



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4340

Objector: Surrey County Council

Admission authority: Learning Partners Academy Trust for George Abbot School, Guildford

Date of decision: 11 July 2024

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 2025 determined by Learning Partners Academy Trust for George Abbot School in the local authority area of Surrey County Council.

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 Surrey County Council (the objector, the LA), about the admission arrangements (the arrangements) for George Abbot School (the school), a non-selective secondary school for children aged 11-18, for September 2025. The school is an academy and is a member of the Learning Partners Academy Trust (the trust), which is its admission authority.
2. The LA is objecting to two points within the arrangements; firstly, that the school has introduced a requirement for cohabiting couples to have been cohabiting for a minimum of one year in order for children of that household to qualify under the sibling or children of staff oversubscription criteria and secondly, that the school has introduced a new means of assessing a child's home address in cases where parents live separately, the child lives with each parent for part of the time, and there is an irregular pattern of overnight stays.

3. The LA also raises issues regarding evidence which may be required in relation to the above points.

4. The LA for the area in which the school is located is Surrey County Council. The LA is the objector. Other parties to the objection are the trust and the school.

Jurisdiction

5. 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. The trust has responsibility for the admissions to all schools within the trust but has delegated authority to the school's local governing body (LGB) to determine its admissions arrangements. The LGB has then delegated this responsibility to an admissions committee. The arrangements were determined by the admissions committee for the school on 27 February 2024. The objector submitted its objection to these determined arrangements on 10 May 2024. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is 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 I have considered in reaching my decision include:

- a. a copy of the minutes of the meeting of the school admissions committee at which the arrangements were determined;
- b. a copy of the determined arrangements for 2025, which include the Supplementary Information Forms (SIFs);
- c. a copy of the determined arrangements for 2024, which include the SIFs;
- d. the objector's form of objection dated 10 May 2024 and supporting documents;
- e. the trust's response to the objection and supporting documents;
- f. the Equalities Act 2010 (EqA2010); and
- g. the Department for Education (DfE) website 'Get Information About Schools' (GIAS), the LA website, the school website and the trust website

The Objection

8. The objector questions whether the introduction of the new requirement in the 2025 arrangements that cohabiting partners must have been living together for a minimum of one year in order for children of their household to be considered under paragraphs 10.3 and 10.4 of the school's oversubscription criteria (as siblings or children of staff respectively) is

fair or lawful given that there is no such threshold for parents who are married or in civil partnerships. The objector also feels that the arrangements are unclear as to how parents would need to evidence the length of their cohabitation.

Paragraph 14 of the Code states:

“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.”

Paragraph 1.8 of the Code states:

“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admissions 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 with a disability or special educational needs...”

9. The objector also considers that in order to gather the information needed to apply this new provision, the admission authority would be in contravention of the Code as follows:

Paragraph 1.9f states that:

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

f) give priority to children according to the occupational, marital, financial, or educational status of parents applying. The exceptions to this are children of staff at the school and those eligible for the early years pupil premium, the pupil premium and the service premium who may be prioritised in the arrangements in accordance with paragraphs 1.39 – 1.42”

Paragraph 2.4 of the Code also states:

“Admission authorities **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for:

Any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);”

9. The objector also questions whether the different requirements for cohabiting parents may be discriminatory under the EqA2010 as “there may be religious or cultural reasons why parents may choose not to marry or enter in to a civil partnership.”

Background

10. George Abbot School is an 11-18 non-selective school in Guildford in Surrey. It opened on 1 July 2011 as an academy converter and joined the Learning Partners Academy Trust on 1 September 2021. It has a net capacity (the number of children that a school can accommodate based on a DfE standard formula calculation) of 1932 and is full to that number according to the government website GIAS. The school was last inspected by Ofsted in 2019 and judged to be good. The published admission number (PAN) for Year 7 (Y7) is 300 with a PAN of 15 for Y12 (the PAN for Y12 applies to external candidates only).

11. The oversubscription criteria for the 2025 arrangements are at point 10 of the arrangements as follows (I have included the full text for 10.3 and 10.4 as these are the subject of part of the objection):

“10.1 Looked after and previously looked after children

10.2 Children with an exceptional medical and/or social need to attend George Abbot School

10.3 Children with a sibling at George Abbot School at the time of application

The sibling must be on the roll in any year group at George Abbot School at the time of application only.

A ‘sibling’ means a full brother or sister (sharing both parents), a half brother or sister (sharing one parent), an adopted brother or sister (sharing one or both parents), a foster brother or sister on a long term placement (a looked after child), a step brother or sister (where one child’s parent is married or in a civil partnership with the other child’s parent) and a child of the applicant’s parent’s partner where they have cohabited for at least one year.

In all cases, the sibling must live at the applicant child’s home address (as defined in this policy) as part of the same core family unit. For the avoidance of doubt, a child of an extended family member (e.g. cousin or grandchild) or of a friend, will not be a ‘sibling’ even if they live at the same address as the applicant child.

10.4 Children of staff at George Abbot School

The staff member must have been employed at George Abbot School for more than 50% of their working week during term time, on a permanent contract or consecutive fixed term on[e] year contracts, for two or more years at the time of application.

The staff member may be full or part-time, teaching or non-teaching staff. For the avoidance of doubt, it is not possible for staff to have priority for the admission of their children at more than one school within the Trust.

A 'child of a staff member' means their natural child, adopted child, long term foster child, step-child (the child of their spouse or civil partner) or the child of their cohabiting partner where they have cohabited for at least one year.

In all cases, the child of the staff member must live and sleep for more than 50% of their time from Sunday to Thursday night during term time at the home address recorded for the staff member in the HR file (which will also meet the definition in this policy for the child's home address). For the avoidance of doubt, a child of another family member (e.g. niece, nephew or grandchild), or of a friend, will not be a 'child of a staff member', even if they live at the same address as the staff member.

The staff member must be the parent whose details are given in the application form, as obtaining details for more than one parent is prohibited. A Children of Staff Form must be submitted with the application in order to ensure that eligibility under this category is identified.

Parents of children believed to have priority under Category 10.2 above (exceptional medical and/or social needs) as well as this one should complete both supplementary information forms, to ensure their children are considered in this category if unsuccessful in the higher one.

10.5 Children for whom George Abott School is the nearest relevant secondary school

10.6 All other children".

Consideration of Case

12. The objector has objected to two new elements that have been introduced to the school's determined arrangements for 2025 following the consultation which took place between 8 December 2023 and 26 January 2024. Paragraphs 10.3 and 10.4 of the arrangements are set out in full above. I shall set out the objector's full comments below and address the points raised within that element of the objection systematically. I will then go on to the objection raised to paragraph 23 of the arrangements.

13. In relation to paragraphs 10.3 and 10.4 of the oversubscription criteria, the objector states in their objection form:

"In relation to the first point and the requirement for cohabiting parents to have lived together for one year, the Local Authority questions the fairness and lawfulness of this, as a similar threshold is not placed on parents who are married or in civil partnerships. As the school is placing different conditions on parents who are not married, this may be considered unfair and, as such, contrary to paragraph 14 of the School Admissions Code.....[see above]

It is also not clear how a parent will evidence that they have been co-habiting for at least one year, which would also render the arrangements to be contrary to the requirement within paragraph 14 for practices and criteria to be clear.

The local authority also believes that this requirement may be contrary to paragraph 1.9f) of the School Admissions Code which sets out that admission authorities must not 'give priority to children according to the occupational, marital, financial, or educational status of parents applying.' By setting a threshold of one year for cohabiting parents to have lived together in order for a child to benefit from either the sibling or staff criterion, the school is in effect giving a higher priority to children whose parents are married or in a civil partnership than to those who have cohabited for less than one year and whose children are thereby not eligible for any associated sibling or staff claims.

The wording may also be contrary to paragraph 2.4a) of the School Admissions Code...[see above]. It is not currently clear from the arrangements how the school will determine whether a parent is married, in a civil partnership or cohabiting with their partner, but paragraph 30 of the arrangements says the following (and there is similar wording in paragraph 34 for sixth form applicants):

'Parents must carefully consider the oversubscription criteria above to check whether any additional documentation must accompany the application for inclusion in a particular category, as failing to do so is likely to prevent the right category being identified, which could result in a place not being offered.'

If this means that parents must provide documentation in relation to their marital status or the length of time that they have been cohabiting with a partner in order to demonstrate they are eligible for either the sibling or staff criteria, then the Local Authority does not believe that this would comply with paragraph 2.4a) of the Code. It would also be contrary to paragraph 14 of the Code, as the arrangements are not clear what evidence would need to, or could, be provided.

Finally, it would appear that to set different requirements for cohabiting parents than for parents who are married or in a civil partnership might also be discriminatory under the Equalities (sic) Act as there may be religious or cultural reasons why parents may choose not to marry or enter in to a civil partnership."

14. The objector responded to the consultation on proposed changes to the admission arrangements on 26 January 2024 raising the concerns detailed above. The admission authority responded to the objector on the 1 March 2024 as follows:

"We thank you for the comments raised in your email (Friday 26 January) on these arrangements during the consultation period; these have been considered by the Admissions Committee and discussed with a specialist lawyer.

In response to the two points raised:

1. The first related to paragraph 10.3 – the requirement for co-habiting parents of siblings to have co-habited for at least one year and the evidence required. The Committee noted that although not raised by yourself, the same requirements is also within the ‘children of staff’ paragraph. The main concern was: is it fair and reasonable to put different conditions on parents who are not married or within a civil partnership?

It was decided that:

- a) Firstly, the inclusion of siblings of co-habiting parents was new to these admissions arrangements and had been added to the policy precisely to address the equality issue, allowing equality of opportunity to parents whether married, within a civil partnership or non married, and their children.
- b) In inserting the new co-habiting wording, it was not unreasonable to have a qualifying period to avoid parents ‘playing the system’ in order to obtain a place. Keeping the requirement for proof of one year’s co-habitation was also seen as a deterrent from trying to falsify co-habitation. It was decided that one year was a reasonable time period to demonstrate an ongoing relationship.
- c) A specialist lawyer had drafted the arrangements, including the paragraphs on acceptable evidence, and been consulted on the point – and the Admissions Committee was satisfied that if the new co-habiting wording was to remain, the one year qualification was needed; it is not unfair or unreasonable because marriage is a commitment for which evidence can be provided. Co-habitation is easier to falsify and therefore governors agreed that some objective proof of meeting these criteria was needed. The deterrent effect was also recognised.”

15. The objector responded to this on 3 May 2024 as follows:

“I was interested to read that your policy had not previously provided for children of cohabiting parents to be treated as siblings. I looked back and note that for 2024 your policy said:

‘A sibling will be considered to be a brother or sister (that is, another child of the same parents/carers, whether living at the same address or not), a half-brother or half-sister or a step-brother or step-sister or an adoptive or foster sibling, living as part of the same family unit, at the same address.’

Without any stipulation that step-siblings referred only to children where their parents were married (which would most likely have been unlawful), I would have interpreted step-sibling to be any sibling where parents lived together, either married or unmarried. This is certainly the approach we apply to community and voluntary controlled schools and would be our advice to any OAA school, on the basis that it would be unlawful to treat step-siblings of unmarried parents any differently to children of married parents. I would therefore see the change that you have

introduced for 2025 to be more restrictive on cohabiting parents than what was published previously.”

16. The relevant paragraphs from the 2024 determined arrangements for the school are as follows:

“3. Siblings

A sibling will be considered to be a brother or sister (that is, another child of the same parents/carers, whether living at the same address or not), a half-brother or half-sister or a step-brother or step-sister or an adoptive or foster sibling, living as part of the same family unit, at the same address. A child will be given sibling priority if they have a sibling at George Abbot School at the time of the child’s admission. For the initial intake to the school a child will be given priority for admission only if their sibling will still be at George Abbot School in September 2024. This will apply both at the initial allocation of places and also when prioritising the waiting list. Giving sibling priority has the effect of maximizing the opportunity for children in the same family to be educated at George Abbot School. Where a sibling is in Year 11 or Year 12 at George Abbot School at the time of application for a younger child to start Year 7 in September 2024, they will be deemed as being in the school at the time of admission, unless the parent/carer has specifically expressed that they will not be continuing in the following academic year.

4. Children of Staff Priority is given to the children of staff where the member of staff has been employed at George Abbot School for two or more years at the time at which the application for admission to the school is made. The member of staff must complete the supplementary information form attached.”

17. I shall first look at the objector’s view that the change introduced to the 2025 arrangements, whereby non-married cohabiting parents are required to have lived together for a minimum of one year prior to application in order to qualify under either the sibling or child of staff criteria, is unfair, and so contrary to paragraphs 1.8 and 14 of the Code.

The question of fairness is fact specific, and any finding by the adjudicator will depend upon the context and the effect of an oversubscription criterion upon the group of children to whom it is applied. My role is to consider the question of fairness based upon the evidence provided in relation to this particular school and for admissions to Y7 in 2025.

18. The fact that the school has changed its sibling priority criterion from one with which the LA was content, and conformed to LA guidelines, is significant. The school has justified this by saying that its purpose was actually to address what they had perceived as a potential inequality of treatment.

19. In the objector’s view, there would be no differentiation under the sibling definition regardless of the marital status of the parents under the 2024 arrangements. Under the determined arrangements for 2025, there is now a clear differentiation between the children

of parents who are married or in a civil partnership and those of parents who are cohabiting and have been so for less than a year.

20. I accept that there may be differing interpretations here. In our current society it is common for partners not to be married or in a civil partnership. A child of one partner (but not the other) living in the same household and treated as a child of the family would commonly be viewed as a step-brother or step-sister to a child of the other partner, regardless of whether the partners are married, in a civil partnership or cohabiting.

21. On the other hand the words “step-brother” or “step-sister” could be narrowly interpreted to mean only children of one partner (but not the other) where the partners are married or in a civil partnership. Consequently, I accept that the admission authority considered it helpful to add cohabitation to make it clear that children of partners in that position were to be included.

22. The issue is whether it is fair to place a time requirement on cohabitees which is not applied to those who are married or in a civil partnership.

23. The purpose of oversubscription criteria is, of their very nature, to establish priority for admission to a particular school and this will necessarily give priority to some applicants at the expense of others. The question of fairness in this context is to establish whether the change to the criteria under scrutiny has given rise to an unfair disadvantage to a specific group of children.

24. While I can understand the school’s desire to have robust and consistent criteria, they have placed a heavy emphasis on the need to prevent parents from ‘playing the system’. I note from GIAS that the school is full to its stated net capacity which indicates that it is a parentally preferred school. I accept that it is legitimate for an admission authority to seek to prevent fraudulent applications, but this must be achieved in a way that does not unfairly disadvantage some children.

25. My conclusion is that the introduction of this requirement could disadvantage children of cohabiting parents and that the disadvantage is unfair and therefore in contravention of paragraph 14 of the Code and I uphold the objection to this element of the arrangements.

26. The second part of the objection is in relation to paragraph 23 of the arrangements which states:

“The child/external applicant’s home address is the residential (not business) address at which they will live and sleep for more than 50% of their time from Sunday to Thursday night each week during term time, at the time of their admission. On the rare occasion where the child/external applicant lives with more than one parent during the school week, and the pattern for overnight stays is irregular from one week to the next, this will be assessed over the most recent five term time week period immediately preceding the application being made.”

27. In the 2025 arrangements, the school has introduced the assessment method for the home address as to where a child has spent the most school nights per week over the five week period preceding the submission of the application. The objection states that:

“In relation to Paragraph 23 and the policy for split parent cases, the Local authority is unclear how the school will assess this and for this reason believes that it does not comply with paragraph 14 of the School Admissions Code. In addition, this policy may result in an address being used that the child does not live at ordinarily, just because there is an irregular pattern of overnight stays from week to week. The ‘most recent five term time week period immediately preceding the application being made’ may not be indicative of where the child will live ordinarily and will be difficult to measure without asking for personal details about parents and their living arrangements. Whilst the school has now stipulated that the date this will be measured from will be the application date, for new round admissions the school will not always know the exact date of application.”

28. I find that the provision in itself is clear. If ascertained the facts will demonstrate where the child has spent the majority of nights in the preceding five term-time weeks. It is possible that this could produce an anomalous result, as the local authority states. However, I do not find that it is an unreasonable test to ascertain a child’s home address in the circumstances described in the admission arrangements.

Evidence

29. I will now look in more detail at the question of the evidence. Paragraph 30 in the arrangements states that:

“Parents must carefully consider the oversubscription criteria above to check whether any additional documentation must accompany the application for inclusion in a particular category, as failing to do so is likely to prevent the right category being identified, which could result in a place not being offered.”

30. It is unclear from this paragraph what, if any documentation, would need to accompany the form in order to ensure that an applicant would be given priority as, for example, a sibling or the child of a member of staff. Nor is it stated what evidence, if any, would be required to establish a child’s living and sleeping pattern over five term-time weeks. There is some indication within the admission arrangements that specific evidence is required in relation to some provisions in the oversubscription criteria, for example adoption, and there are supplementary information forms for social and medical reasons and for children of staff. Paragraph 30 places the onus on the parent to decide what evidence may be required (if any) in relation to any provision of the admission arrangements relevant to their application. A parent cannot be expected to guess what aspect of their application may require evidence and what evidence may consequently be required.

31. I find that paragraph 30 is unreasonable. No reasonable admission authority would require parents to work out what evidence is required for any aspect of the oversubscription

criteria with the risk of not receiving an offer if something is not provided which the admission authority deem to be required but have not specified.

32. As I have found that paragraph 30 is unreasonable, and as paragraph 30 affects every oversubscription criterion, I find that all of the oversubscription criteria are unreasonable and consequently in breach of paragraph 1.8 of the Code.

33. In addition, it would not be possible to require documentary evidence of whether parents are married, in a civil partnership or have been cohabiting for a year or more without asking for evidence which is specifically prohibited under paragraphs 1.9f) and 2.4 of the Code. If paragraph 30 of the arrangements is intended to mean that documents relating to the parents' marital status must be provided as supplementary information, it is contrary to paragraphs 1.9f) and 2.4 of the Code, and consequently I uphold this element of the objection.

34. The final part of the objection to paragraphs 10.3 and 10.4 of the oversubscription criteria is to whether setting different requirements for cohabiting parents as opposed to parents who are married or in a civil partnership could be discriminatory under the Equalities Act as there could be religious or cultural reasons why parents may choose not to marry or enter into a civil partnership.

35. I have determined that the provision in the arrangements which is the subject of the objection is unlawful as set out above and, consequently the arrangements will need to be revised. Having made that finding of illegality, it is not necessary for me to also make a finding on the discrimination point. I do not therefore intend to consider the EqA2010 point further.

Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2025 determined by Learning Partners Academy Trust for George Abbot School in the local authority area of Surrey County Council.

37. 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: 11 July 2024

Signed:

Schools Adjudicator: Mrs Tess Gale