



## **DETERMINATION**

**Case reference:** ADA2742

**Referrer:** Two parents

**Admission Authority:** The Academy Trust of Walsall Academy

**Date of decision:** 19 December 2014

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Walsall Academy. I determine that the arrangements 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 referral**

1. The admission arrangements (the arrangements) of Walsall Academy (the school), a co-educational school for children aged between 11 and 18 for September 2015 have been brought to the attention of the schools adjudicator as a result of an objection submitted by two parents on 30 June 2014. This objection complained that changes made by the school in determining the arrangements for 2015 following the determination of the schools adjudicator in December 2013 concerning the school's admission arrangements for September 2014 did not meet what that determination had required, and that as a result the arrangements remained unfair to children living locally because they result in some local children failing to be admitted while others living much further away are allocated places. The objectors also complained that the school's admission arrangements do not give priority to the siblings of children who are already at the school and that this breaches a requirement of the School Admissions Code (the Code).

2. Both elements of the objection are the same, or substantially the same, as those matters on which the adjudicator had made a decision in the previous two years, and so I came to the view that the objection was one that could not be brought as a result of the prohibition which is described in paragraph 3.3e of the Code. I therefore had no jurisdiction to consider it under section 88H of the School Standards and Framework Act 1998 (the Act).

3. However, having reviewed the school's admission arrangements for September 2015 as a whole, I was concerned that they may not conform with what the Code requires and I therefore decided to use the power available to

me under section 88I(5) of the Act to consider them. I shall set out below those matters which I considered may not conform to what the Code requires.

### **Jurisdiction**

4. 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 Walsall Academy 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 that basis under section 88C of the Act.

5. These arrangements were referred to the adjudicator on 30 June 2014. I am satisfied the arrangements have properly come to my attention in accordance with section 88I of the Act and it is within my jurisdiction to consider them. I am using my power under section 88I to consider the arrangements as a whole.

### **Procedure**

6. In considering this matter I have had regard to all relevant legislation and the Code.

7. The documents I have considered in reaching my decision include:

- a. the referrer's form dated 30 June 2014;
- b. the school's response to the referral, supporting documents and subsequent correspondence;
- c. the LA's response to the referral and supporting documents;
- d. previous determinations dated 16 July 2012, 3 September 2012 and 17 December 2013;
- e. the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2015;
- f. maps of the area identifying relevant schools, the boundaries of the school's inner catchment area and areas of housing development;
- g. confirmation of when consultation on the arrangements last took place;
- h. a copy of the minutes of the meeting at which the academy trust of the school determined the arrangements;
- i. the academy agreement for the school, entered into on 27 November 2001 as the school's Funding Agreement, and
- j. a copy of the determined arrangements for September 2015.

9. I have also taken account of information received during a meeting I

convened on 5 September 2014 at the school and in subsequent correspondence with the school and the LA.

### **The Matters of Concern**

10. When I wrote to the school on 30 July 2014, I set out the following as matters concerning its admission arrangements for September 2015 which may in my view contravene the requirements of the Code. My concerns were that the arrangements:

(i) were not displayed on the school's website as required by paragraph 1.47 of the Code;

(ii) cannot be easily understood by parents, as required by paragraph 14. The arrangements state that the school is part of the specialist schools initiative, which no longer exists, and that the Code applies to the school as to a voluntary aided school, which is inaccurate. Since both statements are misleading this may raise doubts as to what is intended, which means that the arrangements may not be easy to understand as they are required to be;

(iii) employ oversubscription criteria which are not reasonable, which are not clear and which may result in unfair disadvantage, contrary to paragraph 1.8 of the Code. I was concerned that the use of inner and outer catchment areas may not be reasonable in the context of local demand for places, that the combined effect of the use of banding and catchment areas may make the arrangements difficult to understand and therefore unclear, and that they may act to unfairly disadvantage some children. I clarified at the meeting which I held with the school that this latter concern related to the fairness of the practices and criteria used to allocate places and therefore referred it to paragraph 14 of the Code where the overarching requirement that these be fair, clear and objective is set out;

(iv) include in the arrangements for the admission of external students to the school's sixth form a meeting with applicants that appears to form part of the process of deciding whether a place is offered, (which would be in contravention of paragraphs 1.9m and 2.6 of the Code), and

(v) introduce into the arrangements priority given to applicants on medical/social grounds without this change having been the subject of prior consultation as required in paragraph 1.42 of the Code.

11. At the meeting which I held with the parties, I also pointed out that the definitions of the inner and outer catchment areas used in the arrangements were mutually inconsistent because the former was defined as "all WS3 3 postcodes" together with a number of other defined localities, and the latter was defined as "outside the WS3 3 postcode". This appeared to me to imply that some localities were in both areas, and that this was confusing, making the arrangements unclear and therefore contrary to the requirements of paragraphs 14 and 1.8 of the Code.

### **Background**

12. Walsall Academy is located in the Bloxwich area of Walsall and opened as a sponsored academy in 2003 when it replaced TP Riley School, which had required special measures. The academy sponsors are the Mercers' Company and Thomas Telford Online.

13. The school is popular and heavily oversubscribed. Information provided by the school shows that since 2004 there have been approximately three applications for each available place each year, and that those originating from what the school calls its "outer" catchment area outnumber those from a defined "inner" catchment area also by a ratio which has generally been approximately three to one.

14. The school's admission arrangements, as described in the school's original funding agreement, state that 168 places will be available for admissions to Year 7 each year but they also make provision for this number to be increased in a particular year following consultation. The agreement also says that, if the school is oversubscribed, applicants will be placed in one of five bands using scores achieved on a non-verbal reasoning test, and that 33 or 34 admissions will be made from each of these bands, such that "in the first instance" 60 per cent of places are allocated to children who live in the school's inner catchment area and 40 per cent to those who do not. For those in the inner catchment area, priority is to be based on proximity to the school, and for those living outside, on those living furthest from their alternative school.

15. The school's admission arrangements for September 2015 are still based on these principles, and have changed only to accommodate legislative change and in response to previous determinations concerning them since the school opened. There have been three previous determinations. Most recently, in December 2013, the adjudicator determined in response to a late objection made by a number of parties that the school's arrangements for September 2014 did not conform with the requirements relating to admission arrangements, and criticised these because of the unreasonable effect which they had in the resulting admissions of children living near to the school compared to those living further away. The adjudicator also said, amongst other things, that the combined use of banding and catchment areas was complex and that it was unfair to children living nearer to the school.

16. The Code requires admission authorities to amend their arrangements as soon as possible in order to comply with an adjudicator's determination. The school determined on 20 March 2013 the arrangements for September 2014 that were the subject of the determination of December 2013. Following the determination, these remained unchanged, as those which would apply to admissions in September 2014. In July 2013 the school had informed the council that 14 additional places had been approved and that there would therefore be 108 places available to applicants living within the inner catchment area and 74 to those living outside for admissions in September 2014.

17. The school's admission arrangements for September 2015, which were determined by the school on 19 March 2014, retain this increased number of places, and have changed the proportion of places that will be allocated to those living within the inner catchment area to 65 per cent of the total. This

latter change is, the school has told me, its response to the determination of December 2013. It is the only change made by the school to its arrangements for this reason. The referrers complain that this will not end the unfairness for local children which the adjudicator had found, since the effect will be to add only 10 places, or two per band, to the number available to those living there.

18. The school's admission arrangements for September 2015, having stated the number of available places and described the inner catchment area, set out oversubscription criteria, saying that places will be allocated in the order given. First priority is given to looked after and previously looked after children. The arrangements then describe the process of placing all applicants in one of five ability bands. The school has told me that the bands are divided in such a way that each contains one fifth of the ability range of those applying for a place at the school, which is one of the permitted forms of banding described in paragraph 1.25 of the Code. Thirty seven places are to be allocated to pupils from "bands 1 and 5", the highest and lowest ability bands respectively, and 36 from "bands 2, 3 and 4" making 182 places in total.

19. The arrangements next provide for the allocation of 65 per cent of the available places, 118 in all, to children who live in the inner catchment area, divided between the five bands. The arrangements for September 2014 stated explicitly the number of places available in each band for those living in the inner and outer catchment areas, but those for 2015 do not do so. They say that if there are more children than available places in a band, those living nearest the school are given priority, and an appropriate tie-breaker is included within the arrangements. If there are fewer children than places in a band, all are admitted and the unused places offered to children living outside the inner catchment area. The allocation of places to children living outside the inner catchment area then takes place and if any band is oversubscribed, priority is given to children whose nearest alternative secondary school is furthest from their home. A suitable tie-breaker is provided. If a band is undersubscribed, the available places are allocated to children from the inner catchment area.

### **Consideration of Factors**

20. I shall set out my consideration of each of the matters of potential non-compliance that I have raised with the school, in the order given above. In relation to the complaint of the referrers that the school does not give priority to siblings, the Code does not require an admission authority to include such a priority in its arrangements and I have not considered this aspect of the arrangements further.

#### **a. Publication of the arrangements**

21. When I looked at the school's website on 25 July 2014 I was not able to access the school's admission arrangements for September 2015. The school wrote to me on 4 August 2014 saying that there was a link to the arrangements from the site's homepage and I have verified that this is the case. However, the site menu bar "admissions" link accesses only the arrangements that applied for 2013 and 2014 admissions and the school has indicated that it will make appropriate changes to the website. The referrers

were able to provide a copy of the arrangements for September 2015 when they wrote to the adjudicator and I am content that these were in fact available from the school's website as required.

#### **b. The ease with which the arrangements can be understood**

22. The school has said in connection with the matters which I had raised concerning the clarity of the school's arrangements that it is "happy to include proposed changes to the wording for the sake of clarity", but complained that "it is unfortunate that these changes had not been considered by other adjudicators" and it seeks the "adjudicator's views" concerning the changes it suggests. Firstly, if an admission authority has arrangements in which some aspect do not comply with what is required, they are not rendered lawful by the fact that this has not previously been identified. Secondly, it is not for the adjudicator to suggest changes that might be made: this is a matter for the admission authority. While the apparent willingness of the school to accept change is welcome, it has nevertheless failed to understand that it is the school's responsibility to determine lawful admission arrangements. My view is that the phrases which are set out above are either redundant or inaccurate and mean that the arrangements which have been determined fail to comply with the requirement that they are easy for parents to understand, and breach paragraph 14 of the Code.

#### **c. The reasonableness, clarity and fairness of the arrangements**

23. I turn now to the reasonableness of the arrangements in terms of the demand for school places locally. The school tells me that "the concept of an inner and outer catchment area was integral to the school" when it was first established, and that "an inner and outer catchment area, fair banding allocation and the distance measurement by reference to alternative schools were all agreed to be not only lawful but necessary and a critical element of the legal framework that established the academy." It goes on to cite paragraph 21 of its funding agreement which states that "once the admission arrangements have been determined ..... (the school) ..... should propose changes only if there is a major change in circumstances" and says that "the academy is unaware of any evidence to suggest such a major change has occurred locally". It further argues that the school is "required to be mindful of the inner and outer catchment children" by virtue of "the terms of its legally binding contract with the Secretary of State." Elsewhere the school has said to me that "the academy funding agreement requires that there is use of catchment areas to fulfil the terms of the funding agreement and the aims of the academy as established and envisaged. A change to this is a fundamental change to the nature of the academy".

24. Schools which are academy schools are required by virtue of their funding agreement to comply with the law as it relates to maintained schools concerning school admissions. This includes a requirement to act in accordance with the provisions of the Code, as I shall explain more fully below. Paragraph 1.46 of the Code requires that admission authorities determine their admission arrangements each year and in the light of their obligations under the Code and the Code's purpose, which is to ensure that all school places in state funded schools are allocated in a fair and open way. It

may be appropriate in the particular circumstances of a school that it determine arrangements in a given year that do not differ from those used in a previous year. However, the obligation to consider what the arrangements should be, to consult if required to do so, and to determine arrangements nevertheless applies every year. All of this applies to the school.

25. I have considered the school's funding agreement, which has the following to say in Annex 2:

*(i) "This document sets out the admission arrangements for Walsall City Academy. Any changes to the arrangements set out in this document, with the exception of setting a published admission number higher than the agreed admission number for a specific year, must be approved in advance by the Secretary of State." (paragraph 1);*

*(ii) "The admission arrangements for Walsall City Academy for the year 2003/2004 and, subject to any changes approved by the Secretary of State, for subsequent years are: ....." (introduction to paragraph 3);*

*(iii) "Once the admission arrangements have been determined and published, the City Academy should propose changes only if there is a major change of circumstances" (paragraph 21).*

26. It is evident to me from the first two clauses above that the funding agreement envisages the possibility that the admission arrangements of the school might change from one year to the next. The only limitation it imposes is that any change shall be approved by the Secretary of State. There is nothing in the funding agreement which requires any part of the admission arrangements, such as the use of a catchment area or of fair banding, to remain there forever, in spite of the school's assertions. I reject the school's view that the existence of the school and its current admission arrangements are bound together. Each element of the arrangements is capable of being changed, provided the school has the approval of the Secretary of State. That is of course consistent with the statutory obligation to determine admission arrangements annually.

27. Paragraph 21 of the school's funding agreement, which the school has referred to in more than one letter to me, does not introduce any further condition on changes that the school might make to its arrangements from year to year. The school has told me that "the Funding Agreement .....is clear that the arrangements shall not be changed unless there is a significant change in circumstances", citing paragraph 21. This is a basic misreading of the funding agreement and the effect of paragraph 21 within it because it ignores the context of the paragraph, which is the funding agreement's description of the process of annual consultation, determination and publication of the school's arrangements. Paragraph 21 is preceded by the heading "Proposed changes to admission arrangements by City Academy after arrangements have been published", which makes it abundantly clear that that it applies only to changes proposed after arrangements have been consulted on, determined and published in any one year. The purpose of paragraph 21 is to require that after the arrangements for a particular year have been determined, changes should not be proposed unless there has

been a major change of circumstances. It has no bearing whatsoever on whether the school may change its arrangements from year to year.

28. The school has referred in its response to me on this issue to the reasonableness of the school's arrangements when the school was first established, and the version of the Code which was then force. This was the version of the Code approved in 2003 and it is not relevant to my consideration as there have been several different versions approved by Parliament from time to time since then. Significantly, the primary legislation which gives it effect has also changed. As enacted, section 84(3) of the Act required admission authorities to "have regard to" the provisions of the Code, which at that time had the status of a code of practice. The Act has since been amended and it is now the duty of admission authorities "to act in accordance" with the Code. It is no longer simply guidance from which, in appropriate circumstance, admission authorities may depart. The Code contains mandatory provisions which are binding on admission authorities, and it is as a consequence their adherence or otherwise with the Code and the relevant legislation that determines the lawfulness of a school's admission arrangements and therefore that of the school's arrangements.

29. The school defends its retention of the essential elements of those arrangements on the grounds of paragraph 21 of its funding agreement, and has said that each of the oversubscription criteria which it employs is "permissible" by the Code, meaning the current Code. An oversubscription criterion, or oversubscription criteria acting in combination, may in my view fall foul of the Code in spite of being among those described in the Code. It has this to say at paragraph 1.10:

*"This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable for the school according to the local circumstances."*

Paragraph 14 of the Code places a mandatory requirement on admission authorities "to ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective". Arrangements that are fair for one school in its circumstances may not be fair for another, and arrangements that are fair at one time may not be fair at another. It is for this reason that admission authorities are required to consider each year what their admission arrangements should be in the light of prevailing circumstances, and it is for this reason that they cannot assume that admission arrangements that were appropriate and lawful in a particular year will remain appropriate and lawful for ever. It is also the case that oversubscription criteria which are fair considered in isolation may have a combined effect which is unfair. It is the reasonableness of the school's arrangements as a whole at the present time, that is to say, in the light of prevailing circumstances, which I must consider in the light of the current Code.

30. When I wrote to the school, and at the meeting which I held on 5 September 2014, I raised with it that:

(i) the arrangements might not be reasonable in themselves in the context of

the local demand for places;

(ii) the combined effects of its use of banding and catchment areas might make the arrangements difficult to understand, and therefore unclear, and

(iii) the arrangements may be unfair to some children.

31. All of these matters are related to each other since they concern the practical effect of the school's arrangements in the context of the local demand for school places, particularly from children living within the school's inner catchment area.

32. The school says that the test of reasonableness that must be applied to admission arrangements, and therefore to my consideration of its own, is that which is set out in the School Admission Appeal Code (the Appeal Code) in paragraph 4.10 which is that, to be unreasonable a decision must be "beyond the range of decisions open to a reasonable decision maker" or "a decision which is so outrageous in defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it". The school states its belief that the same high threshold (as the Appeals Code describes it) of unreasonableness must be applied to the question of the reasonableness of a school's admission arrangements, since it says that this is the appropriate test of reasonableness of all "lawful and reasonable decision making".

33. The test referred to in the Appeals Code and by the school is known as the test of Wednesbury unreasonableness, which the Practical Law Dictionary, 2010, defines as

*"A standard of unreasonableness used in assessing an application for judicial review of a public authority's decision. A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1947) 2 All ER 680). The test is a different (and stricter) test than merely showing that the decision was unreasonable."*

34. The Appeals Code takes the step of explaining that the sense of "reasonable" which should apply for the purposes of paragraph 4.10 is not the ordinary sense of that word, but that of Wednesbury unreasonableness. The School Admissions Code, by contrast, does not do the same at any point. So I am entitled, it seems to me, to assume that the Code means what it says and that when the word "reasonable" is used, it has no special meaning and should be given its ordinary meaning. The Oxford English Dictionary defines reasonable as "fair and sensible".

35. The test of Wednesbury unreasonableness is an administrative law test that applies when the court is considering setting aside (by judicial review) a decision of a public authority charged with the legal responsibility to take that decision. The administrative court looks at whether the decision maker arrived

at the decision correctly, and may set it aside if it is so unreasonable that no reasonable person could have made it. In looking at school admission appeals, the panel similarly is told by the School Admissions Appeals Code that in deciding whether a decision not to admit a child was reasonable or unreasonable this means unreasonable in the special, Wednesbury sense. The appeals panel is looking at whether the admission authority properly applied its own admission arrangements or whether, in the light of those arrangements, the decision not to admit is one which no reasonable admission authority could have made. By contrast, when an adjudicator considers the reasonableness of admission arrangements he is not looking at whether the admission authority acted reasonably in arriving at the arrangements which it determined, but instead is looking at the arrangements themselves to see whether they are reasonable. The jurisdiction which he is exercising is not a reviewing jurisdiction. An adjudicator has an original jurisdiction.

36. I am therefore clear that there is no basis for arguing that in looking at arrangements to see whether they are reasonable, I should be considering whether the arrangements themselves or the actions of the admission authority in arriving at them are Wednesbury unreasonable. I am required to look at what the Code says, which is that arrangements must be reasonable, and give the word its ordinary meaning. It also seems to me that in coming to a view as to whether the school's arrangements are indeed "fair and sensible" that I should consider whether the school is meeting the formal obligations placed upon it as a result of its funding agreement. I will also consider the effect of its arrangements in practice in the current and developing context in which it operates.

37. I have looked, with the assistance of both the school and the LA, at the available information concerning the pattern of applications for places and the effect of the school's arrangements in deciding the allocation of places up to and including admissions made in September 2014. I shall use this to consider the arrangements for September 2015 in the light of the available information about the demand for places at that point and beyond.

38. In order to understand this picture, it is necessary to look at the effect of:

- (i) the allocation of places between the inner catchment area and the outer catchment area in relation to the number of applications for these places;
- (ii) the use of banding within the arrangements and the means used to give priority to applicants, and
- (iii) the combined effect of these on children seeking places who live in the inner catchment area.

39. The previous determination laid out the adjudicator's consideration of these same matters in some detail, and the reasons for which she formed the view that the arrangements were unfair to those living in the school's inner catchment area. In addition to the information that was available to the previous adjudicator, there is now admissions data for the September 2014 intake to the school. The arrangements which the school used to determine

these admissions remained unchanged from those which were the subject of the previous determination, save for the addition of 14 additional places, as described above. The proportion of places to be allocated to those in the inner catchment area has been increased, also as described above, in the arrangements for September 2015, but again their essential features remain unaltered.

40. The key effect for those living in the inner catchment area noted in the previous determination of the combined use of catchment areas and banding arrangements, with the priority being given to banding outcomes rather than to where pupils live, was the reallocation of unfilled “band 1” places to those living outside the area. The effect has been that in each year since 2006, including in 2014, places that the arrangements state are available to those living in the inner catchment area have not been filled by pupils living there, and have instead been taken up by the most able pupils from outside. As the previous determination also noted, the overall consequence has been that significant numbers of those living in the school’s inner catchment area who have expressed a preference for a place at the school have not been admitted.

41. In previous years the arrangements have stated the number of places which are initially available in each band for the two geographical areas. The 2015 arrangements no longer provide this information, adding to the difficulty which parents will have, in my view, in looking at the arrangements and easily understanding how places are allocated. The figures for 2015 are implicit from the overall distribution, but not transparently obvious. I have therefore included them in the following table which compares the initially available number of places, in brackets, and the actual allocation of places to children in “band 1” in the inner and outer catchment areas in the most recent years.

<b>Band 1 admissions</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
(initially available places)				
Inner	18 (20)	13 (20)	18 (22)	(24)
Outer	16 (14)	24 (14)	19 (15)	(13)

42. So, the effect of the arrangements on the final distribution of “band 1” places noted in the previous determination has continued in the most recent admissions round. Under the arrangements for 2015, more places will nominally be available to “band 1” applicants living in the inner catchment area, but unless these are filled, they too will transfer to those living outside.

43. The school’s banding arrangements are designed to place all those applying for a place at the school in a particular year in five equally large ability groups, and they do this. If the ability profiles of those applying for a place at the school from the inner and outer catchment areas were the same as each other, both areas would always have a fifth of those applying for a

place in each of the bands. The information which the school has given to me about the numbers of applicants for places at the school since it opened contains data which shows how the two ability profiles are in fact different. Broadly speaking, both areas have consistently had about a fifth of the total applicants in each of “band 2 to 4”. “Band 1” by contrast has in each of these years been over-represented by those living in the outer catchment area, and so more than one fifth of outer catchment applicants are in band 1 and fewer than one fifth of inner catchment applicants are in band 1, with the differences frequently being significant. The outer catchment area applicants, compared to the inner catchment area applicants, have dominated band 1 in each year since the school opened.

Applications from inner catchment	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total	151	157	156	163	132	158	170	152	139	146	140	159
20 percent	30	31	31	32	26	31	34	30	27	29	28	31
band 1	14	17	28	23	23	20	20	20	16	23	15	20

Applications from outer catchment	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total	233	450	497	390	437	453	426	410	426	379	330	357
20 percent	47	90	99	78	87	91	85	82	85	70	66	71
band 1	62	106	100	83	91	101	108	93	97	84	76	83

44. I have been given no reason for thinking that this long established pattern will not continue to apply for admissions which take place in 2015 and beyond. As long as it does, additional “band 1” places nominally available to applicants living in the inner catchment area will be at risk of not being filled, and therefore of being made available to applicants from the outer catchment area. The effect has been, and is set to remain, that the school does not admit children to the school from the inner catchment area in line with the number of places which its admission arrangements say are to be provided for those living there. This is clearly a situation well known to the school. It needs to be considered further in the light of the current context in which the school operates, and that which the available information says it will face in the immediate future.

45. It is true of course that the arrangements for 2015 also include additional places for “bands 2 to 5” compared to the number available in 2014. There will be a total of eight additional places, and the data from previous years which I have seen and which was described in the previous determination, shows that available “band 2 to 5” places for the inner catchment area have almost

invariably been taken up. This improvement must be seen in the overall context of the demand for places at the school from the inner and outer catchment areas. I have therefore asked the LA and the school to provide me with this information from the 2014 admissions round.

46. For admissions in September 2014, 182 places were allocated and the arrangements say 108 were available to those living in the inner catchment area and 74 to those living outside. The school has told me that 102 places children living in the inner catchment area were admitted, and 80 children from outside. The LA data shows 99 children were admitted from the inner catchment area and 83 from outside it. Since the children in question are not in doubt, I can only imagine that some addresses have been coded differently by the two parties.

47. The school's funding agreement, in setting out the characteristics of the academy school, say that it a school which is:

*"a) situated in an urban area;*

*b) which provides education for pupils of different abilities who have attained the age of eleven years and who are wholly or mainly drawn from the area in which the school is situated."*

48. The school has pointed out to me that the school draws 97 percent of its pupils from within five miles and 89 percent from within three miles, figures which have not been challenged by other parties. However, in an urban area even three miles is a significant distance and may not equate to "the area in which the school is situated", a term which is not defined in the funding agreement or in the legislation which underlies its use. The school's inner catchment area is roughly rectangular in shape, about 1.25 miles wide and 2.1 miles long, with the school near to its centre. So, very few pupils living in the inner catchment have homes which are more than a mile, measured as a straight line, from the school. The school has helpfully provided me with a map showing the locations of the addresses of applicants initially offered places for September 2014. My own estimate, which I believe to be reasonably accurate, is that some of these are eight or nine miles from the school, and that several are at least five miles away, again measured as straight line distances. It is therefore clear that the school admits some children from much further away than others who it does not admit.

49. The school's funding agreement places a heavy emphasis on the provision of local places, but the school has not in fact provided the 60 percent of its places envisaged in its funding agreement for its initial admission arrangements to those living within the inner catchment area in any year since 2006. For 2015 this target figure, which is likely to continue not to be reached because the school prioritises banding outcomes over admitting local children, will be 65 percent of places. The school points to these figures to say that it meets the terms of its funding agreement by providing a majority of its places to those living in its inner catchment area, and that this is a vindication of its retention of the main features of its historic admission arrangements. It has also told me that there are alternative schools within "a reasonable distance", for example from the location given by the referrers'

contact details and that a reasonable distance is the same as the maximum walking distance for children of secondary school age, which is three miles. It states that if children who have sought a place at the school but who have not been admitted have such schools available to them, the need for them to access alternative schooling “in and of itself does not mean that the Academy’s admission arrangements are unlawful or not in compliance with the Code.”

50. Even accepting that the school’s definition of a reasonable distance is correct or relevant, what it says both about the proportion of children admitted from within the inner catchment area and about the availability of other local places does not address the question of whether the arrangements themselves are reasonable, that is to say fair and sensible, concerning the admission of pupils living in the school’s inner catchment area.

51. No school can ensure that there are enough places for all children who want a place there, but if a school does not have enough places for those for whom it is the nearest school because it chooses to admit those living further away in their stead, and then adopts practices which have the effect of further reducing the number of places which are available to local children, I believe that it is relevant to a consideration of the reasonableness of such admission arrangements to look at their practical consequences for those affected.

52. The LA has provided me with the alternative schools attended in September 2014 by 28 of the 31 unsuccessful first preference applicants for places at the school who live in the inner catchment area. These are shown below together with the distance of each school from Walsall Academy.

<b>School</b>	<b>Number of children</b>	<b>Shortest distance by road from Walsall Academy (miles)</b>
Aldridge School	1	4.4
Brownhills School	3	4.7
Great Wyrley (Staffordshire)	5	3.9
Shelfield Community Academy	8	2.4
Shire Oak Academy	2	4.1
St Thomas More Catholic School	2	5.4
The Mirus Academy	7	1.6

53. While these may not in each case be the next nearest available alternative school for the child in question, each child lives in the inner catchment area of Walsall Academy, and so probably within a mile of the school, and each preferred a place there to the place they have taken up. Most face considerably longer journeys to the schools to which they have been admitted than they would have had to their preferred school. The previous determination also pointed to this phenomenon as a persistent effect of the school’s arrangements in previous years and to some of the attendant difficulties of the journeys involved, matters also brought to my attention by

the referrers. Children who could have been admitted to the school, since it has enough places to have admitted them, do not in practice simply access other nearby schools as the school wishes me to assume, and are likely as a result it seems to me to suffer the negative effects for their education of, to give two obvious examples, significantly longer daily travel times and the difficulty of participating in out of school activities. Such matters in my view do impact on children and their cumulative effect during the period of secondary education is likely to amount to a real deficit to them.

54. I have been provided by the LA with information concerning the projected need for school places in the area and discussed these figures at the meeting which I held with the parties. The projected number of Year 7 children who will be living in the planning area in which the school is situated in coming years is:

<b>Year</b>	<b>Forecast need for Year 7 places</b>
2015	1024
2016	1036
2017	1105
2018	1086
2019	1121
2020	1126

55. The number of available year 7 places at the five secondary schools in this planning area which provide them (since The Black Country UTC which the LA places in this planning area does not do so) is 1082. This figure includes the 14 additional places which Walsall Academy has agreed, and assumes that all of the places at St Thomas More, which is a Catholic voluntary aided school which gives priority to baptised Catholic children, will be taken up by children living in the planning area. Only 77 of St Thomas More's 243 Year 7 places were admissions from within the planning area in 2014. So the number of places available in practice in the local planning area, is well below 1082. The school has agreed that "there may not be surplus capacity in this planning area from 2017", but my own view is that capacity will have been exceeded somewhat sooner, possibly in the immediate future. It is against this background that the provision by the school of what is likely to be no more than eight additional places to those living in the inner catchment area in September 2015 must be viewed.

56. I have also asked the LA for information concerning the success rates of those expressing a first preference for a place at the school in September 2014. The school does not have access of course to preference information, only to the overall position concerning offers and acceptances, and no school is required to ensure any particular outcome through its arrangements for first or other preferences. However it does seem to me that levels of unsatisfied first preferences, particularly if expressed by parents who live locally and who might therefore have a natural desire for their child to go to the school, do provide a relevant context for understanding what effect the arrangements are likely to have on whether parents feel they have been treated fairly by

reasonable admission arrangements, and indeed, whether this is likely to have been the case in fact.

57. The data provided to me by the LA concerning first and other preferences, and their outcomes for those living in the two areas, is shown below.

First preferences (Other preferences) (LA data, 2014)	Number	Successful	Unsuccessful
Inner catchment	125 (53)	94 (5)	31 (48)
Outer catchment	169 (312)	69 (14)	100 (298)

58. This information has been shared with the school and has not been challenged by it except to the extent in my understanding that the school's information would be slightly different if it could be set out in these terms, since it believes three more children were admitted from addresses which are in the inner catchment area. However, the LA data shows that only five applicants from the inner catchment area who did not express a first choice for the school were ultimately admitted, and 31 who did so were not. At the same time, 14 applicants living outside the inner catchment area for whom the school was not a first choice were admitted. Of those expressing a first preference for a place at the school, 75 per cent from the inner catchment area were admitted and 41 per cent from the outer catchment area were admitted.

59. The requirements concerning schemes for the co-ordination of admissions are set out in paragraphs 2.20 to 2.23 of the Code, and regulations require such schemes to ensure that *“so far as is reasonably practicable, in any case where a child is eligible to be granted admission to more than one school, that the child is offered admission to whichever of those schools is ranked highest on the common application form.”* Since the requirement is that first preferences are satisfied first, placing a school first on the CAF gives a parent the best chance of a successful application. How first preferences are used, and the extent to which they are satisfied, can reveal how the effects of a school's admission arrangements are perceived by parents who see themselves, as they do here, competing for places.

60. I have used the data provided to me by the LA to see, in the most recent admission round, what proportion of first preferences were successful, what proportion of all expressed preferences for a place at the school were first preferences, and what proportion of successful preferences were first preferences.

<b>First preferences (percentages) 2014</b>	<b>Proportion of all preferences which were first preferences</b>	<b>Proportion of first preferences which were successful</b>	<b>Proportion of successful preferences which were first preferences</b>
Inner catchment	70	75	95
Outer catchment	45	41	83

61. This data is only that for the most recent year, but I have no reason to believe that it is not representative of the pattern that appears to have been established concerning admissions to the school for a number of years. My reading of it is that parents living in the inner catchment area recognise that it is very important to use their first preference if they are to stand a significant chance of securing a place at the school. In 2014 only five percent of successful applications from those living there were not first preferences. Seventy percent of all preferences for the school from those in the inner catchment area were first preferences in 2014, but only three in four met with success.

62. While the chance of securing a place from the outer catchment area with a first preference is much lower, it is still a reasonable chance since over four in 10 are successful. Second and subsequent preferences from those living there still have a reasonable chance of success and the pattern of preferences show that for large numbers living there, over 300 in 2014, this is their chosen approach. Fifty five percent of the preferences for the school from outside the inner catchment area were not first preferences. For these parents, if a first preference is expressed for another school but their nearest school is some distance from their home, they will still have a reasonable chance of being admitted to Walsall Academy since it gives priority to them on this basis. By contrast, those living in the inner catchment area are not able to pursue such an approach, since the distance of their alternative school is not taken into account by the school. They can nevertheless by no means be sure of a place at the school, and if they are one of those living furthest from it within the area there is a good chance that a first preference will not secure a place there.

63. The LA expressed its view at the meeting which I held with the parties that it considers the arrangements to be unfair to those living near to the school and said that this is due to the transfer of places from undersubscribed bands to outer catchment area applicants. In a letter written in response to the original objection, but in respect of the matters which I am considering, it stated:

*“The local authority welcomes the fact that the Academy has made some changes to their admission arrangements for 2015. However, it is the view of the Local Authority that, despite the changes made, the Academy should further review their admission arrangements to both take account of the changes in demographics and educational organisation in the borough and also of the adjudicator’s comments in the determination concerning the catchment area arrangements.”*

64. The referrers have pointed to the difficulty for parents living within the inner catchment area to obtain a place at the school because of the school's use of distance from the school as a tiebreaker for these admissions. They presented at my meeting with the parties a paper explaining how the combined effect of the school's use of catchment areas and banding can mean that any child living in certain parts of the inner catchment area furthest from the school would have a much improved expectation of being admitted to the school if they lived in the outer catchment area and were subject to the oversubscription criteria which the school applies to applicants living there. The school has not challenged this analysis although it has had the opportunity to do so. The referrers have also described housing developments close to the school which will tend to increase the size of the geographical area where this effect will be seen in the future. Again, the school has not challenged this view.

65. In summary, the evidence which I have seen shows that:

(i) each year since 2006, the last year in which applicants from the inner catchment area filled the available band 1 places, places nominally available to children living in the inner catchment area have not been allocated to children living there but have been filled by children living in the outer catchment area as a result of the transfer of unused "band 1" places to them. The available evidence is that the school's admission arrangements for 2015 will result in this same effect;

(ii) the school's arrangements for September 2015 will continue as a result to fail to allocate to those living in its inner catchment area the number of places which it says are available to them;

(iii) recent data shows a different balance for the inner and outer catchment areas of the use of first preferences for a place at the school and the consequent success of doing so, on the one hand, and of the use of second or subsequent preferences for the school and the success of doing so, on the other. Parents living in the outer catchment area predominantly expressed second or subsequent preferences when seeking a place at the school and nearly one in five of those admitted from these addresses had done so. Parents living in the inner catchment area predominantly expressed a first preference for a place at the school, but only three in four were successful, having done so. There is no reason to believe that the same effect will not apply as a result of the school's arrangements for September 2015;

(iv) some areas within the inner catchment would almost certainly fare better if they were located in the outer catchment area because of the different means used to give priority to applications there;

(iv) many of those living in the inner catchment whose first preference is for a place at the school but who cannot obtain a place there currently travel significant distances to their alternative school. Local pressure for school places is very close to the point where it will cause a deterioration in the position for those living in the inner catchment area and so my view is that all

the above consequences can be expected to result from the school's arrangements for September 2015 and for the effect to be more pronounced thereafter.

66. The school's arrangements have in essence been in place since 2003. In them, the outcome of banding is given priority such that some "band 1" places are now routinely transferred from the inner to the outer catchment area, and are taken up by children some of whom are likely to live considerable distances away from the school. As a direct consequence, the school does not admit the proportion of children from the inner catchment area that is stated in its admission arrangements, and significant numbers of first choice applicants for the school who live in its inner catchment area are not admitted. The evidence which I have seen is that this effect will continue to result from the school's arrangements for September 2015. I consider it unreasonable in the context of the demand for places at the school that the school's arrangements continue to prioritise the effects of banding.

67. There is nothing to prevent the school from having admission arrangements which ensure that all inner catchment area places are then filled by children living there. One way in which this could be achieved would be by allocating unfilled places to the next ability band, as is a usual way of allocating unfilled places in bands, to children from within the area, but it would be for the school to consider how best to do this to ensure that the arrangements as a whole were fair. It is my view that the school's arrangements for September 2015 are, by contrast, not reasonable because they do not operate fairly towards those living in the inner catchment area which it defines. My view is therefore that they fail to comply with what the Code requires.

68. It also seems to me to be unreasonable that a high proportion of those living in the inner catchment area cannot secure a place at the school while significant numbers of those living outside for whom it is not a first preference are able to do so. I believe that it is a clear underlying principle within the Code that parents choose schools, and that schools do not choose children. Admission arrangements which effectively limit the extent to which parents' first preferences for their local school can be met in order to ensure places are available for children living further away do not seem to me to fully recognise this principle. It is also unfair that the different means used to prioritise application from those in the two defined areas result in parents living in the outer catchment area generally being more able to adopt a strategy of using second and subsequent preferences for a place at the school, a choice not in practice available to those living in the inner catchment area.

69. It seems to me to be particularly unfair that parents living in some parts of the inner catchment area would be more likely to be successful in gaining a place at the school if like some near neighbours they happened to live in the outer catchment area, because of the different means by which applications are given priority under the school's arrangements. The developing local context means that the effect of arrangements which are already not fair to children living locally who must seek alternative schools is likely to be extended to more local children under the arrangements for September 2015,

because alternative schooling locally for those affected will probably be more difficult to secure than it is now. There is nothing which requires the school to continue its historical use of inner and outer catchment areas. If it does so, it can alter the balance of places available there, as it has already done, and it can alter the definition of these areas and it is free to propose to the Secretary of State also that the means used to prioritise applications within them are changed.

70. I believe that the arrangements which the school has determined for September 2015 will continue to be unfair to parents living in the inner catchment area as a result of the combined effects of the continued use of historical means to define it and to prioritise applications, the balance of places at the school which are available to children who live there, and the continued priority given by the school to banding outcomes at the expense of local places. For all these reasons, I am of the view that the school's arrangements are not "fair and sensible" and so not reasonable.

71. The increase in the proportion of local admissions which the school has agreed for September 2015, will almost certainly do little or nothing to relieve this situation for the reasons that I have set out above, given the increasing pressure for places and the school's retention of all the other aspects of its admission arrangements. However it is by no means immediately obvious from a straightforward reading of the arrangements exactly what their effect will be. The difficulty noted in the previous determination of being able to look at the arrangements and see how places will be allocated persists, because the catchment areas and banding continue to act together as before. This lack of clarity has been made worse in the arrangements for 2015 because they do not give parents a breakdown of the number of place in the different bands for the inner and outer catchment areas. I am therefore of the view that the arrangements for September 2015 fail to meet the requirement of the Code that they be clear, in addition to not being reasonable. They do not comply with what paragraphs 14 and 1.8 of the Code require for all these reasons.

#### **d. Interviews for sixth form places**

72. The arrangements for admission to the school's sixth form in September 2015 contain the following, under the heading "external students":

*"In the Spring Term applicants will be invited in to discuss their preferences. After the meeting places will be offered and agreement forms sent to applicants."*

73. Again, the school has proposed changes to this wording. These clarify for readers that such meetings are not part of the decision process on whether a place will be offered, as paragraphs 1.9m and 2.6 of the Code make clear **must** be the case. However, as drafted, no such statement is present and while I am willing to accept that the school's assurances that its processes do not infringe this requirement set out in the Code, nevertheless the arrangements are currently insufficiently clear and so do not meet the requirements concerning clarity in paragraphs 14 and 1.8 of the Code.

#### e. The introduction of a medical/social criterion

74. The school determined its admission arrangements for September 2015 on 19 March 2014. It has confirmed that it carried out no consultation concerning its admission arrangements subsequent to the publication in December 2013 of the determination concerning its arrangements for September 2014.

75. The arrangements for September 2015 introduced the following paragraph, which was not present in those for September 2014:

*“To ensure that the Academy complies with the obligations set out in the Equality Act 2010, Governors have discretion to offer a place to children whose lives have been so significantly impacted by a medical condition that it is essential they attend the school. (Professional documentation concerning the situation must be submitted with the application). Any such place will be within the band where the child is placed following taking the test and after any allocations have been made for Looked After or Previously Looked After children. Such applications will be determined by a meeting of the Admissions Sub-group consisting of at least three members.”*

76. It is worth mentioning in this context that looked after or previously looked after children are not required to be allocated places within bands, and neither are children with a statement of special educational need naming the school. The school has responded to me at length regarding my concern that this change had been introduced into its admission arrangements without the consultation required, as set out in paragraphs 1.42 to 1.45 of the Code. The school’s argument is that, firstly, under paragraph 3.6 of the Code, schools may vary determined arrangements without consultation to give effect to a mandatory requirement of the Code. That is so, but the term variation refers to changes made in a particular year following the annual determination of arrangements for the year in question, not to changes made at the point of that annual determination. Secondly, the school tells me, The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements)(England)Regulations 2012 say that consultation is not required concerning “a change made to comply with any mandatory requirement in the School Admissions Code or these Regulations.” It says that the school is subject to the Equality Act 2010 and the Public Sector Equality Duty which it contains, and has quoted sections of guidance concerning this duty issued by The Equality and Human Rights Commission. It says that it had a mandatory requirement placed upon it as a result.

77. The Code has the following to say:

*“Admission authorities are .... subject to the Public Sector Equality Duty and therefore **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it..... The protected characteristics for these purposes are: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.”*

78. It is of course welcome that the school should choose to reflect the duty to comply with this legislation by making a specific provision concerning one aspect of it within its admission arrangements. However, this is an overarching duty concerning the effect of decisions made by the school, and there is no requirement for admission arrangements to say that a school is subject to the duty, or to introduce any particular criterion into them in order to comply with it. So the school cannot rely on the provision within the Code allowing changes to be made to admission arrangements in order to comply with legislation to exempt it from the requirement to consult before introducing the particular criterion it has chosen to adopt. My view is therefore that the introduction of such a criterion, however welcome, requires prior consultation and that the school has failed to meet the requirements of paragraph 1.42 of the Code where this is stated.

#### **f. The definition of catchment areas**

79. The school has not responded to my concern regarding the clarity with which the arrangements define the inner and outer catchment areas, which I set out above. I remain of the view that the arrangements are unclear for the reason stated and therefore contrary to the requirements of the Code in paragraphs 1.4 and 1.8.

#### **Conclusion**

80. I have set out in the previous section my consideration of each of the matters of potential non-compliance that I have raised with the school concerning its admission arrangements for September 2015.

81. For the reasons given there, I am of the view that the school has not breached paragraph 1.47 of the Code since the arrangements were displayed on the school's website as required.

82. I have set out my consideration of what the school has had to say to me concerning the effect of its funding agreement with the Secretary of State and why I conclude that this:

- a. envisages that changes may be made to the school's admission arrangements from year to year;
- b. places no inhibition on the school seeking to make such changes, and
- c. provides a mechanism for changes to the school's admission arrangements to be made.

The school is free to seek the approval of the Secretary of State to change each and every aspect of its admission arrangements as part of the annual cycle of consulting on and determining its arrangements.

83. I have also said why I have come to the view that the school's admission

arrangements for September 2015 are in breach of what the Code requires:

(i) in paragraph 14 since they cannot be easily understood by parents, as required;

(ii) in paragraph 1.8 because they employ oversubscription criteria which are not reasonable, which are not clear and which result in unfairness to some children;

(iii) in paragraphs 1.9m and 2.6 by including in the arrangements for the admission of external students to the school's sixth form a meeting with applicants that appears to form part of the process of deciding whether a place is offered;

(iv) in paragraph 1.42 because a change introduced into the arrangements had not been the subject of the required prior consultation; and

(v) in paragraphs 14 and 1.8 because the definitions of the inner and outer catchment areas used in the arrangements are inconsistent with each other.

84. Although the deadline for applications for school places in September 2015 has now passed, the arrangements are still effective for determining late applications and for ordering the school's waiting list until at least the end of the autumn term 2015, and it is important that the school makes changes to them without delay.

### **Determination**

85. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Walsall Academy. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

86. 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: 19 December 2014

Signed:

Schools Adjudicator: Dr Bryan Slater