



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3957

Objector: A parent

Admission authority: The Cornovii Trust

Date of decision: 03 November 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by the Brine Leas Multi Academy Trust (which has now merged with the Alsagar Academy Trust, now renamed the Cornovii Trust) for Brine Leas School, Cheshire East.

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 Cornovii Trust, the admission authority for Brine Leas School. 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 within one month of the date of this 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 a parent (the objector), about the admission arrangements (the arrangements) for September 2023 for Brine Leas School (the school), an academy. The school is a non-selective secondary school for boys and girls aged 11 to 18.

2. The local authority (LA) for the area in which the school is located is Cheshire East. The LA is a party to this objection. Other parties to the objection are the Cornovii Trust and the objector.

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 Alsagar Academy Trust, which is now named the Cornovii Trust (the trust), which is the admission authority for the school, on that basis. The objector submitted their objection to these determined arrangements on 11 May 2022. The objector has asked to have their identity kept from the other parties and has met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. 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 governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 11 May 2022;
- d. the school's response to the objection and to my queries; and
- e. the LA's response to the objection and to my queries.

Background

6. The school is a non-selective secondary academy school for boys and girls aged 11 to 18. The school has a sixth form.

7. The admission arrangements for 2023 set out the oversubscription criteria as follows:

"OVERSUBSCRIPTION CRITERIA

7.1 Looked After and Previously Looked After Children

7.2 Children resident within the designated catchment area of the school.

Our Catchment map can be viewed at www.cheshireeast.gov.uk and is in the appendix of this policy. In the case of 2 or more applications that cannot be separated by this criterion, those who also meet criteria 7.3 'Siblings' will be given the highest priority.

7.3 Siblings.

Siblings include step siblings, foster siblings, adopted siblings and other children living permanently at the same address.

In the case of 2 or more applications that cannot be separated by this criterion, random allocation will be used as a tie breaker to decide between applicants. The random allocation process will be administered and supervised by an independent person.

7.4 Children of Staff.

Staff must have been employed by the Trust for a minimum of two years or have been recently employed to a post with a demonstrable skills shortage.

In the case of 2 or more applications that cannot be separated by this criterion, random allocation will be used as a tie breaker to decide between applicants. The random allocation process will be administered and supervised by an independent person.

7.5 Children who attend named feeder schools.

Our named feeder schools are:

Audlem St James CE

Bridgemere CE

Nantwich Primary Academy

Pear Tree

Sound & District

Stapeley Broad Lane CE

Weaver

Wrenbury

In the case of 2 or more applications that cannot be separated by this criterion, random allocation will be used as a tie breaker to decide between applicants. The

random allocation process will be administered and supervised by an independent person.

7.6 Distance

Highest priority will be given to children who live closest to the school. Distance will be measured in a straight line from the child's home address to the school's main gates on Audlem Road. A child's home address will be considered to be where he/she is resident for the majority of nights in a normal school week.

In the case of 2 or more applications that cannot be separated by this criterion, random allocation will be used as a tie breaker to decide between applicants. The random allocation process will be administered and supervised by an independent person”

8. The admission arrangements for the sixth form state:

“14. SIXTH FORM

14.1 Admission into Years 12 and 13 is also subject to academic entry requirements. Any applicant who does not meet the academic entry requirements will not be offered a place or their place will be withdrawn.

14.2 The academic entry requirements for entry to the Sixth Form are 5 GCSEs at grade 5 or above, which must include GCSE Mathematics AND either GCSE English Language OR GCSE English Literature.

14.3 All applicants must provide evidence of their GCSE grades (or equivalent) on enrolment to secure the offered place. This must be completed by 10am on the day after GCSE Results Day. Failure to do this, will result in the offered place being withdrawn.

[there is no paragraph 14.4]

14.5 If an applicant does not meet the academic entry requirements, the offer of a place will be withdrawn.”

9. The published admission number (PAN) for Year 7 is 215. For Year 12 it is 25.

10. The Brine Leas Academy Trust merged with the Alsagar Academy Trust from 1 September 2022 and, at the same time the Alsagar Academy Trust was reconstituted and changed its name to the Cornovii Trust. Brine Leas School is now part of the Cornovii Trust, which is the admission authority for the school.

Consideration of Case

11. The objection is to the consultation carried out by the school, to the provisions for entry to the sixth form and to the workability oversubscription criteria, I have considered some other matters relating to the arrangements as set out below.

12. I will set out those parts of the Code which are relevant to my consideration here.

13. Paragraph 1.10 of the Code sets out the basic principle that “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”.

14. Paragraph 1.1 of the Code sets out the compliance duty of admission authorities: “Admission authorities are responsible for admissions and **must** act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation.”

15. Paragraph 14 of the Code sets out the “Overall principles behind setting arrangements” as “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

16. Paragraph 1.8 of the Code sets out the requirements for oversubscription criteria: “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

17. I will now consider each aspect in turn.

18. **Consultation.** The objector has alleged that the consultation process which was conducted before the arrangements were determined was flawed. It is open to an adjudicator to determine that there has been a failure to consult in accordance with the relevant legal requirements, and therefore a failure to comply with both the 2012 School Admissions Regulations and the Code. However, an adjudicator cannot impose a requirement on an admission authority to re-consult after it has determined the arrangements, even if the consultation has not been conducted in accordance with the requirements of the Regulations and the Code. Nor can the adjudicator require the admission authority to re-instate the previous year’s arrangements.

19. I find that the responses to the consultation were discussed and the admission arrangements for 2023 for Brine Leas School (the school) were determined, at a meeting of the Admissions Panel on 6 December 2021, following the close of the period allowed for responses.

20. At some point those determined arrangements were sent out and/or published with the words “Approved October 2021” at the bottom. At a later date this was amended to “Approved December 2021”. I find that the consultation was conducted as required by the provisions of the Code and that any copy distributed after December 2021 marked “October 2021” was so marked in error and that has no effect on the validity of the arrangements. The objection is not upheld on this point.

21. **Date of publication of the Admission Arrangements on the school’s website.** The objector states that these were not published on the school’s website until 28 March 2022, after the deadline of 15 March 2022 required by paragraph 1.50 of the Code.

22. The objector correctly states that it is a requirement of the Code that the admission arrangements are published by 15 March. However, a failure to do so does not render otherwise lawful arrangements unlawful. The remedy is for them to be published as soon as possible and I understand that when this was queried by the LA, in the course of responding to a Freedom of Information request by the objector, this was remedied and the determined arrangements were duly published. Again, this has no effect on the validity of the arrangements. The objection is not upheld on this point.

23. **6th Form Applications.** The objector points out that the arrangements say that the policy does not apply to students already on roll at the school (internal applicants). That is correct as those students do not have to apply for admission to the school. Consequently, the provisions at part 14 of the admission arrangements apply to external students. Paragraph 2.6 of the Code states “ Admission authorities can, however, set academic entry criteria for their sixth forms, which **must** be the same for both external and internal places”. The school have confirmed that the entry criteria are the same for both internal and external places.

24. As internal pupils, being already on roll, are not “admitted” to the 6th Form it is not necessary to set out the policy relating to their entry to the 6th Form in the admission arrangements. The objection is not upheld on this point.

25. It is correct, as the objector states, that appeals can be brought by both internal students and external applicants. Such appeals can be brought by a parent or the child or by both jointly. The Code requires admission authorities to inform an applicant who is refused a place of their right of appeal but does not require details of the appeal process to be set out in the admission arrangements. The objection is not upheld on this point.

26. **Siblings.** Oversubscription criterion 7.3 defines siblings. I accept that it can be taken as read that full siblings are siblings and other types of sibling are listed in order to avoid any doubt as to whether they fall within the definition. I consider this to be clear.

27. The LA have raised an issue with the part of the definition which states “other children living permanently at the same address”. The LA consider that it would be clearer for parents if this definition was aligned with that used by the LA. That may be so, but there is no obligation on an academy admission authority to align its definitions with those of the LA. The LA have also pointed out that this may not be clear in relation to, for example, children living in a household as part of the scheme for Ukrainian refugees. The admission authority may wish to consider whether some amendment is required but I do not consider that every possible situation need be covered in the definition, which I consider is clear as it stands.

28. The LA have also suggested that the admission authority make it clear whether or not siblings in the 6th Form count for the sibling criterion. As such siblings are “attending the school” I consider that as the wording stands such siblings are clearly included, although the admission authority may wish to consider making this explicit. I find that the arrangements are sufficiently clear and therefore compliant on this point.

29. **Oversubscription criteria.** I will consider first the tie breaker provisions. There is no tie breaker for criterion 7.1, looked after and previously looked after children. I consider that filling beyond PAN with looked after and previously looked after children is so unlikely that no tie breaker is required.

30. The next criterion is children resident within the school’s catchment area (7.2). If the number of such children does not exceed the places available all such children will be allocated a place and no additional sibling criteria will need to be brought in to differentiate between them. If, on the other hand, the number of children living in catchment exceeds the places available then priority is given to those who have siblings at the school. That is clear. After places are allocated to children in catchment with siblings there would, in this scenario, inevitably be more children living in catchment without siblings at the school than places available. The criterion does not state how those children are to be ranked in order to decide which of them is allocated a place.

31. The school’s response to this, through their solicitors, is that after siblings are prioritised:

“further applicants in catchment would then be prioritised by reference to the other criteria in section 7 – children of staff (7.4), feeder schools (7.5) and distance (7.6). The school accepts that this wording in paragraph 7.2 of the policy could be clearer and will make the necessary amendments to that wording.”

This position is not stated in the admission arrangements and consequently I find that on this point the criterion is not clear and is not compliant with paragraphs 14 and 1.8 of the Code. I note that the school’s intention is to make the necessary amendments.

32. In a different scenario, where there are fewer children living in catchment (7.2) than places available, the remaining places go first to children with siblings (7.3) attending the school. At first sight all children with siblings (who do not live in catchment) will be equal. The tie breaker is to be random allocation.

33. The wording “In the case of 2 or more applications that cannot be separated by this criterion” is, in my view, misleading. This wording is commonly used where the initial tie breaker is distance. It is rare that all applicants in the relevant category cannot be ranked by distance. In such rare cases, for example where two children live in flats, one above the other, random allocation is used to separate them. The wording “2 or more applications that cannot be separated by this criterion” is appropriate to such a situation. In this oversubscription criterion it is obvious that it will be a whole class of applicant, all those with a sibling but not living in catchment, who will need to be ranked, rather than two or three final places which require a tie breaker, which is what the wording used suggests.

34. The school is entitled to use random allocation if it wishes to do so. However, I find that the wording used is misleading and that the criteria which use this wording would not allow a parent to “be able to look at a set of arrangements and understand easily how places for that school will be allocated”. The wording, as it stands, is not compliant with paragraph 14 of the Code.

35. In a third scenario there are again more applicants living in catchment than places available. Of those, many have siblings at the school and are given priority and allocated places. Of the remainder, in the case of applications for admission in September 2022, two are children of staff (who meet one of the relevant staff criteria). Random allocation might mean that one or both of those children are not allocated places. This does not necessarily contravene the provisions of the Code but would seem a perverse outcome to offer a place to the child of one member of staff but not to the other, given the priority for children of staff at 7.4 and might be considered unreasonable and/or unfair.

36. Similar issues potentially arise as one works down the criteria. Paragraph 1.9 of the Code states the principle “is for admission authorities to formulate their admission arrangements”, provided they are compliant with the Code. However, it seems unlikely that the effect set out in the scenarios above is that which the school wishes. The school has not explained its position on this point to me. I make no formal finding but would suggest the school consider whether the way in which the criteria appear to operate achieves the desired effect.

37. **Waiting Lists.** Paragraph 13.1 of the admission arrangements omits the words “in line with the published oversubscription criteria” which are required by paragraph 2.15 of the Code. I find that this is not compliant with the Code and uphold the objection on this point. I note that the school acknowledges this omission and intends to amend the wording.

38. I have exercised my powers under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions, as follows.

39. **Feeder Schools.** The names of the feeder schools set out in paragraph 7.5 of the admission arrangements are incomplete. I had to Google, for example, “Pear Tree” to check which school is actually referred to. This is unclear and not compliant with paragraphs 14 and 1.8 of the Code. The school has agreed that the full name of each feeder school will be set out.

40. **6th Form academic entry requirements.** It is stated in paragraph 14.1 of the admission arrangements that “admission into Years 12 and 13 is also subject to academic entry requirements”. Academic entry requirements are permitted for Year 12. The issue of academic entry requirements for those in Year 12 wishing to continue to Year 13 gained significant publicity recently over their use by St Olave’s Grammar School, Bromley. The case did not proceed to court as St Olave’s agreed to change their policy. The law states that a child who is on roll can only be removed for one of the reasons set out in paragraph 8 of the Education (Pupil Registration) (England) Regulations 2006. Save in very specific circumstances this can only be on disciplinary grounds, not as a consequence of failure to meet specified academic requirements. A refusal to allow a child who does not meet academic entry requirements for Year 13 to progress from Year 12 is unlawful.

41. The school tell me that this provision applies to external applicants making an in-year application to join the sixth form in Year 12 or Year 13 and that it does not apply to students already enrolled in the sixth form in Year 12 and transitioning to Year 13. I make no finding on this point but would suggest the school makes this position clear in the arrangements.

Determination

42. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by the Brine Leas Multi Academy Trust (which has now merged with the Alsagar Academy Trust now renamed the Cornovii Trust) for Brine Leas School, Cheshire East.

43. 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.

44. By virtue of section 88K(2) the adjudicator’s decision is binding on the Cornovii Trust, the admission authority for Brine Leas School. 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 within one month of the date of this determination.

Dated: 03 November 2022

Signed:

Schools Adjudicator: Tom Brooke