



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA2928/2933/2977/3001

**Referrers:** Three parents and a party that wishes to remain anonymous

**Admission Authority:** The Liverpool College Independent School Trust

**Date of decision:** 15 September 2015

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for Liverpool College determined by the Liverpool College Independent School Trust.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission within two months.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act) four objections have been referred to the adjudicator by three sets of parents and a party who wishes to remain anonymous in emails dated 29 and 30 June 2015 concerning the admission arrangements for September 2016 (the arrangements) for Liverpool College (the school), an academy school for pupils aged 3-19 in the local authority area of Liverpool City Council (the LA). The objections are to the sibling and random allocation criteria in the arrangements for applications to the primary provision in the school and to the overall clarity of the oversubscription criteria for admissions to the school's secondary provision.

### **Jurisdiction**

2. The terms of the academy agreement between the Liverpool College Independent School Trust (the 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 governing body of the school on behalf of the trust, which is the admission authority for the school, on that basis. One party has met the terms of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements)(England) Regulations 2012, which requires that any person or body making an objection who wishes to remain anonymous must provide their name and address so that they are known to the Office of the Schools Adjudicator. The objectors submitted their objections to these determined arrangements on 29 and 30 June 2015. I am satisfied that the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering these matters I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the four objections, dated 29 and 30 June 2015;
  - b. the school's response to the objections, and accompanying documents, in an email dated 15 July 2015;
  - c. the school's admission policy for September 2016, determined at a meeting of the governing body on 23 March 2015, and an extract of the minutes of that meeting;
  - d. the LA's response to the objections in an email dated 15 July 2015;
  - e. a response by one of the objectors to the school's submission, in an email dated 19 July 2015;
  - f. a response from the school, with additional documentation, in response to my further enquiries, in emails dated 22 July and 3 September 2015;
  - g. a response from the school, in an email dated 24 July 2015, to the email submitted to the adjudicator by one of the objectors on 19 July 2015;
  - h. the school's funding agreement and amendments to that agreement;
  - i. the LA's website; and
  - j. the school's website.

## The Objections

5. All four objections refer to the same matters and raise the same detailed points in relation to each of them. The first matter raised by the objections is to the operation of the oversubscription criterion in the arrangements for the primary provision in the school that gives priority to *“Pupils who, on the date of admission, will have a sibling ... in years Reception-13 of the Academy.”* The second aspect of the objections is to the criterion, in the same section of the arrangements, that states *“If there are more applicants than places available in criteria (i) to (iii), the tie-break will be via a random allocation process. This will be supervised by a person not otherwise involved in the admissions process.”* The objectors contend that the arrangements for allocating places in the school’s primary provision do not comply with paragraph 1.7 in the Code in that they do not make separate provision for allocating places to looked after and previously looked after children as the first priority. The final aspect of the objections is to the overall clarity of that section of the arrangements which lists the oversubscription criteria to be used in allocating places in the school’s secondary provision. All four objectors contend that in each of these matters the arrangements *“contravene section 1.8 of the 2014 school admission code, specifically ‘1.8 Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.’”*

## Other matters

6. In the course of considering the objections I reviewed the arrangements as a whole and noted that: they include a statement that pupils in the Nursery *“will automatically progress through Liverpool College”*; while the arrangements make reference to pupils with a statement of special educational needs (SEN), there is no reference to pupils with an Education, Health and Care (EHC) plan; details of random allocation used as the tie-breaker lack some transparency; the arrangements imply that places to applicants on the waiting list will be allocated by random allocation rather than by reference to the oversubscription criteria; and that there is no information concerning the admission of children below compulsory school age, deferred entry to school, or the admission of children outside their normal age group. The arrangements provide no information to applicants concerning notification of the results of the banding test. The application form for external applicants to the sixth form requires the parent’s signature as well as that of the applicant. Applicants at all points of entry, including for Reception (year R), are required to complete a supplementary information form (SIF); the 2016 SIFs for applicants to year R and the sixth form were not published on the school’s website with the other admissions documents. These matters were brought to the attention of the school as possibly non-compliant with the Code.

## Background

7. Liverpool College is an all age academy school for pupils between the ages of 3 and 19, including a school-run nursery with 26 full-time equivalent places and boarding provision for up to 30 sixth form pupils from the United Kingdom and the European Union. The school was, until it converted to academy status in September 2013, a fee-paying independent school; it retains a Church of England foundation but is non-denominational and does not apply any faith-based admission criteria, although the diocese of Liverpool nominates a member of the academy trust. There are just over 1000 pupils on roll, including about 200 in the sixth form, and these numbers are increasing. The amendment to the funding agreement for the school details a planned capacity of 1100 pupils, including a sixth form of 250 places, of which 30 will continue to be boarding places. All pupils on roll in the predecessor school (Liverpool College Independent School) in the 2012/13 academic year were able to transfer into the academy and were guaranteed the opportunity to progress through the academy without further application. Following an inspection in May 2015, Ofsted evaluated the overall effectiveness of the school as good, with sixth form provision deemed outstanding.
8. The arrangements for 2016 were determined by the governing body of the school on 23 March 2015; the governing body is the delegated admission authority under the articles of the academy trust. Previous arrangements, consulted on and determined during the transition of the school to an academy in 2013, were unchanged but the published admission numbers (PAN) for year R and year 7 were increased. For 2016 admissions, the school has a PAN for Reception (year R) of 54 and for year 7 of 86, thus providing for an overall year group size of 140 in year 7. The PAN for external candidates admitted to the sixth form is a minimum of 25 with more spaces available if not all taken up by internal candidates. The school is heavily oversubscribed. In 2014 and 2015 respectively (when the PAN for each relevant year group was different from those determined in the 2016 arrangements), there were 169 and 181 first preferences and 50 places allocated for year R; and 260 and 273 first preferences and 100 places allocated for year 7.
9. The arrangements for admission to year R provide that children with a statement of SEN in which the school is named will be admitted. Oversubscription criteria are then, in summary:
  - i. Looked after or previously looked after children
  - ii. Pupils who, on the date of admission, will have a sibling in years R – 13 of the school
  - iii. Pupils whose parents have been continuously employed for two or more years by the school at the time of application
  - iv. 50 per cent of remaining places to pupils who live within a two mile radius of the main entrance gates
  - v. Other children

10. Notes explain that, in criteria (ii)-(v), children of multiple births will have priority. In criterion (iv), a straight line measurement is used. The tie-break is by random allocation, supervised by a person not otherwise involved in the admissions process. The term “sibling” is explained. Applicants are required to complete a SIF in addition to the LA’s common application form (CAF). The arrangements state that *“Children in Year 6 of the Primary School (Preparatory School) are entitled to transfer to the Secondary school without applying further.”*
11. The arrangements for external applicants for admission to year 7 provide that children with a statement of SEN in which the school is named will be admitted. Other applicants sit a banding non-verbal reasoning test and a modern foreign languages (MFL) aptitude test; 10 per cent of places are allocated based on the results of the MFL aptitude test and applicants who sit the banding test are placed into five ability bands with an equal number of places in each; the MFL places are allocated before banding is applied, but those children are included in the bands. Where the school is oversubscribed, the successful MFL candidates are not allocated a place until after all looked after or previously looked after children, who are not required to take the banding test, have been allocated a place in their relevant band. Oversubscription criteria and explanatory notes are then the same as those summarised above for admission to year R, with some additional information concerning the banding test.
12. The arrangements for the admission of external candidates to the sixth form, for which the PAN is a minimum of 25, give priority to pupils with a statement of SEN that names the school and set the same minimum academic entry requirements as for internal applicants. Oversubscription criteria are then:
- i. Looked after or previously looked after children
  - ii. Pupils who have been offered a boarding place
  - iii. Pupils who, on the date of admission, will have a sibling in years R – 13 of the school
  - iv. Pupils whose parents have been continuously employed for two or more years by the school at the time of application
  - v. Other children

Notes indicate that the tie-breaker will be via a process of random allocation and that an offer of a place will be made on the basis of an applicant’s predicted grades at GCSE.

13. For boarding places, for which the PAN is 15, the arrangements state that pupils must be 16 years of age by the end of their proposed first term of boarding at the school and that they must satisfy the academic criteria set for other sixth form applicants. They will be subject to an assessment of suitability for boarding, by interview and by reference to the child’s home LA and predecessor school.

Oversubscription criteria are then:

- i. Looked after or previously looked after children
- ii. Children of members of UK Armed Forces who are normally resident in the area and who qualify for Ministry of Defence financial assistance with boarding fees because of high family mobility
- iii. Children with a boarding need, allocated to the following sub-categories in order:
  - (a) children of members of the UK Armed Forces who have died while serving or who have been discharged as a result of attributable injury
  - (b) children of serving members of the UK Armed Forces normally resident in the area but posted abroad
  - (c) children of key workers and Crown Servants working abroad whose work dictates that they spend much of the year overseas.

A note explains that if any of the categories in (iii) are oversubscribed, priority will be given first to children normally resident in the area, then to those with younger siblings already on roll and who will continue to be on roll when the child is admitted; any remaining places are allocated by random allocation.

14. All applicants, that is for year R and external applicants for year 7 and year 12, are required to complete a SIF in addition to the LA's CAF.

### **Consideration of Factors**

15. The objectors start from a shared concern, that an application made by each of them for a child to be allocated a place in year 3 at the school (as an in-year admission under the school's phased growth plan, as part of the transition to academy status) was unsuccessful against the sibling criterion. The objectors contend that the detail of the criterion, that is, that the sibling needs to be already on the roll of the school, was not observed when their children were not allocated places. They have therefore objected to the continued inclusion of this criterion in the 2016 arrangements, claiming that the operation of this criterion does not comply with the objectivity required by paragraph 1.8 in the Code. Although the school has provided me with a detailed explanation of the process involved in making decisions about the applications on behalf of each of the objectors' children, I do not consider that the detail of this matter is within my jurisdiction as it involves the allocation of places to individual children rather than the compliance of the arrangements with the Code and admissions legislation. With regard to the arrangements generally, rather than to the specific cases quoted by the objectors, I note that the sibling criterion is permitted by paragraph 1.11 in the Code; it is clearly expressed in the arrangements, with a detailed definition of "sibling". I therefore do not uphold this part of the objection.

16. The objectors then express “*serious concerns over the random allocation process*”. The objection is based on the premise that, in the event of oversubscription, all applicants who would qualify for consideration against criteria (i)-(iii) in the primary phase arrangements summarised earlier would be, as it were, “lumped together” for the purposes of random allocation. If so, the objectors would be correct in claiming that this would be non-compliant with paragraph 1.7 in the Code, in that it would mean the arrangements did not give absolute priority to looked after and previously looked after children. However, it is clear from reading the arrangements, as the school points out in its response to this part of the objection, that random allocation “*will be used as the tie breaker within each of these three criterion [sic] if there are more applicants than places within a criterion.*” In other words, the criteria are treated sequentially, not all together. As this part of the objection is thus predicated on a misreading of the arrangements, I do not uphold it.
17. The final point raised by all four objectors is that they find the school’s arrangements for places in year 7 “*very unclear, and find that the school has altered its stated claim to give preference to siblings through the extremely complicated and long winded wording of this section ... mak[ing] it impossible for us to have any confidence that siblings will receive places. It is unclear as we understand that if all of the siblings fall into 1 banding and that banding is oversubscribed then some siblings will lose out on places to children that fall into lower criteria. This is manifestly unfair and unclear in the admissions policy and therefore we feel it contravenes section 1.8 of the schools admissions code.*” It is true that the school’s arrangements as a whole, not least because of its all-age provision, the offer of boarding places in the sixth form, and the transitional arrangements regarding its planned increase in numbers since the change of status to an academy school, are long and arguably somewhat complex. This is true especially of that part concerning applications to year 7; applicants are banded according to the results of a test and may be tested as well for aptitude in MFL prior to the application of the same oversubscription criteria that are used in the allocation of places in the primary phase.
18. The school’s response is that the detail regarding banding and aptitude tests is necessary to comply with paragraphs 1.27 and 1.29 in the Code. I asked the school to comment on how banding is applied in year 7, and the explanation was first, that children in year 6 are not considered as applicants for year 7 since they are already in the school and are simply progressing through it; second, that banding is used at this point for external candidates, should there be more applications than places available, “*to ensure the intake to year is representative of the full range of ability of applicants to Year 7*” Regarding this second point, the school cited paragraph 1.25a) in the Code that gives permission for banding to be used in this way. In my view, the arrangements comply with the Code in this respect, although under “Other matters” below I make some additional

comments regarding information about the outcomes of the banding test.

19. With regard to the second point in the objection, the school comments that *“Within each band, siblings have the second highest priority, after looked after and previously looked after children. The nature of banding does mean though that in the event the school is oversubscribed and there were more siblings than places available within a band, the places under criterion (ii) would have to be allocated via a tie breaker. Siblings would not ‘lose out’ to children who fall into lower criteria within that band but in a different band it is possible places would be allocated to applicants under criteria (iii)-(v) but only after those applicants under criteria (i) and (ii) had been allocated their places.”* The objectors’ point, therefore, is again based on a misunderstanding of how applications are first banded and then weighed against the oversubscription criteria. One of the objectors responded to the school’s explanation by suggesting that siblings might, in effect, be removed from the banding process in order to *“more clearly reflect the College’s policy of ensuring sibling inclusion”*; in turn, the school counteracted this suggestion by saying that this *“would create a lack of clarity and transparency for all applicants”* and that it was *“not correct to describe the College policy as ensuring the inclusion of siblings”* but rather that it was *“to give a preference to siblings.”* The school’s explanation makes the process clear and justifies its objectivity and transparency; it complies with paragraph 1.8 in the Code and so I do not uphold this aspect of the objection.
20. Although the LA supplied admissions data as requested in response to the objection, it had no comment to make on any of the specific matters raised by the objectors.
21. For the reasons set out above, I therefore do not uphold the objections to the school’s arrangements for 2016.

### **Other matters**

22. I turn now to the other matters that I brought to the attention of the school. First, I noted that the arrangements include a statement that pupils in the Nursery *“will automatically progress through Liverpool College”* and queried the compliance of this with paragraphs 1.39A/B and 1.9e) in the Code; these paragraphs restrict such prioritisation to pupils in receipt of one of the premium payments. The school’s response was that all pupils in the predecessor school during the school year 2012/13, including the nursery, were able to transfer into the academy and that this statement in the arrangements refers to that school year only in respect of the nursery since *“when parents signed their acceptance form to accept a place in the predecessor school’s Nursery their child was guaranteed a place until the end of their secondary schooling without further application.”* The school supplied me with an admission information booklet now provided to

nursery applicants that makes clear it is not the case that pupils who joined the nursery since September 2013 are able to automatically progress to year R in the school.

23. My next concern was that, in several places, the arrangements make reference to pupils with a statement of SEN, but there is no reference in any of these places to pupils with an EHC plan as required by paragraph 1.6 in the Code; the school undertook to add such references to the arrangements with immediate effect and this has been done in the arrangements now published on the school's website.
24. Random allocation is a prominent feature of the arrangements. In response to my question as to whether the reference in the arrangements to the use of random allocation as the tie-breaker met fully the requirements set out in paragraph 1.34 in the Code, the school informed me that it *"proposes to add an appendix to the policy that clarifies the details and mechanism of the random allocation process. Each time that 'random allocation' is mentioned in the policy we will draw parents' attention to the further details in the appendix section. We will also add this explanation in as a 'Frequently Asked Question' in the information booklet provided to parents/carers."* At the time of completing my determination, this addition to the policy on the school's website, and to the admission information booklet, was yet to be included.
25. I raised an issue with the school concerning the implication in the arrangements that places to applicants on the waiting list will be allocated by random allocation rather than by reference to the oversubscription criteria. This relates to paragraph 1.35 in the Code, which I felt was not clearly explained. The school informed me that *"the operation of the waiting list is undertaken in accordance with the School Admissions Code"* but agreed that the arrangements *"need to be reworded to clarify this fact."* This change has yet to be made to the arrangements published on the school's website.
26. On reading the arrangements, I could find no information concerning the admission of children below compulsory school age, deferred entry to school or the admission of children outside their normal age group as required by paragraphs 2.16 and 2.17 in the Code. The school has informed me that it *"will begin work immediately on producing the statements ... that are required with the intention of making these additions to the policy as quickly as possible."*
27. The arrangements provide no information to applicants concerning notification of the results of the banding test. When queried with the school, it commented first in relation to the MFL aptitude test that it *"takes all reasonable steps to inform by letter the parents of applicants who would be allocated a place under the MFL criterion about the outcome of the MFL aptitude test (although the letter makes clear that this does not equate to the guarantee of a place)."*

*As the tests are marked by an external company we are dependent on the company being able to deliver the results in time. This information will be added into the arrangements.”* The school confirmed that with regard to the banding test, it *“does not currently inform applicants about the outcome of the test.”* The reasons given concern the difficulty of programming the tests at a time seen as convenient to most parents, after the school’s Open Event, and not clashing with other local schools that hold test sessions at an earlier date in the school year. For these reasons, and because the number of children sitting the test may be in excess of 650, the school states that the commercial company responsible for processing the papers has *“been unable to return the results with enough time for the school practically to be able to inform all applicants of both results before 31 October. The school therefore prioritised informing applicants of the MFL aptitude test result. This is because the school believes it more useful for parents to be informed of the result of the MFL aptitude test. Places are not allocated on the basis of how applicants do in the banding test and so knowing which band an applicant is in will not in practice assist parents in making an informed choice of schools.”* There are two issues here: one, that the company employed by the school to process the tests is unable to do so within the timeframe established by the school (for sitting the tests) and the Code (for informing parents of the outcome); and that, whatever the school’s view, paragraph 1.32c) in the Code states quite clearly that admission authorities *“must ... take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications ... so as to allow parents time to make an informed choice of school ...”*. The arrangements thus do not comply with the Code.

28. The application form for external applicants to the sixth form requires the parent’s signature as well as that of the applicant. In its response, the school stated its belief that, since applicants would not necessarily be over the age of 16 at the time of application, a parental signature would be required and that *“the form can be amended to include the applicant’s signature.”*
29. The 2016 SIFs for applicants to Reception and the sixth form were not published on the school’s website with the other admissions documents. Since raising this point with the school, it has agreed that there is no need for a SIF in respect of applications for year R, as any information would merely duplicate that provided on the LA’s CAF. Regarding the absence of the sixth form SIF, the school’s explanation was that the option blocks had not been decided when the arrangements were published, but that *“to comply with the Code, the form for 2016 will be published online without the option blocks.”*

## **Conclusion**

30. The objections drew attention to what the four objectors believe is the lack of objectivity, fairness and clarity in the arrangements. They

referred first to children not allocated places in year 3 against the sibling criterion, a matter over which I have no jurisdiction; however, the sibling criterion itself does not contravene the Code. The second part of their objection was to the operation of random allocation, claiming that this is non-compliant with the Code in that it fails to give priority to looked after and previously looked after children and does not take separate account of different oversubscription criteria. This objection was based on a misreading of how the oversubscription criteria are applied by the admission authority. The final strand of the objection was to the complexity of the arrangements for applications to year 7 in the school and specifically to how these affect the situation of siblings. Again, it was my view that the objectors misread the arrangements and that the criteria are compliant with the Code. I therefore do not uphold any part of the objections.

31. Nevertheless, my view is that the arrangements, as they stand, are undoubtedly long and complex. This may be unavoidable to some extent given the particular circumstances of the school, but the admission authority might wish to consider ways in which the arrangements could be made more brief, and perhaps differently structured, in order (as set out by paragraph 14 in the Code) that applicants *“should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*
32. In considering the arrangements as a whole, I found that applicants might have been misled into believing that children in the nursery would automatically gain a place in year R. The latest information to parents makes clear that this is not so. In response to a further question, the school has amended the arrangements to include reference to children with an EHC plan as well as those with a statement of SEN. I found that there was insufficient detail concerning the process of random allocation generally, and noted also some potential confusion regarding random allocation and the operation of waiting lists; the school has undertaken to clarify these parts of the arrangements. It has also agreed to add information concerning the admission of children below compulsory school age, deferred entry to school and the admission of children outside their normal age group.
33. The arrangements did not provide applicants with information concerning the outcome of aptitude and banding tests and the school has not indicated that it intends to rectify this in respect of the banding test; the SIF for applications to year R in 2016 was not published and neither was that for external applicants to the sixth form. The most recent application form available for the latter group did not allow an applicant to sign the form on her/his own behalf. The school has decided to withdraw the SIF for applicants to year R and has undertaken to publish an amended form for external applicants to the sixth form.

34. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised as quickly as possible, and within two months.

### **Determination**

35. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for Liverpool College determined by the Liverpool College Independent School Trust.

36. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

37. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months.

Dated: 15 September 2015

Signed:

Schools Adjudicator: Andrew Bennett