



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA4149-4150, ADA4168, ADA4173, ADA4176-4184, ADA4186, ADA4188-9

**Objectors:** A number of parents, some members of the public

**Admission authority:** The academy trust for Hitchin Girls' School in Hertfordshire

**Date of decision:** 26 September 2023

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2024 determined by the academy trust for Hitchin Girls' School in Hertfordshire.

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), a number of objections have been referred to the adjudicator about the admission arrangements (the arrangements) for Hitchin Girls' School (the school) (HGS), a secondary school in Hertfordshire, for September 2024. The objectors are a number of parents whose children will be the right age to join the school in Year 7 (Y7) in 2024 and some members of the public.

2. The objections are to the fairness of the arrangements for girls living in certain areas of Hertfordshire, to the compliance of the arrangements with equalities legislation, to the clarity of the oversubscription criterion for siblings, and to whether the consultation carried out before the arrangements were determined met the relevant legal requirements.

3. The local authority (LA) for the area in which the school is located is Hertfordshire County Council. The LA is a party to this objection. Other parties to the objection are the academy trust for the school (the trust) and the objectors.

## **Jurisdiction**

4. The terms of the academy agreement between the 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 trust, which is the admission authority for the school, on that basis. The objectors submitted their objection to these determined arrangements between 5 May 2023 and 15 May 2023.

5. The complaints about the consultation undertaken before the arrangements for 2023 were determined are not within my jurisdiction. That is because my jurisdiction under section 88H of the Act can extend to considering the consultation process only where it was undertaken in relation to the determination of the arrangements for the relevant year – that is 2024 in this case. No consultation was undertaken for the 2024 arrangements, and none was required. I am satisfied that the objections in so far as they relate to the fairness of the arrangements for girls living in certain areas of Hertfordshire, to the compliance of the arrangements with equalities legislation, and to the clarity of the oversubscription criterion for siblings, have been properly referred to me in accordance with section 88H of the Act and that they are within my jurisdiction.

## **Procedure**

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

7. The documents and information 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 objectors' forms of objection dated between 5 May 2023 and 15 May 2023 and supporting documents;
  - d. the trust's response to the objections and supporting documents;
  - e. the LA's response to the objections and supporting documents;

- f. information available on the websites of the LA, the school and the Department for Education (DfE);
- g. maps of the area identifying relevant schools;
- h. confirmation of when the trust last consulted on its arrangements and details of the nature of the consultation; and
- i. a determination of the adjudicator in respect of the school dated 15 June 2021 (case reference [ADA3761](#)).

## The Objections

8. The objections can be summarised as follows:
  - a. that the admissions arrangements for September 2024, and in particular their impact on access to single-sex education, are unfair to children living in certain areas of Hertfordshire. Paragraph 14 of the Code states that the practices and criteria used to allocate places must be fair;
  - b. that the arrangements do not comply with equalities legislation and are accordingly also in breach of paragraph 1.8 of the Code which makes clear that they must so comply; and
  - c. that certain aspects of the definition of sibling in the oversubscription criteria are not compliant with the Code. Paragraph 1.8 of the Code requires that oversubscription criteria must be reasonable and clear, and paragraph 14 requires that the criteria must be fair.

## Other Matters

9. I have also considered matters in the determined arrangements which appeared to me to not conform to the Code. These are:
  - a. whether an aspect of the definition of sibling, separate to that raised by the objectors, is clear as required by paragraph 14 of the Code; and
  - b. whether an aspect of the criterion for admission of children of members of staff is clear as required by paragraph 14 of the Code.

## Background

10. The oversubscription criteria in the arrangements for admission to Y7 in 2024 are the same as those determined for 2023, but different to those in use before that. The change to the arrangements between 2022 and 2023 arose in response to a determination by the adjudicator (ADA3761) following an objection.
11. The chronology of the change is as follows:

- a. an objection to the arrangements for 2022 was received in March 2021;
  - b. the determination by the adjudicator, dated 15 June 2021, required that the school revise its arrangements. However, the adjudicator stated that there would be insufficient time prior to the start of the admissions application process for the trust and the LA to model changes, to identify any unintended consequences of change, and to consult. The determination therefore required that the arrangements be revised by 28 February 2022, the deadline for determining the arrangements for admission to Y7 in 2023;
  - c. between 15 November 2021 and 31 December 2021, the trust undertook a consultation on the proposed arrangements for admission in 2023, which incorporated revisions to comply with the determination by the adjudicator;
  - d. the arrangements for 2023 were approved by the trust board following the consultation; and
  - e. on 13 September 2022, the trust board considered whether or not to make changes to the arrangements for 2024. The arrangements for 2024 were determined with no changes from those applying in 2023.
12. The oversubscription criteria in the 2022 arrangements had been as follows:
1. Looked after and previously looked after children.
  2. Children with a particular social or medical need to attend the school.
  3. Siblings living in the school's priority area (PA).
  4. Children of staff.
  5. (Up to 120 places) Children living in the parish of Hitchin, with priority given first to girls for whom the school is their nearest maintained school that is non-faith, non-selective and makes provision for girls ("the nearest school") (5a), and then to those for whom it is not (5b).
  6. Children who live in the rest of the school's PA "by parish, on a proportional basis", with priority given first to girls for whom it is the nearest school (6a) and then to those for whom it is not (6b).
  7. Siblings living outside the school's PA.
  8. Other children.

The arrangements stated that the total number of places to be allocated under criteria 1 to 6 to children living in Letchworth must not exceed 20. Priority within criteria 5a, 5b and 6a was determined by distance from the school. Within criteria 6b and 8, priority was determined by random allocation.

13. ADA3761 contains a detailed description of the complex “parish proportionality” mechanism that operated within criterion 6. In short, it was a mechanism that gave girls over a wider area an opportunity of obtaining a place at the school. The rationale for the approach was that this broadened the opportunity of securing a place at a single sex school to girls beyond those who would have been expected to be able to gain a place on the basis of living in the immediate vicinity of the school.

14. In ADA3761, the adjudicator found that the above arrangements did not meet the requirements for fairness set out in paragraph 14 of the Code, because:

“the opportunity for single sex education to girls living in a wide area is laudable but the fulfilling of this aim should not be at the expense of girls living in the school’s immediate vicinity in circumstances where they may well also not be able to gain a place at the only other school in Hitchin catering for girls.”

The adjudicator identified that a possible effect of the arrangements would be that some girls living further afield would gain a place at the school, whilst some girls living closer to the school might not, whilst also missing out on a place at the only other school in Hitchin catering for girls. This was against a background of there being three schools in Hitchin, a boys’ school, a girls’ school and a mixed school.

15. The adjudicator noted that his determination might also have implications for Hitchin Boys’ School, which had similar arrangements.

16. Following the determination, the trusts of both schools worked with the LA to model potential changes to the arrangements prior to going out to consultation. I have seen documentation to confirm that a variety of scenarios were considered, with each being modelled to consider its impact, and relative advantages and disadvantages. The trusts also considered how to “future-proof” any changes against similar future objections, because whilst the original objection had been in respect of girls resident in a particular parish, there were girls living in certain other parishes for whom a similar argument could potentially be made.

17. Following the modelling process and the consultation, the trust decided to remove the parish proportionality mechanism from the arrangements. The oversubscription criteria determined for 2023 and subsequently for 2024 are as follows:

1. Looked after and previously looked after children.
2. Children with a particular social or medical need to attend the school.
3. Siblings living in the school’s PA.
4. Children of staff.
5. Girls living in the school’s PA for whom the school is their nearest Hertfordshire maintained school or academy that is non-faith, non-selective and makes provision for children of the relevant gender.

6. Girls living in the school's PA for whom the school is not their nearest Hertfordshire maintained school or academy that is non-faith, non-selective and makes provision for children of the relevant gender.

7. Siblings living outside the school's PA.

8. Other children, on the basis of random allocation.

The arrangements state that the total number of places to be allocated under criteria 1 to 6 to children living in Letchworth will not exceed 20, although if all applications under criterion 6 have been satisfied and places remain available, they will be allocated to any outstanding applicants from the parish of Letchworth, before criterion 7. Priority within criteria 5 and 6 is determined by distance from the school.

18. There was no requirement for the trust to consult on the arrangements for 2024, since they were unchanged from the 2023 arrangements. The most recent consultation was in 2021, which is within the seven year period laid down in paragraph 1.45 of the Code.

19. Whilst that consultation process is not within my jurisdiction, I have been supplied with evidence by the trust and the LA of the steps they took to comply with the requirements for consultation set out in paragraphs 1.45 to 1.48 of the Code. There are extensive details of the communications from the LA on behalf of the school to admission authorities in the relevant area, which include requests to pass on information to parents and stakeholders. Having considered all this evidence, I note that there does not appear to be any evidence that there was a breach of the requirements of the Code.

## Consideration of Case

### The oversubscription criterion for siblings

20. One objector says that "...the lack of clarity surrounding the sibling rule for schools within the Hitchin consortium (HBS/HGS & Priory) must be clearly identified and communicated. As we believe the sibling rule (although not bound by law) should be considered for Children applying for associated Schools within the Hitchin Consortium."

21. Another says that "if they have a sibling at the school of the opposite sex, no consideration is given to the practicality of siblings going to a school in a different town."

22. Whilst the school is one of three secondary schools in Hitchin that share a consortium arrangement for sixth form (the other two being Hitchin Boys' School and The Priory School), each school is a separate entity with separate admissions arrangements. There is no requirement in admissions law nor in the Code for these separate admission authorities to adopt an identical definition of sibling.

23. The fact that the school has not chosen to give priority to siblings of children attending another school does not breach any mandatory requirement of the Code or of admissions law. I have considered that objector's argument about the "practicality of siblings going to school in a different town" and whether this might give rise to a finding of

unreasonableness or unfairness in contravention of paragraphs 1.8 and 14 of the Code respectively. As to unreasonableness, the school's approach to siblings is in line with that adopted by very large numbers of admission authorities where priority for places for siblings at a single sex school is not extended to siblings of those attending a brother or sister school. As to unfairness, while it might be convenient for parents to have children at schools close to each other, it would be expected that secondary aged children could travel to school independently of any siblings and of their parents. I therefore do not find any unreasonableness or unfairness and so I do not uphold this aspect of the objections.

### Equalities legislation

24. A number of objectors raise concerns that the arrangements are in breach of equalities legislation. I provide below a flavour of these:

"We believe that full consideration of a school place must be offered if our child wants to attend a single sex school under the Equality act of 2010."

"This does not give children living in Hitchin surrounding villages the option of a same sex education which is discrimination, all children should be given this option wherever they live – especially as most years previous there have been 6-7 children who have been accepted from the village."

"This year, Hitchin Boys and Girls' abided by a new admissions criteria [sic] which made it harder for children from Knebworth village to get in. In the past, Knebworth has been in the fortunate position of families having a choice between mixed or single sex education, with both schools serving their wider community. The new rules mean that children in these villages no longer have the choice of a single sex education, which appears to discriminate against them, under the Equality Act."

"The new admission rules now discriminate against girls who live in villages such as Codicote and Knebworth as is no other choice for fair access to single sex secondary state education. HGS is the only single sex girls' school in the catchment area and due to the new rules only Hitchin and Letchworth girls will have the right to access this. As there is no other option for single sex secondary education for children in the village of Codicote there is now no fair access / choice for families, and I feel that this is discriminatory."

"Now that your recent admissions changes have come into effect this year, girls from our village no longer have access to a single sex state secondary school. Your new admissions rules give clear priority to girls living in town locations (Hitchin and Letchworth), leaving village locations (such as Codicote) within the priority area with no single sex provision. We would request that these changes to the rules are reversed so that you do not discriminate against girls living in rural locations within the priority area."

**“It means there is not a fair choice for families who live in a rural location and therefore the new rules are discriminatory. I would request that the Governing body review the admissions rules and revert to the previous system which did not.”**

25. The Equality Act 2010 (the EA) makes provision for the protection of individuals from direct and indirect discrimination on the basis of certain protected characteristics including, so far as is relevant here, sex. The EA also makes specific provision to disapply the prohibition of discrimination on the grounds of sex so that single-sex schools can admit girls only in the case of a girls’ school and boys only in the case of a boys’ school. The Education Act 1996 places statutory duties on local authorities to secure the provision of schools and school places in their area for every child of compulsory school age. None of these duties separately or taken together give parents a right of access to state-funded single-sex schooling.

26. In some parts of the country, there are significant numbers of single-sex schools and in others there are not. Against that background I have considered whether the arrangements adopted by the school could be considered to discriminate either directly or indirectly and, if so, whether such discrimination is on the basis of a protected characteristic. The relevant protected characteristic here is sex. Direct discrimination arises where a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Indirect discrimination arises where a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. A provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if:

- a. A applies, or would apply, it to persons with whom B does not share the characteristic;
- b. it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share the characteristic;
- c. it puts, or would put, B at that disadvantage, and
- d. A cannot show the provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

27. In this case, any disadvantage that could be said to accrue to some girls (those living in villages outside Hitchin) in terms of having a lower prospect of being admitted to the school than girls living in Hitchin, arises as a result of where they live and not on the basis of sex. I therefore find that the arrangements do not discriminate either directly or indirectly against girls because they are girls, and I do not uphold this aspect of the objections. In circumstances where there is an alleged disadvantage based upon residence in a rural location, the relevant question is whether any such disadvantage is fair. I consider this question in the next section. Living in a location outside Hitchin is not a protected characteristic under the EA.



## The fairness of the arrangements

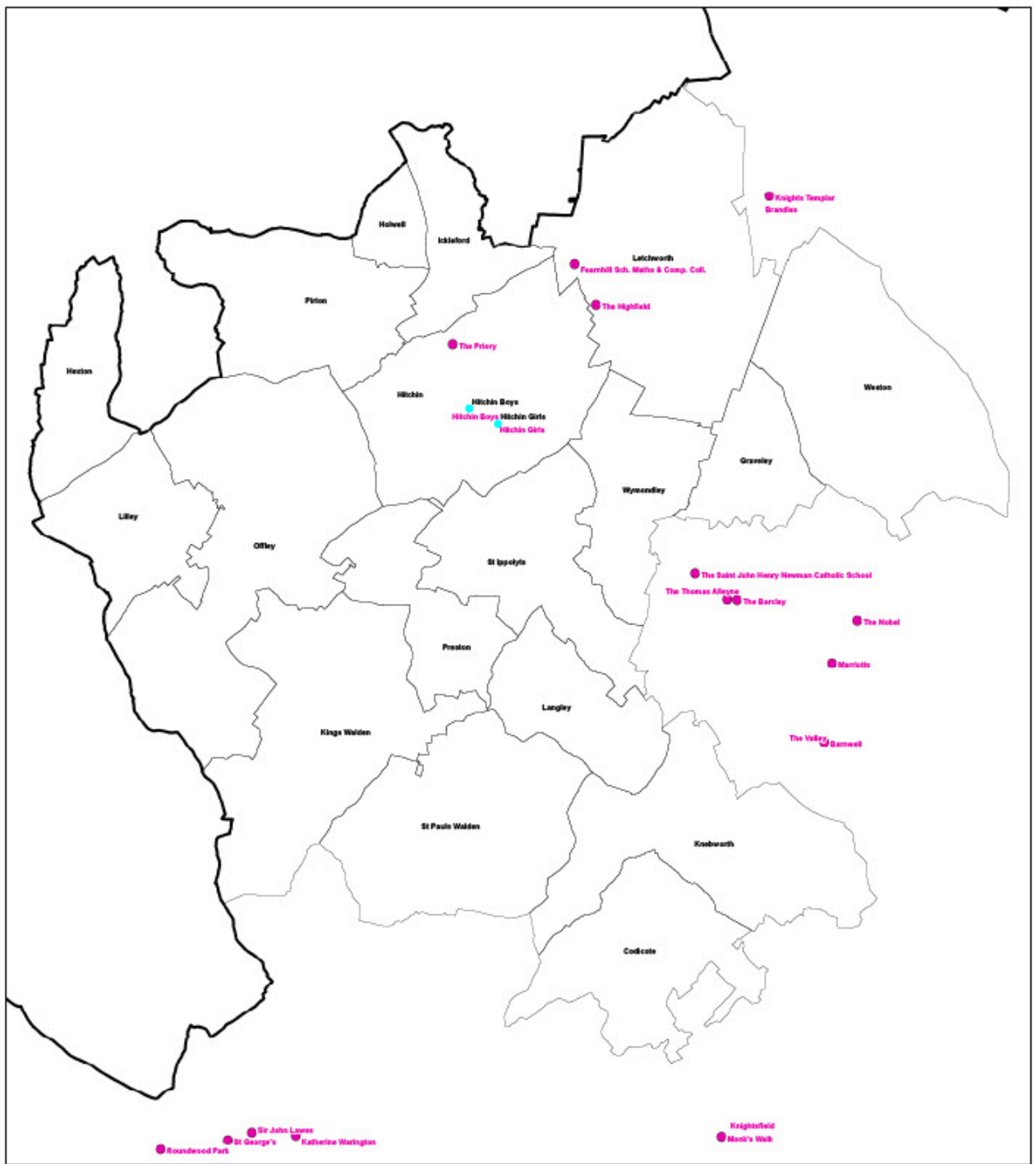
28. The Code does not define fairness, which means that it has its ordinary dictionary meaning. In considering whether the arrangements are unfair to children living in certain areas of Hertfordshire, I will look at the consequences for them of not being able to gain a place at the school. I will consider also the effects of the higher priority that the arrangements give to girls in the PA for whom HGS is the nearest school, upon any other group of children. In doing this, I have in mind that all oversubscription criteria will advantage some and disadvantage others; I have to consider whether they have done so fairly, balancing the effect on different groups.

29. I note at this point that one aspect of the objections is that the objectors simply do not agree with the findings of fairness made by the adjudicator in ADA3761. As explained earlier, ADA3761 identified a potential unfairness to girls living in the school's immediate vicinity who might not gain a place at the school nor at the only other school in Hitchin catering for girls. I have not been supplied with any evidence that ADA3761 failed to address sufficiently the matters before the adjudicator, nor that any points were missed or that there has been a significant change in circumstances in the area. The details of the modelling process undertaken by the trust and the LA show that great care was taken to consider the position of girls resident in the parish of St Ippolyts (as identified by ADA3761) and of other parishes subsequently identified as facing the same issue, and it is self-evident from the revisions to the oversubscription criteria that the trust has taken steps in order to address the potential unfairness to these girls.

30. However, it is also clear that an effect of the revisions may be that girls resident further afield from the school will have a lower chance of attending HGS, and so my consideration of fairness will look at whether the impact of this effect has turned out to have been more of a disadvantage than anticipated, to the extent that it now outweighs the advantage given to girls who live closer.

31. Map 1 shows the parishes in the PA for HGS and the location of other secondary schools:

Map 1:



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32. The objections are all from residents in Codicote and Knebworth and so I have therefore carefully considered the data about applications from girls in those parishes, as summarised in table 1.

**Table 1****Secondary school applications and destinations from Codicote and Knebworth**

	TOTAL	HGS	Monks Walk School	Bishop Hatfield Girls' School	Barnwell School	St John Henry Newman Catholic School	Other
Codicote 2021 (prior to revisions)	12	6	3	3	0	0	0
Codicote 2022 (prior to revisions)	8	3	3	1	0	0	1
Codicote 2023 (post revisions)	20	1	13	3	3	0	0
Knebworth 2021 (prior to revisions)	19	10	0	4	3	1	1
Knebworth 2022 (prior to revisions)	22	10	0	6	4	2	1
Knebworth 2023 (post revisions)	15	3	0	4	7	1	0

33. Whilst it is not in question that the effect of the changes has been to reduce the proportion of applicants from these parishes being admitted to HGS, I note that the consequences are as follows:

- a. it is not the case that no girls in these parishes will progress to a single sex school in September 2023;
- b. no more than half of the girls from Codicote or Knebworth went on to HGS in the two years before the arrangements changed;

- c. there is no evidence that any of the 2023 applicants have been unable to progress to a school that makes provision for their gender and is within an acceptable distance of their home; and
- d. in those cases where applicants may have not had their preference met for a single sex school in September 2023, map 1 shows that it is highly likely that the alternative destination is closer than HGS. Whilst the shape of the parishes is such that the relative distances will vary somewhat, table 2 shows the approximate distances in a straight line from the centres of Codicote and Knebworth to HGS, Monks Walk School and Barnwell School.

**Table 2**

**Approximate straight-line distances from village centres to schools**

	Monks Walk School	Barnwell School	HGS
Codicote	2.2 miles	3.8 miles	7.0 miles
Knebworth	3.3 miles	1.8 miles	6.8 miles

34. I therefore conclude that the oversubscription criteria in the arrangements do not create an unfairness to those girls in the parishes of Codicote and Knebworth which is sufficient to outweigh the advantages given to girls living closer to Hitchin. Hence, I do not find that the arrangements are in breach of the requirements for fairness set out in paragraph 14 of the Code. I do not uphold this aspect of the objections.

## Other Matters

### Definition of a sibling

35. The school’s definition of a sibling includes the following:

“A sibling is defined as: the sister, half sister, adopted sister, child of the parent/carer or partner or a child looked after or previously looked after, and in every case living permanently in a placement within the home as part of the family household from Monday to Friday at the time of the application.”

36. As it stands this section is unclear and needs to be revised. This is because it appears to exclude, for example, an applicant whose older sister is at the school, and where both children spend Monday to Wednesday with one parent and Thursday to Friday with another. In this respect, the issue is the same as that identified by the adjudicator in a recent determination for a primary school in Hertfordshire (VAR2320 and VAR2321), where similar wording was found to be unclear. Following that ruling, the local authority has revised its definition of a sibling to make it clear that, if an applicant lives at more than one address, the sibling must also reside at the same address for the majority of the school

week. The school has told me that it intends to do likewise in order to ensure that this section of their arrangements will comply with the requirement of the Code for clarity.

### Admission of children of staff

37. The arrangements give priority to children of staff. These are defined as:

“Children of permanent members of staff who are a) directly employed by Hitchin Girls’ School and b) will have been employed at the school for a minimum of two years at the time the application is made for admission to the school or have been recruited to fill a vacant post for which there is a demonstrable skills shortage.

38. The arrangements add the following explanatory note:

“For the purposes of satisfying these criteria, a member of staff is defined as a member of the full-time teaching staff, or of the part-time teaching staff with a 50% and above timetable, or a member of the fulltime support staff (on a 38 week and above contract), or of the part-time support staff who work 50% and above as determined by their role (on a 38 week and above contract) whose role and activities can be demonstrated to provide a significant impact upon student achievement at the school. A panel from the Governors’ Admissions Committee will determine whether the member of staff meets the requirements for this rule.

This definition does not include contract staff or peripatetic staff employed by HCC.”

39. Paragraph 14 of the Code requires that criteria should be clear, with parents able to understand easily how places will be allocated. I find that the above criterion is not compliant with this aspect of the Code because it is not clear upon what basis the panel of Governors might decide that a particular support staff role does or does not demonstrate “a significant impact upon student achievement at the school.”

40. In response to my queries, the school has drafted revisions to the criterion, removing the clause relating to “significant impact”. I am satisfied that those changes, once implemented, will ensure that this aspect of the admission arrangements will conform with the Code.

## **Summary of Findings**

41. I do not find any breaches of the Code in relation to the process of determining the arrangements for 2024. I do not find that there is any breach of the Code in the lack of priority given to siblings of children attending another school, nor in the adoption of a different definition of sibling to that in use in other schools in the sixth form consortium. I do not find any breaches of equalities legislation and I do not find that the arrangements are unfair. I do not uphold the objections.

42. There are two aspects of the arrangements which must be revised in order to conform with the Code. These are:

- a. the definition of a sibling; and
- b. the wording for the priority given to children of members of staff.

## Determination

43. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2024 determined by the academy trust for Hitchin Girls' School in Hertfordshire.

44. 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.

45. 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: 26 September 2023

Signed:

Schools Adjudicator: Clive Sentance