



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4153

Objector: Sandwell Metropolitan Borough Council

Admission authority: Stour Vale Academy Trust for Oldbury Academy,
Oldbury, West Midlands

Date of decision: 13 October 2023

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2024 determined by the Stour Vale Academy Trust for Oldbury Academy, Sandwell.

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 Friday 27 October 2023.

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 Sandwell Metropolitan Borough Council (the objector, the LA), about the admission arrangements (the arrangements) for Oldbury Academy (the school), a mixed non-selective academy school for students aged 11 to 16 for September 2024. The objection is to the published admission number for Year 7 (the PAN). The admission authority for the school is Stour Vale 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 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 objector submitted their objection to these determined arrangements on 11 May 2023. 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 Board of Trustees at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 11 May 2023, supporting documents and subsequent correspondence;
- d. the trust's response to the objection and subsequent correspondence.

The Objection

6. In stating its objection to the arrangements, the LA referred to a letter which it had sent to the trust in December 2022 objecting to the latter's proposal to reduce the PAN for Year 7 from 310 to 270 from September 2024. This set out pupil number projections for the borough as a whole and for the LA's planning area in which the school is located (the Oldbury planning area), and said that "The retention of a higher PAN than 270 is necessary to support place provision locally and also to meet much wider demand across the Borough". More explicitly, it had told the school that "Any reduction in PAN at the Academy.....will continue to present added pressure for the provision of a sufficient number of school places in the Borough" and in its form of objection said that this letter (which had attached the LA's pupil number projections based on the January 2022 school census for the borough as a whole and for the different planning areas within it which the LA uses) "provides greater depth as to the LA's case for the Academy needing to retain its PAN at 310 to support the local place planning strategy."

7. The LA in its form of objection went on to say that "As a minimum the LA need to maintain the Borough PAN at 4846, including a PAN of 310 at Oldbury Academy. In addition further expansion plans are anticipated for implementation by September 2024 to establish a small percentage of surplus places to meet ongoing demand for New Arrivals

and in-year transfers.” The form had earlier included the statement that “...the Local Authority’s Place Planning Strategy remains under constant pressure to provide sufficient school places to meet demand. Sandwell is an area that has also seen a significant rise in New Arrivals, including high numbers of applications for in-year transfers.”

8. Taking all this into account, when I wrote to the parties concerning my jurisdiction to consider the objection, I said that I understood the objection to be that the reduced PAN of 270 is unreasonably low, which results in the arrangements being unfair in contravention of paragraph 14 of the Code, which says so far as is relevant here:

“.....admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”

Other Matters

9. In that same letter I set out the matters which, when I saw the determined arrangements, it seemed to me did not, or may not, conform with the requirements concerning them:

(i) the arrangements contain a section entitled “Mid-year admission requests”. This includes the following conditions applied to the consideration of admission requests:

- a. “The student is willing and able to recognise his/her commitment to a new school”;
- b. “Adequate support for the transition and the subsequent education of the student exists in the family, extended family or supported family”;
- c. “The needs of the student will not be such as to unfairly disadvantage other students at the academy; parity of provision must be maintained”;
- d. “The induction of the students can be met and supported within existing resources and is manageable”; and
- e. “Prior to admission, one or more interviews with the parents/carers will take place and the original school will be contacted. Agencies may be contacted as appropriate.”

Each of these appears to be contrary to the requirements of paragraph 2.28 of the Code that “...all maintained schools, and academies...that have places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria, unless admitting the child would prejudice the efficient provision of education use of resources.”

In addition, paragraph 1.9 of the Code forbids admission authorities to:

“a) place any conditions on the consideration of applications other than those in

the oversubscription criteria published in their admission arrangements; ...

g) take account of reports from previous schools...; ...

m) interview children or parents.”

(ii) the arrangements contain the following description of a tie-breaker:

“If two or more applicants tie for last place during the allocation process the final place shall be decided by the tossing of a coin.”

Paragraph 1.34 of the Code says that : “Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate...”. It is seemed to me to be unclear how the toss of a coin can determine priority for more than two equally qualified candidates unless there is further explanation of the process used.

(iii) the arrangements do not comply with the requirement of paragraph 2.18 of the Code that “Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.” The “Admissions Policy” of the trust, which I have seen, contains a section devoted to this subject but this is not the admission arrangements for the school (or for any of the schools listed there) and the statement it contains does not meet the requirement that the process for making such a request is set out in the admission arrangements for the school.

10. I informed the parties that, accordingly, I had decided to exercise 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.

Background

11. The LA is located in the West Midlands, in an area known as The Black Country. The six main towns of Sandwell are Oldbury, Rowley Regis, Smethwick, Tipton, Wednesbury and West Bromwich. The LA’s website lists 20 secondary schools, all of which are their own admission authority and most of these are academy schools. The LA operates six secondary planning areas which are used by the LA to assess current and future demand for school places, and I have concluded from the information which I have seen and from my own researches that the Oldbury planning area includes 5 secondary schools, one of which is Oldbury Academy.

12. The school is part of the Stour Vale multi-academy trust, which comprises nine schools – three of which are in the area of the LA, and the others in the area of neighbouring Dudley Metropolitan Borough Council. The school converted to academy status in 2011 and is the only secondary school in the trust which is in the area of the LA.

13. The arrangements were determined on 25 January 2023 by the board of Trustees. They state that the “published Pupil Admission Number [sic] (PAN) is 270”. In a section with the heading “Mid-year admission requests”, the arrangements say:

“In the case of a mid-year request for admission, a student will be considered eligible for transfer if:

- There are available places in the relevant year group
- They have not been permanently excluded from two or more previous schools”

There then follow four further bullet points with the wording in paragraph 9 (i) a-d above and a further statement with the wording in paragraph 9 (i) e above.

14. The arrangements also contain the statement given above concerning the tie breaker which is used.

Consideration of Case

The PAN

15. In order that the parties and other readers can be clear as to how I have considered the information I have seen and how it has formed the basis of my consideration of the objection, I will summarise what has been a lengthy correspondence between the parties and myself. In what follows I will state whether correspondence which I have had on behalf of the trust has been from the trust itself or from the school.

16. When the LA submitted its objection, it referred me to a copy of its letter to the trust objecting to the proposed PAN during the consultation concerning it, and to pupil number projections which this contained. It also provided me with a copy of the reply from the school (presumably on behalf of the trust) seeking to clarify points made by the LA about these pupil number projections, and of its own final response to the school during the consultation.

17. The school had asked the LA a number of specific questions, and taking these together with the LA’s response, the picture which emerged was that:

- (i) the LA had provided revised forecasts to those seen previously by the trust in its objection to the proposal, and these showed an increase in capacity across the secondary school estate, and lower forecasts of need. The LA was however still of the view that these figures did not provide it with a sufficient margin of excess provision;
- (ii) the school had challenged the view of the LA concerning this surplus, saying that the relevant statistic concerning the school’s PAN is the number of Year 7 places and the demand for them, not the total number of school places in the secondary sector as a whole (which the LA had referred to in its letter). The school said that it had read the new figures provided at that time to mean that there was a projected surplus in Year 7 places going forward which was within the desired range of 5-8% which is stated in the LA’s School Organisation Plan;

- (iii) the LA had agreed with that analysis but pointed out that the surplus in places which the school had alluded to was based on a PAN of 310 for the school. It also stated that while the individual planning area figures were important there was “significant movement across the borough”. The school had also used the same forecast, but the reduced PAN of 270, to show that this still projected a borough-wide surplus in Year 7 places after 2015. The LA responded by saying that this is what the data showed, but that it assumed that places provided at two new schools from September 2023 would all be taken up by “Sandwell children”, which it considered unlikely. The LA also said that it was aware of new housing developments (which, by implication, I must assume were not included in the projection of need at that time). The LA therefore still considered that a PAN of 270 would be inappropriate.

18. When the LA submitted its objection to the adjudicator, it included this early correspondence as supporting evidence for its case. When I wrote to the parties setting out my jurisdiction to consider the objection, I asked the LA to confirm my own analysis of the effect of the pupil number projections on which this correspondence had been based. These figures led me to believe that the determined PAN of 270 resulted in a projected deficit for September 2024 of 13 Year 7 places for the borough as a whole, but a surplus in the Oldbury planning area of 69 places, which equates to 5.43% of the available places there. I therefore also asked the LA to explain in more detail its view that the PAN of 270 was unreasonably low, with relevant supporting information and any maps that would be helpful to my understanding. I also asked to be provided with the details of its pupil forecasting methodology.

19. The LA’s reply contained data which confirmed my analysis of Year 7 figures (given above) relating to 2024 but the LA did not state that this was so in terms. It was necessary for me to ask the LA to clarify the narrative of its most recent response and the source of figures given to me there, as I had not seen them previously. From the LA’s further response, I am clear that (in spite of me saying to the LA that the only relevant data for me to consider “is projected Year 7 numbers and available Year 7 places in Oldbury and Sandwell as a whole”) it has continued to seek to make its case concerning the objection based on projections of the total number of secondary places in the borough and the related forecasts of pupil numbers. For example, it said to me that “whilst in isolation the Oldbury Planning Area Analysis does indicate a surplus of places of 5.43% for Year 7 in 2024/25, the Authority’s case is that in the same year the Borough surplus is only projected at 3.45% requiring capacity to be retained in the Oldbury PA to support demand for places in neighbouring PA’s”. The 3.45% figure had been derived by the LA by dividing the projected number of secondary places in Years 7 to 11 by the projected total PAN for these years, I assume using the school’s reduced PAN of 270, although this is not stated.

20. The LA’s correspondence with the school had mentioned Windsor Olympus Academy and Shirelands CBSO School which are both new free schools opening in September 2023. Concerning the former, when the LA wrote to me in June 2023, only 30 of the available 180 places had been taken up by Sandwell children. The latter school has admission arrangements which use a nodal system and the LA believes these are likely to

give priority to non-Sandwell pupils, again effectively reducing the number of Year 7 places which will in practice be available to the number of children it is projecting will need them.

21. The LA's exposition of its case concerning the school's PAN for 2024, which I had requested that it provide me with, consisted of:

- (i) further reference to borough-wide data involving all age groups in 2024;
- (ii) a statement that there would be a reduction in the previously projected surplus in 2024 amounting to "0.8%" because of the anticipated admissions at Windsor Olympus Academy based on the experience of 2023 admissions (which figure the LA subsequently said was derived in relation to "borough wide projections" which it referred me to and which were to do with total secondary places);
- (iii) a statement that there is a growing Key Stage 2 cohort (in the borough), and
- (iv) a concluding statement that the "emerging surplus... for the Oldbury Planning Area...is offset by shortfall elsewhere, which the Local Authority views as being perfectly reasonable given that the Borough is only 12 miles wide." The LA had said that "work continues on preparation for 2023 SCAP [the DfE School Capacity Survey, using data from the January 2023 school census]" and I had noted that earlier correspondence referred to this being available in July 2023.

22. The local authority's forecasting methodology states that cross-border movement is factored into its forecasts for Year 7 at individual planning area level, and it would therefore appear that the next available forecast should pick up the effects which it has referred to concerning the new free schools in the borough. The LA has also said that the effect of admissions at Windsor Olympus Academy will only become clear when SCAP 2023 projections are available.

23. I wrote to the school and the LA in July 2023, summarising what I had understood to be the relevant facts which had been presented to me at that point. These were, that:

- (i) using the reduced PAN of 270 which has been determined by the school's admission authority, the local authority currently projected (using forecasts based on the 2022 SCAP return) that in September 2024, compared to the expected number of Year 7 admissions, there will be a surplus of 69 places in the Oldbury planning area, but a deficit of 13 places for the Borough as a whole. Using the PAN used for admissions in 2023 of 310, these figures would be a surplus of 109 for Oldbury and 27 for the Borough, and
- (ii) the LA also believed that the experience of the 2023 admission round indicated that current projections are likely to be overestimates of the availability of Year 7 places to Sandwell residents in future years because of the large number of admissions of pupils from other local authorities to one recently-opened Academy school in the Borough in particular.

24. I had asked the parties for any further comments on this analysis, and the LA confirmed my summary of the figures in (i) above, adding that it aims “to maintain, as a minimum, a 5% (242 places) level of surplus places across its secondary school estate to support the increasing demand for school places in-year.” I was pleased to see that this figure related to the number of Year 7 places based on the PANs set by schools across the borough.

25. The school had seen the earlier correspondence from the LA and said that it had been informed on 26 June that only 252 pupils had been allocated a place there for September 2023 (against the existing PAN of 310) and that information which it had to hand showed that other schools in the Oldbury Planning Area also had lower than PAN allocations. It said that the LA’s projections had always been “inherently overestimates” and that it believed that there will be sufficient places for all Year 7 children in the borough if a PAN of 270 is retained at the school.

26. Finally, and in summary, the figures based on the 2022 projections which would be relevant to my consideration of the objection are those given above for Year 7 for the Oldbury Planning Area and for the borough as a whole. When set out against the LA’s projection of pupil numbers based on the 2022 SCAP, and shown in tabular form for the determined PAN of 270 (and with the effects of the former PAN of 310 in brackets), these (surplus places and related percentage of the total provision) figures are:

Year	2024	2025	2026	2027
Oldbury PA	69 = 5.43% (109 = 8.3%)	161 = 12.6% (201 = 15.3%)	142 = 11.1% (182 = 13.9%)	128 = 10.0% (168 = 12.8%)
Sandwell Borough	-13 = - 0.003% (27 = 0.56%)	284 = 5.9% (324 = 6.7%)	246 = 5.1% (286 = 5.9%)	230 = 4.7% (270 = 5.8%)

27. Actual admission data for September 2023 is now be available, and I have asked the LA and school for these figures for the school, and for Windsor Olympus Academy. Since it was possible that revised projections (SCAP 2023) had now been made, I have also asked the LA if these are available.

28. The LA told me on 27 September that it did not have final figures for admissions to the school, but the trust said that it had admitted 257 pupils. The LA also told me that the number of Year 7 admissions at Windsor Olympus Academy in September 2023 was 179 (the school’s PAN being 180), but it did not have information as to their place of residence and so I am unable to ascertain whether or not what the LA has feared in terms of the effect of this new school on places for Sandwell residents was borne out in the 2023 admissions round.

29. The LA also gave me what it said were updated Year 7 SCAP 2023 projections of “surplus” (expressed as a percentage of total provision), as follows:

Year	2024	2025	2026	2027
Oldbury	8.78%	16.64%	14.27%	12.44%
Sandwell	2.9%	8.58%	7.05%	6.07%

In response to my further enquiries the LA has informed me that these figures were based on the school having a PAN of 310. If the determined PAN of 270 is used, these latest projections of Year R surplus (as percentages of provision) are:

Year	2024	2025	2026	2027
Oldbury	5.91%	14.02%	11.57%	9.69%
Sandwell	2.14%	7.87%	6.33%	5.33%

30. It will be evident from the foregoing that it has not been a straightforward matter for me to be clear as to the precise facts underlying the LA's case regarding its objection to the PAN for the school. This has been, not least, because of its repeated reference during our correspondence to data relating not to the need for Year 7 places in the borough in 2024, but to the overall number of secondary school places there. This is of course of great importance because of the large number of pupil movements across the secondary sector which the LA must have to accommodate each year, but it does not have direct relevance to the reasonableness of the school's PAN, which must be judged (as I have said) in the context of the overall demand for Year 7 places alone.

31. I have set out above what I believe is a clear picture of the data relevant to my consideration of the objection, both as it has appeared in correspondence about the objection involving the parties, and in its most up to date form. I now turn to what the trust has said to me about the reasoning behind its desire to reduce the school's PAN. When it was asked to comment on the objection, the trust provided me with a copy of the "Consultation Pack" which it had provided as background information to the meeting of the Trust Board at which the arrangements were determined. This contained the covering letter to its public consultation which said:

"The Published Admission Number (PAN) for Oldbury Academy is currently 310. Having reviewed this, Oldbury Academy's Senior Leadership Team, in consultation with the Local Governing Body and Stour Vale Academy Trust (the Admissions [sic] Authority) wish to reduce the PAN to 270.

The basis for this change is to ensure the excellent teaching and learning, identified by Ofsted, continues and is further enhanced by supporting class sizes that will promote a focussed learning environment for the benefit of current and future students."

32. The trust has not elaborated on this reasoning during our correspondence and I must therefore regard this statement as what it wishes me to consider alongside the argument of the LA concerning the need for places locally. I understand the school management and the teaching and learning context which stand behind the trust's approach to be that, as for any school, both are likely to profit if more classes are "full" and there are fewer in-year admissions to be supported. Putting aside for one moment the fact that it is a common error that a PAN set for a normal year of admission acts as a "cap" for the number of possible in-year admissions as a year group moves through a school (and that therefore having a reduced PAN does not necessarily provide the conditions which a school may suppose), it must nevertheless in my view be any school's paramount responsibility to contribute to there being a sufficient educational provision for the young people in the area in which they are situated.

33. I am aware that the school has stated its willingness to admit children in excess of its reduced PAN should the LA need this. However, the PANs which the admission authorities for schools are required to set provide absolute certainty for an LA concerning the number of places which are available locally, and this is not the case concerning any offer of what are often referred to as "bulge" (over PAN) admissions.

34. The LA, for good reasons, sets itself the target of there being at least 5% of surplus school place provision in order to be sure of meeting its duty to secure adequate provision, and while it is evident that this buffer is likely to be available to it in 2024 in the immediate locality of the school (the Oldbury planning area), I must also bear in mind what the LA has had to say about the interconnected nature of the borough's different neighbourhoods.

35. I am also conscious that the most recent figures show an improved situation in 2024 compared to that which was anticipated at the time the objection was made (and that the school has admitted fewer than 270 pupils in September 2023). It is also evident that there is a further improvement anticipated in 2025. However, the latest projections also show that the critical figure (in this context of a geographically small LA) of the number of surplus Year 7 places which will be available to the LA as a whole in September 2024 still falls short of its planning target, even if a PAN of 310 is retained. The determined PAN of 270 therefore leaves the LA some considerable way short of this target.

36. As a result, I consider that the PAN of 270 which the trust has determined for the school for admissions in 2024 is unreasonably low, which results in the arrangements being unfair in contravention of paragraph 14 of the Code, and I uphold the objection. For the avoidance of doubt, and based on this analysis, I am of the view that any reduction in the school's PAN from that which applied for 2023 would have made the arrangements unfair.

Other Matters

37. The trust has helpfully accepted that each of the five conditions which are contained in the section of the arrangements dealing with "mid-year admission requests" (as set out above) is contrary to the requirement of paragraph 2.28 of the Code that all children who have applied for a place at school can only be refused admission if doing so would prejudice the efficient provision of education or use of resources, and of paragraph 1.9a) of

the Code which forbids any conditions other than those in the determined oversubscription criteria from being applied. Paragraph 1.9g) forbids an admission authority from taking account of reports from a child's previous school and 1.9m) forbids interviews of children or parents, and so the condition in the arrangements that says that:

“Prior to admission, one or more interviews with the parents/carers will take place and the original school will be contacted.”

also breaches these requirements.

38. The trust responded to my concern about the absence of description of how its tie-breaker would work by telling me that it “has been taken from the determined arrangements of all Sandwell controlled [sic] schools.” I assume that this statement refers to the arrangements of all schools for which the LA is the admission authority (and not, therefore, only voluntary controlled schools) but I do not see the relevance of it to my consideration of the school's arrangements, for which it is the responsible body. It cannot be assumed that something contained within the arrangements determined by an LA for the schools for which it is the admission authority will necessarily be compliant with the Code and it is the responsibility of the trust in this case to ensure that its arrangements are compliant.

39. What the Code requires is that any parent would be able to understand how a tie-breaker affecting their child operates in practice, and the arrangements fail to explain how the toss of a coin can separate more than two otherwise equally entitled children. If there were three children to be separated, for example, would there be a simultaneous toss of three coins, and if so, how would the outcome determine the successful candidate? There could be other approaches. The Code at paragraph 1.34 requires the process envisaged by the school to be described. The arrangements fail to do this and so are in breach of this requirement.

40. The school has helpfully acknowledged that the admission arrangements for the school (as opposed to a policy statement made elsewhere by the trust) do not contain a description of the process any parent who wishes to request that their child be admitted outside its normal age group must follow. This is a breach paragraph 2.18 of the Code.

Summary of Findings

41. I have explained in the foregoing paragraphs why I:

- (i) uphold the objection which has been made to the PAN of 270 for the school for admissions in September 2024; and
- (ii) find that the arrangements:
 - a. contain conditions which are applied to some applications for places at the school in contradiction to the requirements of the Code;
 - b. do not set out clearly how random allocation operates when used under the arrangements, and

- c. do not contain a statement of how parents can make a request that their child be admitted outside of its normal age group.

42. The deadline for preferences to be expressed by parents in relation to admissions to secondary schools in 2024 is 31 October 2023. In order that a revised PAN shall be determined by the trust for the school in time to inform parents of the number of available places at the school before stating their preferences, I will require the trust to revise these arrangements no later than 27 October 2023.

Determination

43. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2024 determined by the Stour Vale Academy Trust for Oldbury Academy, Sandwell.

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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by Friday 27 October 2023.

Dated: 13 October 2023

Signed:

Schools Adjudicator: Dr Bryan Slater