

DETERMINATION

Case reference: ADA/002321

Objector: Two parents

Admission Authority: The governing body of Walsall Academy

Date of decision: 3 September 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of Walsall Academy for admissions in September 2013.

I have also considered the arrangements in accordance with section 88I (5) of the Act. I determine that they do not conform with the requirements relating to admission arrangements in the way set out in this determination.

By virtue of section 88K (2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

The referral

1. Under section 88H (2) of the Schools Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by two parents (the objectors), about the admission arrangements (the arrangements) for the Walsall Academy (the school), a secondary school with a sixth form, for September 2013. The objection comprises six matters concerning consultation; the funding agreement; the catchment areas and the way places are allocated; the lack of change in the criteria overall; the lack of clarity in the way places are allocated; and the lack of priority for siblings.

Jurisdiction

2. The terms of the Academy agreement between the proprietor 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 governing body, which is the admission authority for the school, on that basis on 19 March 2012. The objectors submitted their objections to these determined

arrangements on 26 June 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objectors' form of objection dated 26 June 2012, together with supporting documents and subsequent correspondence;
 - b. the school's response to the objection dated 6 July 2012 and supporting documents, and subsequent correspondence;
 - c. Walsall Council's, the local authority (the LA) response to the objection dated 9 July 2012;
 - d. a copy of the minutes of the meeting on 19 March 2012 at which the governing body of the school determined the arrangements; and
 - e. a copy of the determined arrangements
5. I have also taken account of the information I received during the discussion held with the parties at a meeting I convened at the school on 22 August 2012 and subsequent correspondence.

The Objection

6. The objectors say:
 - a. "There has been no proper parental and community consultation regarding the criteria.
 - b. Because of the above, Walsall Academy has broken the terms of its Funding Agreement.
 - c. The way in which the inner and outer catchment areas differ in terms of the way places are allocated – this is detrimental to the children living in the inner catchment area. We object to the number of places allocated to outer catchment applicants – when demand in the inner catchment always outweighs the number of places offered. (Inner catchment map attached as evidence –please note this is NOT available on the school website and I feel it should be.).
 - d. The criteria has not changed since 2003 when the Academy was first incepted, despite local demand for places at the school.

- e. The way places are allocated is not clear, because banding is unknown at the time of application, and parents have no way of assessing whether they have a good chance of gaining a place at the school when they apply.
 - f. A 'no sibling' policy has a detrimental affect on families living close to the school and therefore a detrimental effect on community cohesion."
7. The objectors refer in particular to paragraphs 1.26, 1.42 and 1.45 of the Code.

Other matters

8. I have also considered the arrangements as a whole and find there are matters that appear not to conform with the Code.

Background

9. The School was founded as a sponsored academy in September 2003 under section 482 of the Education Act 1996. The school has purpose built accommodation and replaces TP Riley School, a school that had required special measures. The admissions arrangements were set out in detail as part of the funding agreement and have not been changed since the school opened other than to comply with changing legislation.
10. The objection has been made as a result of the objectors' experience in seeking a place for one of their children under the 2012 admission arrangements. An older child has a place at the school and the second child has not been allocated a place. The objectors acknowledge that their objection cannot affect the 2012 arrangements, but they wish to raise their concerns through an objection to the 2013 arrangements.

Consideration of Factors

Part a.

11. The objectors say that there has not been a proper parental and community consultation on the arrangements for admissions in 2013 and do not believe that there has ever been a full consultation on the admission arrangements. As to the objectors' assertion that the community has never been properly consulted, I cannot comment as my jurisdiction is limited to considering whether proper consultation took place in relation to the 2013 arrangements.
12. The Code that was introduced on 1 February 2012 and applies to admissions in 2013 onwards sets out in paragraphs 1.42 to 1.45 the requirements for consultation. If arrangements have not changed from the previous year, other than to incorporate any change required by the Code, there is no requirement to consult. If there are no changes then arrangements must still be consulted on as set out in the Code at least once every seven years. The Code in force for the 2012 arrangements

required arrangements that had not changed to be consulted on not less than every three years. Those who must be consulted are set out not just in the Code at paragraph 1.44, but in regulation 12 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012. Other than some minor differences in wording and the time period within which there must be a consultation, the requirements for consultation in 2012 and 2013 are substantially the same.

13. The school, referring to paragraph 1.42 of the Code, is of the view that it did not need to consult for 2013 arrangements as no changes other than those required by the new Code have been made from the previous year, and that consultation has been carried out within the last seven years.
14. The school says it consulted during the academic year 2011/12 on its 2012 admission arrangements. It also says that the LA and all schools receive the proposed "Rules of Admission" on an annual basis and are invited to comment. The LA has supported them in this view. Among the papers I have seen are:
 - a. an email sent to the LA and secondary schools dated 4 January 2012 and headed "Consultation on admission arrangements for the academic year 2013-2014" which shows there were attachments for admissions to Year 7 and to the sixth form;
 - b. a second email dated 13 January 2012 headed in the same way with just Year 7 arrangements attached and sent to primary schools.;
 - c. a copy of a document headed "Walsall Academy Proposed Rules of Admission Year 7 September 2012" submitted by the school in response to the objection that has on page 8, the final page of the document, a section "Consultation Process". After a reference to taking part in the LA's co-ordinated scheme, it says, "Walsall Academy, as its own admissions authority, has a duty to consult including all primary and secondary schools and other local admission authorities before determining their arrangements for the academic year 2011/2012. The Governing Body has agreed to the Rules of Admission and intends to ratify these arrangements in March 2011. If you wish to comment or raise any objections to the criteria please write to Mrs K Plant at the school or enquiries@walsallacademy.com
15. There is no dispute that the 2013 arrangements are the same as those for 2012 and were not the subject of a full consultation prior to being determined in March 2012. I therefore need to be satisfied that the last full consultation said to have taken place for the 2012 arrangements was carried out in accordance with the Code. At the meeting on 22 August 2012 I sought further clarification about the way the last full consultation had last been undertaken.

16. Although the school is convinced that it has complied fully with the Code, it is unable to provide documentary evidence to confirm this. I note that the LA says it was consulted, I note too from the emails to the LA and other schools for 2013 that the secondary schools were sent full arrangements and the primary schools parts of the arrangements. Similar emails may have been sent in 2011. A document from the school's Parents' Advisory Council says they have been consulted.
17. Crucially, however, there is no email trail or other record that demonstrates how the full requirements for consultation have been met, and in particular there is no information evidencing consultation with parents or other local groups with an interest in the local area. There is no evidence about the precise wording that may have been used on the school's website where the school says the proposed 2012 arrangements were posted, nor of the dates on which they were displayed. The information on page 8 of the document cited above suggests that the consultation period must have been prior March as the wording says the governors intend to ratify the arrangements in March 2011. The consultation period may therefore have lasted for the minimum of eight weeks specified in the Code, and completed as required by 1 March, but I cannot be certain. The incorrect inclusion of the academic year 2011/2012 rather than 2012/13 may have confused anyone seeing the document. It appears that the only way all parents of children between the age of 2 and 18 years would have known of the consultation would have been to find the proposed arrangements on the school's website during whatever period it was that they were displayed. The same would be true for any other persons in the relevant area who may have an interest in the proposed arrangements.
18. Taking into account the evidence available to me I conclude that the school has met in part the requirement for consultation, but not fully. I therefore uphold this part of the objection.

Part b

19. In relation to compliance with the funding agreement, an adjudicator only has jurisdiction to consider determined admission arrangements and the compliance of those arrangements with relevant legislation and the Code. I do not have jurisdiction on whether there has been a breach in terms of the funding agreement otherwise than as part of the consideration of the admission arrangements. I cannot make any discrete determination in relation to part b.

Part c.

20. With regard to the allocation of 100 places to children living in the inner catchment area and 68 to children in the outer catchment area, the school says that the arrangements were designed at the inception of the school to avoid any negative impact on the intakes of three named local schools that are within 1.1 miles, 1.98 miles and 1.3 miles of the school. The objectors argue that there should be more places for children from the inner catchment area, which is oversubscribed, but

the school says there are more students from the inner catchment area on roll than there were at the predecessor school. The LA has indicated that it is content with the catchment area arrangements.

21. The co-ordinated scheme for admissions in Walsall invites applicants to express a preference for up to five secondary schools. Data provided by the LA show that for September 2012 there were 660 applications of which 268 were first preferences. The School has indicated that of the 661 applications on its list for 2012 admissions, 171 were from applicants in the inner catchment and 490 from the outer catchment. From this data I note that for 392 applicants the school was not their highest preference. As I do not have more detailed data about how many inner and outer catchment applicants placed the school as their highest preference and how many were allocated a place the data have not influenced my decisions.
22. The Code does not require a school to have a catchment area, but if it does, paragraph 1.14 of the Code requires that, "Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."
23. The objectors say that as a result of limiting the number of places available for children from the inner catchment area those who are not allocated a place have to travel several miles to an alternative school. At the same time children from the outer catchment are allocated a place taking into account of the band to which they are allocated and then giving priority to children whose nearest alternative secondary school is furthest away.
24. At the time the objection was made there was no map of the catchment areas included on the school's website as part of the arrangements so the catchment could only be checked by obtaining a copy of the arrangements from the school. The school has now placed a copy of the map on its website. The inner catchment is clearly defined and the outer catchment is defined as anywhere that is not the inner catchment so by checking that the applicant does not live in the inner catchment s/he must be in the outer catchment. Although I find it rather strange to describe anywhere outside the inner catchment as being a catchment area, I conclude the catchment is clearly defined and meets the Code in this respect.
25. I am less certain that the way inner catchment and the outer catchment areas operate is reasonable. It seems to me that it is possible that a child living towards the outer boundary of the inner catchment will not be allocated a place if the band s/he is in is filled by children living near the school, but a child in the same band living a little further away, but in the outer catchment area, could be allocated a place on the basis that his or her "nearest secondary school is furthest as measured in a straight line". So, potentially the child living in the inner catchment but not allocated a place has to travel past the address of the child in the

outer catchment and further on to an alternative school while the child from the outer catchment travels not just past the address of the inner catchment child but also a distance to the school than might be longer than to the nearest alternative school.

26. Furthermore, as determined, the arrangements give greater priority to filling the bands with applicants allocated to the specific band than ensuring 100 places are allocated to applicants from the inner catchment area. If a band is not fully subscribed by inner catchment area applicants instead of allocating the places alternately to an applicant from the band above and the band below up to the band capacity as would be usual when banding is done without reference to a catchment area, places are allocated to applicants from the outer catchment that have been placed in that band. This action too would require inner catchment area children to seek places out of the catchment.
27. In considering the position of children in the inner catchment area who are not allocated a place at the school I also looked briefly at the admission arrangements for other Walsall secondary schools. Other than the grammar schools and schools designated as having a religious character, priority seems to be given to applicants attending named feeder schools and/or on straight line distance from the school with priority for those nearest to the schools. While the use of a catchment area is not unlawful I am not convinced that the combined use of the catchment and banding and limiting the number of places in the inner catchment taken together is reasonable. I am of the view that the school with the assistance of the LA and data it has on admissions matters would do well to consider the position of the school and the area it serves now rather than the historical reasons for the oversubscription criteria and the reasons for the arrangements decided at the time the school opened. If the school comes to the conclusion the arrangements should remain it will have up to date evidence to support its reasons, but if with the changes that have occurred over the last decade the school concludes there should be some changes to its admissions those changes would also be based on sound evidence.
28. I cannot be certain whether the use of the inner and outer catchment areas and the allocation of places to those areas is reasonable for 2013. While the arrangements set out for the new school may well have been reasonable when the school was established and were devised because of the potential effect on other schools, the question is are they reasonable a decade later. Without considerable further analysis I am unable to form a firm conclusion, but I have some doubt about the reasonableness.

Part d

29. The objection that the criteria have not changed since 2003 despite local demand is not of itself unlawful. As suggested above however, a thorough review may be timely. I do not uphold this part of the objection.

Part e

30. The fifth part of the objection concerns the banding arrangements. The objectors argue that applicants do not know the results of the banding tests before making an application and therefore cannot make a fair assessment of whether they have a reasonable chance of securing a place. The school says it will take all reasonable steps to inform parents of the test score before 31 October. It is the school's view that there is no advantage to be gained in knowing the score and an indication of the banding. A similar view is held by the LA. The objectors explained that knowing the results would help as parents have been able to deduce that a child in certain bands living at the more distant part of the inner catchment area would not be likely to gain a place, but in the higher bands would have a good chance. With equal percentages of places available in each band, but the number of pupils scoring in the range of marks in the different bands being quite different, parents among themselves have worked out how to assess their chances, if they know their child's mark and likely band.
31. The Code at paragraph 1.25 says that banding pupils by ability is a permitted form of selection that can be carried out using any one of three possible ways of determining the bands. The school uses the first way, "the full range of ability of applicants for the school" and divides the bands into five equal bands with 20 per cent of the total places available for each band. In addition to banding, the school subdivides the places available in its published admission number (PAN) of 168 into 100 places available for children living in the inner catchment and 68 for the outer catchment.
32. The school has not hitherto administered the tests until November. The 2010 Code did not require the results to be available to parents before they stated their school preferences. Paragraph 1.32 c) of the Code that applies for the 2013 admissions says, "Admissions authorities **must** take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school – while making clear that this does not equate to a guarantee of a selective place." The school's arrangements for 2013 show the "Student assessment sessions" as taking place on 10 November 2012.
33. Moving from a position of not administering the tests until November and not giving applicants the results before they complete their common application form to one of completing the process and issuing results in sufficient time for parents to consider the results before submitting their application by 31 October requires a significant change from the previous organisational arrangements. This requirement was indicated in the version of the Code laid before Parliament in December 2011 before coming into force on 1 February 2012.
34. When the school determined its arrangements in March 2012 it included the November date for testing despite the requirement of the

Code and did not indicate any consideration being given to how it could comply with the Code. The notes under “Procedure for Admission” require applicants to complete a registration form by 31 October so as to be able to take the test and this date is also given on the registration form. I am not confident that the school had given sufficient attention to trying to comply with the Code on this matter.

35. In its written response to the objection the school said that it would take all reasonable steps to inform parents of the results before 31 October, but that this will depend on the timing of the tests. Following discussion of this matter at the meeting I convened, I note that the arrangements for admissions to Year 7 displayed on the school’s website have been amended. The arrangements and registration form both require parents to register their child by 5 October and that a date will be set for the child to attend for assessment. The registration also form says that if the applicant does not receive an invitation to attend an assessment session by Friday 2 November 2012 they should contact the school.
36. I welcome the move the school has made to try to comply with the Code, but there is still work to do to comply fully. I uphold the objection as at the time it was made there was no indication of any action being taken to comply with the Code in making that the results of the banding tests available in time for parents to consider them before submitting their preference form.

Part f

37. The Code does not require admission authorities to give priority to siblings so it is not unlawful to decide not to give priority to siblings. The school’s arrangements have not changed and therefore parents have known that there is no priority for siblings, but this does not mean that they cannot object. I have therefore considered only whether it is fair and reasonable not to give priority to siblings in the light of what the objectors and school have to say.
38. The objectors say that the lack of priority for siblings has a detrimental effect on families living close to the school and therefore on community cohesion. The school has responded that the no sibling rule was agreed at the school’s inception, “in the interests of ensuring a fair and balanced intake representing the five bands of ability.” It asserts that allowing all siblings could skew the balance of the intake. The LA says that there is no requirement for school to give priority to siblings and that as the arrangements have always stated this parents know that the fact one child gains a place does not mean that another will also gain a place. The LA suggests parents should consider whether or not it is important that children attend the same school before applying for a place and adds that there are other schools within a three mile radius of the school which do give priority to siblings.
39. Although the lack of a sibling criterion does not itself contravene the Code, I find the school’s argument that allowing all siblings could skew

the intake an unconvincing rationale for its position. Where a school uses banding to admit children it then uses additional criteria to allocate places if any or all the bands are oversubscribed. The school uses two catchment areas and two ways of measuring distance, one for each catchment area, with allocations across catchment areas if a band remains undersubscribed. There is no reason why it could not give priority within a band to siblings and then allocate places according to the particular distance criterion it uses. If the older sibling had been allocated to say band 4 and the second sibling to band 2 there would be no impact on the banding, no skewing of the intake. If both siblings were allocated to the same band, again there would be no skewing of the intake as the places are still allocated via banding. Allocating places to siblings without taking banding into account would have the potential to affect the ability range of the intake, but the very purpose of banding is to allocate all applicants to a band and then prioritise the applicants. The school allocates all applicants to a band and then separates them into inner and outer catchment areas and then uses two different distance measures for the two catchment areas, priority for siblings is just another way of prioritising applicants within a band.

40. I find that while the school's argument for not giving priority to siblings is not compelling, the objector's arguments are not strong either. So, I have concluded, particularly that as there is no requirement to give priority to siblings, that I should not uphold this part of the objection.

Other matters

41. During the meeting I raised with the school a number of matters where in my view the arrangements appeared to contravene the Code. These include: the listing of children who have a statement of special educational need that names the school as the first group under text about allocating places if the school is oversubscribed. Children who have such a statement are covered by separate legislation and must be admitted to the school. They are not admitted through applying oversubscription criteria.

42. The second group listed are Children in public care. Paragraph 1.7 of the Code requires the highest priority to be given to looked after children and previously looked after children. Although a note lower on the page indicates that looked after children includes the new category of previously looked after children, the oversubscription criterion itself needs to refer to both groups.

43. The arrangements do not have a final tie breaker to separate two applications that cannot otherwise be separated as required by paragraph 1.8 of the Code. In the albeit rare event that two applicants live at exactly the same distance, a final way of separating the applicants must be included, for example by random allocation.

44. The admission arrangements for admission to the sixth form are not available on the school's website. A copy was provided at the meeting but it was still marked draft even though it was said to have been

determined. The arrangements do not make clear the admission number giving only the total capacity of the year groups thus contravening paragraph 1.2 of the Code as the school admits external students to the sixth form; referred to applications from parents/carers and did not include the option for a student to apply in contravention of paragraph 2.6 of the Code; forms for application were not published on the website; and in the event of the school being oversubscribed students will be allocated placed on a “first come first served basis” in contravention of paragraph 2.9 of the Code.

45. The school has already made some amendments to its arrangements as now published on its website as it is able to do in accordance with paragraph 3.6 of the Code to achieve compliance with the Code.

Conclusion

46. For the reasons given above I have upheld some parts of the objection and not others. This leads me to partially uphold the objection.
47. I acknowledge the concerns for parents when younger children are not allocated a place at the school attended by an older sibling. The objection has raised a number of matters that the school accepts merit further consideration. Already the school has taken some action to achieve better compliance with the Code and further work is still needed.

Determination

48. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Walsall Academy for admissions in September 2013.
49. I have also considered the arrangements in accordance with section 88I (5) of the Act. I determine that they do not conform with the requirements relating to admission arrangements as set out in this determination.
50. By virtue of section 88K (2) of the Act, the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 3 September 2012

Signed:

Schools Adjudicator: Dr Elizabeth
Passmore