



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** REF3892

**Referrer:** A parent

**Admission authority:** Oak Multi Academy Trust for Manor High School,  
Leicestershire

**Date of decision:** 29 April 2022

## Determination

We have considered the admission arrangements for September 2022 for Manor High School, Leicestershire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the selection of feeder schools the arrangements do not conform with the requirements. We have also found that 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 adjudicators' decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise the selection of feeder schools by 28 February 2023 and the other aspects of its admission arrangements within two months of the date of this determination.

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (SSFA), an objection has been referred to the adjudicator by a parent (the referrer) about the admission arrangements (the arrangements) for Manor High School (Manor) for September 2022. The date of the objection was 1 November 2021.

2. The referral relates to the selection of feeder schools named as such in the arrangements. It raises a concern that the omission of St Thomas More Catholic Primary School (St Thomas More) from the list of feeder schools is unreasonable, was made in breach of the admission authority's responsibilities under the Public Sector Equality Duty (PSED) and results in unlawful discrimination on the grounds of religion or belief against

children attending that primary school. The referrer made similar referrals to the 2022 admission arrangements for two other schools in the area, Beauchamp College (Beauchamp) and Gartree High School (Gartree). These are considered in determinations REF3891 and REF3893 respectively.

3. When we read the arrangements, we considered that there were additional matters that did not, or might not, conform with the requirements for admission arrangements. These are set out later in this determination.

4. The parties to the case are the Oak Multi Academy Trust (the trust) which is the academy trust for and admission authority for Manor, the school's governing board, Leicestershire County Council (Leicestershire), Leicester City Council (Leicester) and the referrer.

## Jurisdiction

5. 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 under section 88C of the SSFA by the school's governing board on behalf of the trust, which is the admission authority for the school, on 4 February 2021 on that basis.

6. The referrer submitted an objection to these determined arrangements on 1 November 2021. The School Admissions Code (the Code) requires objections to admission arrangements for 2022 to be made to the Office of the Schools Adjudicator (OSA) by 15 May 2021. As this deadline was missed, the case cannot be treated as an objection. However, section 88I of the SSFA gives the adjudicator the power to consider whether arrangements brought to their attention conform with the requirements relating to admission arrangements. As permitted by the SSFA, two adjudicators, Phil Whiffing and Jane Kilgannon, were appointed to consider this case and those concerning Beauchamp and Gartree, with Phil Whiffing as lead adjudicator.

## Procedure

7. In considering this matter we have had regard to all relevant legislation and the Code.

8. The documents we have considered in reaching our decision include:

- a) the referrer's form of objection dated 1 November 2022, accompanying documents and subsequent correspondence;
- b) confirmation that the arrangements had been determined by the governing board on behalf of the trust;

- c) a copy of the determined arrangements;
- d) comments from the trust and the school's governing board on the matters raised and subsequent correspondence;
- e) comments from Leicestershire and Leicester;
- f) maps of the area identifying relevant schools;
- g) the Manor website;
- h) the latest Ofsted report on Manor;
- i) data published online by the Department for Education (DfE); and
- j) 'The Equality Act 2010 and schools' (DfE publication, May 2014) and 'Technical Guidance for Schools in England' (Equality and Human Rights Commission publication, July 2014).

## The Referral

9. The referral began by quoting Appendix 1 of the Code in which relevant legislation is set out, beginning with the Equality Act 2010 (EA). This includes provisions on indirect discrimination and the PSED. The referral argued that because St Thomas More, a school with a Roman Catholic religious designation, was not included as a feeder school for Manor, children attending St Thomas More were indirectly discriminated against on the basis of religion or belief and that the admission authority had not complied with its responsibilities under the PSED to consider whether its admission arrangements advance equality of opportunity between people who share a protected characteristic and those who do not share it.

10. The referral quoted paragraph 1.8 of the Code which states: "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated". It also referred to paragraph 1.15 of the Code: "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."

11. The referral also alleged that the consultation undertaken by the admission authority before determining the arrangements was ineffective and did not conform with the requirements for consultation set out in the Code. Under section 88I of the SSFA

adjudicators have jurisdiction solely for the arrangements, therefore, it is not within their jurisdiction to consider prior consultation on the arrangements.

## Other Matters

12. 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.” It appeared to us that some aspects of the arrangements may not be clear and at one point may be unfair.

13. In addition to this general requirement for arrangements to be clear, paragraph 1.8 of the Code specifically requires that oversubscription criteria are clear and include a tie-breaker; paragraph 1.9b requires that all feeder schools are named; and paragraph 2.18 requires that the process of requesting admission outside of the normal age range is made clear. It appeared to us that that these requirements may not be met.

## Background

14. Manor is a secondary school for children aged 11 to 16 situated in Oadby on the south-eastern edge of the conurbation of Leicester. It is, however, in the administrative area of Leicestershire about a mile from the boundary between the two authorities and less than a mile and a half from Beauchamp and Gartree.

15. The published admission number (PAN) is 180 and the oversubscription criteria can be summarised as:

1. Looked after and previously looked after children
2. Children with siblings at the school
3. Children who attend one of the three primary schools in the trust
4. Children who attend one of the nine “traditional” feeder schools
5. Children of members of staff
6. Distance

The names of the three primary schools in the trust are published as are the names of nine “traditional” feeder schools. We will use the term “feeder school” to include either of the two groups of feeder schools in the arrangements and where necessary to differentiate between the two, the terms “Oak MAT feeder” and “traditional feeder” will be used.

16. Prior to a reorganisation of education in the area in 2017, the school was part of a three-tier system of schools. This can be visualised as a pyramid with several schools for

children in Reception to Year 5 at the bottom feeding into two schools for Year 6 to Year 9 and then into a single school for Year 10 to Year 13. Until that date Gartree and Manor were for Years 6 to 9 with transfer to Beauchamp in Year 10. Since 2017, all three secondary schools have admitted children into Year 7. Beauchamp is the only school of the three with a sixth form.

17. The arrangements for 2022 differ from those for 2021. The earlier arrangements gave second priority to siblings of children already attending Manor, third priority to children attending one of the 12 “traditional” feeder schools (the same 12 schools named as either trust schools or traditional feeder schools in the 2022 arrangements), followed by fourth priority to children attending one of 16 “emerging” feeder schools ahead of priority based on distance.

## Consideration of Case

### Feeder schools

18. By definition, oversubscription criteria in admission arrangements must give some children an advantage when applying for a school and disadvantage others. The Code requires that admission arrangements are reasonable, objective and fair. If arrangements give one group of children higher priority for a place at the school, then another group will be given lower priority.

19. Before considering the detail of this case, we have reflected on some of the issues which can arise for families who wish to apply to schools where priority is given on the basis of where the child goes to school rather than where they live. It seems to us that there can be reasonable grounds for an admission authority to decide that priority based on feeder schools was the appropriate way to allocate places at the school. For example, in situations such as existed in this area before 2017, where the age at which children transferred between schools was different to that in neighbouring areas. In that situation, giving priority to children who attend schools where they cannot continue their education into the next year, say Year 6, over children who attend schools where they could continue into Year 6 would appear to be a reasonable approach. Another consideration would be whether the number of places available in each tier of education lines up and is sufficient for the area served otherwise a feeder school system may be considered unreasonable and so not conform with the Code.

20. There can, however, be negative consequences of a feeder school system for some families who would like a place at a school which uses feeder schools to prioritise admissions. Seven years before applying for a secondary school, parents may have placed their child at a primary school which is not a feeder school for their preferred secondary school. This may have been for valid reasons, for example, proximity to home or the availability of after-school care provision, the quality of academic or pastoral support or the wish to attend a school with a religious character. Some of these reasons are understandably more relevant when choosing a primary school as compared to choosing a secondary school. That decision may place such families at a disadvantage when it comes

to the secondary school admission process where a feeder school system operates. There can also be issues for families moving into the area if, when they arrive, the feeder schools are all full. This would lead to those families having low priority for what may be the only secondary school which is easily accessible to them.

### Fairness

21. From Table 2 below, it would appear to us that a family moving into the area served by Manor would be able to find a place for their child at one or more of the feeder schools because some of the feeder schools appear to have vacant places. Therefore, in practice, a family moving into the area would not be unfairly disadvantaged when applying for the school. We have also considered what disadvantage would accrue to a child who had been placed in a school which was not a feeder, such as St Thomas More, from the start of their primary school education. It is already the case that Manor cannot admit all the children attending its feeder schools who would like to go there. We address this specific matter in detail later in this determination but note now that it is inescapable that if children attending schools like St Thomas More (that is, schools that are not listed as feeder schools) had a higher priority for places, then children attending some of the other feeder schools would necessarily have lower priority and may be disadvantaged by it. It is the balance between the interests of these two groups of children that determines the fairness of this aspect of the arrangements.

22. While the referrer has undertaken some analysis based on her own postcode, it is not our role to consider one particular case, but the arrangements as a whole. We have used the postcode of St Thomas More as indicative of where its pupils live and have used the same approach for other primary schools. We acknowledge that as priority for admission to St Thomas More is mainly based on faith rather than residence, its pupils are likely to come from a wider radius than would be the case for a school serving a geographic community, but it seems to us that if parents consider the journey from their home to St Thomas More as acceptable for a child aged four or five, then that provides a reasonable starting point to consider journeys to secondary schools for a child aged 11 or more. We therefore consider that using the postcode of the school is a reasonable proxy for where its pupils live.

23. The DfE publishes online many details about schools on a public website called "Get Information About Schools" (GIAS). This lists 20 secondary schools within three miles of the post code for St Thomas More. Of these, some are single sex, some have a religious character, and one is a studio school admitting pupils at the age of 14 not 11. There remain 13 non-faith co-educational comprehensive schools within this radius. If the radius is reduced to two miles there are five non-faith co-educational comprehensive schools. All of these five give priority to children on the basis of where children live, not on the basis of which primary school they have attended.

24. We note the referrer's concern about the Ofsted judgements on secondary schools in the area. Parents do not have an entitlement to choose a place at a school in any particular Ofsted category, or for that matter, the school closest to their home, of a particular religious

character or other specific characteristic. Parents express a preference for a school and if that school is oversubscribed, criteria are used to determine which children are offered places and which are not. Ofsted judgements on schools are not a matter which we have taken into consideration. They reflect the school at the time of inspection and change over time. However, in passing, we have noted that three of the five secondary schools within two miles of the postcode for St Thomas More are judged as “good”.

25. The referrer also appears to consider it unfair for some children to have high priority for several schools when others may only have high priority for one. This is not unusual. Some children in urban areas live close to several schools, perhaps in the catchment area for one, possibly more and they may also meet the tests of membership and practice of a religion to have high priority for a faith school, or the necessary aptitude or ability to have high priority for a selective school. Other children may find that there is only one school within a manageable journey from their homes. In our view, it would be unfair if priority for those children with alternative schools near their homes led to those living in more remote areas not being able to be offered a place at the only school within a reasonable travelling distance of their home.

26. We have compared the number of secondary schools close to St Thomas More with those close to the postcode for feeder schools to Manor and located in the rural area to the east of Leicester. If St Cuthbert’s in Great Glen is used as a proxy for its pupils’ addresses, there are only three secondary schools within a three miles radius, Beauchamp, Gartree and Manor, and no secondary schools within a two-mile radius. The other rural area can be represented by the postcode of Houghton on the Hill CE School which also has no secondary schools within two miles although there are four within three miles, including Manor, but not Beauchamp or Gartree. Of the three other schools, all of which are in Leicester, not Leicestershire, two base their priority for admission on where children live, and one is a faith school. Therefore, children attending Houghton on the Hill would have relatively low priority for them as there will be many children living in the urban areas nearer to those schools than the children in this rural area do.

27. We are of the view that a child living in an area from where they can attend St Thomas More can more easily access other secondary schools than can children living in the rural areas.

28. The referrer argued that the location of some of the 13 schools made the journeys to them during rush hour excessive and the oversubscription criteria of others reduced the number of (in her words) “realistic” options to two. Our internet searches show that to get from St Thomas More to Manor at eight o’clock on a weekday morning takes between 8 and 12 minutes by car or 42 minutes by public transport. From St Thomas More to the farthest of the schools within two miles it takes 8 to 16 minutes by car and 45 minutes by public transport. The two schools seen by the referrer as “realistic” are both within walking distance for a child of secondary school age. We note that local authorities are not required to provide home to school transport for children over the age of eight until the distance

exceeds three miles to the nearest available school by the shortest safe walking route. Hence our identification of schools within a three-mile radius and focus on those within two.

29. The referrer questioned whether the journey times we had identified were realistic allowing for queuing and other factors. These times were not questioned by the other parties. They are not intended to be the actual time a child from any particular address would take for the journey, some would be shorter and others longer; however, these times give an indication of the journey times from the area to secondary schools which are not necessarily the closest to their home. All children living in this part of Leicester would have a secondary school closer to their home than either of the two secondary schools for which we have looked at the journey times and would have high priority for admission to them based on where they lived, not the primary school attended.

30. We sought comments from Leicester on the availability of secondary school places at the secondary schools for children living in the area around St Thomas More. In response, Leicester provided data on the admission of children to schools in its administrative area. This showed that of the five schools within two miles of the postcode for St Thomas More, two were undersubscribed and all admitted children from outside of their catchment area on the grounds of distance from the child's home to the school. Leicester expected that the pattern of admission to be similar in 2022 to that in 2021.

31. From the data provided by Leicester, we have concluded that a child living in the area around St Thomas More will live in the catchment area for one of the five secondary schools less than two miles away and it would be likely that they would be offered a place at their catchment area school if they applied. It also appears to us that, because 279 children were admitted to those schools from outside their catchment areas in 2021, they may also be able to secure a place at a school which is not their catchment area school. These admissions are based on where the children live, not on any primary school attended.

32. We have found that a child attending St Thomas More would not face an unreasonable journey to another school if he or she was not able to attend Manor by reason of St Thomas More's not being a feeder school. We do not find that that the omission of St Thomas More from the list of feeder schools for Manor causes the arrangements for Manor to be in breach of the paragraph 14 requirement that arrangements be fair. Moreover, it appears to us that if St Thomas More was included in the current arrangements as a feeder school, the relative priority for places for children living in the rural area to the east of Leicester would be reduced and they would be less likely to be offered places.

33. This is because the school is usually oversubscribed with children who attend the feeder schools. Adding more children into this group will reduce every child's priority for a place and as noted below, the number of children attending the feeder schools already exceeds the PAN for Manor and the combined PAN for Manor, Beauchamp and Gartree. As we find later in this determination, the tie-breaker in the arrangements is not clear. One interpretation is that random allocation is used to decide at which feeder school children are



offered places, the other is that those living closest to the school are offered places. In either case, and more so in the second, children attending St Thomas More could be offered places ahead of children living in more rural areas. A child living in, say, Great Glen attending St Cuthbert's has no alternative schools within three miles, yet the child at St Thomas More has five within two miles.

### The feeder schools

34. There are two sets of feeder schools named in the arrangements. The first set of three are described in the second oversubscription criterion as "Oak MAT" schools and the other as "traditional feeder" primary schools". Details of these schools are tabulated below in alphabetical order. All information is taken from GIAS.

Table 1

School	Oak MAT Feeder	Traditional Feeder	Local Authority	Distance from Manor (miles)
Avenue Primary School	N	Y	Leicester	2.64
Brocks Hill Primary School	N	Y	Leicestershire	1.26
Brookside Primary School	Y	N	Leicestershire	0.09
Fernvale Primary School	N	Y	Leicestershire	2.4
Houghton on the Hill CE Primary School	N	Y	Leicestershire	2.73
Langmoor Primary School	N	Y	Leicestershire	1.28
Launde Primary School	N	Y	Leicestershire	0.78
Overdale Junior School	Y	N	Leicester	2.29
St Cuthbert's CE Primary School	N	Y	Leicestershire	2.24

St John The Baptist CE Primary School	N	Y	Leicester	2.52
St Luke's CE Primary School	N	Y	Leicestershire	1.92
Woodland Grange Primary School	Y	N	Leicestershire	0.83

35. The DfE publishes online the results of the annual school census taken in January each year. The most recent data is from January 2021 when the year group due to transfer to secondary school in 2022 was in Year 5. The total number of Year 5 children attending these 12 schools was recorded as 718 of which 252 were in the Oak MAT feeder schools. The school has a PAN of 180 and so could more than fill from the Oak MAT feeder schools and only about one in four children from all the feeder schools could ever hope to be offered a place.

36. Clearly, it is not possible for all children attending feeder schools to be offered a place at Manor. All of these feeder schools are also named as feeder schools for Beauchamp and all but Avenue are named as feeder schools for Gartree. The combined PAN of the three secondary schools is 665, again less than the number of children attending the feeder schools in the year group which will transfer in 2022.

37. We asked the admission authority for details of the places allocated at the school against the oversubscription criteria in previous years. Comparison is not straight forward because prior to 2021, all feeder school applicants had higher priority than siblings who did not attend a feeder school. In 2019, 91 children from the first group of feeder schools were offered places and in 2020, this number was 105. In 2021, 90 children were offered places on the basis of attending one of the 12 traditional feeder schools, however, ahead of these were 64 children offered places as siblings and some of these could have also attended the feeder schools. In none of the three previous years has a place been offered (other than to children with an EHCP naming the school and looked after or previously looked after children) unless they attended a feeder school or already had a sibling at the school.

38. We also asked the admission authority to provide details of the number of children who transferred to the school from each of the 12 feeder schools in the last three years and compared this with the number on roll in the transferring year group at each feeder school taken from the relevant school census. "Oak MAT" feeder schools are marked with \*. As these 12 schools are also feeder schools for Beauchamp and Gartree we asked for the same data in our consideration of REF3891 and REF3893. This is tabulated below with "-" showing where the school is not a named feeder. The three secondary schools are identified by their initials.

Table 2

	2019				2020				2021			
	Roll	B	M	G	Roll	B	M	G	Roll	B	M	G
Avenue	71	0	15	-	71	10	14	-	78	5	26	-
Brocks Hill	61	45	1	14	60	36	2	22	62	32	1	25
Brookside*	62	26	26	3	66	13	31	4	65	21	28	2
Fernvale	30	26	1	3	26	13	0	4	33	23	2	3
Houghton on the Hill	29	18	1	6	33	24	0	5	30	25	1	2
Langmoor	33	14	0	15	30	17	0	11	30	12	0	16
Launde	90	63	11	12	90	48	6	21	90	51	8	24
Overdale*	118	7	26	48	114	11	31	30	89	11	28	27
St Cuthbert's	39	3	1	15	35	5	1	11	40	6	8	10
St John the Baptist	66	7	10	18	64	9	4	23	66	7	7	39
St Luke's	35	29	2	3	36	25	1	7	35	22	3	5
Woodland Grange*	62	42	2	11	60	43	3	6	75	55	0	7
Total	696	280	96	148	685	254	93	153	693	270	112	160

39. It is noticeable that very few children transfer from some of these feeder schools to Manor including from one of the "Oak MAT" feeder schools which have highest priority. No child has been admitted to Manor from one of the feeder schools, Langmoor, in the last three years.

#### Ground for the selection of feeder schools

40. 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". This means that the admission authority must specifically name the feeder schools and its rationale for selecting those feeder schools must be within the range of options open to a reasonable admission authority. That is, the admission authority cannot select on an irrational basis, nor can it take into account irrelevant considerations. Therefore, we have

tried to understand the rationale behind the selection of the 12 feeder schools named in the arrangements.

41. We asked the admission authority why each of the 12 feeder schools was named as a feeder school and why other nearby schools were not. The response was in general terms, not specific to each school, citing the legacy from the three-tier system of schooling, providing places for children in their own locality (in particular, for children living in the rural areas) and parental expectations.

42. The admission authority did not explain why children attending schools in the same multi-academy trust were given higher priority than children attending other feeder schools.

### Three-tier legacy

43. The first reason given by the admission authority for the selection of feeder schools related to the former three-tier system in place before 2017. It said: "The majority 'traditional feeder' schools are those schools who prior to age range change were within the catchment area of the three Oadby secondary schools; Manor High and Gartree (years 6-9) and Beauchamp College (Years 10-13). Only Avenue and St John the Baptist are within the City boundary." We pause here just to note that of the three schools, only Beauchamp retains a catchment area; Manor (and Gartree too) no longer has a catchment area.

44. In response to our enquiries, Leicestershire told us that prior to reorganisation in 2017, the feeder schools for Manor were: Brookside, Fernvale, Launde and Woodland Grange. While Brocks Hill, Houghton, Langmoor and St Luke's were feeders for Gartree. The four remaining schools, Avenue, Overdale, St Cuthbert's and St John's were not listed by Leicestershire as feeder schools for either Manor or Gartree and as the admission authority did not comment on Leicestershire's list when it was circulated to the parties, we have taken it to be accurate.

45. We consider that the selection of feeder schools on the grounds of continuity from the previous three-tier pyramid of schools could be a reasonable ground. However, only four of the 12 feeder schools were feeder schools for Manor and only eight of them were part of the former pyramid. It is now over five years since any child was admitted under the former system and so they would now have left the school making the connection with the former system tenuous.

### Local places for children

46. The admission authority said that its selection of feeder schools supported the local authority's "obligation ... to secure places for all pupils in their own locality." It drew attention to "schools in very rural areas and the pupils would otherwise face the prospect of not being allocated places at schools where [sic] they could access with free school transport." In our view, this could be a reasonable ground for the selection of feeder schools.

47. Using GIAS, we have looked at the proximity of the feeder schools to Manor and to other secondary schools, with Oak MAT feeder primary schools marked \*.

Table 3

Feeder	Number of secondary schools closer than Manor	Feeder	Number of secondary schools closer than Manor
Avenue	17	Launde	1
Brocks Hill	2	Overdale*	13
Brookside*	0	St Cuthbert's	2
Fernvale	7	St John the Baptist	14
Houghton	2	St Luke's	4
Langmoor	2	Woodland Grange*	2

48. Three of these schools have many other secondary schools closer to them than Manor. Children attending one of these, Overdale, have greater priority because Overdale is in the same multi-academy trust. Naming primary schools with many nearby secondary schools is in our view contrary to the stated intention to support pupils in rural areas. Justification for giving greater priority to children attending one of these on the basis of it being in the same multi-academy trust was not provided by the admission authority.

49. The admission authority also states that children living in the rural areas could not access any of the Leicester schools with the free transport scheme. The law requires that for children of secondary school age the local authority must provide free home to school transport if the journey to the nearest available school place by a safe walking route is more than three miles from their home. This is why we have looked at schools within a three-mile radius and focused on those within a two-mile radius. We question the logic of justifying an admissions policy based on where children go to school by reference to a transport policy based on where children live. If a child living in the rural area and not attending a feeder school could not be offered a place at Manor because it is (as are Beauchamp and Gartree) fully subscribed or oversubscribed with siblings and feeder school children, then the local authority would be required to provide transport in accordance with the statutory requirement set out above.

50. We consider that helping children find school places in their locality could be a reasonable ground for the selection of feeder schools. However, as illustrated in Table 3, some of the feeder schools have many secondary schools closer to them than Manor at which children could secure places.

### Parental expectations

51. The admission authority also said that two Leicester schools were included because this respected “the relationship between schools and expectations/parental choice.” The admission authority said that historically, children had been allocated places at Manor from these schools. We think that historical links and parental expectations could be reasonable grounds for the selection of feeder schools.

52. There are in fact three feeder schools (Avenue, Overdale and St John the Baptist) which are in Leicester as opposed to Leicestershire. Using information from GIAS we considered how many primary schools in both local authority areas were closer to Manor than the three Leicester schools named as feeder schools.

Table 4

	Number of Leicester primary schools closer to Manor than named feeder which are not feeders	Number of Leicestershire primary schools closer to Manor than named feeder which are not feeders
Avenue	10	5
Overdale*	4	3
St John the Baptist	10	4

Each of these three schools has more than 13 other secondary schools closer than Manor and are farther away from Manor than other primary schools in both local authority areas. We do not think that parents of children in these schools would have more of an expectation of a place at Manor than parents of children attending other primary schools in the area. It is also the case that giving priority to children attending schools where there are many alternative secondary schools nearby works against the earlier aim stated by the admission authority of supporting children in rural areas.

Consistency in the selection of feeder schools

53. Naming the schools which were part of the former three-tier system as feeder schools five years ago when the system was changed appears to be within the range of reasonable grounds available to the admission authority for its selection of feeder schools. However, we query whether the merits of this reasoning are weakening over time particularly when four of the 12 feeder schools named for 2022 were not part of the three-tier pyramid.

54. We consider that selecting feeder schools to enable children living in areas where alternative secondary schools are less easy to access is also a potentially reasonable ground. However, as illustrated above, it is possible to identify feeder schools which have

many alternative secondary schools nearer to them than Manor while there are primary schools in the area which are closer to Manor which are not feeder schools. While we have made clear that it can be reasonable to give priority to some more distant feeders in order to ensure that all children can access a school within an acceptable distance, this does not appear to be what is happening here in all cases given that many of the schools that are feeders have so many secondary schools which are nearer than is Manor.

55. We also consider that naming feeder schools because of other historical links and parental expectations may also be a reasonable ground. However, we are of the view that selecting feeder schools on this ground frustrates the previous aim.

56. The admission authority did not provide any reasons for giving children attending primary schools in the same multi-academy trust higher priority than children at other feeder schools.

57. It has not been explained to us, although we did ask the question, why other primary schools which appear to have the same characteristics as some of the feeder schools have not been included as feeders. St Thomas More is in the same part of Leicester as Avenue, Overdale and St John's but is not a feeder school. There are also two schools in Leicestershire, Meadow and St John Fisher, which are closer to Manor than any of the schools in Leicester but are not feeder schools. We are of the view that the admission authority has provided potentially reasonable grounds for the inclusion of the 12 feeder schools, but we find that these grounds have not been applied fully and consistently when making the selection of feeder schools.

58. We are not necessarily advocating that any schools should be added to the list of feeder schools, indeed we acknowledge that doing so would exacerbate the imbalance between the number of pupils attending feeder schools and the number of places. However, we have not been given a satisfactory explanation of why one school with particular characteristics is named as a feeder school and another with the same characteristics is not. We find that the grounds provided for naming the schools as feeder schools are potentially reasonable grounds for selection of feeder schools, however the application of that reasoning is inconsistent and so leads to anomalies. Consequently, we find that the selection of feeder schools has not been made on reasonable grounds and so does not conform with paragraph 1.15 of the Code.

59. In light of that finding, it will be necessary for the admission authority to revise its admission arrangements. It is not therefore strictly necessary for us to consider the other matters raised in the referral (indirect discrimination, PSED). However, as those matters have been expressly raised, and because it may assist the admission authority when considering the new arrangements, we have considered them as set out below.

#### Public Sector Equality Duty (PSED)

60. Paragraph 1.8 of the Code requires that oversubscription criteria must be, amongst other things, compliant with equalities legislation. Section 149 of the EA sets out what is

often referred to as the PSED. That section of the legislation requires public authorities, including admission authorities, to have regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

61. The referrer asserted that, in omitting St Thomas More from its list of feeder schools, Manor had “not properly considered its [PSED] duty”. However, we have also seen correspondence between the referrer and Manor that casts some doubt on the referrer’s strength of feeling on this matter because the referrer stated in an email to Manor dated 14 December 2021 that “although the “legal jargon” is sometimes “accusatory” in the sense of stating that the school didn’t observe its PSED duty, etc., this is really more to do with the necessary language to put it through to the OSA. In no instance did I personally think that the school did not observe its duty”.

62. The admission authority refuted the assertion that it failed to have regard to the relevant matters to meet its duties under the PSED, explaining that whilst it did not undertake a specific equality impact assessment in relation to its admission arrangements for 2022, the PSED duties would have been considered when the arrangements were drafted and consulted upon. The admission authority added that: the consultation it conducted in relation to the arrangements was open, transparent and non-discriminatory; the arrangements have equality of opportunity embedded within them because there is no restriction on who can apply for a place at Manor, except by reference to the age of the child; and equality is at the heart of what Manor provides to all students.

63. We noted that Manor’s website refers to the school’s ‘Core Values’ of excellence, inspiration, resilience and respect, explaining that “Respect is based around recognition and celebration of the many cultures which make up Manor High School. The majority of our students have families from all around the world and this brings with it a cultural richness which benefits us all. The common link is a respect for learning and for education. Much of respect is based around tolerance and understanding which provides strong links with traditional British values. We are proud of the cultures and values which combine to create the Manor High culture of learning and excellence.”

64. We also noted that the most recent Ofsted inspection of Manor, in 2019, reported that “The school is highly inclusive. Pupils from a wide range of backgrounds come together as a single community” and that “Staff make sure that pupils learn about the wide range of cultures and traditions which contribute to the school population and to British society. Pupils are respectful of each other’s backgrounds and mix well socially. Leaders ensure that opportunities for pupils’ spiritual, moral, social and cultural (SMSC) development are



deeply embedded in the school curriculum.” Taken together, we considered that these statements provided evidence of a school that has an inclusive culture that promotes equality of opportunity and fosters good relations across cultural and religious divides.

65. We have not been provided with any written record that the admission authority explicitly considered the PSED when it determined the arrangements. However, we note that the relevant legislation only requires that the admission authority have regard to the relevant matters, it is not prescriptive in requiring a record to be kept of that action nor for any record to be kept in a particular format. It is, however, good practice for some record to be kept of how the PSED has been considered, as this can provide a sound evidential basis for showing compliance.

66. We note that the PSED does not amount to a duty to achieve a specific end, but rather a duty to have due regard to the matters specified, and that when considering compliance with the PSED the courts have held that this is a matter of substance rather than form. Notwithstanding the absence of any written record, we therefore take into account the admission authority’s explanation that its PSED duties would have been considered when the arrangements were drafted and consulted upon, the referrer’s apparent concession that she does not personally believe that the school failed to observe its PSED duties in this respect, and the Ofsted comments and the school’s statements on its website in terms of its intent on ensuring equality of opportunity and community cohesion. On that basis, we would not have found that the admission authority had failed to comply with the PSED. In any event, we observe that the admission authority will have to redetermine its admission arrangements, and when doing so will have to comply with the PSED to ensure that the arrangements comply with the mandatory requirements.

### Indirect discrimination

67. The referrer raised a concern that the omission of St Thomas More from the feeder school list for Manor resulted in indirect discrimination on the grounds of religion or belief, contrary to both the EA and paragraph 1.8 of the Code.

68. Section 85 (1)(a) of the EA makes clear that admission authorities must not discriminate in the arrangements that they make for deciding who is offered admission as a pupil, including in their admission arrangements. Paragraph 5 of Schedule 11 to the EA provides an exemption from this requirement in relation to the protected characteristic of religion or belief for those schools that are designated as having a particular religious character. As Manor is not so designated, it does not have recourse to that exemption.

69. Section 19 of the EA provides the following in relation to indirect discrimination:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
  - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
  - (c) it puts, or would put, B at that disadvantage, and
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
- (3) The relevant protected characteristics are— age; disability; gender reassignment; marriage and civil partnership; race; religion or belief; sex; sexual orientation.”

70. The referrer’s arguments in this regard were equivalent for all three schools – Beauchamp, Manor and Gartree. The referrer explained that the omission of St Thomas More from the list of feeder schools for Beauchamp, Manor and Gartree, meant that local children attending St Thomas More had a lower chance of obtaining a place at a local secondary school with an Ofsted rating of Good or Outstanding as compared with those children attending a feeder school. The referrer considered this disadvantage to be unlawful discrimination because those whom it impacted shared a protected characteristic under the EA. It was not clear to us which protected characteristic the referrer sought to rely upon. In some correspondence the referrer referred to the shared characteristic as attendance at a Catholic primary school. In other correspondence, the referrer referred to children attending St Thomas More and holding a Church of England religious belief, a Roman Catholic religious belief or no religious belief.

71. The admission authority refuted any assertion that its selection of feeder schools, including the omission of St Thomas More, was unlawfully discriminatory. It stressed that it does not have a designated religious character and its arrangements do not prioritise children on the basis of membership or practice of a particular religion. It explained that it does not employ any faith-based criteria in its admission arrangements and that the opportunity to apply for a place at Manor is open to all children, irrespective of the primary school that they attend and irrespective of the religious designation or otherwise of that primary school. In addition, Manor explained that "the Ofsted category of a school is not a formal part of the admission policy or process", indicating that it considers that it would be improper for an admission authority to consider the Ofsted judgments of relevant schools when determining its admission arrangements.

72. Attendance at a primary school with a designated religious character is not a protected characteristic in and of itself. It is likely that a relatively high proportion of children attending St Thomas More would hold a Catholic religious belief compared to the proportion of Catholic children living in the area. The oversubscription criteria for that school prioritise Catholic children and it is more likely that Catholic parents will seek a Catholic education for their children than those who are not Catholic. However, we do not and cannot know whether most or all primary school aged Catholics in the area attend St Thomas More, or indeed any Catholic primary school. Unlike other characteristics such as ethnicity, pupils’

faith is not included in the annual school census and so no robust data is available to ascertain the distribution of children of various faiths among local schools.

73. We considered whether the admission authority for Manor had indirectly discriminated against children attending St Thomas More who had a Church of England religious belief, a Roman Catholic religious belief or no religious belief by applying a provision, criterion or practice, in this case the school's admission arrangements, which was discriminatory in relation to their relevant protected characteristic. We did so by considering the provisions of section 19 of the EA.

74. Does the admission authority apply, or would it apply, the arrangements to persons with whom the child does not share the characteristic? It was clear from the evidence before us that the admission authority applied its arrangements to all applicants equally, irrespective of their religious belief or none.

75. Do the arrangements, or would the arrangements, put persons with whom the child shares the characteristic at a particular disadvantage when compared with persons with whom the child does not share it? Not including St Thomas More as a feeder school is more likely to disadvantage Catholics than children of other faiths or none in relation to admission to Manor, if (as we accept is a reasonable assumption) children attending St Thomas More are more likely to be Catholic. Children who are Church of England, any other faith or no faith are not being disadvantaged in our view because of their faith or lack of faith.

76. However, we note that any such disadvantage is attributable purely and solely to the fact that they attend a school with a particular character and not to any characteristic of the child. As described above, all children at St Thomas More would be able to obtain places at other schools on the basis of where they lived, and Catholics would have high priority for a place at a Catholic secondary school on the basis of faith. In addition, a Catholic child whose parent had chosen to send him or her to one of the feeder primary schools for Manor would fall to be treated in the same way as any other pupil at that feeder school for the purposes of admission to Manor.

77. We have thought carefully about whether having less chance of being admitted to Manor amounts to a "particular disadvantage" within the meaning of the EA. We do not think that it does, given the availability of other schools within a reasonable distance. On that basis we do not consider that the admission arrangements give rise to indirect discrimination on the basis of the protected characteristic of religion or belief.

78. If we were wrong in that conclusion, and St Thomas More's not being a feeder for Manor did put Catholics or other children at a particular disadvantage under the EA, the question of justification would arise. If the admission authority could show that the arrangements are a proportionate means of achieving a legitimate aim, they would not amount to unlawful discrimination.

79. We consider that the issue of legitimate aim would be satisfied. Paragraph 1.6 of the Code requires the admission authority to set criteria against which places will be allocated if

Manor is oversubscribed. The admission authority told us that its reasons for selecting those schools that appear on its list of feeder schools was, as set out above, (a) historic ties arising from the previous three-tier school pyramid, (b) a desire to avoid children living in rural areas having limited options in terms of secondary schools and c) parental expectations. We found above that these were potentially reasonable grounds for selecting feeder schools.

80. We note that there is a potential argument that even if the admission authority had applied all of its stated grounds accurately and consistently, those grounds would not have required the authority to have included St Thomas More, and that the number of children attending the 12 feeder schools is already greater than the number of places available at Manor (and at Beauchamp and Manor and Gartree combined). Those are both matters which might go to the question of proportionality.

81. In light of our earlier determination that the admission authority did not appear to have accurately and consistently applied its stated grounds for its selection of feeder schools when making its selection, we consider that it is difficult to reach any concluded view on the proportionality of the arrangements. This further emphasises the importance of the admission authority having due regard to its equality duties when it comes to revise the arrangements.

#### Other matters

82. At section 2.2 of the arrangements, parents are advised that applications received “beyond four weeks post-closing date” cannot be considered under exceptional grounds. This appears to be inconsistent with paragraph 3.10 of the local authority Co-ordinated Admission Scheme for Secondary School Transfers Entry September 2022 which provides for the consideration of late applications received late for a good reason up until the end of January. Leicestershire confirmed this was the case. We consider this provision in the school’s arrangements may be unfair and so contrary to paragraph 14 of the Code and that the inconsistency with the co-ordination scheme makes this part of the arrangements unclear. When this matter was raised with the admission authority it proposed to bring the arrangements in line with scheme of co-ordination.

83. The first oversubscription criterion is correctly for looked after and previously looked after children. However, the definition of such children did not conform with the definition given in paragraph 1.7 of the Code and its footnotes, it also included reference to residence orders which were replaced by child arrangements orders by the Children and Families Act 2014. Paragraph 1.8 of the Code requires that oversubscription criteria are clear. When this was raised with the admission authority it proposed to amend the definition to meet the requirement of the Code.

84. The second oversubscription criterion reads “Second Priority: Children with siblings at the school. A sibling is a child who will have a brother or sister at the school at the time of the sibling’s application and/or admission. This would apply both at the initial allocation of places and also when prioritising the waiting list. (see notes ii).” This appeared to us to be

unclear as the criterion is for “Children with siblings at the school” and sibling is then defined as the child applying for a place, not the brother or sister already at the school. Note ii defines a sibling as “Siblings are two or more children who have at least one parent in common and who reside in the same home as one another, and legally adopted children living at the same address. A sibling needs to have a brother or sister at the school at the time of the sibling’s application and/or when they enter the school.” This is a necessary full definition of sibling but continues to conflate what a sibling is with the condition that to meet this criterion, the siblings must be on roll at the school. We consider this to be unclear and so not conform with the Code.

85. The third oversubscription criterion is “Third priority: Children who attend one of the Oak MAT primary schools (see note iii)” and note iii says “MAT primary schools at the time of adoption are” and lists three primary schools. We consider this to be unclear because these three schools are not noted as specifically Oak MAT primary schools as in the oversubscription criterion, they could be in any MAT, and “at time of adoption” begs the question of what is being adopted. It also suggests that there could be more than the named three primary schools at some point in the future. Paragraph 1.9b of the Code requires that all feeder schools are named admission arrangements and if the admission authority wished to add another feeder school, it would be necessary for it to apply for a variation to the Education and Skills Funding Agency. When these matters were raised with the admission authority it proposed to revise the wording to address the issues.

86. The sixth and final oversubscription criterion simply states “Distance” and explains the measurement used. It does not say how distance is used to prioritise children for places at the school. In response the admission authority said it was children living closest to the school who had priority and proposed revising the wording to make this clear.

87. Paragraph 1.8 of the Code requires that oversubscription criteria include “an effective, clear and fair tie-breaker to decide between two applications which cannot otherwise be separated.” The arrangements include a section with the heading “Tie Break” which says, “If two or more applications have identical ranking following applying all the above criteria in priority order, then the final determination will be made by drawing lots, supervised by an independent officer.” Earlier in the arrangements note it said, “Combinations of the above criteria are used in priority order.”

88. It was not clear to us whether these statements meant that if oversubscription was reached in, say, the fourth criterion for children attending a “traditional” feeder school random allocation would be used to decide which children would be offered places or whether within that group of children priority would be given to children of members of staff, then those living closest with random allocation being used if two children or more lived the same distance away. The arrangements must be revised to clarify this matter.

89. Paragraph 2.18 of the Code requires that admission authorities make clear in their arrangements the process for requesting admission outside of the normal age group. Paragraph 4.7 of the arrangements does not do this.

90. We also noted a typographical error in section 4.4 of the arrangements where the word “many” appears instead of “may” and consider that the first sentence of section 4.9 of the arrangements does not make grammatical sense. It reads “Where one parent objects to a school application made by the other parent, and to prevent the application from being processed the School Admissions Service will require a court order.” The admission authority proposed to address these issues.

### Next Steps

91. Because we have found that the selection of feeder schools for 2022 was not made on reasonable grounds and so does not conform with paragraph 1.15 of the Code and that the arrangements do not conform with other parts of the Code, the admission authority is required to revise the arrangements. It is not for us to say how the arrangements should be revised, but we are required to say by when they must be revised. 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.”

92. The “other matters” set out in the previous section mainly relate to the clarity of the arrangements and we see no reason why they cannot be revised within two months as set out in paragraph 3.1 of the Code. We set out below why we are setting the date of 28 February 2023 as the deadline for the admission authority to revise the arrangements to address the selection of feeder schools.

93. In deciding to set this date we took into account the timing of the referral and the determination. The referral was made after parents had made their applications on the basis of the published arrangements and after the process of applying the arrangements had begun. The determination will not be issued until after places have been allocated by that process and so it will not affect which children will be offered places for September 2022 in the main admissions round. The arrangements for 2023 should also have been determined by the admission authority before this determination is published.

94. The revision of the arrangements to address the issues we have identified with the selection of feeder schools is not a simple exercise. We stress here that it is not for the adjudicators to say how the admission authority should revise the arrangements. However, it appears to us that if the arrangements are revised quickly without wide ranging consultation with parents, the local authorities and other schools in the area there is a significant risk that the revised arrangements could lead to unforeseen issues which would result in them being referred to the adjudicator again. We also note the importance of the admission authority complying with its duties under applicable legislation, including the EA. This timing is intended to help the admission authority work out a sustainable way ahead.

95. While we have found that the selection of feeder schools was not made on reasonable grounds, we have not seen any evidence that in practice this is leading to unfair disadvantage for any children. Nor has either local authority suggested that the selection of

feeder schools leads to difficulty in placing children in secondary schools within an acceptable distance of their homes. Any changes made to the 2022 arrangements would only affect offers of places made from the waiting list in operation until 31 December 2022 and not the majority of offers which will already have been made.

96. We have also considered the implications of our determination on any appeal to the independent panel from the parent of a child refused a place at Manor. The first consideration for an appeal panel as set out in paragraph 3.2 of The School Admission Appeals Code is “whether the admission arrangements [...] complied with the mandatory requirements of the School Admissions Code”. This determination settles that question; however, paragraph 3.5 of the School Admission Appeals Code says, “The panel must uphold the appeal at the first stage where: a) it finds the admission arrangements did not comply with admissions law or had not been correctly and impartially applied, and the child would have been offered a place if the arrangements had complied or had been correctly and impartially applied”. The panel would not be in a position to know what selection of feeder schools would be reasonable or whether the child would have been admitted if there had been a different set of feeder schools and so the second part of the test would be impossible to apply.

97. We note that an objection has been lodged to the arrangements for the school for 2023. However, our jurisdiction in this determination is solely for the 2022 arrangements.

## Summary of Findings

98. The referrer was of the view that because St Thomas More was not a feeder school for Manor, children attending St Thomas More were unfairly and unlawfully disadvantaged. The disadvantage she saw was that those children attending a feeder school had more secondary schools available for which they had high priority than did children attending St Thomas More. She was of the view that if the admission authority had made the selection of feeder schools on reasonable grounds and had had proper regard to the PSED, St Thomas More would be included as a feeder school.

99. We find that children living in the area from which they could access St Thomas More do in fact have several alternative secondary schools closer to their homes than children living in some, but not all, of the feeder schools’ local areas and, based on where they live, would have high priority for a place at one of those secondary schools and a chance of a place at others. Therefore, while the referrer may prefer that her child attended Manor rather than one of the schools where her child would have high priority, we find no unfair disadvantage arising to her child or others attending St Thomas More from it not being included as a feeder school of Manor. Indeed, if it were a feeder school, by increasing priority for St Thomas More pupils, it would reduce priority for other pupils who would have fewer alternative secondary schools available within an acceptable distance of their homes which might result in unfairness.

100. We find that the arrangements do not result in unlawful indirect discrimination on the grounds of religion or belief, and we do not find that the school failed to meet its duties under the PSED when determining its arrangements.

101. We do find, however, that the feeder schools were not selected on reasonable grounds. Whilst the reasons given by the admission authority were reasonable, it was clear from the evidence presented to us that the selection could not have been made, or wholly made, on those grounds. Some of the schools only share a few of the characteristics described by the admission authority for the selection of feeder schools while we have identified other schools which share more of them but are not included. We therefore find that the arrangements do not conform with paragraph 1.15 of the Code.

102. We also find that the arrangements do not conform with the Code in the other ways set out above.

## Determination

103. We have considered the admission arrangements for September 2022 for Manor High School, Leicestershire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the selection of feeder schools the arrangements do not conform with the requirements. We have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

104. By virtue of section 88K(2) the adjudicators' decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise the selection of feeder schools by 28 February 2023 and the other aspects of its admission arrangements within two months of the date of this determination.

Dated: 29 April 2022

Signed:

Schools Adjudicators: Phil Whiffing

Jane Kilgannon