



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3900

Objector: Salendine Nook High School, Huddersfield

Admission authority: the local governing board for Rastrick High School, Brighouse

Date of decision: 12 September 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 determined by the local governing board for Rastrick High School, Brighouse.

I have also considered the arrangements in accordance with section 88I(5) and find 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 adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 October 2022.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by another secondary school (the objector), about the admission arrangements (the arrangements) for Rastrick High School (the school) for September 2023. The school is a non-selective secondary school for 11 to 16 year olds. The school converted to academy status in 2011.

2. In respect of the school's arrangements for 2023, the objector identified concerns with the location of part of the school's catchment area and with the selection of a proportion of its student intake by their aptitude for music.

3. The parties to the objection are:

- Salendine Nook High School, Huddersfield (the objector);
- the local governing board of the school, which is the admission authority;
- Polaris Multi-Academy Trust (the trust) of which the school is a member;
- Calderdale Council which is the local authority for the area in which the school is located (the local authority (LA)); and
- Kirklees Council, which is the local authority for the area in which the objector is located (KCLA).

Jurisdiction

4. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the local governing board, the admission authority for the school, on that basis.

5. The objector submitted its objection to these determined arrangements on 9 February 2022. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act. I set out below those issues raised by the objector which are not within my jurisdiction.

6. I have also used my power under section 88I of the Act to consider the arrangements as a whole and to determine whether or not they conform with the requirements relating to admissions and, if not, in what ways they do not so conform. I will refer to these as 'Other Matters' and these are covered in the sections of the determination under that name.

7. My jurisdiction is solely for the determined arrangements for 2023 for the school. Therefore, I do not consider the following matters, referred to by the objector in the objection, to be within my jurisdiction:

- 7.1. Issues related to the difficulties the objector reports having with the school and the LA in respect of the lack of response to requests made for information / meetings about the matters forming the basis of the objection.
- 7.2. The objector refers to the consultation process which led to the change in the school's arrangements that incorporated the current catchment area and criterion to select a proportion of its intake by aptitude for music. I can only consider a consultation process that takes place in the determination year for

any arrangements (for the 2023 arrangements, the consultation would have had to have taken place between 1 October 2021 and 1 January 2022). The consultation in this context took place in 2016/17 in respect of the 2018 arrangements. That consultation is not within my jurisdiction and therefore cannot be considered in this determination. There is no requirement to consult unless admission arrangements are being changed or seven years have elapsed since the last consultation.

7.3. The school's arrangements prior to the changes implemented in 2018.

8. However, it has been necessary in this determination to refer to aspects of the arrangements prior to 2018 where they provide context to, and a greater understanding of, the objection to the 2023 arrangements.

Procedure

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

10. The documents I have considered in reaching my decision and in considering the 'Other Matters' include:

- a. a copy of the minutes of the meeting of the school's governing board at which the arrangements were determined;
- b. a copy of the determined arrangements, which included the Supplementary Information Form (SIF) for the Talented Musician Development Programme;
- c. the objector's form of objection dated 9 February 2022, supporting documents and a number of follow-up emails;
- d. the response to the objection and supporting documents from the school, including copies of the school's previous arrangements (1997, 1999, 2005, 2010, 2017, 2018, and 2022);
- e. the responses to the objection from the LA and KCLA;
- f. the LA's composite prospectus for admissions to secondary schools;
- g. the IoD 2019 (indices of deprivation in 2019) Interactive Dashboard website from the former Ministry of Housing, Communities and Local Government;
- h. maps of the area, including those that identify relevant schools; and
- i. information available on the websites of the school, LA, the Department for Education (DfE) and Ofsted.

The Objection

11. The aspects of the objection made by the objector which I can consider are:
- 11.1. that the element of selection by aptitude for music introduced in 2018 does not conform with what is permitted by the Code; and
 - 11.2. that the catchment area which was introduced in 2018 does not conform with the Code's requirements in respect of catchment areas in that it leads to unfairness for applicants from Calderdale who might not get a place.
12. The objector believes these two concerns are linked in that the catchment includes two primary schools in the village of Lindley – Moorlands Primary School and Lindley Junior School – the latter school having a “strong and locally recognised choir / music department”. The objector expresses concern that the approach by the school means that some pupils in Calderdale do not get places at the school, “at the expense of Music students from this particularly affluent area of Kirklees”.
13. The objector is of the view that the selection of a proportion of the school’s pupils by musical aptitude is a breach of paragraph 1.9 of the Code, specifically:
- “It is for admission authorities to formulate their admission arrangements, but they must not:
- [...] f) give priority to children according to the occupational, marital, financial, or educational status of parents applying.
- g) take account of reports from previous schools about children’s past behaviour, attendance, attitude, or achievement, or that of any other children in the family.”
- (Note: the underlining is by the objector and is not presented as such in the Code).
14. I will refer to the specific subsections of sections 99, 100 and 102 of the Act (detailed where appropriate in the determination) and the following paragraphs of the Code (in relation to the matters raised in the objection – I deal with any paragraphs from the Code relevant to that which I raise in respect of ‘Other Matters’ in that section):
- 14.1. 1.8 (part): “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 [...]”
 - 14.2. 1.9 (part): “It is for admission authorities to formulate their admission arrangements, but they **must not**: [...]”
 - d) introduce any new selection by ability;”

- 14.3. 1.14: “Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.”
- 14.4. 1.22: “Partially selective schools **must not** exceed the lowest proportion of selection that has been used since the 1997/98 school year.”
- 14.5. 1.24 (part): “Schools that have arrangements to select by aptitude **must** not allow for more than 10 per cent of the total admissions intake to be allocated on the basis of such aptitude [...] The only specialist subjects on which a school may select by aptitude are: [...]
- b) the performing arts, or any one or more of those arts;”
- 14.6. 1.32 (part): “Admission authorities **must**:
- a) ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability; [...]”

Other Matters

15. The aspects of the arrangements which I identified as not or possibly not conforming with the requirements relating to admissions have been identified in detail towards the end of this determination. The school’s arrangements consist only of a list of oversubscription criteria, and therefore do not provide the information necessary to meet the requirements of paragraphs 5, 14 and 15a of the Code.

Background

16. The school is a secondary academy for 11 to 16 year olds, located in Brighouse in Calderdale, West Yorkshire. The school converted to academy status on 1 September 2011. It is an all-ability school with an element of pre-existing partial selection for children demonstrating musical aptitude, as permitted by section 100 of the Act. The school is the only secondary academy in the five-academy Polaris Multi-Academy Trust (the rest being primary). Ofsted rated the school as ‘Good’ in 2018. According to the DfE’s website ‘Get Information About Schools’ (GIAS), the number of pupils at the school is 1673, out of a capacity of 1750. The published admission number (PAN) for the school is 360. The school is oversubscribed.

17. The arrangements for 2023 were determined by the school’s local governing board (which has responsibility for this matter delegated to it by the trust) on 2 December 2021. The arrangements only contain a list of the oversubscription criteria (a point I deal with in the ‘Other Matters’ section at the end of this determination). Those criteria can be summarised as follows:

1. Looked after children and previously looked after children.
2. Pupils from eight named primary schools.
3. Children who have a (step) brother or (step) sister living at the same household at the time of admission.
4. Children who have a particular ability for music (limit of 30 places).
5. Children resident in the school's catchment area.
6. Distance from the school's home address to the closest designated school gate, using the LA's geographic information system.

18. The arrangements have been the same every year since 2018. The 2018 arrangements were determined after a consultation which took place in 2016. The school told me that the following changes were made to the arrangements as a result of that consultation:

- 18.1. The school's PAN was increased by 30 pupils.
- 18.2. The inclusion of the catchment area at oversubscription criterion 5.
- 18.3. The school's provision for music places was increased from 16 to 30.

(I note here that under paragraph 1.3 of the Code, the school was not required to consult on an increase to the PAN).

19. According to GIAS, there are six other schools admitting secondary-aged pupils within three miles of the school's location. Four of those schools are academies, one is voluntary aided (Roman Catholic) and the other a foundation school. According to Google maps, the objector school is 4.8 miles away by road to the south-west of the school and on the border of the southernmost section of the catchment area introduced by the school in 2018.

Consideration of Case

20. I will now turn to look at the concerns raised by the objector in respect of the school's arrangements for 2023. I will look at the matters raised in order. First, that related to oversubscription criterion 4 (partial selection of pupils by musical aptitude). Secondly, that which concerns oversubscription criterion 5 (the catchment area). The latter will also include the matter raised by the objector in relation to the combination of both.

Partial selection of pupils by musical aptitude

21. Throughout this section, I will be referring to relevant sections of the Act that set out how schools (other than grammar schools which are covered by different and specific provisions) may be able to use selection by aptitude and selection by ability in their

arrangements. Before setting out my determination on this part of the objection, I quote the relevant sections of the Act here for information and ease of reference:

- 21.1. Section 99(2): “The following are for the purposes of section 39(1) of the Education and Inspections Act 2006 permitted forms of selection by ability—
 - (a) any selection by ability authorised by section 100 (pre-existing arrangements);”
- 21.2. Section 99(4): “The following are permitted forms of selection by aptitude—
 - (a) any selection by aptitude authorised by section 100 (pre-existing arrangements);”
- 21.3. Section 100(1): “Where at the beginning of the 1997-98 school year the admission arrangements for a maintained school made provision for selection by ability or by aptitude (and they have at all times since that date continued to do so), the admission arrangements for the school may continue to make such provision so long as—
 - (a) the proportion of selective admissions in any relevant age group does not exceed the permitted proportion (as defined by subsection (1A)), and
 - (b) there is no significant change in the basis of selection.”
- 21.4. Section 100(1A): “In subsection (1)(a), “the permitted proportion”, in relation to any relevant age group, means the lowest proportion of selective admissions provided for by the school's admission arrangements at any time since the beginning of the 1997-1998 school year.”
- 21.5. Section 102(1): “Subject to subsection (2) the admission arrangements for a maintained school may make provision for the selection of pupils for admission to the school by reference to their aptitude for one or more prescribed subjects where—
 - (a) the admission authority for the school are satisfied that the school has a specialism in the subject or subjects in question; and
 - (b) the proportion of selective admissions in any relevant age group does not exceed 10 per cent.”
- 21.6. Section 102(2): “Subsection (1) does not apply if the admission arrangements make provision for any test to be carried out in relation to an applicant for admission which is either a test of ability or one designed to elicit any aptitude of his other than for the subject or subjects in question”.

22. The objector is concerned that the consultation carried out by the school in 2018 ‘introduced an oversubscription criterion to select a proportion of its pupils on the basis of

their musical aptitude', which remains in place in the 2023 arrangements. The objector was of the view that this contravenes paragraph 1.9 f) and g) of the Code.

23. The response from, and evidence provided to me by, the school demonstrated that this criterion was not introduced for the first time following or resulting from the consultation in 2016. The consultation had, in fact, included the proposal to increase the number of pupils already prioritised, under the existing partial selection criterion, from 16 to 30 pupils. Though later in this section I will address issues in relation to the wording of this criterion, I record here that the school has further provided evidence that it has been partially selecting pupils since before the Act was passed in 1998 with the result that it has pre-existing partial selection covered by Section 99(4)(a)). I find, therefore, that it is not the case that the school introduced partial selection of pupils by musical aptitude in 2018.

24. I emphasise here key aspects of the law and the Code in relation to the introduction of partial selection by aptitude for music. Had the school introduced such selection of pupils by musical aptitude for the first time for admissions in 2018 following the necessary consultation, it would have been permitted to do by Section 102(1) of the Act provided it adhered to sub-sections (a) and (b). About that I make the following points:

24.1. In respect of sub-section (a) (and paragraph 1.24 b) of the Code), a school is permitted to partially select pupils with aptitude in 'the performing arts, or any one or more of those arts' (allowing partial selection by musical aptitude).

24.2. In relation to sub-section (b) (and paragraph 1.24 of the Code) it is permitted for up to 10 per cent of the admission number to be partially selected by aptitude. Arising from the consultation in 2016, the number prioritised for admission under oversubscription criterion 4 is 30. The PAN for the school in 2018 was 300, it is therefore the case that the number of pupils prioritised for admission under this criterion was that which is allowed by law. The PAN is now 360 and so the proportion that can be selected is less than that limit. (I will return to this general point again later in relation to another matter, however).

25. No reasons were provided by the objector as to why it was considered that oversubscription criterion 4 breaches paragraphs 1.9 f) and g) of the Code. I can find nothing in the arrangements which states that the school are giving priority to children according to the occupational or educational status of parents applying (paragraph 1.9 f)) or where the school are taking account of reports on the achievement of pupils (paragraph 1.9 g)) in relation to this criterion. I do not find that, as regards the areas underlined (the specific areas of paragraphs 1.9 f) and g) the objector says are breached), the school is going beyond that which is permitted under the provisions of both the Act and the Code when implementing priority by partial selection.

26. In consequence, I do not uphold this part of the objection.

27. However, there is another matter about this oversubscription criterion that I wish to raise here. The objector has not raised this, and I am, therefore, doing so myself under

Section 88I of the Act. In looking at this aspect of the arrangements, it became apparent that oversubscription criterion 4 is worded such that it states that the basis of the school's partial selection is that of 'ability', and not 'aptitude' which, however, was the term used by the objector. I have also noted that parties have been using these two terms interchangeably in documentation and responses. These terms do not mean the same thing and are made distinct from each other by their everyday definitions. Put simply, ability can be defined as that which one has and can demonstrate in the present. Aptitude can be defined as: that which one has the capacity to develop; one's potential; and how quickly and easily one will be able to learn (that something to which a particular aptitude refers) in the future. In the context of the requirements as to school admissions, partial selection by 'ability' on the one hand and 'aptitude' on the other are treated differently from each other by both the Act and the Code. The two terms therefore cannot be used interchangeably in school admission arrangements as if they mean the same thing, as different provisions apply to each.

28. Section 100(1) of the Act makes provision for a school to partially select by ability or aptitude, as long as it did so prior to or at the beginning of the 1997/98 school year, and has done every year since. Section 102(1) makes provision for a school to be able to introduce partial selection by aptitude. However, there is no equivalent provision for the introduction of selection by ability and selection by ability is permitted only if it existed prior to or at the beginning of the 1997/98 school year and then only to the extent of the lowest proportion of such selection since that time. This is also repeated clearly in paragraph 1.9 d) of the Code.

29. Because the school is an academy there is also the scope for the Secretary of State to give it permission through its funding agreement not to have to meet one or more requirement of the Act or the Code. This is explained in paragraph 4 of the Code and is usually referred to as the academy concerned having a derogation from the Code. I raised the matter of the wording of oversubscription criterion 4 with the school. In its response, the school was unable to point to any paragraph(s) in the 2011 academy funding agreement (or any of the supplementary funding agreements) or any other documentation which permits the school to select a proportion of its intake by ability. Instead, the school signposted me to the copies of the previous arrangements for admission to the school in 1997, 1999, 2005, 2010, 2017, 2018, and 2022 that it had provided (it did not have copies of any of the arrangements for any of the other years prior to 2017 and the arrangements for 2019, 2020 and 2021 were the same as 2018). It also provided me with a letter from the now retired Assistant Director of Music. In that letter, the retired Assistant Director wrote that this part of the school's admission criteria was in place at least from the time he was in post from the mid-1990s and explained that the application process involved a "short, informal musical performance by prospective students to the Director of Music and an external accompanist, followed by a discussion about their musical interests". This confirmed that the school has had some form of partial selection which has been tested as part of the arrangements. It also provided the SIF for this criterion along with some examples of anonymised completed audition test record forms which show the criteria used to assess applicants.

30. I noted that in the school's arrangements for 1997, 1999, 2005 and 2010, the relevant criterion was for partial selection (then of up to 16 pupils) by 'aptitude'. The

arrangements for 2017, 2018 and 2022 state that the school partially selected by 'ability'. This means that at some point between 2011 and 2017, the wording of the criterion was changed. Consequently, this raises a number of concerns about the school's arrangements:

- 30.1. The school was selecting by aptitude in 1997 and therefore was able to do so from that point, providing it did so every year. At some point before the 2017 arrangements, it stopped doing so. Therefore, the school has forfeited the right to partially select by aptitude under Sections 99(4)(a) and 100(1)(b) of the Act, but also note that this does not remove its right to have such selection by virtue of section 102 of the Act.
- 30.2. At some point prior to or in 2017, the school introduced partial selection by ability. Schools are expressly prohibited by law from introducing partial selection by ability if they did not already do so prior to 1997/98. The school's arrangements are therefore currently unlawful, contrary to Sections 99(2)(a) and 100(1) of the Act and paragraph 1.9 d) of the Code.
- 30.3. Section 102(1) allows for the partial selection of pupils by aptitude, but it does not if, under Section 102(2) a school's arrangements make provision for any test to be carried out in relation to an applicant for admission which is a test of ability. Both the SIF and audition test record forms clearly request / record information that is related to the ability of applicants (as well as that related to the applicants' aptitude). Although in line with the criterion as it is currently worded, the partial selection by ability has been found to be unlawful. Therefore, the arrangements are also unlawful and in breach of paragraphs 1.9 d) and 1.32 a) of the Code in relation to aspects of the SIF and audition tests. I stress here that it is not the use of the SIF or audition tests as part of the selection process per se that is unlawful, but the ability-related information requested / recorded through them.

31. I pause here to use the school's situation to illustrate a wider point about what schools can and cannot do in terms of a particular aspect of partial selection. In 2016, the school consulted on increasing the proportion of its intake that could be partially selected and subsequently increased that proportion from 16 to 30 pupils in 2018/19 (this increased the proportion of pupils prioritised under that criterion from 6.67 per cent in 1997/98 to 10 per cent in 2018/19 (now 8.3 per cent because of the increase in PAN from 300 at that point to 360)). If the school had been selecting partially by aptitude in 2018/19, this would have been permitted under Section 102 which allows for the introduction of partial selection of children by aptitude of up to 10 per cent of the proportion of the intake of pupils in the year of entry (reliant, of course, on a consultation having taken place to do so). Because the school was partially selecting by aptitude in 1997/98 it would not have been bound by Section 100(1)(a) and (1A) which state that the proportion of selective admissions must not exceed the lowest proportion permitted in any year since 1997/98. Had the school been selecting by ability since 1997/98, it would be bound by Section 100(1)(a) and (1A) as the Act and Code do not make provision for schools in respect of introducing partial selection

by ability. In fact it is expressly forbidden. The increase in the proportion of its intake in 2018/19 partially selected by ability was therefore also unlawful.

32. After raising these points with the school, the CEO of the trust stated that: “I can say that the school is happy to change the oversubscription criteria and all corresponding documents to affirm that places are achieved through the music provision on on [sic] pupils having an ‘aptitude for music’.”

33. That the school are willing to address the matters raised is welcomed. However, as previously stated, sometime between 2011 and 2017, the school stopped partially selecting by aptitude and, therefore, forfeited the right to do so at that point. The school has also unlawfully introduced partial selection by ability, and its arrangements include requests for information about applicants’ ability (via the SIF) and records assessments of ability in its selection testing process (during auditions) in breach of the Code. The school is, consequently, not able to include an oversubscription criterion which prioritises pupils on the basis of their musical ability and cannot simply change the wording for it then to partially select by pupils’ musical aptitude. In any event, because of the point I make next, it would be too late to do so at this point.

34. This determination will be published during the application process for school places for 2023, and likely very close to the admission deadline in October 2022. In my view, although (as I point out later) the number applying for places under this criterion is small and decreasing, expecting the school to change its arrangements at such a late stage in the admissions process would in all likelihood cause chaos and would certainly substantially inconvenience the hundreds of families who will have already applied for any of the places available for their children by that time. Therefore, I do not propose to require the school to change its arrangements for admission into the school for 2023.

35. However, the school:

35.1. must not partially select by musical ability after the admission round for entry to the school in 2023; and

35.2. cannot partially select by musical aptitude on the basis that it did so prior to 1998/98 because it ceased doing so sometime between 2011 and 2017.

36. The school should note that this determination does not prevent it from consulting on the introduction of partial selection by musical aptitude for its 2024 arrangements, as is permitted by Section 102(1) of the Act and in line with paragraph 1.24 of the Code. As previously specified this means that, should the school implement such partial selection, it can choose to select up to 10 per cent of its pupils (which is up to 36 pupils out of the current PAN of 360).

The catchment area

37. The objector has raised matters about the school’s catchment area which are, in part, connected to the school’s partial selection of pupils in relation to music. It is important

to note here that, although I have found the school to be unlawful in its partial selection of pupils by ‘musical ability’, reference will still need to be made in this section to that oversubscription criterion as it is currently part of the arrangements under scrutiny and will be part of the arrangements for 2023/24. In doing so, I am not contradicting my earlier finding or condoning its use.

38. Before looking in depth at the catchment area, I note here that I will be referring to the location of some primary schools from which children have joined the school in recent years and pause to look at the data provided by the school in respect of the numbers of pupils from each primary school offered places for Year 7 in September 2022. Table 1 shows that data (though I have had to amend the location of some schools in the LA column).

Table 1: Offers for places at the school in September 2022 by LA (C – Calderdale / K – Kirklees / B - Bradford) ordered by distance from the school (as measured by GIAS)

Primary School	Number offered places	LA	In catchment?	Distance from school (miles)
Longroyde Primary School	51	C	Yes	0.19
Field Lane Primary School	7	C	Yes	0.5
Carr Green Primary School	37	C	Yes	0.56
Woodhouse Primary School	49	C	Yes	0.67
St Andrew's CE (VA) Junior School	4	C	Yes	0.77
Old Earth School	11	C	Yes	1.16
St Joseph's Catholic Primary Academy (Brighouse)	3	C	Yes	1.42
Trinity Academy St Chad's	1	C	Yes	1.45
Fixby Junior and Infants School	21	K	Yes	1.51
St John's (CE) Primary Academy, Clifton	5	C	Yes	1.53
Our Lady of Lourdes Catholic Primary School	1	K	No	1.78
Cliffe Hill Community Primary School	4	C	Yes	1.8
Ashbrow School	5	K	No	1.83
Bailiffe Bridge J and I School	9	C	Yes	2.09
Withinfields Primary School	2	C	Yes	2.1
St Thomas CofE (VC) Primary School	8	K	No	2.12
Lightcliffe CE Primary School	18	C	Yes	2.18
Cross Lane Primary and Nursery School	1	C	Yes	2.38
Siddal Primary School	1	C	No	2.44
Birkby Junior School	5	K	No	2.48
West Vale Academy	1	C	Yes	2.56
Lindley Junior School	11	K	Yes	2.57
The Mount School	1	K	No	2.57
St Patricks Catholic Primary School (Huddersfield)	2	K	No	2.63
St Patrick's Catholic Primary Academy (Elland)	1	C	Yes	2.65

Primary School	Number offered places	LA	In catchment?	Distance from school (miles)
Salterhebble Junior and Infants School	19	C	No	2.77
Copley Primary School	2	C	No	3.14
The Greetland Academy	1	C	Yes	3.26
Reinwood Junior School	3	K	No	3.3
Worthinghead Primary School	1	B	No	3.41
Holy Trinity Primary School (COEA)	1	C	No	3.41
The Gleddings Preparatory School	1	C	No	3.42
Moorlands Primary School	2	K	Yes	3.5
Holywell Green Primary School	1	C	No	3.52
St Joseph's Catholic Primary Academy (Halifax)	1	C	No	3.52
Salterlee Academy Trust	7	C	No	3.6
Northowram Primary School	41	C	Yes	3.61
Shelf Junior and Infants School	1	C	No	4.03
St Michael and All Angels CE Primary School	2	C	No	4.24
Lee Mount Primary School	1	C	No	4.36
Crowlees CE (VC) Junior and Infant School	1	K	No	4.38
Whitehill Community Academy	1	C	No	5.81
Wainstalls School	2	C	No	6.93
Unknown prior school	6	C	-	-
Secondary Import	2	C	-	-
Elective Home Education	1	C	-	-
Kirklees Unknown School	4	K	-	-

39. Of the places that have been offered at the school for September 2022, 347 are from the 43 primary schools listed in Table 1 (13 pupils either do not come from a primary school or that school cannot be identified). The range of distance of those 43 primary schools from the school is between 0.19 and 6.93 miles. Those in bold are the eight feeder primary schools listed under oversubscription criterion 2. Out of the feeder schools, six are in the catchment area. Out of the remaining 35 primary schools, 19 are not in catchment. The only two primary schools in Kirklees in Table 1 that are in the catchment area are Lindley Junior and Moorlands Primary School (totalling 13 pupils), which are the two schools cited by the objector.

40. The catchment area in the 2023 arrangements has not changed since its introduction in 2018 and prioritises admission under oversubscription criterion 5. The larger settlements from Calderdale included within the catchment area are Brighouse and Elland along with smaller settlements such as Hipperholme, Northowram, Southowram, and most of Greetland and all areas in between. The catchment crosses the Calderdale border to encompass a small area of Bradford (Lower Wyke) and then into Kirklees to the north-east of the school (including Scholes and Hartshead Moor Top (south of Bradford)) and again into Kirklees to the south and south-west of the school skirting the northernmost areas of Huddersfield until it then encompasses an area north of the A640 where the villages of

Birchcliffe and Lindley are located. It is this area, in the Mount area of Huddersfield, that overlaps with the objector's school's catchment. It is this smaller section of the catchment area – I will refer to as the 'catchment overlap area' – which is referred to in the objection and which will therefore form my initial focus. I will also consider the catchment area as a whole.

41. Admission authorities of schools which are oversubscribed are able to give higher priority to some applicants, provided this is in accordance with the Code, and the adoption of catchment areas as a means of doing this is perfectly lawful provided the catchment area is clearly defined and reasonable and provided its use does not make the arrangements unfair overall. Paragraph 14 of the Code requires, amongst other things, that arrangements must be clear and fair. Paragraph 1.8 requires that oversubscription criteria are reasonable, and paragraph 1.14 requires that catchment areas must be reasonable and clearly defined. I find that the catchment area is clearly defined. A map is provided for parents which is easily accessible from the admission page on the school's website. In respect of being 'reasonable' and 'fair' it appears to me that, although the objector has not used those terms overtly in the objection (save for a reference to unfairness in later correspondence), the matters raised do question the reasonableness and fairness of a part of the school's catchment area – specifically the catchment overlap area – in any event. I will look at what 'reasonable' and 'fair' mean and how they apply to this part of the objection in due course, but turn first to look in more detail at the specific concerns that the objector has raised and to making further preliminary points.

42. The objector is concerned that some pupils in Calderdale will not get places at the school as a result of admitting those from the catchment overlap area, stating:

"[...] Rastrick is substantially oversubscribed. According to 2021 freely available data (<https://www.inyourarea.co.uk/news/which-are-the-most-oversubscribed-schools-in-england/>) [the 'in your area' data], Rastrick had 846 preferences and 346 places offered, with a percentage of first place offers running at 84.5%.

We hypothesise that some Calderdale children in the 15.5% not allocated Rastrick as their first place, must be being denied a place as a direct result of Kirklees [that is children from the catchment overlap area] children being offered place."

43. In later correspondence, the objector stated:

"We see no reason why the Rastrick [catchment area] should extend into Kirklees and literally up to the front gates of Salendine Nook High School. In our clear view, it should be set at the county boundary. This would not stop Kirklees children from applying, but Rastrick High School would first have to have it's [sic] places filled by Calderdale children only. We have no objection whatsoever to free parental choice but the current arrangement is disadvantaging Calderdale students and gives the impression of providing advantage to certain children in Kirklees, particularly when twinned with their Admission Criteria 4 (as was) which is around guaranteeing places based on musical aptitude. The two factors give clear advantage to more affluent

children in Kirklees (particularly Lindley) and there is now evidence that it has denied places to Rastrick families.”

44. I emphasise the following here, arising from the points made by the objector in that correspondence:

44.1. There is nothing in the Code which explicitly states that the boundary of one school’s catchment area cannot be close / next to another school or overlap that school’s catchment area. Indeed, there are many cases of shared catchments and of schools being located close to the edge of their catchment areas.

44.2. It is a universal requirement of all school admission arrangements that – where the school has places – all who seek one must be admitted (except for grammar schools who can keep places empty if not enough pupils meet the entrance test threshold). While a school can give priority to children in a variety of different ways, it cannot keep places empty because it does not fill places it has ‘guaranteed’, such as the objector asserts in respect of oversubscription criterion 4. The school is not of course doing this; but I want to emphasise that in law places are not ‘guaranteed’ by being in anyway ‘reserved’ for children under such criteria; rather, priority is given to children with musical ability for those places when there is oversubscription. If there are not sufficient successful applicants to fill the 30 places currently allocated, then pupils are admitted from the oversubscription criterion that follow until the PAN is reached.

44.3. The objector was particularly concerned that Lindley Junior School, located in the catchment overlap area, has a “strong and locally recognised choir / music department”. However, priority in the oversubscription criteria is given to pupils with musical ability first (under oversubscription criterion 4) before those in the catchment area (under criterion 5). Pupils seeking priority for a place under criterion 4 can live anywhere and do not need to be resident in Lindley or in the catchment area at all.

45. The objector is of the view that having a school with a good reputation for music in the catchment overlap area increases the likelihood that those admitted under oversubscription criterion 4 would be from that area, as well as pupils from the same area being afforded the opportunity to be admitted under criterion 5. It is hypothesised by the objector that the school, in consequence, takes more pupils from the catchment overlap area and this would reduce the number of pupils admitted from Calderdale. It is also stated by the objector that the inclusion of the catchment overlap area is an attempt by the school to prioritise places for pupils from affluent families in that area. As previously stated, the school’s catchment also encompasses other areas of Kirklees to the east of Lindley and north-east of the school. I will first look at the catchment overlap area (the main focus of the objection), then at the wider catchment area.

46. When considering the reasonableness and fairness of this aspect of the school's arrangements, I will adopt a two stage approach which can generally be described thus: first, I will assess whether the criterion in question is reasonable. If I find that it is unreasonable, the criterion would be non-compliant with the Code and I would not need to proceed to the second stage. If the criterion is found to be reasonable, I will go on to look whether the effect of the criterion is fair.

47. The Code uses the term 'reasonable' but does not define it. An everyday definition is of having sound judgement; being sensible and rational. It is the requirement of public bodies, including admission authorities, that they must act reasonably in adopting any policy or making any decision. The test I will apply to reach a conclusion on this aspect of the objection, therefore, is whether the catchment area is one which a reasonable admission authority acting rationally and taking into account all relevant factors and no irrelevant factors would choose. This is an objective test. It will be necessary to consider the rationale for adopting it (part 1 of the test) and the effect of its practical operation (part 2). Part 1 follows.

48. I asked the school for the rationale underpinning the adoption of its catchment area. It told me that:

"The reason for the introduction of the catchment area in 2018 was to engage more families from the local area (Calderdale). Calderdale pupils were being refused places based on the distance element of the over subscription criteria because of the school's proximity to large population areas in Kirklees.

Throughout the planning (pre consultation) process the school worked in partnership with the LA to plan and to implement this strategy and the increase in PAN, in order to meet the bulge / growth years projected by the Calderdale LA. [...]

The school's catchment area was selected on the principle that it would support the children of Calderdale achieving a place at the school more than they had previously.

This is particularly important for pupils in deprived areas of Calderdale as in the event that there were too many in 'catchment & feeder' pupils for the available places, the close proximity to the school would mean that such pupils from more deprived part of Calderdale (within 2.0 miles of the school), would be afforded priority under the tie-breaker of distance."

(I have raised with the school that the arrangements do not currently include a tiebreaker – see 'Other Matters' section. It is also the case that the arrangements do not make clear that the applicants under oversubscription criterion 5 are ranked by distance. For the purposes of the consideration of this part of the objection, I have proceeded on the basis that the school ranks applicants under this criterion by distance from the school).

49. The school went on to explain:

“To highlight the point about serving all communities fairly. The areas within the school’s catchment in Calderdale (as evidenced by the Joint Strategic Needs Assessment: Indices of Multiple Deprivation Calculator) are Elland 25% most deprived, Brighouse 30% most deprived (with a key estate that feeds into the school being in the bottom 10%), Rastrick 30% most deprived (with several areas falling below 15%) and Lightcliffe 30% most deprived.

In specific terms to the area in Kirklees. The school has had a historic long-standing agreement in place to serve the children and families of Kirklees (note Fixby Primary School being on the school’s feeder school list since the early 1990s).

The area within the catchment in Kirklees is a short distance from the school’s gate and the catchment boundary in Kirklees, runs along the major road network. This road network is used to support a pre-existing long-standing agreement with Kirklees Local Authority and First Bus Kirklees, to provide transport for pupils.

It should also be noted that the areas within Kirklees served by the catchment vary in levels of deprivation. Birkby for example is in the bottom 40% of areas of deprivation. It is noted that the areas of Outlane and Lindley are considered more affluent areas than those highlighted above, but is [sic] does demonstrate that when combined with the areas in Calderdale highlighted above the catchment area of Rastrick high School is reasonable and balanced.”

(KCLA have since challenged the school’s latter point about Birkby and the school have since conceded that Birkby is in the least deprived 30 per cent, and not in the most deprived 40 per cent. In any event, I will not be taking that area – and the points made about it – into account in my consideration).

50. Therefore, the school cites two reasons why the catchment area was introduced into the arrangements. First, that it was to ensure that applicants for places from Calderdale did not lose out to applicants from Kirklees who live closer. Secondly, it was so those applicants from more deprived areas closer to the school were allocated places when oversubscribed as places would be allocated according to distance. Addressing the point raised by the objector that the school is prioritising places for pupils from affluent families in Lindley, the school has attempted to justify this by saying that the inclusion of the area of Kirklees covered by the catchment overlap area ensures that the catchment area is ‘reasonable and balanced’. I will look at each of these two reasons in turn.

51. Looking at the whole catchment area, I note it is of a shape where there are areas of Calderdale therein which are further away from the school than the areas of Kirklees included within it. Focussing first on the catchment overlap area, Google maps shows the straight line distance from the school to the approximate closest point of the boundary of the Lindley area of Huddersfield is around 2.2 miles. The settlements of Greetland and Northowram, to the west and north of the school (respectively), and which are at the extremities of the Calderdale-based areas of the catchment, are beyond that distance. This

means that applicants from the Lindley area would be prioritised in the ranking by distance under oversubscription criterion 5 over those areas of Calderdale further away than Lindley, as suggested by the objector.

52. This situation would appear to be at odds with the first of the school's two reasons for the introduction of the catchment area. I note that Northowram Primary School is on the feeder school list and the school already prioritises admissions from pupils who attend that school under oversubscription criterion 2. However, a parent living in Northowram has the choice of 12 primary schools within a two mile radius of Northowram Primary school (according to GIAS). One of those schools (Salterlee Primary School) is also on the list of feeder schools under criterion 2 and two are in the catchment area (Lightcliffe C of E Primary School and Withinfields Primary School) and so are not disadvantaged by the arrangements. If a parent was to choose to send their child(ren) to one of the other nine primary schools however, this could potentially disadvantage them when those from areas of Kirklees included in the catchment area and who live closer to school would be prioritised before them under oversubscription criterion 5. Additionally, the two primary schools in the Greetland area (The Greetland Academy and West Vale Primary School) are not listed as feeder primary schools and applicants could also be similarly disadvantaged when ranked by distance under criterion 5.

53. When looking at the whole catchment area, I was concerned that more areas of the Calderdale-based catchment would be prioritised after areas of Kirklees (a lot of those areas of Kirklees within the catchment area south of the school are closer than Lindley). A straight line measurement in Google maps shows that the shortest distance from the school to the border with Kirklees (south of the school and not the north-eastern boundary) is approximately one mile. This means that the Calderdale-based areas of the catchment (outside of most of Brighouse) would be competing with applicants from Kirklees that are the same or similar distances from the school, or will be prioritised after those from Kirklees because they are further away. Areas of Kirklees close to the school (from the area south of the school) are: north Bradley; Fixby; areas of Netheroyd Hill and Cowcliffe; Birchenccliffe; and the Prince Royd area. Fixby Primary School is on the feeder school list, however, and so pupils attending that school and applying for places would already be prioritised under oversubscription criterion 2. A similar situation is found with the border with Kirklees which is north-east of the school. This is approximately 2.1 miles from the school and includes Scholes and Hartshead Moor Top. This area is closer than Northowram and Greetland, further disadvantaging applicants from those areas. Part of Lower Wyke, immediately to the east of this area, is the only area in the school's catchment originating from Bradford. This is two miles from the school. Applicants from this small area of Bradford will also be prioritised over Calderdale applicants under criterion 5 when distance is applied and where they are closer to the school.

54. Continuing part 1 of the test of reasonableness, I turn now to look at the second of the two reasons given by the school for the introduction of the catchment area. I have used IoD 2019 data to look at levels of deprivation in the relevant areas to test whether the school's assertions – that the catchment area is designed to ensure those from deprived parts of Calderdale (within two miles of the school) – would be afforded priority under the

tie-breaker of distance and that the inclusion of areas of Kirklees maintain a 'reasonable and balanced' (in terms of levels of affluence and deprivation) intake.

55. Table 2 shows the Lower-Layer Super Output Areas (LSOAs – standard statistical geographical areas of England designed to be of a similar population size, with an average of approximately 1,500 residents or 650 households) in both the Calderdale-based areas of the catchment organised by deciles (deciles are calculated by ranking the 32,844 LSOAs in England from most deprived to least deprived and dividing them into 10 equal groups, where '1' is the 10 per cent most deprived and '10' is the 10 per cent least deprived). Table 3 shows the same for the Kirklees and Bradford-based areas of the catchment.

Table 2: LSOAs (whole or part) in the Calderdale-based area of the catchment and their deciles

Decile	LSOAs	Total
1	019D	1
2	025D, 024A, 025A, 015E	4
3	024C, 019C, 023C, 019E	4
4	026C, 025C, 025B, 023D, 015A	5
5	024E, 025F, <u>024D</u> , 018B, 018C, 008A	6
6	015D, 011D	2
7	026A, 025E, 024B, 015B, 026D, 026B, 015C, 019B	8
8	011C, 011A, 003F, 003D	4
9	026E, 019A	2
10	023A, 023B, 011B, 003E	4
	Total =	40

The school is located in the underlined LSOA in Table 2.

Table 3: LSOAs (whole or part) in the Kirklees and Bradford-based areas of the catchment and their deciles

Decile	LSOAs	Total
1	(061E)	1
2	-	0
3	022B, <u>003B</u>	2
4	030A, 033B	2
5	022D, 036C, (061F)	3
6	<u>003A</u>	1
7	022C, <u>003D</u>	2
8	030C, 030B, 030D , 027C, 027D, 036D	6
9	022A	1
10	-	0
	Total =	18

Those in bold in Table 3 are the LSOAs wholly or in part in the catchment overlap area. Those underlined are in the area of Kirklees to the north-east of the school. Those in brackets are in Bradford.

56. Table 2 shows that there is already a balanced socio-economic intake from the Calderdale-based LSOAs in the catchment area, with half of the potential intake in lower deciles (1 to 5) and half in upper deciles (6 to 10). Table 3 shows that when looking at just the areas of Kirklees, more of the area is in upper deciles (10 LSOAs compared to six in lower deciles). The catchment overlap area includes small parts of 030A and 033B (both in decile 4) which are less affluent, but is predominately covered by much more affluent LSOAs (030C, 030B and 030D), which are all in decile 8. The most deprived Calderdale-based areas of the catchment are, as the school pointed out, within two miles of the school site. However, all or part of LSOAs 019D, 015E, 025A and 025D are more than one mile from the school, and this means that the current catchment area is likely to prioritise applicants from closer areas of Kirklees for places before applicants from those areas of Calderdale.

57. I note that the geographical area of Kirklees covered by the catchment area is smaller than the area of Calderdale that it encompasses. It is also the case that the Kirklees-based area of the catchment lying to the south of the school is less densely populated than other areas, meaning there is likely to be less potential for applicants for places at the school. This is further reduced from Fixby for example, as the local primary school there is already on the feeder school list under criterion 2. I summarise my findings under Part 1 of the reasonableness test in that context.

58. The school said that the broad reason for its introduction of the catchment area was because: "Calderdale pupils were being refused places based on the distance element of the over subscription criteria because of the school's proximity to large population areas in Kirklees." It seems counter-intuitive, therefore, to include areas of Kirklees in the catchment that potentially stymie the achievement of that goal. It is the case that there is the potential for applicants in Kirklees-based areas of the catchment to be prioritised under oversubscription criterion 5 before those in areas of Calderdale that the school purports to want to prioritise over those from Kirklees (for example, those in the most deprived areas of Calderdale and those in the extremities of the catchment in the north and west), particularly in years when there might be a high level of application from Kirklees. The school also believes that by including areas of Kirklees it has created a 'reasonable and balanced' catchment area from the perspective of affluence and deprivation. Through an analysis of the IoD2019 data, I have found that the areas of Calderdale included in the catchment area do provide a balance across the 10 deciles. However, when those areas of Kirklees included in the catchment area are analysed, this potentially increases the intake from more affluent areas. Coupled with the higher priority that would be given to areas of Kirklees over those in areas of Calderdale that are furthest away, there is also the potential that the school could be admitting more pupils from areas of higher affluence as a consequence. I note here that all oversubscription criteria create advantage for some groups of children and disadvantage for other groups: that is their purpose. Nevertheless, it appears that there

is the potential for pupils from Kirklees to be admitted at the expense of those in Calderdale from the catchment area, counter to the original reasons for its introduction.

59. Turning now to Part 2 of the test of reasonableness, I intend to look at the effect of the practical operation of the arrangements in respect of those concerns raised by the objector and in the context of my findings in Part 1 of the test. On request, the school provided the data in Table 4, which shows how many pupils were admitted with EHCPs and under each of the oversubscription criteria from 2018 to 2021 and have been offered places for 2022.

Table 4: Numbers of pupils admitted with an EHCP and under each of the oversubscription criteria between 2018 and 2021 and offered for 2022

EHCPs / oversubscription criteria	2018	2019	2020	2021	2022
EHCP	2	10	3	11	9
1 - LAC / PLAC	2	3	4	4	4
2 - From feeder primaries	176	202	248	243	225
3 – Siblings	32	30	28	37	36
4 - Musical ability	13	13	8	16	6
5 - Catchment area	28	40	54	49	66
6 - Distance from the school (out of catchment)	77	47	0	0	14
Total	330 *	345	345	360	360
PAN	300	345	345	360	360

* the school admitted over its PAN in 2018

60. The data show that there is, overall, an increasing number of admissions made under criterion 5 (in bold). In 2022, slightly over 18 per cent of admissions were under criterion 5 compared to around half that figure in 2018. This criterion is, therefore, of increasing significance to the admissions to the school. I note here that the number offered places under criterion 6 in 2022 was only just under four per cent of the offers as compared to just under 26 per cent of admissions in 2018.

61. For the same period, I requested the data to show the number of pupils from Kirklees admitted to the school. This is shown in Table 5.

Table 5: Number of pupils from Kirklees that have been allocated a place at the school between 2018 and 2021 and offered for 2022

Pupils admitted from Kirklees under EHCPs and each oversubscription criterion	2018	2019	2020	2021	2022
EHCP	0	5	0	1	1
1 - LAC / PLAC	1	2	2	0	2
2 - From feeder primaries	61	54	62	65	59
3 – Siblings	22	23	18	20	19
4 - Musical ability	6	6	2	8	5

Pupils admitted from Kirklees under EHCPs and each oversubscription criterion	2018	2019	2020	2021	2022
5 - Catchment area	2	13	13	7	14
6 - Distance from the school (out of catchment)	48	35	7	2	12
Total	140	138	104	103	112
Percentage of PAN	47	38	29	29	31

(Note: I brought to the school's attention a discrepancy with the dataset for 2020 and 2021 in that the number admitted from Kirklees in those years under criterion 6 should be 0 given the data in table 4. The school have explained that the data has had to be provided from datasets taken at different points in those two years. The data for Kirklees pupils in Table 5 is from a time after that in Table 4).

62. The proportion of the intake of pupils from Kirklees has decreased from 47 per cent of the PAN in 2018 to 31 per cent of the PAN in 2022. Just under four per cent of the total places allocated in 2022 are applicants from Kirklees under oversubscription criterion 5. However, the proportion of admissions from Kirklees from the catchment area is increasing over time and is now a larger proportion of the overall total admitted from Kirklees than any year since 2018 (12.5 per cent in 2022 compared to 1.43 per cent in 2018). The proportion of the total of those admitted from Kirklees via criterion 5 in 2018 was 7.1 per cent. In 2022, that proportion has risen to 21.2 per cent. I note here that the number admitted under criterion 6 has decreased markedly since 2018 (especially when taking into account the PAN was lower in 2018), while admissions under other criteria remain relatively consistent. Criterion 6 is where you might expect more pupils from Kirklees to be admitted if the rationale for introducing the catchment area was being realised. The proportion of those admitted from Kirklees is increasing only under criterion 5 and is decreasing through criterion 6. Whilst the school is achieving its aim to reduce the number from Kirklees overall, it does not appear to be doing so through the catchment area as it is currently configured.

63. The objector expressed a concern about the proportion of pupils admitted from Lindley under oversubscription criteria 4 and 5. The school provided the figures for admissions under these two criteria between 2018 and 2021 and offered for 2022. I have put that data into Table 6.

Table 6: Lindley admissions under oversubscription criteria 4 and 5

Pupils admitted from Lindley under oversubscription criterion 4 and 5	2018	2019	2020	2021	2022
4 - Musical ability	2	3	0	4	1
5 - Catchment area	1	2	6	2	2
Total	3	5	6	6	3
Percentage of the total admitted from Kirklees	2.1	3.6	5.7	5.8	2.6

64. The proportion of the total number of pupils from Kirklees admitted / offered places under criterion 4 from Lindley decreased from 33.3 per cent in 2018 to 20 per cent in 2022. Under criterion 5, that decline has been more marked, reducing from 50 per cent in 2018 to

14.2 per cent in 2022. Although there were slightly higher years for both in between, overall the proportion of pupils from Lindley admitted under both criteria has been no more than 5.8 per cent of the total number admitted from Kirklees and the proportion has dropped considerably in 2022. In terms of the PAN, the number from Lindley admitted in 2018 was one per cent. In 2022, the offers of places to pupils from Lindley amounts to 0.83 per cent of the intake. I have not found any evidence here that the objector's concerns are founded. In fact those concerns appear to be disproportionate to the reality shown by the data.

65. The objector hypothesised that a proportion of the 15.5 per cent of first preference applicants who did not get a place in 2021 (as quoted from the 'in your area' data used as the basis of this part of the objection) will be pupils from Calderdale who did not get places at the expense of the admission of pupils from Kirklees. It is important to note here that the number of applications to the school will include first, second and third preferences. The LA have confirmed that some second and third preference applicants do get places at the school.

66. I requested data from the LA on the number of first preference applications for entry between 2018 and 2022 and the number that did not get offered a place in each of those years (with the latter broken down by area of residence and in those areas where they form part of the catchment). The data is shown in Table 7.

Table 7: First preference application data between 2018 and 2022

Number of first preference applications ...	2018	2019	2020	2021	2022
for entry into Year 7 (Calderdale)	140	182	239	201	240
for entry into Year 7 (Kirklees)	135	124	134	126	122
for entry into Year 7 (Bradford)	1	2	7	11	8
(Totals =	276	308	380	338	370)
that did not get offered a place at the school (total)	4	12	42	37	41
that did not get offered a place at the school (Calderdale)	4	4	7	5	14
that did not get offered a place at the school (Kirklees)	0	7	34	28	22
that did not get offered a place at the school (Bradford)	0	1	1	4	5
for entry into Year 7 (Calderdale – catchment area)	118	137	189	165	189
for entry into Year 7 (Kirklees – catchment area)	29	35	33	26	36
for entry into Year 7 (Bradford – catchment area)	0	0	1	1	0
that did not get offered a place at the school (Calderdale – catchment area)	0	0	1	1	0
that did not get offered a place at the school (Kirklees – catchment area)	0	0	2	1	0
that did not get offered a place at the school (Bradford – catchment area)	0	0	0	0	0

67. The data show that the number of first preferences for places at the school has increased from 2018 to 2022 (with 2020 being the highest). The number of applications from those resident in Calderdale for entry in 2022 was 100 more than in 2018. The number of applicants from Kirklees fell by 13 over the same period. For those resident in areas of Bradford, the number of applicants increased over the same period, though numbers remain small. The data show that most of the increase in first preference applicants has been from those in Calderdale-based areas of the catchment (increasing by 71 as opposed to 7 for those in Kirklees-based areas of the catchment). Given the increase in the numbers of first preference applications overall, it is understandable that the numbers not getting offered a place at the school have also increased. The number of applicants expressing a first preference for the school that did not get offered a place increased ten-fold between 2018 and 2020 and then have plateaued. However, that overall increase is much higher for those applying from Kirklees than it has been for those from areas of Calderdale and Bradford. For entry in 2022, the proportion of Kirklees-based first preference applicants not getting a place was 18 per cent. For Calderdale it was only six per cent. Although for those expressing a first preference from Bradford it was 62.5 per cent, I note that numbers overall are very small and there were no applicants from Bradford-based areas of the catchment, thereby increasing the chances of not being offered a place.

68. The data show that the number of those applicants resident in Calderdale who did not get a place has increased from four in 2018 to 14 in 2022. However, the data also shows that all or most of those applicants were not resident in the catchment area, but were from other areas of Calderdale. The LA confirmed to me that the 14 applicants that did not get a place at the school in 2022 were not from the catchment area and were offered another of their preferences at schools in Calderdale. Table 7 also contains data that show that the number of first preference applicants in the Calderdale-based areas of the catchment not getting a place at the school has been limited to two pupils over the period 2018 to 2022. I note here that although the number of first preference applications from pupils in Kirklees has increased only slightly, the data in Table 5 show that the proportion of those applicants from Kirklees-based areas of the catchment securing places at the school has increased more over the same period. However, despite the concerns I detailed in relation to the rationale in Part 1 of the reasonableness test, I do not see evidence in the data presented by the school and the LA that those concerns are being played out in the practical operation of the arrangements in the way that the objector asserts. For that reason, I conclude that the catchment area meets the reasonableness test and therefore conforms to those parts of paragraphs 14, 1.8 and 1.14 of the Code which require the relevant parts of the arrangements to be reasonable.

69. I have found the arrangements, by way of oversubscription criterion 5, to be reasonable, and therefore now go on to consider the second stage – the fairness of this part of the arrangements. Fairness is a concept, not unlike being ‘reasonable’, that is used in the Code but is not defined. Fairness can be described as a ‘protean concept’, in that it cannot be defined in universal terms, but its requirements will depend on the circumstances. Fairness is focussed on the effect of the arrangements on any relevant group. I stress here as I did earlier, that oversubscription criteria create advantage for some

applicants and disadvantage to others. In relation to admission arrangements, fairness is often best evaluated by undertaking a balancing exercise, weighing the advantage said to accrue to children who would be offered places (or afforded a high priority for places) at the school in consequence of the arrangements, against any disadvantage caused to any other relevant group of children who would not be offered places (or would not be afforded a high priority for places). Unfairness can be found when the disadvantage is considered to outweigh the advantage. In this context, the disadvantage to assess is to those catchment-area residents of Calderdale.

70. The objector has said that it is unfair to applicants from Calderdale-based areas of the catchment whom it has hypothesised do not get places at the school because of the prioritisation of those pupils from the Kirklees-based areas of the catchment that are closer to the school. The data used to test for reasonableness can also be employed in the test for fairness. The data show that there has been disadvantage to only two Calderdale-based applicants over the period 2018 to 2022. In three out of the five years since 2018, all first preference applicants from Calderdale-based areas of the catchment gained places at the school and in two out of those five years only one applicant did not gain a place (0.5 to 0.6 per cent of the total applicants from Calderdale-based areas of the catchment). This does not evidence the scale of disadvantage that the objector hypothesised was taking place in admissions to the school as a result of the implementation of the current catchment area. I am also reassured that the LA, from the perspective of its overall co-ordination role across the borough, has not raised any concerns with me that the way the school's catchment area is implemented is affecting its ability to meet its statutory duties in respect of placing children in its schools. The balancing exercise in this regard shows that there is very little disadvantage evident in the data provided by the school and the LA over the period since the introduction of the catchment area. While the current arrangements may not be the simplest and while the school's account of why they are as they are is not the most robust, they are not unreasonable and are not causing any unfairness to any identifiable group of children. For these reasons, I do not find the effect of the catchment area, in the way the objector asserts, to be unfair.

71. However, the inclusion of areas of Kirklees in the catchment, and the data showing that the number from those areas increasing in 2022 compared to 2018 means that the school should be mindful that, if this were to continue, it could lead to catchment-based applicants from Calderdale being denied a place. If this was to be the case, it would be at odds with the stated rationale for the introduction of the catchment area and could be considered to be unfair to those applicants from Calderdale – the degree of unfairness of which would be determined by how many did not get places. The fact that there exists a potential for this to take place means that the arrangements, were it to be the case that this situation took place, could be considered unfair and might be subject to a future objection. This needs to be monitored closely by the school.

72. Dealing specifically with the concerns raised by the objector, I do not find there are high, let alone disproportionately high, admissions from the Lindley area as a result of the combination of admissions from the catchment overlap area and oversubscription criterion 4. I also do not find that there is an increase in the number of pupils being admitted from

Kirklees-based areas of the catchment such that there is a commensurate increase in the numbers of pupils from Calderdale-based areas of the catchment not getting places. I, therefore, do not uphold those parts of the objection relating to the catchment area.

Other Matters

73. Having considered the arrangements as a whole it appeared to me that the following matters do not conform with requirements of the Code and so I brought them to the attention of the local governing board. These matters were (paragraphs of the Code are indicated where relevant):

73.1. The arrangements consist only of the list of the oversubscription criteria. The Code defines 'admission arrangements' as: "The overall procedure, practices and oversubscription criteria used in deciding the allocation of school places including any device or means used to determine whether a school place is to be offered." Paragraph 15a states: "All schools **must** have admission arrangements that clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school." Paragraph 14 of the Code requires that arrangements must be clear for parents on how places are allocated. By not having a full set of arrangements the school is not meeting the general requirement upon admission authorities as specified in paragraph 5 of the Code. In addition, the following specific requirements are not met:

73.1.1 Information pertaining to the school's waiting list (paragraph 2.15).

73.1.2 The process for requesting admission out of the normal age group (paragraph 2.18).

73.1.3 The in-year admission process, including whether the school utilises the local authority's in-year admission co-ordination scheme (paragraph 2.24).

73.1.4 There is no information on the circumstances in which an offer may be withdrawn (paragraph 2.13) or how late applications will be dealt with.

73.1.5 Information is missing on the right to appeal (paragraph 2.32).

73.2. In respect of the oversubscription criteria:

73.2.1 It would be clearer to parents if the oversubscription criteria were labelled as such (paragraph 14).

73.2.2 Children with education, health and care plans (EHCPs) naming a school must be admitted (paragraph 1.6). Children with EHCPs are not mentioned in the arrangements.

73.2.3 The reference to, and definition of, previously looked after children in oversubscription criterion 1 does not meet the requirements of the Code in two ways:

73.2.3.1 footnote 15 of paragraph 1.7 of the Code states: “A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school”. The definition of looked after child in the arrangements does not cover (b); and

73.2.3.2 as set out in the revised Code which came into force on 1 September 2021, it is now a requirement to extend the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021 (this could be done without requesting a variation from the adjudicator). There appears to be no reference to this requirement in the arrangements. (As set out in paragraph 1.7 of the Code, and in the separate guidance entitled ‘Admissions priority for children adopted from state care outside of England: Guidance for admission authorities and local authorities – July 2021’).

73.2.4 In respect of oversubscription criterion 4, paragraph 1.17 of the Code states: “The admission authorities for all selective schools **must** publish the entry requirements for a selective place and the process for such selection in their admission arrangements.” There is no such description of the entry requirements for those with ‘particular ability in music’ in the arrangements. It is not enough to state that applicants must complete the SIF. It is not clear to parents that the completion of the form, in and of itself, is not the selection criteria (paragraph 14).

73.2.5 Oversubscription criterion 6 does not make clear how the ‘home’ address will be determined in any calculation of distance from the school or include the provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.

73.2.6 Paragraph 1.8 of the Code states: “Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two

applications that cannot otherwise be separated.” There is no tie-breaker in the arrangements.

73.2.7 Paragraph 2.22 of the Code states: “The admission authority **must** also inform parents of their right to appeal against the refusal of a place.” This information is not in the arrangements.

73.3. The arrangements refer to a ‘Published Admissions Limit (PAL)’. I am concerned the use of this term will not be clear for parents (paragraph 14) as this is referred to in the Code as a published admission number (PAN). Additionally, the use of the term PAL may also not be clear in that the PAN is not technically a limit on admissions. For example, paragraph 1.4 of the Code sets out, amongst other things, circumstances when an admission authority might admit above the PAN.

73.4. In respect of oversubscription criterion 4, the school requests that applicants complete the SIF. Paragraph 2.4 of the Code states that admission authorities: “[...] **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. Places **must** be allocated on the basis of the oversubscription criteria only”. The form does not comply with the Code in the following ways:

73.4.1 Question 9 on the form asks for the name of the child’s primary school. Paragraph 1.9 of the Code states:

“It is for admission authorities to formulate their admission arrangements, but they **must not**:

a) [...];

b) take into account any previous schools attended, unless it is a named feeder school”.

73.4.2 Question 10 asks “Does your child have a statement of Special Educational Needs made under the 1996 Education Act?” That question requests information that is not required to determine priority for places under oversubscription criterion 4 and, furthermore, is prohibited by paragraph 2.4c. I note here that to include references to statements of educational need makes the arrangements unclear as such statements no longer exist as they have been replaced by EHCPs.

73.5. In respect of the admissions page on the school’s website, I am concerned that the information does not meet the requirement of paragraph 14 of the Code, in that it is not clear for parents and does not enable them to easily understand how places for the school will be allocated:

73.5.1 The page and the links to documents do not address the shortcomings of the arrangements as I have identified above.

73.5.2 The 2022 admission arrangements (consisting only of the oversubscription criteria) are still marked as 'proposed'.

73.5.3 The page provides the deadline date for applications for 2023 but does not provide the arrangements for 2023 that the governing board determined in December 2021. Paragraph 1.50 of the Code states: "Once admission authorities have determined their admission arrangements, they [...] **must** publish a copy of the determined arrangements on the school's website [...] by 15 March in the determination year".

73.5.4 The in-year admission process cannot be found on the admissions page (paragraph 2.21).

73.5.5 Information for parents on their right to appeal the refusal of a place is not on the admissions webpage (paragraph 2.22).

73.5.6 The SIF referred to in the arrangements appears to be called the 'Talented Musician Development Programme' form in the information booklet on this programme linked to from the admissions webpage. It is not clear from the arrangements as a whole whether these are in fact the same form. Parents may gain the impression from the arrangements that they have two forms to complete for application under oversubscription criterion 4 and the SIF is therefore unclear. This is further compounded by the fact that during the consideration of this case the school have changed the name of this programme on its website to 'Rastrick Young Musician Initiative (RYMI)' (Paragraphs 1.8 and 14).

73.5.7 The list of 'important documents' does not link to any of the listed documents.

74. The school has told me that it intends to address these matters which is welcomed.

75. I have, while considering this case, been provided by the school with a copy of proposed revised arrangements for 2023. I record here that my jurisdiction is for the arrangements for 2023 as they were determined and not for the draft arrangements, which are undetermined. The revisions address many of the issues raised and demonstrate the school's willingness to do so. The draft policy also contains a number of provisions which go beyond making the changes necessary to revise the existing determined arrangements to bring them into line with the Code and upon which I therefore cannot comment. I bring to the school's attention here that the following matters in the draft arrangements do not conform to the Code (with the relevant paragraphs of the Code in brackets):

75.1. In the section now entitled 'Allocation of Places':

75.1.1 It is stated that: "There are 345 places available at Rastrick High School." No mention is made that this is only for the 'relevant year group' and that this is the PAN and this statement is therefore not clear for parents (Paragraphs 14 and 1.2). Additionally, the school has informed me that the PAN is 360 and not 345 and has not informed me of any consultation that might have led to a reduction in PAN for 2023.

75.1.2 It is stated that: "Where the number of applications for admissions exceeds the above figures". It is not clear what figures are being referred to here and it is therefore not clear for parents (Paragraph 14).

75.1.3 Under oversubscription criterion 1, it is stated that: "Also, pupils who were previously in state care outside of England and have ceased to be in state care as a result of being adopted." Paragraph 1.7 of the Code states: "including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted". The wording in the draft arrangements does not contain the words "who appear (to the admission authority)". These words are required because the responsibility for determining whether a child is eligible for a place under this priority rests with the admission authority and therefore the wording as currently presented would not be clear to parents (Paragraph 14).

75.1.4 The way the oversubscription criteria are labelled is such that there is no criterion 2 and this would render the oversubscription criteria unclear for parents (Paragraph 14).

75.2. In respect of section '6. Late Applications', the definition of what constitutes a late application is not clear. The Code defines late applications as: "[...] applications for entry in a relevant age group which are submitted before the first day of the first term in the admission year but have not been made in time to enable the local authority to offer a place on National Offer Day." The draft arrangements state: "If an application is received for a place in year 7 after the deadline as set out in the co-ordinated admissions scheme, the application will be dealt with after all those received by the closing date." This does not necessarily mean the same thing (paragraph 14). It would also be clearer to simply state the deadline rather than expect a parent to find and search the co-ordinated admissions scheme.

75.3. Paragraph 2.15 of the Code, in respect of waiting lists in arrangements, states: "Each admission authority **must** maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria". The section

entitled “Re-allocation (Waiting) list” in the draft arrangements does not state that the list will be ranked again in line with the published oversubscription criteria with the addition of each child to that list. This would, therefore, not be clear to parents (Paragraph 14).

75.4. The section entitled ‘In-Year Applications’ does not have a section number. Additionally:

75.4.1 The phrase “In-year places will become available when the number in each year group falls below the PAN” used in this section of the draft arrangements, appears to imply that parents can only make an in-year application when there are places. Paragraph 2.23 of the Code states: “A parent can apply for a place for their child at any school, at any time.” Additionally, the PAN exists only for the normal year of entry (Year 7 in the school’s case) and not for other year groups. Admission to other year groups therefore can only be refused if: “[...] admitting the child would prejudice the efficient provision of education or use of resources” (paragraph 2.28).

75.4.2 Paragraph 2.26 of the Code states so far as is relevant here and in relation to in-year admissions: “They [admission authorities] **must** set out how parents can apply for a school place, and, where they manage their own in-year admissions, provide a suitable application form for parents to complete (and a supplementary information form where necessary), and set out when parents will be notified of the outcome of their application and details about the right to appeal. If the admission authority is to be a part of the local authority’s in-year co-ordination scheme, it **must** provide information on where parents can find details of the relevant scheme. An admission authority, governing body or local authority **must** provide a hard copy of the information about in-year applications on request for those who do not have access to the internet”. The draft arrangements do not make clear for parents:

75.4.2.1 where the ‘In Year Application Form’ can be obtained;

75.4.2.2 whether the school co-ordinates its own in-year scheme or is part of the LA’s in-year co-ordination scheme and, if it is part of the LA’s scheme, then it does not mention where parents can find details of the relevant scheme; and

75.4.2.3 that hard copies can be obtained for those who do not have access to the internet.

75.5. Under Appendix 1, a note is included which states: “A sibling link cannot be claimed where a sibling in receipt of an Education, Health and Care Plan (or a Statement of Special Educational Needs) is attending a resourced unit within

a mainstream primary school.” This is not relevant to a secondary school and so will not be clear to parents and should not be included. (Paragraph 14)

76. As the school is actively seeking to address the areas I have brought to its attention, I will not mention these matters further in this determination. The Code requires that the arrangements be amended to address the points I have raised within the timescale set out in this determination.

77. As part of the process of raising these matters with the school, I requested the school’s reasons for the inclusion of each of the eight feeder primary schools under oversubscription criterion 2. Paragraph 1.15 of the Code states: “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.” The school provided the following reasons for them being named in the arrangements:

“The responses below can be summarised into two categories; schools that have been feeder school’s since before 1997 / 1998 and school’s [sic] who have been added to the feeder school list in support of the [LA’s] growth strategy and in turn fill the local need for secondary school places.

Response: Carr Green Primary School: Long standing feeder school within Calderdale, Field Lane Primary School: Long standing feeder school within Calderdale, Salterhebble Junior and Infants School: Feeder school. In agreement with [the LA] to support them in allocating secondary school places / growth, Northowram Junior and Infants School: Feeder school. In agreement with [the LA] to support them in allocating secondary school places / growth, Copley Primary School: Feeder school. In agreement with [the LA] to support them in allocating secondary school places / growth, Woodhouse Primary School: Long standing feeder school within Calderdale, Fixby Junior and Infants School: Long standing feeder school within Kirklees.”

78. Using the definition of the term ‘reasonable’ I detailed earlier, I determine that the reasons given for the inclusion of the named primary schools are made on reasonable grounds.

Summary of Findings

79. I do not uphold the objection in respect of the school introducing partial selection by aptitude. However, oversubscription criterion 4 has been found to be unlawful because it prioritises on the basis of partial selection by ability. This means that the school, which had legitimately been partially selecting by aptitude since before or in 1997, has introduced at a point before or around the time of its last consultation in 2016, partial selection by ability. This is expressly prohibited by the law and the Code. The school therefore cannot partially select by ability or aptitude – the right to partially select by the latter having been forfeited as a result of the change to selection by ability.

80. Given that this determination will be published late in the current application process, I find that it would likely cause chaos and inconvenience to parents to require the school to change its arrangements for September 2023 in respect of oversubscription criterion 4. However, the school will not be able to partially select by ability from September 2024 onwards. This will also be the same for partial selection by aptitude on the basis that they did so prior to 1997/98. Should it still wish to partially select by aptitude for music, the school could consult on the introduction of such an oversubscription criterion for its 2024 arrangements, as is permitted by Section 102(1) of the Act and in line with paragraph 1.24 of the Code.

81. I do not uphold the part of the objection concerning the school's catchment area, employed under oversubscription criterion 5. I have found the catchment area to meet the tests of reasonableness and fairness when looking at the practical operation of the arrangements. However, the school should continue to monitor the number of pupils admitted from Kirklees-based areas of the catchment to ensure that numbers are not rising such that it would cause significant disadvantage to the admission of those from Calderdale-based areas of the catchment.

82. I have found a significant number of issues with the school's arrangements which I have listed in detail in the 'Other Matters' section. The school has said it will address them and it must do so in the timescale set out in this determination.

Determination

83. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 determined by the local governing board for Rastrick High School, Brighouse.

84. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

85. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 October 2022.

Dated: 12 September 2022

Signed:

Schools Adjudicator: Dr Robert Cawley