



Office of
the Schools
Adjudicator

Determination

Case reference: REF3893

Referrer: A parent

Admission authority: Gartree High School for Gartree High School,
Leicestershire

Date of decision: 29 April 2022

Determination

We have considered the admission arrangements for September 2022 for Gartree 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 Gartree High School (Gartree), 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 Manor High School (Manor). These are considered in determinations REF3891 and REF3892 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 academy trust and admission authority for the school, also named Gartree High School (the trust), the governing board of Gartree, 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 20 January 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 Manor and Beauchamp, 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 2021, accompanying documents and subsequent correspondence;
- b) confirmation that the arrangements had been determined by 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 report of the Ofsted monitoring visit to Gartree on 9 October 2018;
- h) the website published by Gartree;
- i) data published 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 referrer argued that because St Thomas More, a school with a Roman Catholic religious designation, was not included as a feeder school for Gartree, 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 a previous consultation undertaken by the admission authority 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 that they contain a clear tie-breaker; paragraph 2.15 of the Code prohibits basing priority on a waiting list based on the date of an application; and paragraph 1.9f of the Code prohibits giving priority according to parents occupational status other than in some prescribed cases. It appeared to us that that these requirements may not be met.

Background

14. Gartree 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 less than a mile and a half from the boundary between the two authorities. Its site is adjacent to Beauchamp and less than a mile and a half from Manor.

15. The published admission number (PAN) is 185 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 named feeder schools
4. Children with a serious medical condition or domestic needs that make it essential that they attend the school
5. Children living nearest to the school.

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 one with a sixth form.

Consideration of Case

Feeder schools

17. By definition the 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.

18. 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 secondary schools where priority is given on the basis of where the child goes to primary 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.

19. 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

20. From table 3 below, it would appear to us that a family moving into the area served by Gartree 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 Gartree 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.

21. 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.

22. 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.

23. 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”.

24. 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.

25. We have compared the number of secondary schools close to St Thomas More with those close to the postcode for feeder schools to Gartree 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.

26. 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.

27. 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 Gartree at eight o'clock on a weekday morning takes between 12 and 20 minutes by car or 35 minutes by public transport. From St Thomas More to the farthest of the secondary 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.

28. 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.

29. 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.

30. 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 at least one of the five secondary schools less than two miles away and it would be unlikely that they would not 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.

31. 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 Gartree 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 Gartree causes the arrangements for Gartree 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 part of the catchment area would be reduced and they would be less likely to be offered places at Gartree. These children would have fewer alternative schools near their homes.

The feeder schools

32. Twelve feeder schools are named in the arrangements. We have listed these below in alphabetical order, indicating for each the local authority area in which it is located and its distance from Gartree. The distance information has been taken from GIAS.

Table 1

School	Local Authority	Distance from Gartree (miles)
Brocks Hill Primary School	Leicestershire	0.12
Brookside Primary School	Leicestershire	1.19

Fernvale Primary School	Leicestershire	3.56
Glenmere Primary School	Leicestershire	0.68
Houghton on the Hill CE Primary School	Leicestershire	3.79
Langmoor Primary School	Leicestershire	0.8
Launde Primary School	Leicestershire	0.78
Overdale Junior School	Leicester	1.94
St Cuthbert's CE Primary School	Leicestershire	2.15
St John The Baptist CE Primary School	Leicester	2.73
St Luke's CE Primary School	Leicestershire	3.09
Woodland Grange Primary School	Leicestershire	0.67

33. 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 primary schools was recorded as 718. The school has a PAN of 185 and so could more than fill from the feeder schools and only about one in four children from the feeder schools could ever hope to be offered a place.

34. Clearly, it is not possible for all children attending feeder schools to be offered a place at Gartree. All of these feeder schools are also named as feeder schools for Beauchamp and all but Glenmere are named as feeder schools for Manor. 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.

35. We also asked the admission authority for details of how many children were admitted under each criterion in the last three years and were provided with the following information.

Table 2

	2019	2020	2021
EHCP	4	4	4
LAC/PLAC	3	7	3
Sibling	52	46	52
Feeder	109	112	112
Medical, Social, Domestic	0	0	0
Distance	0	0	10
Appeal	2	1	1
Total	170	170	182

36. The PAN for 2022 is 185. Given that the total number admitted in the last three years has been less than this and there have been successful appeals for places, we asked the admission authority what the PANs were in previous years. We were told that in 2019 the PAN was 170 and in 2020 it was 155, but 170 were admitted. The PAN was set as 185 in 2021. We do not understand the reason that appeals were necessary with the PANs stated, but in only one of the last three years has it been possible to secure a place at Gartree based on where a child lived rather than on other factors. This would not have been possible if the PAN had not been raised to 185.

37. 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. As these schools are also feeder schools for Beauchamp and Manor we asked for the same data in our consideration of REF3891 and REF389. This is tabulated below with “-” showing where the school is not a named feeder. The three secondary schools are identified by their initials.

Table 3

	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
Glenmere	30	11	-	7	30	18	-	0	32	15	-	8
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	726	291	96	155	715	272	93	153	725	285	112	168

38. We note that very few children from some of the feeder schools have joined Gartree in the last three years. The admission authority acknowledged that very few children currently join them from some of the feeder schools and explained that it has considered reviewing the list of feeder schools, but considers it is still too early for the changes to have bedded in. It last consulted on its arrangements in December 2017 and is planning to leave any new consideration of changes until it is required to consult again after the statutory seven-year period between consultations is reached.

Grounds for the selection of feeder schools

39. Paragraph 1.15 of the Codes 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.

40. We asked the admission authority why it had selected the 12 schools as feeder schools and not others. In response the admission authority referred us to OSA determination ADA3458 and a document (the 2018 document) it had provided setting out its representations for that case. That determination concerned the arrangements for Gartree for 2019 and was published in September 2018.

Three-tier legacy

41. The first justification for the selection of feeder schools in the 2018 document concerned what was then a recent change in the organisation of schools from a three-tier system in which local primary schools provided for Year Reception to Year 5, Gartree and Manor provided for Year 6 to Year 9, with Beauchamp providing education for Year 10 onwards. The change happened in 2017, prior to which the admission authority told us there were five feeder schools to Gartree, Brocks Hill, Langmoor, Houghton on the Hill, Fernvale and St Luke's. When we asked Leicestershire about the pattern of feeder schools prior to 2017, it did not include Fernvale in its list of feeders for Gartree. Fernvale was included in the list of pre-2017 feeders for Manor provided by Leicestershire along with Brookside, Launde and Woodland Grange. Glenmere did not appear on either of the lists provided by the local authority. The admission authority did not comment on this when the list was circulated to the parties and so we have taken Leicestershire's list as being correct. Although we accept that historic links from the three-tier legacy could be a reasonable ground on which Gartree could select its feeder schools, we note, therefore, that on its own admission only four out of the twelve named feeder schools were Gartree feeder schools under the previous three-tier system. That leads us to the conclusion that Gartree's selection of feeder schools cannot, at least in relation to the majority of feeder schools on its list, have been made on this stated ground.

Rural schools and accessibility

42. As well as historical reasons, the selection of feeder schools was justified in the 2018 document by reference to location and the availability of home to school transport. We have considered the location of the feeder schools in relation to other secondary schools. Because Gartree and Beauchamp are adjacent we have not included Beauchamp when counting closer schools. Again, the data is taken from GIAS.

Table 4

Feeder	Number of secondary schools closer than Gartree	Feeder	Number of secondary schools closer than Gartree
Brocks Hill	0	Launde	0
Brookside	1	Overdale	8
Fernvale	11	St Cuthbert's	0
Glenmere	0	St John the Baptist	17
Houghton	6	St Luke's	8
Langmoor	0	Woodland	0

43. 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. It appears to us that the location of several of the feeder schools would mean that if home to school transport was necessary for the children attending them, that transport would go to other schools, not Gartree.

44. We have also noted that there are two other schools in Leicestershire for which Gartree is the closest school, nearer even than the adjacent Beauchamp. They are The Meadow Community Primary School (which is in fact an academy, not a community school) and St John Fisher Catholic Voluntary Academy.

45. Although we accept that ensuring accessibility of secondary school places to those children living in rural areas could be a reasonable ground on which Gartree could select its feeder schools, we note that it is possible to identify many closer secondary schools to some of the feeder schools and to identify some primary schools for which Gartree is the closest secondary school, but which are not listed a feeder schools for Gartree. That leads us to the conclusion that Gartree's selection of feeder schools cannot, at least in relation to the majority of feeder schools on its list, have been made on this stated ground.

46. Although we asked, no explanation was given to us as to why schools other than those listed were not selected as feeder schools, other than there being no history of admission from St Thomas More (which, as it has never been a feeder school, is not unexpected).

Consistency in the selection of feeder schools

47. 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.

48. 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 Gartree while there are primary schools in the area which are closer to Gartree which are not feeders despite being closer to Gartree than the schools that are feeders. 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 Gartree are not feeder schools.

49. We find that the stated grounds for selecting the schools as feeder schools are potentially reasonable grounds; however, the evidence provided indicates that the selection of feeder schools cannot, in fact, have been wholly made on those grounds. Consequently, we find that the selection of feeder schools has not made on reasonable grounds and so does not conform with paragraph 1.15 of the Code.

50. 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

51. 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:

52. (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act;

53. (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

54. (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

55. The referrer asserted that, in omitting St Thomas More from its list of feeder schools, the admission authority had failed to meet its duties under the PSED.

56. The admission authority refuted the assertion that it failed to have regard to the relevant matters to meet its duties under the PSED. It explained that its decision-making in

relation to its selection of feeder schools related to historic catchment areas and admissions trends and has in no way been influenced by unlawful discrimination. The admission authority has stressed that its selection of feeder schools was not based on the religious status of primary schools. Indeed, it has pointed to the fact that some of its feeder schools are faith schools and others not.

57. We noted that Gartree’s website included a detailed Equality & Diversity Policy, dated 2021, and Equality Objectives, that specifically referred to the school’s responsibilities under the PSED. We also noted that Gartree’s most recent Ofsted monitoring visit report, in 2018, included the statement “The school has a positive and inclusive culture”.

58. Taken together, we considered that these matters provided evidence of a school that has an inclusive culture that promotes equality of opportunity and fosters good relations across cultural and religious divides.

59. 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.

60. 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 determination of the arrangements was not influenced by unlawful discrimination, 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

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

62. 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 Gartree is not so designated, it does not have recourse to that exemption.

63. 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.”

64. 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.

65. The admission authority refuted any assertion that its selection of feeder schools, including the omission of St Thomas More, was unlawfully discriminatory. Gartree stressed that the “faith” of a primary school was not something that it considered when selecting its feeders schools. It explained that it had selected feeder schools on the basis of the historic catchment area and historic links to primary schools, irrespective of the religious designation or otherwise of those schools. Indeed, the admission authority had pointed out that four of its feeder schools have a Christian religious designation.

66. 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.

67. We considered whether the admission authority for Gartree 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.

68. 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.

69. 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 Gartree, 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.

70. 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 Gartree would fall to be treated in the same way as any other pupil at that feeder school for the purposes of admission to Gartree.

71. We have thought carefully about whether having less chance of being admitted to Gartree 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.

72. If we were wrong in that conclusion, and St Thomas More's not being a feeder for Gartree 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.

73. 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 Gartree 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, and (b) a desire to avoid children living in rural areas having limited options in terms of secondary schools. We found above that these were potentially reasonable grounds for selecting feeder schools.

74. 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 Gartree (and at Beauchamp and Manor and Gartree combined). Those are both matters which might go to the question of proportionality.

75. 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

76. In paragraph 4.1 the arrangements say: "Any application received after the closing date will be accepted will have the lowest priority as a late application and will only be considered after those received by the closing date." Apart from the English in this paragraph not being clear, it appears not to be consistent with the scheme of co-ordination in Leicestershire which says: "When Leicestershire LA considers that applications are received late for a good reason, e.g. when a single parent has been hospitalised, or a family are returning from abroad. These will be considered along with the applications received before the closing date of 31st October, providing documentary evidence of the reason for lateness is also received and it is no later than end of January." Not to make provision for cases where an application is late for exceptional and unforeseeable reasons is not in our view fair; paragraph 14 of the Code requires that arrangements are fair. The inconsistency with the scheme of co-ordination also makes the arrangements unclear.

77. While it may be permissible for late applications to be processed after those received on time, to give lower priority to late applicants on the school's waiting list would not conform to paragraph 2.15 of the Code which prohibits placing children on a waiting list

based on the date their application was received. Paragraph 6.1 of the arrangements says: "Priority will be given to children whose parents applied on time, in the following order". This suggests that there may be a different order for late applications not set out in the arrangements. To have a different set of oversubscription criteria for late applicants would not conform with paragraph 2.15 of the Code which requires waiting lists to be held in the same order as the oversubscription criteria.

78. Paragraph 5.2 of the arrangements refers to statements of special educational need; these have now been replaced by Education, Health and Care Plans (EHCPs). Using obsolete terms renders the arrangements unclear. Paragraph 14 of the Code requires that arrangements are clear.

79. Paragraph 1.8 of the Code requires that admission arrangements include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. The arrangements include a tie-breaker for the fifth oversubscription criterion, but not for any of the others. They do not make it clear for example, how all the children meeting the feeder school criterion would be prioritised or ranked in order if the school reached and exceeded its PAN within that oversubscription category.

80. The definition of a previously looked after child in paragraph 6.2 of the arrangements does not appear to fully reflect the definition found in paragraph 1.7 of the Code and its footnotes, it is therefore unclear and does not conform with paragraphs 14 and 1.8 of the Code.

81. The fourth oversubscription criterion says: "(see 6.5-6.6)". This is unclear because paragraph 6.4 of the arrangements is relevant to this criterion while 6.6 is not.

82. Note 6.5 in the arrangements concerns the fourth oversubscription criterion which is for "Pupils who have a serious medical condition or exceptional social or domestic needs that make it essential they attend the school." It reads as follows:

"6.5 The following circumstances are solely considered by school to constitute exceptional social and domestic needs:

6.5.1 Children of Crown Servants. An official government letter declaring a relocation date and intended address will be required. A unit postal address will be accepted, or if appropriate a "quartering area" address in the absence of a new home postal address.

6.5.2 Children subject to Child Protection Plans.

6.5.3 Children of parents suffering from domestic violence."

83. It seems to the adjudicators, strange that if it is seen by the admission authority that it is "essential" for a child to be admitted, then this criterion appears in fourth place, after the

point at which the school normally reaches the point of oversubscription. However, in itself that does not fall foul of the Code.

84. It is, however, unclear why being the child of a crown servant is an exceptional social or domestic need and merits greater priority for a place at the school. Provisions in paragraph 2.21 of the Code concerning children of crown servants allows such children to be included in the main admission round ahead of living at a confirmed address in the area but does not require they are given higher priority in oversubscription criteria. Prioritising children on the basis of their parents' occupational status is with a few exceptions (and this is not one of them) prohibited by paragraph 1.9f of the Code. We find this part of the arrangements does not conform with the Code for that reason.

85. We are concerned that in its comments on this issue, Leicestershire argued that children of police officers should be given priority for school places outside of their parent's "policing patch". This would be prohibited by paragraph 1.9f of the Code. There may be good reasons why the child of a police officer should not attend a particular school, but the criterion here is that it is "essential" they attend Gartree, but this would not be the case as there will be other schools they could attend away from the "policing patch". Of course, the low priority given here to such children makes it unlikely that any would be admitted on these grounds.

86. While it is important that the address used to decide priority for admission to a school is the address at which the child lives, some of the reasons set out in paragraph 6.7 of the arrangements for not accepting an address as genuine could lead to unfairness. For example, a family which had outgrown a small house and moved into a relative's larger house while retaining ownership of the small house as an investment and source of income would be deemed by the arrangements not to live where they actually do. It is permissible for admission authorities to say when they would check whether an address was genuine and to give examples of the circumstances in which checks might be made but making a definitive statement such as those in the arrangements may lead to unfairness and so is prohibited by the Code.

87. Leicestershire considered that appeal panels would be best placed to determine these matters. The Code requires that arrangements make it clear how a child's address will be determined and the way this is done needs to be fair in the same way as other elements of admission arrangements. To suggest that a family caught by one of these conditions when their address was genuine should be required to go through the appeal process, with the associated stress and delay in securing a school place is in our view unreasonable.

88. Paragraph 9.1 of the arrangements concerning waiting lists says: "If places become available between the acceptance deadline and 31st December of the year on entry, individuals may be offered a place according to the waiting list." Using the word "may" suggests that individuals may not be offered a place. Not offering a place from the waiting list when one became available would not conform with section 86 of the SSFA which says places may only be refused if to offer the place would prejudice the provision of efficient

education or the efficient use of resources. During the normal year of admission, no prejudice can arise if the number on roll is less than the published admission number.

When these matters were raised with the admission authority it said it would “make all necessary amendments in line with the adjudicator’s [sic] determination.”

Next Steps

89. 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 also 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.”

90. 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.

91. 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 deadline for the determination of arrangements for 2023 had also passed.

92. 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 appropriate 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.

93. 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.

94. 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 Gartree. 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.

95. We note that an objection has been lodged to the arrangements for the school for 2023. Our jurisdiction in this determination is solely for the 2022 arrangements.

Summary of Findings

96. The referrer was of the view that because St Thomas More was not a feeder school for Gartree, children attending that school were unfairly and unlawfully disadvantaged. The disadvantage she saw was that those children attending a feeder school had more desirable 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.

97. 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 Gartree 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 Gartree. 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.

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

99. 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. We therefore find that the arrangements do not conform with paragraph 1.15 of the Code.

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

Determination

101. We have considered the admission arrangements for September 2022 for Gartree 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.

102. 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 Adjudicator: Phil Whiffing

Jane Kilgannon