



## DETERMINATION

**Case reference:** ADA 2667

**Objectors:** Luton Borough Council

**Admission Authority:** The academy trust of Challney High School for Boys, Luton

**Date of decision:** 12 September 2014

### 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 academy trust of Challney High School for Boys, Luton, the admission authority for the school, for admissions in September 2015.

I have also considered the arrangements as a whole in accordance with section 88I of the Act and I determine that these do not conform with the requirements relating to admission arrangements.

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 Objection

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the Adjudicator by Luton Borough Council, the local authority (the LA), (the objector) about the 2015 admission arrangements (the arrangements), for Challney High School for Boys (the school), a secondary academy school for pupils aged 11 to 16 years.

2. The objection relates to the change to the arrangements and to the oversubscription criterion that gives priority for siblings; specifically, the removal of the priority for boys who have a sister on roll at Challney High School for Girls (CHSG).

### Jurisdiction

3. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on 9 December 2013, on that basis.

4. The objector submitted the objection to these determined arrangements for 2015 on 11 June 2014 and 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.

5. I have also used my power under section 88I to review the arrangements as a whole.

### **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:

- the objector's letter dated 11 June 2014; and further correspondence dated 26 June 2014, 18 and 23 July 2014;
- the Funding Agreement dated 28 March 2011;
- a plan of the site of the school and CHSG;
- the school's responses dated 20 June, 3 and 21 July and 11 August 2014, with supporting documents;
- the composite prospectus for parents seeking admission to schools in the area in September 2013 and 2014 published by the LA;
- a map of the area identifying local secondary schools and their catchment areas;
- the determined arrangements for 2012 which contain the footnote to oversubscription criterion 2;
- minutes of the meetings of the governing body held on 16 November 2011 at which the arrangements for 2013 were discussed and agreed; and the meeting of 29 February 2012 at which the objection by the LA, about the higher priority to be given to the children of staff before catchment area children and other minor amendments was reported; and at which the arrangements for 2013 were determined;
- a copy of the determined arrangements provided by the school for 2013 and 2014 which do not contain the footnote;
- minutes of the meetings the Board of Directors held on 9 December 2013 at which it was noted that there was no proposal to change the oversubscription criteria this year and the Board approved the document detailing the criteria for admission to the school in 2015;
- the determined arrangements for 2015; and
- a copy of the determination of 25 July 2012 to the objections ADA 2274, ADA 2275 and ADA2293.

### **The Objection**

8. The objection relates to a change to the arrangements for admission to the school in September 2015 and to a lack of consultation about the removal of a footnote to the oversubscription criterion that gives priority for siblings, specifically the removal of the priority for applicants who have a sister on roll at CHSG. The objector asserts that the school should maintain the priority for applicants with sisters at CHSG as it would be unfair to boys with sisters to be disadvantaged in

comparison with boys with brothers at the school and would therefore contravene paragraphs 14 and 1.8 of the Code.

### **Other Matters**

9. Having reviewed the arrangements as a whole for admissions in September 2015, I considered other issues which may contravene the Code. These include meeting the requirement for a statement that if places are available all applicants will be admitted; that the waiting list is insufficiently clear and that details of the catchment area are not readily available to parents, with the arrangements.

### **Background**

10. The school, previously a community secondary school for pupils aged 11 to 16 years, has a published admission number (PAN) of 165 and is located on an adjoining site with CHSG, a community school with a PAN of 165. The school changed its status to become a foundation school on 1 September 2009 and then converted to become an academy on 1 April 2011. It became part of the Chiltern Learning Trust in August 2013.

11. Historically the arrangements for both schools contained a footnote to the oversubscription criterion for the admission of siblings. For the school it states, "*For Challney High School for Boys this criterion will apply to brothers of pupils attending either Challney High School for Boys or Challney High School for Girls.*" The footnote, which is the focus of the objection, has been included in the arrangements for the school for admissions every year from 2010 to 2014, the period for which I have information, but has been omitted from the arrangements for 2015. The CHSG has retained a similar footnote which reads, "*For Challney High School for Girls this criterion will apply to sisters of pupils attending either Challney High School for Boys or Challney High School for Girls.*"

12. The two school sites are located next to each other and both schools have traditionally served the same catchment area. The LA operates an admissions system based on catchment areas, to ensure that school places are made available for local children in each high school. The LA is concerned that this change to the arrangements for admission to the school in 2015 will affect the traditional pattern of admissions and will result in some boys failing to gain a place at their local high school and then subsequently finding it difficult to secure a place at another high school.

13. There has been increasing pressure on places at the school in recent years and as a result not all applicants living in the catchment area and expressing a preference for the school have been admitted. In each year from 2012 to 2014 there were more first preferences than places available at the school. Projections of the number of pupils, provided by the LA, show numbers remaining steady for the next three years, after which there is an increase from 204 in 2017 to 220 in 2018, again remaining steady thereafter for the next three years to 2020. Data for the last three years also identify a pattern of preferences that indicates 95 of 257 boys living in the catchment area did not express a first preference for the school in 2012; and that this figure was 94 of 292 boys in 2013 and 102 of 302 boys in 2014.

14. It is the school's view that its determined arrangements for 2013 and 2014 did not include a footnote, but the LA prospectus for parents seeking information about the arrangements of all secondary schools in 2013 and 2014 does contain the footnote. The LA contends that the school has not consulted about this particular change to its arrangements for admission to the school in 2015 and that the footnote should therefore be included, that is, the arrangements for 2015 should reflect those of 2014. It is the view of the LA that if the school wishes to make this change for 2016 it will need to undertake a full consultation as required by the Code.

15. The school disputes the authority of the LA to include the footnote to its determined arrangements in its publication but the LA maintains that it checked with the school before the publication of its prospectus each year to ascertain whether or not there had been an oversight or administrative error and the school had confirmed on each occasion that it should be included. The school states that the two members of the senior leadership team who had confirmed to the LA that the footnote should be included in the arrangements for 2013, and then the following year agreed that it should be included in the arrangements for 2014, had no authority to agree to the inclusion of the footnote.

### **Consideration of Factors**

16. In the school's initial response to the objection the following background and information was provided:

- The school is a single sex converter academy, but CHSG remains a community school.
- Originally when the school buildings were physically joined and had adjacent entrances, the arrangements of both schools contained the footnote at issue.
- Since January 2011, the schools have been in separate buildings with entrances on different roads and are separate legal entities.
- The new admission policy was formally determined by the governing body on 16 November 2011 for admissions in September 2013 and did not include the footnote.
- On 30 May 2012 the LA objected to the Adjudicator about the arrangements for 2013. The arrangements did not include the footnote. The Adjudicator upheld the arrangements and these were formally adopted.
- In the autumn of 2012 the LA published the school's arrangements for 2013 and "*regardless of the fact that the footnote in question no longer formed part of the admission criteria, the Council added in the footnote.*"
- The current arrangements have remained unchanged since those that were determined for 2013, on 16 November 2011 and confirmed at meeting on 29 February 2012.
- The arrangements for 2015 were determined by the Board of Directors on 9 December 2013. The minutes show that as no changes were planned the arrangements would remain unchanged from 2014.
- The LA did not have the authority to make this "*unilateral change*" as the addition of the footnote amounted to a substantial change which cannot be made without consulting, in line with the requirements of the Code.

17. On 3 July 2014 the school provided a further response in which it confirmed that there had been a full consultation about the 2013 arrangements. Referring to

the fact that a footnote had been added to the arrangements, the school informed me that neither the head teacher nor the associate principal *“had the authority to amend the policy agreed by the relevant admission authority and only did so because of the informal and inconsequential manner in which the amendment was presented on each occasion.”*

18. The LA responded to the school’s comments explaining that:
- Its previous objection was to the prioritisation of the children of staff before catchment area children, in the arrangements for 2013 and therefore in no way relates to the current objection.
  - The omission of the footnote from the 2013 arrangements was not noticed until later in the year, in July 2012 and the LA says it genuinely thought that the omission was either an oversight or a misprint, as at no point had the school’s consultation drawn attention to a policy change on this matter.
  - In response to an enquiry to the school on 9 July 2012 the following affirmative email was received from the assistant to the principal, *“Further to your email of 9 July, please find attached a revised version of the Challney High School for Boys admission criteria, stating a footnote. We would like this version included in the booklet please”*.
  - The following year when the arrangements for 2014 were received, again without the footnote, the LA made further enquiries to the school on 7 August 2013, *“Further to our conversation regarding Challney High School for Boys admissions criteria, please can you confirm whether the sibling criteria should include the following footnote, ‘For Challney High School for Boys this criterion will apply to brothers and sisters of pupils attending either Challney High School for Boys or Challney High School for Girls’. The footnote was included in the admissions criteria for 2013. I would be grateful if you could confirm whether the footnote should be included by Friday 2 August 2013.”* In an email sent on 30 July 2013 the head teacher wrote, *“Yes please (name). Please include the footnote.”*

19. In a further submission the school explained that the newly appointed head teacher was contacted in July 2013 and informed that a footnote to the academy’s arrangements for 2014 that had been historically included had been omitted in error as the result of an administrative oversight. *“This may have been the LA’s view but the school is clear that it was not included because it was not determined.”*

20. In the absence of a formal consultation about the removal of the footnote and thus the removal of the priority that had been traditionally afforded to boys with sisters at CHSG, in my opinion it is reasonable for the LA to have concluded the matter was an oversight by the school and to have sought clarification before publishing its prospectus for parents.

21. The school asserts that the new head teacher was unaware of the history and as it was made clear to him that that permission was simply being sought to correct an oversight he agreed to its inclusion. *“Had the correct position been put to (head teacher) by the Council, (name) would not have agreed. This variation to the school’s admission criteria for 2013 and 2014 did not follow due process ....”* In an email to the LA dated 3 April 2014, a year after the event, the head teacher acknowledged that despite agreeing to the change he had had no authority to do so. The email continues, *“.....but I do feel as the admissions authority, LBC should have*

*understood that they could not put me in a position of taking a decision I did not have the authority to take and that any changes to the criteria resulting from my email to you cannot be regarded as valid.*" In a retrospective statement dated 18 June 2014 the head teacher says he thought he was being asked about an administrative oversight and that if this was the case it should be corrected.

22. The LA says it did not consider that it had acted inappropriately in seeking clarification about admission matters. It is normal practice to seek information from head teachers, who in turn may wish to seek clarification from the governing body. There was no intention to either mislead or to place any person in a difficult position. In my opinion the LA has a responsibility to check the arrangements determined by own admission authorities in its area to ensure there are no unintentional errors or oversights, before it proceeds to publish its annual composite prospectus for parents. In this case in the absence of 'due process' by the admission authority, that is, a full and open consultation about the impact of the decision to remove the footnote to the sibling criterion, it had a duty to follow this up. Paragraph 3.2 of the Code states, "*Local authorities must refer an objection to the School's Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful.....*"

23. I believe that the majority of schools will have clear systems in place to deal with incoming queries about a range of issues including admission enquiries from the LA. It is not in my view satisfactory for the school to assert that if members of the senior leadership team are not aware of the respective roles of senior leaders and the governing body, this is the fault of the LA and for the school to seek to be absolved from responsibility. I would expect the school to provide an appropriate and informed response to the LA about its admission policy. I do not accept the school's argument that the LA has acted without authority as this is quite contrary to the documented evidence provided by both parties.

24. I have been advised that when the determined arrangements for 2015 were submitted to the LA, the admissions team again noted that the footnote had been omitted. It had happened in the previous two years, so on 3 April 2014 the LA again contacted the school seeking approval for the same footnote to be included in the arrangements for admission in September 2015. The school says that the head teacher, '*now fully appraised of the situation*' explained that a footnote could not be included and that he was by then aware that the decision was not his to make, and he could not change the policy that had gone through a full consultation process and had been agreed by the governing body. The school replied on 3 April 2014. "*....Whilst I appreciate your concerns, we are not in a position currently to include sibling relationship relationships with girls at the Girls school in our admission criteria.....*"

25. The school contends that the substance of the LA's objection is that there has been a variation to the school's determined arrangements without due process as the school did not intend to change its admissions criteria. Had it wanted to it would have fully consulted and followed due process for the 2013 and subsequent admission rounds. "*It was the council's decision to insert the footnote that breached the Code.*" The school says that the inclusion of the footnote to the criteria for 2013 and 2014 in the LA prospectus was incorrect and in breach of the Code as the footnote did not form part of the arrangements. It concludes that the insertion of the

footnote “*occurred through a very flawed, invalid process*” and that no change has been agreed by the Board or its predecessor the governing body since 2013, “*The Chiltern Learning Trust’s position remains that any fundamental change to the agreed admissions policy is a decision of the Board.*”

26. The objection by the LA is to the arrangements for admission to 2015 and the omission of the sibling footnote, but in my opinion this is because the arrangements for 2013 and 2014 that have been published in the annual composite prospectus included the footnote and this was agreed by the school. Therefore as 2015 will be the first year that the footnote has been excluded it constitutes a change to the 2014 arrangements and as such should have followed a consultation process as specified by the Code to bring the issue to the attention of all concerned parties including local parents.

27. The school’s view on the other hand is that the change was introduced in 2013, after consultation. Given that the admission authority has acknowledged that any change to arrangements must first be the subject to a full consultation I asked for evidence of the consultation process about the arrangements for admission to the school in 2013, referred to in the school’s letter of 3 July 2014 and for the response to be framed in the light of the mandatory requirements of the Code. I also requested a record of the number and content of responses to the consultation and a copy of any report to the governing body and of the minutes of the meeting at which they were considered.

28. In response, the school provided a copy of the 2013 arrangements which contain the footnote, a copy of the LA’s booklet about traded services, an email to schools and a copy of an advertisement in an undated newspaper. The school says it has always used the LA to manage its admissions process and, “*.....they carry out a full annual consultation on our behalf as part of a service level agreement.*” However, I could see nothing in the description of the admissions service to schools; in the core service information or in the details of service provision that mention the responsibility for consulting all the requisite parties, on behalf of an own admission authority. Rather the document describes the processing of applications according to oversubscription criteria, the provision of statistical data about admissions to individual schools and a service responding to queries. On 23 July 2014 the LA wrote to confirm that the service level agreement does not include the annual consultation on admissions. The LA provides a free service to circulate documents to schools, to put a notice in the paper and publish arrangements on its website.

29. I have examined the documents that have been provided by the school that relate to the consultation for the 2013 arrangements. The email dated 3 January 2012 to schools, advises them that the school has published its proposed admission arrangements for 2013, these can be found on the LA’s website and comments should be sent to the school. No deadline is given and the email provides no information whatsoever about any proposed changes, that might elicit interest and responses. The newspaper advertisement states that the LA and, “*...some of the schools/academies that are responsible for setting their own arrangements are now consulting on their proposed arrangements for September 2013. Responses to be submitted by 29 February.*” There is no information about proposed changes or indication about which schools are proposing to make changes or any guidance as to where responses should be submitted to. In my opinion this consultation process

does not comply fully with the requirements of paragraph 1.44 of the Code which provides a complete list of parties that the admission authority **must** consult including parents of children between the ages of two to eighteen years.

30. I can see no evidence of the requirement to engage in a genuine consultation with parents in the catchment area at that time, nor any document that shows a concerted attempt to ascertain the views of parents of pupils who attend CHSG, other than reliance on a 'round robin' email to all schools. The school received only one objection and it was from the LA which had received the proposed arrangements directly from the school. After the arrangements were determined the LA made an enquiry about a missing footnote. The school agreed to its inclusion as detailed above and this suggests to me that there had been no specific focus on a proposal to change the sibling criterion to remove the priority for boys with sisters on roll at the adjacent girls' school. The minutes of the meeting show no evidence of any such discussions or considerations and it is difficult not to conclude that the school has made the change without engaging in due process as required by the Code in paragraph 1.42 which says, "Consultation – When changes are proposed to admission arrangements, all admission authorities **must** consult....." and then goes on in paragraph 1.44 to set out all the parties who must be consulted.

31. The school correctly makes the point that as an academy it is a separate legal entity from the CHSG and as such the academy trust is responsible for determining the arrangements for admission to the school; and the LA will determine the arrangements for CHGS. It refers to a previous objection to the Adjudicator made by the LA to the arrangements determined for admission in September 2013. The school asserts that the Adjudicator upheld the arrangements and these were formally adopted. However, on reviewing the evidence I note that the previous objection and the determination have no relevance to this case. The issue of the 'missing footnote' was not noticed by the LA until afterwards, in July 2012.

32. Copies of its determined arrangements for admission to the school for 2013 and 2014 were provided by the school. These were published on the school's website. They did not include a footnote. The school contends that the LA published the school's arrangements for 2013 and "*regardless of the fact that the footnote in question no longer formed part of the admission criteria, the Council added in the footnote*" and says that LA did not have authority to make a "unilateral change" to its determined arrangements. Noting the exchange of emails detailed above in which the school confirmed in 2013 and then again in 2014 that the footnote should be included in the LA's prospectus, I asked both parties whether or not the school had made any representations about the addition of the footnote once the prospectus for parents was published in 2013, or when the prospectus for 2014 was issued. The LA points to two letters sent to all schools, one in September 2012 and the other in October 2013 each including a copy of the annual LA's booklet, "How to apply for a school place" (for 2013 and 2014). "*If you have any queries please do not hesitate to contact me.*"

33. In its response of 11 August the school reconfirmed its position that senior leaders, "*...did not engage with the significance of inserting the footnote to the policy agreed by the Admissions Authority for 2013 because of the inconsequential way in which it was presented to them on each occasion. As a result they did not think to refer it back to the Admission Authority.*"

34. I enquired whether or not there had been any applications made under the sibling criterion in 2013 or 2014, checking specifically if any boys with sisters on roll at the CHSG had applied and been offered a place, as it seems to me that were any places allocated on the basis of the footnote, this would surely have alerted the admission authority early in 2013 that there was an issue to be resolved. I have not been provided with any evidence of representations by the Board of Directors to the LA about its '*unilateral action*' in adding a footnote to the 2013 arrangements or about the priority subsequently afforded to 18 boys who had sisters on roll at the neighbouring girls school. I find this puzzling given the strength of the view now expressed by the school.

35. Data from the LA indicate that again in 2014, 49 siblings living in the catchment area were allocated a place and 14 of those boys had sisters attending the girl's school. The LA confirmed that no-one from the school has queried the outcome of either admission round.

36. While I acknowledge the school's point that it is the role of the admission authority to determine its own arrangements and that when a school changes its status and is no longer a community school it may well wish to change those arrangements, but as the school also acknowledged such changes need to be the focus of a consultation and own admission authorities must meet all the requirements for consultation set out in paragraph 1.44 of the Code. The requirements of the Code were not met by merely displaying the arrangements on the school's or the LA's website. Communications with schools about arrangements did not alert parties to a significant proposed change to the oversubscription criterion relating to the admission of siblings. A genuine and thorough consultation must include steps to draw attention of those families most likely to be affected. This may involve informative notices in a local paper, at local supermarkets or in local health centre, depending on local facilities.

37. The school says that it has a service level agreement for the LA to undertake consultation on its behalf, but this does not absolve the admission authority from taking full responsibility for ensuring that consultations are genuine attempts to reach the parties most likely to be affected and to seek responses. No evidence has been presented that a full and Code compliant consultation was undertaken by the school about the removal of the priority for boys with sisters on roll at the CHSG. It would appear from the evidence provided there was not a single response to the online consultation in 2012, which provided no detail to alert parents or other interested parties to proposals to remove this long standing priority.

38. The arrangements published in the LA's composite prospectus contained a footnote in the arrangements for 2012, 2013 and 2014. It is as likely, if not more so, in my opinion that parents who are expressing preferences for more than one school will refer to the LA's prospectus.

39. For whatever reasons it appears that systems within the school were not in place to deal with admission enquiries from the LA until 2015. There is no evidence of a review by the admission authority of each admission round, yet boys with sisters on roll at CHGS were afforded priority for admission to the school in both 2013 and 2014. No representations were made about this to the LA. The LA sought clarification every year before publishing its prospectus and received confirmation

from the school. It is not sufficient to assert after the event that the head teacher and senior staff had no authority to respond to a query from the LA. It is not unreasonable for a LA to assume that before making a response senior staff will check the facts of the matter in hand.

40. This objection refers to the arrangements for 2015 and although the school says that no changes have been made to its arrangements for 2014 because the footnote was removed after consultation linked to the arrangements for 2013, in practice this is not the case. There is no evidence that the consultation met the requirements of the Code, but there is documented evidence that the school agreed to the inclusion of the footnote in the arrangements of 2013 and 2014 and pupils were admitted on the basis of the footnote.

41. In my view had the school wished to remove the priority for boys with sisters on roll at CHGS for 2015 it should have undertaken a full consultation. This has not taken place and the arrangements for 2015 must therefore reflect those of 2014 and include the footnote. As the school has not consulted about a change for 2015 the process for the determination of the arrangements has not met the mandatory requirement of the Code for admission authorities to consult on proposed changes before making any changes to arrangements and for this reason I uphold this objection.

42. The LA has expressed concern that such a change to the arrangements for admission to the school in 2015 will affect the traditional pattern of admissions and will result in some boys failing to gain a place at their local high school and then subsequently finding it difficult to secure a place at another high school. In considering any proposed changes for 2016 the school will wish to take account of the views of all interested parties and may wish to consider the requirement of the funding agreement which states that the school should provide education for pupils who are wholly or mainly drawn from the area in which the school is situated and therefore to consider any changes it may wish to make, in the light of the combined arrangements of other schools in the area.

### **Other Matters**

43. Having reviewed the arrangements as a whole for admissions in September 2015, I considered other issues which may contravene the Code.

44. The arrangements require an additional statement to explain to applicants that if places are available all applicants will be admitted. The Code sets out in paragraph 1.6 that oversubscription criteria will only be applied if there are more applicants than places available.

45. The arrangements state that a waiting list will be held until 31 July each year. The year is not specified so there is a lack of clarity about whether this refers to the offer year or to the admissions year. Paragraph 2.4 of the Code says 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....*"

46. In order to comply with paragraph 14 of the Code all information that parents require to complete an application must be published together on the school's

website. At present parents are referred to the LA's website in order to find details of the catchment area.

## **Conclusion**

47. The school states that its arrangements for 2013 were changed in 2012 and excluded the footnote that gave priority to boys who had sisters on roll at CHSG. Evidence provided by the school and the LA indicates that the consultation made no specific mention of an intention to remove this priority. The LA made enquiries in 2013 and 2014 before publication of its annual prospectus for parents about the omission of the footnote and on each occasion the school confirmed that it should be included.

48. The consultation about the 2013 arrangements did not meet the requirements of the Code in paragraph 1.44. As it happens the arrangements of 2012 have not changed in practice. Places were then allocated to boys with sisters on roll at CHSG in each admission round and no representations were made by the school to the LA. Minutes of meetings provide no evidence of any discussion about this issue until after this objection was made.

49. There has been no consultation about removing the footnote that affords priority to boys with sisters on roll in the arrangements for 2015. For these reasons and those given in detail above I uphold the objection to the arrangements of the school.

## **Determination**

50. 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 academy trust for Challney High School for Boys, Luton, the admission authority for the school, for admissions in September 2015.

51. I have also considered the arrangements as a whole in accordance with section 88I(5) of the Act and I determine that these do not conform with the requirements relating to admission arrangements.

52. 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.

Date: 12 September 2014

Signed:

Schools Adjudicator: Mrs Carol Parsons