



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3865

Objector: An individual

Admission authority: Avanti Schools Trust, for Krishna Avanti Primary School

Date of decision: 19 October 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 the multi-academy trust Avanti Schools Trust for Krishna Avanti Primary School in 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 Krishna Avanti Primary School (the school), a co-educational academy school for children aged 3 to 11, for September 2022. The school is designated as having a Hindu religious character. The objection is that a new oversubscription criterion which gives priority based on home to school distance alone (irrespective of religious faith or none) is unreasonable and unfair because it reduces the likelihood of local Hindu children obtaining a place at the school.
2. The local authority for the area in which the school is located is the London Borough of Harrow (the LA). The parties to the case are the objector, the admission authority for the school, namely the Avanti Schools Trust (the Trust), the LA and the relevant representative body for the Hindu religion – the Hindu Education Authority.

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. The objector submitted their objection to these determined arrangements on 14 May 2021. 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.

4. At the time of the determination of the school's admissions arrangements and at the time the objection was made, the School Admissions Code 2014 (the 2014 Code) was in force. A revised School Admissions Code (the Code) came into force on 1 September 2021, which means that the 2014 Code no longer has any effect. I shall therefore use references to the new Code throughout this determination as it is that Code which is now in force. The arrangements for the school as set out in this determination were determined on 25 February 2021. At that date the 2014 Code, which was then in force, provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code which came into force on 1 September 2021 extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the Secretary of State and no reason for the school to send me its varied arrangements. I have made my determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements set out above.

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. a copy of the minutes of the meeting of the Trust at which the arrangements were determined (dated 25 February 2021, signed as accurate on 22 July 2021);
- b. a copy of the determined arrangements;

- c. the objector's form of objection dated 14 May 2021 and further comments in emails dated 8 September 2021, 9 September 2021 and 30 September 2021;
- d. the Trust's response to the objection dated 19 September 2021;
- e. the local authority's response to the objection dated 4 August 2021.

I did not receive any response to the objection, nor to my request for information in relation to the case, from the Hindu Education Authority.

The Objection

7. The objection is to oversubscription criterion 5 "Community places: Ten children per year group based on distance criterion alone, irrespective of their faith or of no faith at all (Applicants under this criterion are not required to complete a SIF)". A SIF is a Supplementary Information Form. The objector considers that the oversubscription criterion, because of its location between the two oversubscription criteria prioritising places for Hindu children with a practising Hindu parent, reduces the likelihood of local Hindu children obtaining a place at the school. The objector did not specify which aspect of the Code they considered had been breached. I have considered whether the arrangements are reasonable and fair in accordance with the requirements of paragraph 1.8 of the Code.

Background

8. The school is a coeducational academy primary school for children aged 3 to 11 situated in the London Borough of Harrow. The Trust is a multi-academy trust comprising 11 schools across England.

9. The school is a popular school and has a published admission number (PAN) of 60 for pupils entering the reception year in September 2022.

10. The school has been designated by the Secretary of State for Education as having a Hindu religious character.

11. Previously, the oversubscription criteria for the school were, in summary:

- 11.1. Looked after children and previously looked after children;
- 11.2. Children with a sibling attending the school;
- 11.3. Children of staff;
- 11.4. Hindu children with a practising Hindu parent who worships at the ISKCON Bhaktivedanta Manor temple (up to 10 places);
- 11.5. Hindu children with a practising Hindu parent (up to 30 places);
- 11.6. All other children.

12. Since the arrangements for entry in September 2021, the oversubscription criteria have been, in summary:

- 12.1. Looked after children and previously looked after children;
- 12.2. Children with a sibling attending the school;
- 12.3. Children of staff;
- 12.4. Hindu children with a practising Hindu parent who worships at the ISKCON Bhaktivedanta Manor Temple (up to 15 places);
- 12.5. Community places - proximity of home address to the school, measured as a straight line (up to 10 places);
- 12.6. Hindu children with a practising Hindu parent (up to 30 places);
- 12.7. All other children.

Consideration of Case

13. The focus of the objection is on the current oversubscription criterion 5, “Community places: Ten children per year group based on distance criterion alone, irrespective of their faith or of no faith at all (Applicants under this criterion are not required to complete a SIF)”. The objector’s complaint is that the insertion of this criterion between the two criteria prioritising Hindu children necessarily means that local Hindu children seeking a place at the school are now less likely to obtain a place.

14. The objector has not specified which part of the Code they consider the arrangements do not comply with. However, on the basis of the objector’s description of his concerns, I have considered whether the arrangements are reasonable and fair as required by paragraph 1.8 of the Code (“Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation”). The Code does not define reasonableness or procedural unfairness and so the terms should be given their plain English meaning. In relation to procedural fairness, it is my view that one must look at whether the arrangements cause any disadvantage to an identifiable group or groups of children. If they do, then it is necessary to examine the nature and magnitude of that disadvantage. A key consideration will almost always be how the arrangements impact on access to a school place within a reasonable travelling distance of a child’s home.

Reasonableness

15. The objector made a number of points potentially relevant to the consideration of reasonableness. They asserted that:

- 15.1. The rationale for the new criterion appears to be a desire to imitate a “reservation quota” introduced into education provision in India in 2019;

15.2. The Hindu character of the school (including, for example, following a vegetarian/vegan diet, housing a small Hindu temple on site, and hosting Hindu worship programmes) is valued by the local Hindu community, supporting local Hindu children to better understand their own faith;

15.3. Local Hindu parents object to the introduction of the new criterion;

15.4. The new 'Community places' are not needed because there is an abundance of non faith-based school places available in the locality; and

15.5. The Trust's approach here is an outlier approach. The vast majority of other faith schools in the locality give higher priority to applicants applying under faith-based criteria as compared with those applying under other criteria. The objector has provided examples of the admission arrangements of a number of local faith schools or a variety of faiths and denominations. They all prioritise faith-based criteria above criteria not based on faith.

16. I asked the Trust what the rationale for its introduction of the new oversubscription criterion was, including its location between the the two other faith-based criteria. The Trust outlined that its rationale for prioritising ten places for members of the local community irrespective of faith was a desire to support local families. The Trust explained that it was heavily oversubscribed indicating significant demand for places at the school.

Acknowledging that the ideal for primary school age children is to have a place at a school within walking distance from home, the Trust wished to support those children living near to the school to obtain a place at the school exclusively on the basis of proximity and without reference to faith-based criteria. Given the historic demand for places at the school under the faith-based criteria, the Trust considered that the only way to provide such an opportunity for local children who could not meet the faith-based criteria, was to insert the new Community places criterion higher than at least one of the faith-based criteria.

17. The LA provided some relevant background. It explained that when the school was originally opened, it was a one form entry school and the level of oversubscription meant that it only offered places to those who could meet faith-based criteria. However, when the school expanded its provision to two form entry, it introduced the 'community places' criterion meaning that local families who wanted a place at the school and were happy with the ethos of the school would have a higher prospect of being offered a place. The LA described the school as "very inclusive".

18. I find that oversubscription criterion 5 complies with the requirement in paragraph 1.8 of the Code that oversubscription criteria must be reaonable. In coming to this conclusion, I have taken into account the following:

18.1. The rationale for the new criterion given by the Trust – wishing to provide that some children living locally who do not meet the requirements of the faith-based criteria, have a better prospect of obtaining a place at the school – is plausible and rational. Furthermore, I have not been provided with any

evidence that causes me to doubt that the stated rationale is the Trust's true and genuine intention;

- 18.2. I have not been provided with any evidence to support the objector's assertion that the rationale for the new criterion related to policy changes in education provision in India or what the relevance of this might be to this case;
- 18.3. The possibility that there might be an abundance of non faith school places in the locality is irrelevant to the reasonableness of the oversubscription criteria for this school. The Trust is not required to take into account provision elsewhere when setting its own admission criteria, provided that it acts within the requirements of the Code;
- 18.4. Likewise, the fact that many faith based schools – including those whose admissions arrangements were highlighted by the objector – choose to prioritise places according to faith based criteria, does not render that approach mandatory nor the only reasonable approach. There may be a whole host of factors that an admission authority considers to be important when prioritising places. The fact that a school is a faith school does not place on it a requirement to consider the faith of its pupils to be the most important or even a relevant factor when making its admission arrangements;
- 18.5. The fact that the school provides a valuable service to Hindu families, offering their children an opportunity to better understand their own faith does not make it unreasonable for the school to also offer a valuable service to families who do not necessarily follow the Hindu faith; and
- 18.6. The Code sets out requirements for consultation before changes to admission arrangements. I note that the objector states that many local Hindu families object to the new criterion but he does not allege that the requirements of the Code in relation to consultation were not followed. The fact that the criterion may be unpopular amongst some local families does not make it necessarily unreasonable. It simply means that there is a disagreement about which approach is to be preferred, when choosing from a number of options.

19. For these reasons, I do not uphold this part of the objection. Oversubscription criterion 5 appears to have been adopted for a rational purpose and is not a criterion that no reasonable admission authority could have included in its determined admission arrangements.

Procedural Fairness

20. In considering whether the insertion of the new criterion into the arrangements has made them procedurally unfair, I looked at whether the arrangements now cause a disadvantage to an identifiable group or groups of children. The objector contended that the arrangements now cause a disadvantage to local Hindu children of practising Hindu parents because they are now less likely to obtain a place at the school.

21. The objector made a number of points potentially relevant to the consideration of procedural fairness. They asserted that:

- 21.1. Although there are theoretically 45 places available under the Hindu faith-based criteria, because of the location of the new criterion - between the two faith-based criteria - in reality far fewer than 45 places are actually allocated to applicants across those two faith-based criteria;
- 21.2. The new 'Community places' are not needed because there is an abundance of non faith-based school places available in the locality;
- 21.3. There is a high demand for school places locally because the school is located in a densely populated area, close to the meeting point of three London Borough boundaries, namely Brent, Harrow and Barnet, and because many other local schools employ 'catchment areas'. As such, some local families who would prefer a non faith school are essentially 'trapped' into accepting a place at the school where it is one of their lower named preferences and they are offered a place under oversubscription criterion 5; and
- 21.4. The new criterion has created an 'overheating' of the local property market as parents move into the area hoping to obtain a place at the school under oversubscription criterion 5. The objector has asserted that this practice is seen, amongst others, in families relocating to England from India, who are able to rent in the area in order to obtain the school place and then move to another area relatively easily once the place has been obtained. The objector provided a quote from a website forum (no address nor date provided) reading "We moved from ub4 to ha8 for Krishna avanti worth it". For those families who can afford and have the flexibility to do this, the objector considers that it may be a preferred method of obtaining a place at the school because it is less effort than attending worship at a Hindu temple for the requisite number of times.

22. I asked the Trust and the LA how the new criterion had impacted on the allocation of places at the school. I was provided with admissions data broken down by oversubscription criteria for entry in September 2019 and September 2021. I was not provided with the equivalent data for entry in September 2020 but considered that the data I had gave me a helpful enough impression of the impact of the new criterion.

23. The allocations were as follows:

	September 2019	September 2021
Looked after children and previously looked after children	0	0

	September 2019	September 2021
Children with a sibling at the school	14	24
Children of staff	0	0
Hindu children with a practising Hindu parent who worships at the ISKCON Bhaktivedanta Manor temple	10	11
Community places (distance)	Not applicable	10
Hindu children with a practising Hindu parent	30	15
All other children (distance)	0	0

24. I note that there was a large increase in the number of children obtaining places under the sibling criteria (14 in 2019 and 24 in 2021) but have not been provided with any evidence or comment from the parties on why this might have been. It may well be within the normal range of fluctuation one would expect for places allocated on the basis of a child having a sibling in the school. However, given that siblings are afforded a high priority in the oversubscription criteria for the school, that large increase in 2021 will inevitably have had an impact on the number of places available under the subsequent categories of oversubscription criteria. I have borne that in mind.

25. I note that the number of places allocated to Hindu children of a practising Hindu parent who worships at the ISKCON Bhaktivedanta Manor temple has remained relatively stable (10 in 2019 and 11 in 2021) despite more places becoming available under that criteria (10 in 2019 and 15 in 2021). From that evidence I conclude that there appears to be a relatively limited number of children that fall within that criterion in any given year.

26. I note that all 10 of the available 'Community places' under oversubscription criterion 5 in 2021 were taken up, indicating a strong demand for those places from the local community.

27. I note that the number of children obtaining a place as the Hindu child of a practising Hindu parent has halved from 30 in 2019 to only 15 in 2021. From the information available, it would appear that the reduction in places available under this criterion is the result of a combination in 2021 of a significant increase in the number of children offered a place under the siblings criterion and the introduction of the 10 'Community' places.

28. The LA provided some contextual information about the allocation data. The LA explained that in 2021, all of the 10 children offered a 'Community' place under oversubscription criterion 5 lived within 0.24 miles of the school – indicating that the demand for these places was from children living very close to the school. From this information, I conclude that the school appears to be achieving its target of using the 10 new 'Community' places for those children living within walking distance of the school. The LA further explained that 7 out of the 10 children who obtained a place under the new criterion also met the requirements to be considered for a place under the next category of oversubscription criteria (Hindu child with a practising Hindu parent). From this I conclude that the majority of children obtaining a place at the school are Hindu children with a practising Hindu parent – because this includes all those obtaining a place under oversubscription criteria 4 and 6 (11 and 15) plus 7 of those who obtained a place under the new oversubscription criterion 5 – a total of 33 out of an intake of 60. I have not been provided with data on how many of the 24 children who obtained a place under the sibling criterion were also eligible to be considered under other criteria but, given the history of the admission arrangements for the school, I consider it to be more likely than not that many of these children will also be Hindu children with a practising Hindu parent.

29. I asked the LA about the availability of school places locally and whether there were any important obstacles to accessing school places (for example, admissions criteria or difficult travel routes to school) that I should be aware of. The LA reported that although there were 43 primary schools serving the area within a 2 mile radius of the school, demand for places was high and there were some barriers to access because many of the schools employed faith based admissions criteria and/or employed 'catchment area' criteria. The LA reported that there were no significant barriers in terms of public transport access to local primary schools.

30. I find that the new criterion has caused a notional disadvantage to local Hindu children of practising Hindu parents, in that they now have a lower likelihood of obtaining a place at the school than those children living closer than them to the school (irrespective of the religious practice of those families). Indeed, that was the stated intention of the Trust in introducing the criterion. I find, however, that the impact of this disadvantage has thus far been minimal. In 2021, only three of the children admitted to the school under the new oversubscription criterion 5 would not have been otherwise considered for admission under oversubscription criterion 6. Furthermore, I note that there is good provision of primary school places in the area (albeit that some schools employ faith based and catchment area criteria) and no notable transport obstacles to travel to those schools. I have not been provided with any evidence to indicate that if a local Hindu child with a practising Hindu parent were to be unsuccessful in obtaining a place at the school, they would be unable to or have difficulty in finding an alternative school place within reasonable travelling distance.

31. On that basis I find that the school's admission arrangements are not procedurally unfair and I do not uphold this aspect of the objection.

Summary of Findings

32. I find that oversubscription criterion 5, which allocates 10 'Community' places based on the distance from the child's home to the school, is not unreasonable nor procedurally unfair contrary to paragraph 1.8 of the Code. This is because there is a clear and plausible rationale for the insertion of the criterion and because any local Hindu children with a practising Hindu parent that are disadvantaged by the criterion, of which there appear be few, have access to good availability of alternative school places within a reasonable travel distance.

Determination

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

Dated: 19 October 2021

Signed:

Schools Adjudicator: Jane Kilgannon