2022 will, in the first instance, be offered to applicants on the Waiting List.” The use of the term “first instance” suggests there may be another unexplained route by which children may be admitted.

22. What the section about the waiting list does not say makes the arrangements less clear than the two matters above. The arrangements are not clear on how the waiting list operates with the three different types of places. Consider a child who was ranked 26 on the MFL criteria for the 25 places and 205 by the criteria for community places (of which there are 200). Do they appear on the waiting list twice, in first place for a MFL place and fifth for a community place? Also consider a child who moves to that area in, say, August 2022. Is there an opportunity for them to be assessed to establish whether they meet the required academic standard, or have aptitude for MFL and be placed on the waiting list against those criteria or can they only be placed on the waiting list for a community place? The arrangements must be clear on how these and similar situations would be addressed on the waiting list.

Children with an Education, Health and Care Plan (EHCP)

23. A child with an EHCP must be admitted to a school if that school is named in the EHCP. The arrangements say “Ashlawn School will admit applicants that name Ashlawn School who have a statement of special educational need or an Education, Health and

Care Plan.” It is not the applicants that name the school, it is the EHCP. Together with the reference to statements of special educational need which are no longer issued, this makes this part of the arrangements unclear.

The oversubscription criteria

24. The oversubscription criteria are labelled using a combination of roman numerals, numbers and letters. It appeared to me that this labelling was not always consistent. The trust may want to consider if there is a simpler labelling system which could be used. I make no finding on this; however, there are ways in which I consider that the oversubscription criteria are not clear and in one respect they do not conform with the Code in another way.

25. The arrangements include two oversubscription criteria for looked after and previously looked after children (including those adopted from outside of England). These are labelled under “I Looked after children” as:

“ a. Selective place (from the total of up to 31) for pupils meeting the criteria of Looked After Children as defined above who meet the qualifying score through the 11+ test as agreed by the Committee of Reference

b. Community place for other pupils meeting the criteria of Looked After Children as defined above.”

26. With some exceptions for designated grammar schools and schools with a religious character (of which this school is neither), the Code requires in paragraph 1.7 that all looked after and previously looked after children are given highest priority for a place at the school. The Code does not allow the trust to discriminate between some looked after and previously looked after children and other such children on the basis of academic ability, or, although such a possibility is not recognised in the arrangements, aptitude for MFL.

27. The next oversubscription criteria are labelled “II Selective Places*”. Underneath this heading both numbers and letters are used to order the subsidiary criteria as follows:

“1. Up to 15 selective places will be allocated to pupils living in the Eastern Area of Warwickshire** using the following method of prioritisation:

a. Pupils living in the Eastern Area of Warwickshire who would be eligible for the Pupil Premium who achieve the qualifying score or above

b. Pupils living in the Eastern Area of Warwickshire who achieve the qualifying score or above

2. Up to 16 selective places will be allocated to children living in the priority circle (the centre of which is the Rugby Water Tower), who achieve the qualifying score or above using the following method of prioritisation:

a. Pupils living in the priority circle who would be eligible for the Pupil Premium who achieve the qualifying score or above

b. Pupils living in the priority circle who achieve the qualifying score or above

3. Pupils living in the priority circle who have been considered by the Committee of Reference and placed on the reserve list

4. Other pupils who meet the qualifying standard for a school selective place.”

28. The * in the heading leads to a note on the following page in italics which explains that places are allocated in the order of test scores with distance of the child’s home to the school being used to separate equal scores and details a subsequent tie-breaker. The position of this note is not helpful in making the arrangements clear because it follows notes labelled 1 and 2 about the tie-breaker used for the MFL places and “any category” which could be read as applying to the selective places given where they are placed on the page.

29. Two geographic areas are referred to in these criteria, the “Eastern Area of Warwickshire**” and the “priority circle”. The first is defined on the next page of the arrangements in a note which reads “** The Eastern Area of Warwickshire is described as the following (being the aggregated priority areas of Bilton, Ashlawn and Avon Valley Schools). Information on The Eastern Area can be found at www.warwickshire.gov.uk/admissions”. This is not in my view a clear definition of the area, particularly as the link to the local authority website does not go directly to a map of the area. However, the definition is followed in the arrangements by a list of parishes, which do form a clear definition of the area. Following this list of parishes, the “Eastern area priority circle” is defined as a circle of radius 10.004 miles from Rugby water tower. This is a clear definition of the second geographical area other than using a slightly different name for it.

30. Maps of both areas can be found after some searching on the local authority’s website. These show that the priority circle encompasses the whole of the eastern area. If a child lives in the eastern area, they also live in the priority circle and therefore meet the criteria for both the 15 places and the 16 places. If that is not the intention, then the arrangements should be clear on this point.

31. It may be unlikely, but it is possible that there may not be sufficient applicants meeting the academic standard for the quota for either geographic area, or both of them combined, to be met. The arrangements must be clear on how unfilled places in either category will be allocated.

32. In the third sub-criterion the term “reserve list” is used. This is the only time this term appears in the arrangements, and it is not defined. It is therefore unclear.

33. After listing the oversubscription criteria for selective places, the arrangements continue:

“III Next, places will be allocated to children who are of the required aptitude for MFL demonstrated through the Ashlawn MFL Aptitude Test, up to a maximum of 25 places”.

It is not until the next page that the arrangements explain how places will be allocated if more than 25 children show aptitude for MFL:

“1. Where there is need to split category III (above), places will be offered by taking the pupil's standardised score in Part Four of the Ashlawn MFL Aptitude test.”

This sentence may require some additional words to be clear and an explanation of how these places will be allocated if less than 25 applicants have aptitude for MFL.

34. The arrangements continue:

“IV Community places will then be allocated

a. To same year siblings of a child admitted for a selective or aptitude place within the application cycle

To children living within the priority area who will have a sibling at the academy at the time of admission

b. Children living outside the priority area who have siblings in Ashlawn School in Years 7-10 at the time the application is made when the older sibling was on role in the academic year 2020-21;

c. to children living within the priority area.

The priority area for Ashlawn School can be viewed on the Warwickshire County Council website at: <http://www.warwickshire.gov.uk/mapsecondaryschools>”.

35. It would appear to me that second of the four sub-criteria has not been labelled. More significantly, another “priority area” used in this criterion which is different to the two geographic areas used to allocate the selective places. A partial map of this new priority area was attached to the arrangements with a written description of it. However, the link to the local authority's website did not show the priority area clearly. It was necessary to repeatedly click on a map which showed which priority area had been clicked until the priority area for the school was landed on.

36. I should note here that the Code calls “a geographical area from which children may be afforded priority for admission to a particular school” a catchment area rather than a priority area. In paragraph 1.14, the Code requires that catchment areas are clearly defined. The school uses three different catchment areas and similar terms for two of them. It is necessary for the arrangements to be clear which catchment area is being used in which oversubscription criterion. This could include the use of distinctive names and clear maps.

37. Following the link to the local authority's website, the last four oversubscription criteria are labelled V, VI, VII and VIII instead of continuing with d, e, f and so on which would appear to be the convention adopted earlier with the roman numerals being used for the type of place being offered, not the criteria within them.

38. My final comment on the oversubscription criteria is that paragraph 43 concerning the measurement of distance in the arrangements repeats what is said on the previous page.

Place of residence

39. Paragraph 1.13 of the Code says that arrangements “should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.” This provision is not made in the section on “Place of Residence” in paragraphs 46 and 47 of the arrangements or elsewhere within them.

Admission to selective pupil places

40. In the section of the arrangements under this heading, paragraph 53 follows paragraph 51. It is not clear whether this is a numbering error, or if something has been omitted from the arrangements.

41. The paragraph numbered 53 refers to “automatic qualifying score”, it is not clear if this is the same as the “qualifying score” referred to earlier in the arrangements. The meaning of the word “automatic” in this context is unclear. The term is used several times later in the arrangements without definition.

42. The same paragraph says, “The Committee of Reference will also consider the scores of students just below the automatic qualifying score and may decide to admit one or more of these students from the waiting list provided that the Published Admission Number (PAN) for the school is not exceeded.” My understanding of the role of the Committee of reference is that it agrees the test score that will represent in any year the academic standard for each of the local grammar schools and for this partially selective school. It is not the admission authority and so cannot “decide to admit one or two more” students to a school. Even if it was argued that the admission authority had delegated such decisions to the Committee of Reference, the Committee would need clear, fair and objective published criteria on which to base those decisions and for these to be published in the arrangements.

Summary of Findings

43. I find that the arrangements are not clear in the ways set out above and so do not conform with paragraph 14 of the Code. I have also explained other ways in which they do not conform with the Code.

44. I wish to commend the trust and governing board for recognising that they had not determined the arrangements as required by the Act and the Code and for the constructive way in which they engaged with the adjudication process. The trust has recognised the points set out above and has undertaken to address them. I hope that this determination proves helpful in that process.

45. Paragraph 3.1 of the Code says, “The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Schools 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 Schools Adjudicator.” At the meeting I discussed with the trust an appropriate timescale for these arrangements to be revised. In setting this timescale I have taken into account that the process of administering the arrangements is underway. It also appears to me that the revisions which this determination requires will not change which children are offered places. Therefore, I have decided to set 28 February 2022 as the date by which these arrangements must be revised. This will enable the revisions to be made at the same time as determining the arrangements for 2023 and for the revisions to be in place with a clear explanation of the waiting list by 1 March 2022 when it comes into operation.

Determination

46. I have considered the admission arrangements for September 2022 for Ashlawn School, Warwickshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out above the arrangements do not conform with the requirements.

47. 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 28 February 2022.

Dated: 13 October 2021

Signed: Phil Whiffing

Schools Adjudicator