



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3944

Objector: Lancashire County Council

Admission authority: Mosaic Multi-Academy Trust for Southlands High School, Chorley, Lancashire

Date of decision: 07 November 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the Mosaic Multi-Academy Trust for Southlands High School, Chorley, Lancashire.

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.

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 Lancashire County Council, (the objector, the LA), about the admission arrangements (the arrangements) for Southlands High School (the school), a mixed non-selective academy school for students aged 11 to 16 for September 2023. The objection is to the published admission number for Year 7 (the PAN). The admission authority for the school is Mosaic Multi-Academy Trust (the trust).
2. The parties to the objection are the LA, the school and the trust.

Jurisdiction

3. The terms of the Academy agreement between the multi-academy 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 academy trust board on that basis. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. a copy of the minutes of the meeting of the trust board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's letter form of objection dated 10 May 2022 and supporting documents and subsequent correspondence with the LA;
- d. the trust's response to the objection and subsequent correspondence;
- e. a copy of the net capacity calculation for the school, and
- f. recent admissions data and the LA's most recent forecast of the demand for places in Year 7 locally.

The Objection

6. The LA did not make an explicit statement of its objection on the form which it submitted, but instead referred me to an undated document which was a "Brief to Counsel, In the Matter of Southlands (sic) PAN, Advise (sic) Sought by Lancashire County Council" in which it sought advice about its ability to challenge the admission authority's decision to reduce the PAN at the school for admissions in September 2023. This document was not however further referred to in the LA's objection in any other way. It provided the reader with the background to this request which was that:

- a building programme had allowed the school's PAN to be increased from 190 to 220 in 2015
- the PAN had remained at this level through to September 2022, when the school agreed to admit an additional 30 children in a "bulge" year to help meet local demand, but had nevertheless consulted "in parallel" (as the LA put it in this document) on reducing the PAN from September 2023

- in February 2022, a PAN of 200 was determined as part of the school's admission arrangements for September 2023.

7. Accompanying the form of objection and the "Brief to Counsel" were eleven other documents and the admission arrangements for the school for September 2023. The first eight documents are referred to in the "Brief to Counsel". This sets out for its legal advisor the LA's reasons for seeking to oppose the school's reduced PAN, which were the existing capacity of the six secondary schools in Chorley and the LA's forecast of the need for Year 7 places there, as these data were presented by it to the headteachers of these schools in July 2021. The eight documents include such things as the school's Commercial Transfer Agreement (written when it transferred to academy status in December 2017) and the report of the Cabinet Member to the LA's Cabinet in 2014 when capital funding was agreed to enable the school's PAN to be increased.

8. While it was clear to me from this collection of papers that the LA was in effect objecting to the PAN reduction (having presumably received advice as a result of its request that it was appropriate for it to submit an objection to the adjudicator in these circumstances), it had not said so. I therefore asked it to confirm my understanding that its objection was that the PAN of 200 was unreasonably low. The response I received was that:

"Lancashire County Council is objecting to the PAN decision and the Arrangements (sic) at Southlands High. It is respectfully requested that the OSA orders the Mosaic Trust to amend the Published Admission Number from 200 to 220, the PAN that had been applied previously."

I shall refer to what the LA has said to me below, but my understanding remains that the LA is objecting that the PAN of 200 is unreasonably low.

Other Matters

9. When I looked at the arrangements as a whole, it seemed to me that the following matters may also fail to conform with the requirements concerning admission arrangements:

- (i) a statement "Once a year group in excess of 200 students is admitted, should students leave there will be no automatic refilling of the vacant space created until the number in that year group falls below 200" does not conform with the requirements of the Code. A PAN only applies to a relevant year group (paragraph 1.4 of the Code). Whether a child is admitted to another year group will depend on whether the admission would prejudice the efficient provision of education or use of resources. This in turn will be fact specific and may or may not occur at 200. Paragraph 14 of the Code requires that admission arrangements are clear;
- (ii) a reference to "admission criteria" makes the arrangements unclear. Paragraph 15 d) of the Code states that if a school is undersubscribed, any parent that

applies must be offered a place. The arrangements do not say this, or that the criteria listed are only relevant if the school is oversubscribed, as required by paragraph 1.6 of the Code;

- (iii) the “admission criteria” state that looked after and previously looked after children are given priority in two sequential categories – with those who are adopted having been in state care “overseas” given lower priority. This does not accord with paragraph 1.7 of the Code which requires these children to have the same priority as other looked after or previously looked after children;
- (iv) a reference to children adopted from “overseas” is incorrect, and therefore makes the arrangements unclear. Paragraph 1.7 of the Code refers to children who have previously been in state care outside of England, which is not the same as “overseas”;
- (v) a footnote (x) in relation to looked after and previously looked after children is not clear, in breach of paragraph 14 of the Code, because of its reference to “overseas”, and to “the Code”, which is not explained to readers;
- (vi) paragraph 1.14 of the Code requires that catchment areas are clearly defined. The arrangements fail to comply with this requirement because although they list the civil parishes which comprise the school’s “geographical priority area”, no information is given which will enable parents to ascertain whether they live in one of these parishes;
- (vii) the arrangements do not contain a statement setting out the process for parents to request admission outside their child’s normal age group, as required by paragraph 2.18 of the Code, and
- (viii) the statement concerning late applications contained in the arrangements does not comply with the requirement in paragraph 2.9a) because it places conditions on the consideration of such applications. Paragraph 2.9a) requires that late applications must be considered if this is possible.

Background

10. Chorley lies on the northwest fringe of the Greater Manchester metropolitan area. The town of Chorley and the wider borough which surrounds it have a population of approximately 120,000 inhabitants, served by six state-funded secondary schools. The LA has confirmed that it carries out pupil place planning for these six schools as a group.

11. The LA submitted its objection on 10 May 2022 and the trust was made aware of it on 17 May 2022, and was asked to respond with evidence of the determination of the arrangements by 24 May 2022. However, it was necessary to remind it on more than one occasion during July 2022 of this communication, as no reply had been received. The trust responded on 10 August 2022 apologising for this delay, and saying that the trust had appointed a new CEO over the summer.

12. A substantive response was also submitted with the same date. This included a paper concerning the PAN that had been considered by the trust board on 10 February 2022, which was when it determined the arrangements.

13. In this paper, the board was told that consideration had been given to reducing the PAN from 220 to 200 “for several years, particularly following an intake of 217 in 2020”. By way of explanation for what seems to me to be a somewhat strange statement, since I do not regard admitting three fewer children than the PAN of 220 as a situation which should cause a school any difficulty, the paper said “Significant variations in cohort size that necessitate a growth then a reduction in the teaching staff would be unsettling the education of our students”, which does not seem to relate to the situation described for 2020, but is referred to later in the paper concerning the proposed reduction in PAN for 2023 in terms of the school being the only one locally “with a lower intake than its PAN”, as a result of which it has been “allocated a significant number of students mid-year.”

14. The paper also went on to say that the LA had projected a shortfall in local places between 2022 and 2026, and summarised discussions with LA officers which included a request from the LA that the school admit 250 Year 7 pupils, both in 2022 and in 2023, and that “LCC have not been able to find additional alternative spaces at other schools in Chorley, since they are at their theoretical maximum capacity.” It referred to there being some uncertainty as to the physical capacity of Southlands High School, because of redundant sports facilities which it said could not be used for teaching “without substantial investment.” I shall refer below to the current net capacity calculation for the school.

15. Finally, the paper said that “By fixing a PAN of 200 we would have greater control over the number of extra students who could be placed with us and also negotiate for growth funding to cover their immediate cost to us”. It recommended adoption of a PAN of 200, saying that “This will not preclude us from taking more students in order to assist in addressing the short-term bulge in student numbers, but this will be by agreement on an annual basis.”

16. I shall refer to these arguments below, but note here that the LA, when given the opportunity to comment on them, did not do so other than to say that they were a record of the trust’s decision making concerning the PAN and so there was nothing that it wished to query. I was surprised that the LA had no view to put before me concerning the reasons which the trust had thought relevant to the decision concerning which the LA has made its objection.

17. It was necessary for me to ask the LA, when asking it to confirm the nature of the objection that it was making, also to tell me whether it had any specific reference it wished to make to the document “Advice re Southlands PAN”, which I have described above, and also to say why it had provided three further documents to me which were not referred to in it or in its form of objection. It did not respond to my request about the contents of the document, but told me that the unreferenced attachments (the Chief Adjudicator’s Annual Report for 2021 and two published determinations) “were provided as it appears that the OSA has previously considered similar objections to those being raised by Lancashire. It is

hoped that these provide precedents in respect of this objection.” Adjudicator determinations do not, as a matter of law, create precedents. The OSA is not a court – adjudicators are, rather, tribunals. While the OSA takes great pains to ensure that there is consistency in its decision-making, adjudicators must consider objections to school admission arrangements in their own inevitably unique context. I also note here that the LA’s expressed wish that the school be “ordered” to set a particular PAN as part of its admission arrangements is not a possibility within the adjudicator’s remit.

18. Notwithstanding the LA’s response concerning the contents of the documentation which it had sent to me, and having read them all, it does seem to me that they contain some points of particular relevance to my consideration of the LA’s objection. First, it shows that the number of Year 7 admissions at the school in recent years has rarely approached the PAN of 220:

Year	Admissions to Year 7
2018	179
2019	181
2020	216
2021	190

It can be seen that the figure for admissions in 2020 does not quite match that given in the report considered by the trust board, but taken together these data do give the background to the trust’s concern about variability in the numbers admitted from one year to the next. The LA’s document stated that additional places had been agreed for admissions in September 2022 (up to 250) at the school because it was already expecting 235 students to be admitted, and “all other schools in the district have admitted to their PAN. Therefore, the only remaining places in Y7 for September 2022 are at Southlands.” I will set out below the latest position for admissions across the schools in September 2022, which do reflect this position.

19. The LA’s document also gives the available forecast of the need for Year 7 places in the Chorley planning area in July 2021 in the form of a presentation which was made to local headteachers at that time. This was:

Year	2022	2023	2024	2025	2026	2027	2028
Year 7 forecast need (July 2021)	1319	1286	1273	1220	1246	1244	1214

Crucially, the total number of Year 7 places at the six secondary schools in Chorley (the sum of their PANs) is stated as being 1185. The document refers to the trust's decision to set a reduced PAN of 200 for admissions to the school in 2023 and to the minute of the meeting at which the arrangements were determined which says that the trust could nevertheless hold annual conversations with the LA and other local schools "to come up with adjustments by way of taking excess students in that year's cohort". The LA's view of this as given in the document was that "this reduction removes any security around the number of places available and undermines the Authority's statutory sufficiency obligations".

20. I wrote to the parties on 23 August 2022 setting out my understanding as to the objection and my jurisdiction concerning it, listing my concerns about other aspects of the arrangements, and seeking the comments of both and a range of further information from the LA.

21. The trust's response stated that the arrangements had been revised, and it provided me with a copy of this new version of the arrangements. I noted that this retained the PAN of 200 which was the subject of the objection. Since my jurisdiction is confined to a consideration of arrangements which have been determined by a school's admission authority, I sought confirmation from the trust that it had indeed revised the school's arrangements in the period of something close to a week between my letter setting out my jurisdiction and my concerns about the arrangements and the date of its reply. I said that if there had been no redetermination I would necessarily understand the version of the arrangements which had been given to me to represent the changes which the trust considered appropriate in the light of my concerns, but no more. I also pointed out that the trust had not provided me with any comments on the objection, and invited it to do so.

22. The trust wrote to me on 15 September 2022 saying that it had not redetermined the school's arrangements but was aware of the concerns which I had expressed concerning the arrangements as determined by it on 10 February 2022. It also stated in relation to the objection that it was willing to determine a PAN of 220 for Year 7 admissions in September 2023. I can only imagine that the change in the leadership of the trust over the summer has led to this change in its position.

Consideration of Case

The PAN

23. Although the trust has revised its position concerning the PAN which it considers appropriate for September 2023, the arrangements remain those which it determined on 10 February 2022 and are those concerning which the LA has made an objection. I am required to consider this objection and so I shall set out here my view concerning it.

24. In order that I should have available to me the most up to date information concerning the need for places in the area and relevant information concerning the school, when I wrote to the parties in August I asked the LA to give me:

- The latest information concerning the likely number of Year 7 admissions expected for each of the six secondary schools in Chorley for September 2022
- The latest forecast of the need for Year 7 places in the Chorley planning area (if different to that presented to Headteachers in July 2021)
- A copy of the net capacity calculation for the school.

25. The latter shows a net capacity of 1155 and an indicated admission number of 231 for the school (that is, 1155 divided by the number of year groups in the school).

26. On 6 September 2022, when the LA wrote to me, the position for admissions at the six schools for September 2022 (and the determined PANs and agreed additional places as confirmed to me by the LA on 1 November 2022) was:

School	September 2022 PAN	Agreed additional places	September 2022 admissions
Albany Academy	135	15	154
Chorley St Michael's CE High	225	nil	232
Parklands Academy	220	15	235
Chorley Holy Cross RC High	195	nil	201
Southlands High	220	30	221
Bishop Rawstorne CE Academy	190	nil	191
TOTALS	1185	1245	1231

27. The forecast in June 2021 had been that there would be a need for 1319 places in September 2022, and so the number of actual admissions is lower by 88. The LA has told me that it does not necessarily regard this as evidence of a reduced demand for places in the planning area, because some parents whose first preference for a place in the area had not been satisfied had opted for available places in neighbouring planning areas.

28. On 6 September the LA also gave me the following figures for its most recent forecast of future need which use a weighted three-year average of recent actual admissions. A revised forecast which uses the September 2022 actual admissions will not be available until December 2022.

Year	2023	2024	2025	2026	2027
Forecast Year 7 (September 2022)	1287	1268	1229	1252	1259

It can be seen that these figures are very close to those forecast in July 2021.

29. The determined PANs and agreed additional places for the schools in the planning area for September 2023 are as follows:

School	September 2023 PAN	Agreed additional places
Albany Academy	135	15
Chorley St Michael's CE High	225	Nil
Parklands Academy	220	10
Chorley Holy Cross RC High	195	Nil
Southlands High	200	Nil
Bishop Rawstorne CE Academy	190	Nil
TOTALS	1165	1190

30. The sum of the PANs for the six schools for September 2023 is 1165, and the number of additional places agreed between the schools and the LA is 25. This gives a total across the six schools of 1190 on the basis of a PAN of 200 for Southlands High. So even if the forecasts for future years needs to be revised downwards as a result of the lower actual number of admission in September 2022, all of the places indicated by the determined PANs of the six schools, together with the agreed additional places, will in all probability still be needed in September 2023. Even if the school's PAN had remained at 220, the total of 1210 places that would then be available to the LA in the planning area seems to me to be very much under pressure, with no margin available to the LA. LAs generally consider it

necessary to provide a margin of provision if all pupils are to be offered a place at a local school as part of the admissions process (that is, on National Offer day for the cohort in question) with a figure of 3 percent often being used for planning purposes.

31. The LA told me on 1 November 2022 that it had received 1234 first preferences from online applicants for places at the six schools in the planning area for September 2023, with the eventual total therefore certain to be somewhat higher.

32. The need to ensure local places for local children must always outweigh the concerns of an individual school about the organisational and managerial difficulties which accompany any lack of certainty that all available places will be taken up at the start of a school year, however understandable these may be. That is the case here, and it has been very helpful that the trust has now indicated its willingness to restore a PAN of 220 for September 2023 for the school. However, as determined, a PAN of 200 for the school in 2023 is unreasonably low in my view, since it compromises the LA's ability to meet its statutory responsibilities. I uphold the objection.

Other matters

33. I have set out above the concerns about matters in the arrangements determined by the trust which I have shared with it, and the nature of its response to these concerns. I shall consider each of these matters in turn.

34. Paragraph 14 of the Code says:

“...admission authorities **must** ensure that the practices and 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.”

35. The arrangements contain a statement which means, in effect, that only the Year 7 PAN, and not any above PAN places which may have been agreed, are relevant to admissions to that year group as it moves through the school. As I set out above, this is not an accurate reflection of the relevant requirements, since the PAN does not in any case apply to admissions other than to the normal year of admission to the school. Whether a child whose parents seek a place at a school in any subsequent year group is admitted has to be determined on the basis of whether their admission would cause “prejudice”, as set out above. The statement in the arrangements implies that something other is the case, and so is unclear, and in breach of paragraph 14 of the Code. I note that the trust has removed this statement from its putative arrangements, but replaced it with a footnote which also refers to a “PAN for that year group”, which as I have said has no existence in law.

36. Paragraph 15 d) of the Code includes the statement:

“If a school is undersubscribed, any parent that applies **must** be offered a place.”

Paragraph 1.6 of the Code says:

“The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied.”

The arrangements simply say “the admission criteria are:” followed by six criteria, and do not mention oversubscription. A parent reading this is very likely in my view to believe that to be admitted, one or more of the given criteria must be met, which is not the case. The arrangements are therefore unclear and in breach of paragraph 14 of the Code.

37. Paragraph 1.7 of the Code says:

“All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given to looked after children and all previously looked after children, including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in care as a result of being adopted.”

The arrangements set out the “admission criteria” as:

“1 A) Looked after children and those who have been previously looked after, then

B) Looked after children and those who have been previously looked after – those legally adopted from overseas, then ...”

This wording does not provide parity of priority for the two groups of children described, since they are clearly prioritised sequentially. This breaches the requirement in paragraph 1.7 that the two groups are treated as one in oversubscription criteria.

38. In the above statement, and elsewhere in the determined arrangements, the term “from overseas” is used in connection with the second group. The phrase in the Code is “outside of England”, which is not the same as “overseas”, since other nations of Great Britain are not overseas, but are also not England. The arrangements contravene paragraph 1.7 for this second reason.

39. I note here that the LA has told me that it understands that the inappropriate sequential prioritisation of different categories of looked after children and the inappropriate reference to children from “overseas” apply to many admission arrangements for own admission authorities in the county, and to its own arrangements for community schools. It has helpfully said that own admission authorities will be alerted, and the LA’s admission arrangements revised. It will of course be open to the LA to object to the arrangements of any own admission authority schools which fail to comply with any of the relevant requirements in the future.

40. A footnote to the arrangements includes a statement “Further references to previously looked after children in the Code means children who were adopted,” which is a paraphrase of a sentence in paragraph 1.7 of the Code, and which makes sense in that context, but not in this footnote to a school’s arrangements, since the reader is reading them, and not the Code, and would therefore be confused. The arrangements are therefore

unclear, in breach of paragraph 14 of the Code. I note that in its putative arrangements the trust has replaced this sentence with one which reads “Further references to previously looked after children in the School Admissions Code 2021....” which does not help.

41. Paragraph 1.14 of the Code says:

“Catchment areas **must** be clearly defined.”

A list of the civil parishes - with no accompanying map or list of post codes or roads - which comprise the school’s “geographical priority area” is not in my view a sufficiently clear definition, since parents will not with certainty know in which parish they live, particularly those new to an area. The arrangements fail to comply with this requirement of the Code.

42. Paragraph 2.18 of the Code says:

“Admission authorities **must** make clear in their arrangements the process for requesting admission outside the normal age group.”

The arrangements contain no such statement and are therefore in breach of this requirement of the Code.

Summary of Findings

43. I have upheld the objection that the PAN of 200 which the trust has determined for the school for September 2023 is unreasonably low, because the evidence which I have seen is that this will not allow the LA to be able with certainty to offer a place locally to each child seeking one on 1 March in that year.

44. I have said why I consider that the arrangements also fail to comply with the requirements of paragraphs 14, 15 d), 1.6, 1.7, 1.14 and 2.18 of the Code.

Determination

45. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the Mosaic Multi-Academy Trust for Southlands High School, Chorley, Lancashire.

46. 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.

47. By virtue of section 88K(2), the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 07 November 2022

Signed:

Schools Adjudicator: Bryan Slater