



## DETERMINATION

<b>Case reference:</b>	<b>ADA2585</b>
<b>Objectors:</b>	<b>A member of the public</b>
<b>Admission Authority:</b>	<b>The governing body of the academy trust of Watford Grammar School for Boys, Hertfordshire</b>
<b>Date of decision:</b>	<b>17 July 2014</b>

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of the Academy Trust of Watford Grammar School for Boys, for admissions in September 2015.**

**I have also considered the arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 31 of this adjudication.**

**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 make any remaining revisions to its admission arrangements as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the Adjudicator by a member of the public about the 2015 admission arrangements (the arrangements) for Watford Grammar School for Boys (the school). The objection relates to the definition of sibling used by the school which does not include any reference to foster family relationships.

### **Jurisdiction**

2. The terms of the academy agreement between the academy trust of the school (the 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. The arrangements were determined by the governing body of the academy trust which is the admission authority for the school on this basis.

3. The objection to the 2015 determined arrangements was submitted by an anonymous objector on 1 April 2014. The anonymous objection was allowable under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012 because the objector had provided his/her name and address to the Adjudicator. 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 to consider this objection. 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).

The documents I have considered in reaching my decision include:

- a. the form of objection of 1 April 2014, and further comments from the objector dated 10 April and 12 May 2014;
- b. the school's response dated 6 May 2014 including a copy of the 2015 determined arrangements, the minutes of the governing body of 20 November 2013 at which the 2015 arrangements were determined, and a copy of the supplementary information form (SIF);
- c. the determination of September 2008;
- d. responses with attachments from Hertfordshire County Council (the council) dated 6 and 8 May 2014;
- e. admissions information for Year 7 and for the sixth form downloaded from the school's website;
- f. a letter of 18 June 2014 from the community cohesion governor; and
- g. amended arrangements and admissions data from the school and data from the council emailed in the period 17 to 27 June 2014.

5. I arranged a meeting on 4 June 2014 (the meeting) with representatives of the school, the council and Watford Grammar School for Girls (the girls' school), as the school and the girls' school operate a shared admissions policy. Correspondence was also submitted after the meeting as a result of my requests for further information and clarification, and this has been copied to the council and the girls' school and the objector as appropriate. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

### **The Objection**

6. The objection relates to paragraph 1.11 of the Code with respect to the definition of sibling used by the school and by the council which fails to include foster family relationships. As the school prioritises *"applicants with a*

*brother enrolled at the school...*” at oversubscription criterion 4, the objector asserts that in using this sibling definition the school appears to have excluded a younger child from applying as the sibling of a looked after child already on roll at the school, even though both are living together in the same family home. The objector complains that the sibling definition does not comply with paragraph 14 of the Code because it is “*vague, confusing and unclear for families looking after children on behalf of the state.*”

## **Background**

7. The school opened as a state-funded, independent academy school for boys aged 11 to 19 years on 1 September 2010, replacing the predecessor school of the same name which ceased to be a maintained school on that date.

8. The funding agreement confirms that this partially-selective school has a planned capacity of 1300 boys including 350 places in the sixth form. The school has pre-existing partially selective admissions permitted by section 100 of the Act, and as such is permitted to maintain the proportion of 25 per cent selective admissions, the level set in 1998. The arrangements indicate that the published admission number (PAN) is 190, including 48 places for applicants selected on the basis of academic ability, and 19 places on the basis of musical aptitude.

9. The school has designated the catchment area as two sectors: the Watford area, and the rest of the admissions area, defined by postcode. As the school is oversubscribed, boys living outside the catchment area are unlikely to be allocated a place at the school. If there are more applications than the 190 places available for September 2015, then the governing body must allocate places in accordance with oversubscription criteria in the arrangements which are summarised below:

### COMMUNITY PLACES (123 places)

1. Looked after children and previously looked after children who ceased to be so because they were adopted, or became subject to a residence order or a special guardianship order;
2. Applicants whose permanent home address is nearest to the school and would not be allocated a place under another criterion (19 places);
3. Applicants who are children of a parent who is a permanent member of the school staff;
4. Applicants with a brother enrolled at the school, excluding brothers who first entered the school in the Sixth Form (Year 12 or Year 13);
5. Applicants with a sister enrolled at the girls' school, excluding sisters who first entered the school in the Sixth Form (Year 12 or Year 13);
6. Places will then be allocated to applicants living closest to the school;

### SPECIALIST PLACES (40 places in Watford; 27 in rest of catchment)

7. Applicants selected on the basis of aptitude for music as measured by the school's assessment procedures (19 places); and
8. Applicants selected by academic ability as measured by the school's assessment procedures, in merit order (48 places).

10. The school confirmed that following consultation, two changes to the oversubscription criteria were made for admissions in September 2013: a new priority for the sons of permanently appointed staff; and the reinstatement of a priority for applicants with an older sister at the girls' school (known as the "cross-sibling criterion"). The school and the council provided data about the breakdown of applications and first round allocations for the last three years, which I have summarised in the table below.

	2012		2013		2014	
<b>Total applications</b>	758		904		964	
<b>First preferences</b>	392		392		446	
<b>SEN</b>	4		6 (1 late)		8 (2 late)	
<b>1. Previously/ Looked After Children</b>	0		0		0	
<b>2. Proximity</b>	19		19		19	
<b>3. Staff children</b>	-		5		4	
<b>4. Sibling</b>	58		54		53	
<b>5. Cross-sibling</b>	-		39		41	
<b>6. Distance</b>	52		1		0	
<b>Specialist Places</b>	<b>Watford</b>	<b>Rest</b>	<b>Watford</b>	<b>Rest</b>	<b>Watford</b>	<b>Rest</b>
<b>7. Music</b>	11	8	11	8	11	8
<b>8. Ability</b>	29	19	29	19	29	19
<b>Total allocations</b>	190		191		192	

11. From the table above it can be seen that the school is oversubscribed. For example, in 2014 there were 964 applications, with 446 of these nominating the school as their first preference. Following the testing process for specialist places, and after applying the oversubscription criteria, 192 places were then allocated in the first round in March 2014, with the majority being assigned to siblings and cross-siblings.

### Consideration of Factors

12. I note that paragraph 1.11 of the Code states that "*admission authorities **must** state clearly in their arrangements what they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).*"

13. Oversubscription criterion 4 prioritises applicants with a brother already on roll at the school (excluding brothers who were admitted to the sixth form).

The definition of sibling used by the school for the purposes of criterion 4 is found at note (iii) of the arrangements, which states that “*brother*” means:

*“a) a boy having at least one natural parent (or parent by legal adoption) in common with the applicant; or  
b) a boy related to the applicant as a step-brother by the inter-marriage of one of each of their parents prior to the date of application.  
In all cases, the relevant parent must have parental responsibility (sole or shared) for the applicant.”* Note (iv) explains further that for an applicant to qualify for a place under criterion 4, the brother must be a student at the school in Years 7 to 13 at the time of admission.

14. For oversubscription criterion 5, the cross-sibling criterion, the same sibling definition would apply to applicants with an older sister in Years 7 to 13 at the girls’ school at the time of admission (excluding a sister who joined the school in the sixth form).

15. However the objector identifies that applicants with a foster brother at the school would not be considered under criterion 4 (and, by the same principle, an applicant with a foster sister at the girls’ school would not be considered under criterion 5) because the sibling definition does not recognise foster family relationships. Therefore the sibling of a foster child would not be allocated a place at the school under criterion 4 (or 5) and would therefore be disadvantaged compared to other applicants with a sibling at the school. In this case I have taken *foster brother* (or sister) to mean a boy (or girl) being looked after by parents who have at least one younger child by birth and that all are living in the same family home.

16. In the meeting the school said it was concerned that the nature of the objection had not been provided by the Office of the Schools Adjudicator (OSA). However, the initial letter of 30 April 2014 from the OSA clearly states in the third paragraph that the “*adjudicator is looking at your arrangements in relation to paragraph 1.11 of the Code, and the definition of sibling in the arrangements which appears to exclude a younger child living in the same family home from applying as the sibling of a looked after child on roll at the school.*” In the meeting I also explained that the objector had assumed that the school’s sibling definition had been informed by what s/he regarded as the council’s “*narrow*” sibling definition.

17. During the meeting the school felt that paragraph 1.11 of the Code did not state what had to be included in the sibling definition, and that foster sibling had only been mentioned in paragraph 1.11 as an example of what might be considered, rather than as a requirement of what had to be included. The school questioned whether the sibling definition would have to include every conceivable family unit relationship.

18. In the response of 6 May 2014, the council confirmed that it does not currently include in its definition “*the siblings of children living in the same household as children looked after and ... it is fairly common for schools and local authorities not to include CLA [children looked after] in their sibling definition.*” The council explained that it “*does not object in principle to*

*amending its sibling definition to include children looked after, however we do feel that if the exclusion of CLA from the sibling definition is indeed a breach of the Code, the Code itself should be clear on this issue.*" The council confirmed that its sibling definition is:

*"the sister, brother, half brother or sister, adopted brother or sister, or child of the parent/carer or partner, and in every case living in the same house from Monday to Friday. A sibling must be on the roll of the named school at the time the younger child starts."*

19. In the response of 6 May 2014 the council also expressed concerns *"that the inclusion of children looked after in the sibling definition could, perhaps 'unfairly' in the eyes of some parents, provide a sibling link to children who would otherwise have little chance of obtaining a place at an oversubscribed school some distance from their home address, particularly if the CLA in question was fostered on a temporary basis."* In the meeting the council reiterated what it described as a *"slight concern"* that some children are placed with the foster family on a short-term temporary basis, and that in such cases, allocating a place on the basis of being the sibling of the foster child already at the school may be unfair to other families, but the council acknowledged that such cases would be rare. The council said that it did not have an issue in principle with widening the sibling definition to recognise foster relationships, and would be happy to do so.

20. Paragraph 1.11 of the Code requires that *"admission authorities **must** state clearly in their arrangements what they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school)."* As foster sibling is included as an example in paragraph 1.11, this suggests that it is up to the admission authority to decide whether or not foster siblings should be included in the sibling definition. It seems to me that the lack of any reference to foster relationships in the sibling definition may lead parents with a foster son already at the school to be unsure as to whether their son by birth would be eligible to be considered under the fourth criterion. Accordingly, the lack of certainty about whether or not foster relationships fall within the school's sibling definition does not comply with the Code at paragraph 14 which requires that *"parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*

21. However, from the lack of reference to foster relationships in the sibling definition, it may be that the school has excluded foster relationships from the sibling definition. As the Code at paragraph 14 also states that *"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"* it seems to me that I should consider whether it is fair for the school to exclude foster relationships from the sibling definition.

22. In the hypothetical case that two boys live as brothers in the same family home, one a foster son already at the school and the other a younger son by birth, I consider that the brothers should have as much right to be

eligible as siblings under the fourth criterion as two boys living in any other family arrangement which qualifies under the sibling definition. Not to regard foster relationships as siblings would mean that the younger sibling of a foster child would not be allocated a place under the fourth criterion which therefore disadvantages unfairly the sibling of a looked after child. I also consider that this would be in breach of paragraph 14 because in drawing up the arrangements, the school **must** ensure *“that the practices and the criteria used to decide the allocation of school places are fair ...”*

23. In the meeting I explained that there are two other matters regarding the sibling definition, and I drew the school’s attention to paragraph 1.9(f) which makes clear that in formulating their arrangements, admission authorities **must not** give priority to children according to the marital status of parents applying. Accordingly, the sibling definition at note (iii) should be reworded to remove the reference to *“inter-marriage”* and the school agreed to do so.

24. The sibling definition also applies to criterion 5, the cross-sibling criterion, for applicants who have a *“sister”* at the girls’ school and I note that in the earlier adjudication of 2008, the cross-sibling criterion had been removed because of the disadvantage to boys living very close to the school, which was contrary to a mandatory provision of a much earlier Code.

25. However, the Code now in place, at paragraph 1.12 permits a school *“to give priority to siblings of pupils attending another state funded school with which they have close links (for example ... close links between two single sex schools).”* Accordingly, I had asked the school for further information about any close links it may now have with the girls’ school.

26. In a joint letter with the girls’ school of 21 May 2014, the school explained that the close links between both schools *“have existed for over 300 years, since the schools’ foundation as one school in 1704. The links are evident in our history, our shared ethos, the joint activities provided for pupils in and out of school, in the mixed classes for some advanced level subjects, and in the joint admissions committee and other links with the governance of the two schools.”*

27. In a letter dated 18 June 2014, a governor of the school explains that a single board of trustees operates for the two schools, overarching both separate governing bodies, to ensure that the two schools remain linked and maintain the traditions started when the school was founded as one school. Having had children at both schools, the governor confirms that the schools demonstrate close links through the coordination of *“consultation evenings, music and drama performances, social events, curriculum meetings and school visits”* which enables *“parents with children at both schools to attend all of them.”*

28. Furthermore, both schools had produced jointly a list of close links which was presented in the meeting. The list of links included a joint ethos statement; joint foundation with trustees overseeing both schools and owning

the land on which each school stands; linked academy companies including some governors in common; joint admissions committee and identical admissions criteria; joint extended curriculum activities such as trips, orchestra, drama productions, and special events; a joint curriculum statement; some joint sixth form courses and revision classes; and joint sports events. In the meeting the school also spoke about the joint appointment panel for senior posts, and that the schools have to work closely because families have children at both schools and expect the same for their son and daughter. Clearly there are joint activities at sixth form level but much less so in Years 7 to 11. The school explained that joint courses and other activities are more difficult to arrange in the lower school because of supervision and travel issues as the schools are not on the same site, but the schools were planning together to develop joint activities to the lower school. Accordingly, I am persuaded there are close links between the school and the girls' school.

29. From the table above in paragraph 10, the effect of reinstating the cross-sibling criterion can be surmised. In 2012, which was before the cross-sibling criterion was reintroduced, more than 50 places were allocated on distance at criterion 6, but afterwards only one or no place was assigned on distance. In the joint letter of 21 May 2014, the school explained that since the 2008 adjudication, provision had been made in the admissions arrangements *“to offset the effect of the cross-sibling rule on applications by families with no prior connection to the school ...”* I note that the school has clarified in criterion 2 that 10 per cent of the total admissions (19 places) will be available for those applicants living closest to the school who would not otherwise be allocated a place under any other criterion. Accordingly, the school believes *“that in reserving 10 per cent of the places in Year 7 for applicants who live locally and who have no prior connection to the school, nor a qualification for a place under any other criterion, they have addressed the concerns upon which the decision to remove the cross-sibling rule was based, while allowing long-standing family links to be preserved.”* I accept that after the previous adjudication the school amended the wording of the second criterion so as to “protect” the places available for local families although it is arguable whether prioritising just 19 of the 190 places for boys living closest to the school is sufficient. The school points out that no concerns have been raised on that aspect.

30. Having considered at length the cross-sibling criterion, I am also of the view that in the hypothetical case of the family with a foster son already on roll at the school, the younger son by birth has at least as much right to be prioritised as a sibling as the boy who would be prioritised under the cross-sibling criterion because he has an older sister at the girls' school. For the school not to prioritise for the same school the boy living in the same household as his older foster brother does not seem reasonable when the school clearly extends priority to a brother and sister living in the same household but attending two separate schools. Accordingly, I conclude that the school must include foster relationships in the sibling definition, and that to do otherwise would be unreasonable as it would disadvantage unfairly a birth son living in the same family home as his foster brother already on roll at the school, and therefore in breach of the mandatory requirement in paragraph 14

that “*the practices and the criteria used to decide the allocation of school places are fair*” and also a breach of paragraph 1.8 that “*oversubscription criteria **must be reasonable.***” I acknowledge that in the meeting on 4 June 2014 the school agreed to amend the definition of sibling to include foster relationships.

## **Other Matters**

31. In reviewing the 2015 admission arrangements I noticed that there were other aspects of the admission arrangements that appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. I raised with the school several points which appeared to me to contravene the Code and could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to comply with the Code, and agreed to note their progress in my determination. I raised the following points:

### Sixth form arrangements

- a. The requirement to attach a passport size photograph to the application form does not comply with the Code at paragraph 1.9(o). The amended application form shows that this requirement has been removed, but I note that the form currently available on the school’s website is not the amended version and so does not comply with the Code;
- b. The request for further information related to the applicant’s reason for applying, and achievements in academic work, sport and music does not comply with the Code at paragraph 2.4 and must be removed from the application form as this information is not required to operate the oversubscription criteria. The amended form shows that this section has been removed but this form is not the version currently available on the website;
- c. Either the applicant or a parent may be expected to sign the form, but both signatures should not be required. The form has been amended slightly but still does not make clear that the parent or the applicant or both may sign;
- d. The second page of the confidential information sheet for completion by the applicant’s current school asks for information about the applicant such as behaviour, attendance, and attitude to work which is prohibited by paragraph 1.9(g) of the Code. This information may be requested after places have been allocated. This page has been removed from the amended form, but not from the version on the website;
- e. The admissions policy at section 3(i) states that application procedures will be available on the school’s website in the autumn term preceding admission. However, paragraph 1.46 of the Code makes clear that “*admission authorities **must determine admission***”

*arrangements 15 April*” before the offer year and I can see no reason why the arrangements should not be published on the website as soon as possible afterwards. Furthermore, paragraph 1.47 states that *“admission authorities **must** send a copy of their full, determined arrangements to the local authority as soon as possible before 1 May”* and paragraph 1.47. At the very least, the arrangements should be on the school’s website well before 30 June, the deadline provided in paragraph 1.50 for objections to be made to the Office of the Schools Adjudicator;

f. The admissions policy refers to published oversubscription criteria but I could not find any, and the oversubscription criteria in the Year 7 arrangements would not be applicable. To comply with paragraph 1.6 of the Code, the school **must** set out in the sixth form arrangements the criteria against which sixth form places will be allocated at the school when there are more applications than places available, and the order in which the criteria will be applied. The 2015 arrangements now displayed on the website include oversubscription criteria. However, so that the criteria are clear, the school must provide at paragraph 6[i] the definition of a child *“previously looked after”*. The school has a relevant definition in the amended 2015 admission arrangements for Year 7;

g. The statement at section 3(ii) *that “the minimum number of admissions of [applicants from outside the school] will be 35 in the first instance”* is ambiguous. For certainty, the school should make clear that the published admission number is 35 so as to comply with the Code at paragraph 1.2. The 2015 arrangements now available on the website state clearly that the admission number *“will be 35”*;

#### Year 7 and sixth form arrangements

h. The school has not yet included a final tie breaker to determine who has the higher priority between two equidistant applications that are otherwise equal. The Code at paragraph 1.8 makes clear that *“admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”* To comply with paragraph 1.8 of the code, the school must provide an effective final tie breaker such as random allocation; and

i. The website currently displays the 2015 arrangements, which complies with paragraph 1.47 of the Code. However, the 2014 arrangements should also be available on the website until the end of this calendar year as they apply to any waiting list held by the school. The Code at paragraph 2.14 states that *“each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.*

## Conclusion

32. As the school did not refer to foster relationships in its sibling definition, it may be that parents with a foster son already at the school would not be able to look at the arrangements and ascertain whether or not their younger son by birth would be eligible to be considered under the fourth criterion. This lack of certainty is, in my opinion, a breach of the Code at paragraph 14 which requires that *“parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

33. The lack of reference may, instead, be interpreted to mean that the school has excluded foster relationships from the sibling definition. In the hypothetical case of two boys living as brothers in the same family home, one a foster son already at the school and the other a younger son by birth, the younger son would not be eligible for a place under the fourth criterion. In my opinion, these two foster brothers have as much right to be regarded as siblings under criterion 4 as two boys living in any other family arrangement which qualifies under the sibling definition. Not to regard foster relationships as siblings would mean that the sibling of a foster child would not be allocated a place under the fourth criterion which therefore disadvantages unfairly the sibling of a looked after child. I consider that this would be in breach of paragraph 14 because in drawing up the arrangements, the school **must** ensure *“that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”*

34. I am also of the view that the brother of the foster sibling on roll at the school has at least as much right to be prioritised for a place at the school as the boy who would be prioritised under the cross-sibling criterion because he has a sister at the girls' school. Accordingly, I consider that it would be unreasonable and therefore a breach of the Code at paragraph 1.8 for the school not to decide that foster relationships qualify as siblings when the school has already extended priority to boys with older sisters at a different school. To decide otherwise would be unequal treatment, therefore unfair and in breach of paragraph 14.

35. I acknowledge that in the meeting on 4 June 2014 the school agreed to amend the definition so that foster relationships are recognised as siblings.

## Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of the Academy Trust of Watford Grammar School for Boys, for admissions in September 2015.

37. I have also considered the arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 31 of this adjudication.

38. 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 make any remaining revisions to its admission arrangements as quickly as possible.

Date: 17 July 2014

Signed:

Schools Adjudicator: Cecilia Galloway