



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3049

Referrer: a member of the public

Admission Authority: Merchants' Academy, Withywood, Bristol

Date of decision: 25 November 2015

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements for admissions in 2016 determined by the Merchants' Academy Trust for Merchants' Academy in Bristol. I determine that there are matters which 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 arrangements by 28 February 2016.

The referral

1. The admission arrangements (the arrangements) for Merchants' Academy (the school), an all through academy school for children aged between 3 and 18, for admissions in September 2016 were brought to the attention of the Office of the Schools Adjudicator (OSA) by a member of the public in May 2015. The arrangements were not available on the school's website as required by paragraph 1.47 of the Code. There was no evidence that the arrangements had been determined by the school and so the matter was out of jurisdiction of the adjudicator and not considered further at that time. I was provided with the determined arrangements and a copy of the initial referral, on 23 September 2015 and the arrangements were on the school's website on that date. These are the arrangements that I am considering.

Jurisdiction

2. The terms of the academy agreement between the Merchants' Academy Trust (the trust) and the Secretary of State for Education require that the admissions policy and arrangements for the school are

in accordance with admissions law as it applies to maintained schools. As these arrangements were determined by the trust, which is the admission authority for the school, on that basis on 25 March 2015, I have used my power under section 88I of the School Standards and framework Act 1998 (the Act) to consider the arrangements as a whole, including those matters brought to my attention by a member of the public, as it appeared to me that they may not conform with the requirements relation to admission arrangements.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the referral dated 26 May 2015 and subsequent communications from the referrer;
 - b. the school's response to the referral, supporting documents and further communications including responses to my questions;
 - c. Bristol City Council's (the local authority) composite prospectus for parents seeking admission to primary schools in the area in 2016; and the composite prospectuses for parents seeking admission to secondary schools in the area for September 2014 and 2015;
 - d. information on consultation about the arrangements;
 - e. copies of the minutes of the meeting at which the governing body, on behalf of the trust for the school, determined the arrangements;
 - f. a copy of the determined arrangements; and
 - g. a copy of draft amended arrangements not yet ratified by the trust.

Matters of Concern

5. The arrangements appear unclear in some aspects, which would mean they do not conform with paragraph 14 of the Code. There also appear to be other matters which may not comply with the Code. The aspects considered (the figure in brackets refers to the relevant paragraph of the Code if additional to paragraph 14) are:
 - a. consultation on changes to the arrangements (1.42);
 - b. the description of the right to a place for a child with a statement of special educational needs or education, health and care plan (EHCP) that names the school (1.6);
 - c. the possible lack of precision on how the home address is defined when applying the distance criterion when a child has two homes (1.13);
 - d. the lack of a final tie-breaker (1.8);
 - e. the information on any waiting list appears to say that the waiting list will be held until 31 October; and it is not clear how the waiting list will be applied with regard to banding arrangements (2.14);
 - f. the arrangements for admission to the reception year include

- banding arrangements being applied and do not describe the right to part-time and deferred entry (2.16);
- g. the arrangements do not appear to explain clearly the process for requesting admission out of the normal age group (2.17);
 - h. the banding arrangements for entry to the secondary provision may be unclear in several ways including: the definition of oversubscription (2.23); the apparent need for a child with a statement of education need or an EHCP, which names the school, to take the test (1.30); and the apparent need for children looked after or previously looked after to take the banding test to be allocated a place at the school (1.7);
 - i. the oversubscription criteria for the secondary phase appear insufficient (1.7); and
 - j. for admission to year 12 the arrangements appear to have an inaccurate published admission number (PAN) (1.2); the oversubscription criteria may not conform with the Code (1.8); information requested on the application form may be inappropriate (1.9a); and there are indications that an interview may be part of the admissions process (1.9m).

Background

6. Merchants' Academy was established as a secondary school in 2008 replacing a previous school. It became an all-through school for children aged between 3 and 18 in 2012. The arrangements combine arrangements for admission to the nursery, reception year, year 7 and year 12. Admissions to the nursery are outside of my jurisdiction and so I do not consider them in this determination. The PAN for the reception year is 60 and is 182 for year 7. The arrangements say that the school will admit up to 250 students for year 12 and year 13.
7. Every child who has made a first preference for the school for reception year or year 7 has been allocated a place at the school in 2013, 2014 and 2015, and there have been vacancies. The school has explained that there has been a surplus of places in the area and this is anticipated to continue for admissions for 2016. Paragraph 1.7 of the Code requires that, "*All schools **must** have oversubscription criteria for each 'relevant age group'*" so it is necessary for a school to have arrangements with oversubscription criteria which comply with the Code whatever the number of applicants.
8. The arrangements have '*general oversubscription criteria*' which are:
 - "2.1 *When the Academy is oversubscribed, priority will be given to the admission of students who meet the criteria set out below:*
 - (a) *students with Statements of Special Educational Needs where the Academy is named in the Statement.*
 - (b) *A 'looked after child' or a child who was previously looked after but immediately after being looked after became subject to an adoption, residence or special guardianship order 67. A looked after child is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in section 22(1) of the Children*

Act 1989).

(c) Children with a sibling attending the Academy at the time of application. Sibling is defined in these arrangements as children who live as brother or sister in the same house, including natural brothers or sisters, adopted siblings, stepbrothers or sisters and foster brothers and sisters."

9. This is followed by information on other matters relevant to admissions and then there is further information on oversubscription:

"2.5 Once the statutory oversubscription criteria have been applied, the additional criteria relevant to each phase will be adopted.

Nursery and Primary Phase

2.6 Priority for admissions will be given to children who live nearest to the Academy as the crow flies. Distances are measured from the main entrance of the child's home to the main entrance of the relevant phase.

Secondary Phase – Fair Banding

2.7 In order to ensure that the intake to the Academy represents the full range of ability, the Academy will use student banding as part of its admissions arrangements if the Academy is oversubscribed at secondary phase. Other than to determine the ability band into which a student will be placed, the assessment of a student's ability plays no other part in the admission arrangements for the Merchants' Academy. All applicants will be required to take a non verbal reasoning test and will be placed in one of five equal bands according to their test scores. The same number of students will be admitted to each band so each band represents 20% of the applicants. In the case of applications from multiple births (e.g. twins or triplets), if one sibling gains a place through the fair banding process, the second or third siblings will automatically be given a place.

2.8 To achieve an intake representative of the national ability range the bands will be criterion referenced relating to national figures.

2.9 Students with a Statement of Special Educational Needs, that name the Academy will be included in the band allocations. Children in Care and Siblings will also be included in the banding process.

2.10 The Academy may seek other evidence of a student's academic ability if (for acceptable reasons) he/she is not able to take the non-verbal reasoning test.

2.11 If places become vacant in a band, for example because parents accept offers of places at other schools, and no applicants in this band remains without a place, they will be evenly by students [sic] falling into the next nearest bands (i.e. the bands on either side, or below or above, if the first student is selected from the band above, the next will be selected from the band below."

10. Section 7 of the arrangements is headed "Arrangements for admission to reception/primary phase." 7.3 says, "The Academy will admit 60 students to the Primary Phase. Where the number of applications is greater than the published admission number the oversubscription criteria in paragraph 2.1 and 2.7[sic] will be applied."

11. Section 8 of the arrangements is headed, “Arrangements for admission to secondary phase” and says:

“8.1 Merchants’ All Age Academy will admit up to 182 students in total to Year 7 each September; 30 of these places will be allocated to all students in Year 6 currently in Merchants’ All Age Academy (Primary phase). If not all primary phase children transfer into Year 7 the places will be offered to external applicants up to the PAN.

8.2 In the event of the number of applications exceeding the number of places available, the Academy will use fair banding as part of its admissions arrangements in accordance with its Funding Agreement (see paragraph 2.8).”

12. Section 9 is headed “arrangements for admission to post 16 provision” and says:

“9.1 Merchants’ Academy will admit up to a maximum of 250 students in Year 12 and Y13, including the students who transfer from Year 11 of the Academy. In the event of there being more applicants for new admission to Year 12 the following factors will be taken into account:

- (a) The availability of courses which best suit the applicant’s preferences;*
- (b) The effective use of staff resources.*

9.2 Merchants’ Academy will publish specific criteria in relation to minimum entrance requirements for the range of courses available based upon GCSE grades or other measures of potential attainment. These will apply to both transfers from Year 11 and new admissions to Year 12.”

13. The school provided draft amended admission arrangements to me in October 2015; these have not been determined by the trust. The trust is permitted by paragraph 3.6 of the Code to make changes to its determined arrangements to comply with a mandatory requirement of the Code. Some of the matters that are detailed in this determination have been changed in the amended arrangements.

Consideration of Factors

14. As this is an all-through school with three relevant years of admission (reception year, year 7 and year 12) I have considered aspects that affect all applications first and then the further detail for each point of entry. Paragraph 14 of the Code sets the general requirement for all admission arrangements so that “*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*”

15. Paragraph 1.42 of the Code says, “*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following*

school year.” I note that, based on the information in the local authority’s prospectuses, the arrangements for 2014 included matters which were not in the arrangements for 2015 and 2016. This included the significant change of the removal of the catchment area. The school did not consult on this change and thus did not meet the requirements of the Code on consultation. The school has explained that this change to the published arrangements was unintentional and that the accurate arrangements were laid down in the school’s funding agreement.

16. Paragraph 1.6 of the Code says, “*All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted.*” The arrangements give a priority in the oversubscription criteria, but this is not the same as a guaranteed admittance which is what is required by the Code. The arrangements make no reference to EHCPs and so this is not clear. The school does not comply with the Code in these matters.

17. Paragraph 1.13 of the Code permits the use of distance as an oversubscription criterion or in other ways and says, “*Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.*” The arrangements explain that distance will be measured in a straight line from the main entrance of the home address to the main entrance of the school. However, they do not explain how home address is decided for children where there is shared parental responsibility and a child may be living at two addresses. The school does not comply with the Code in this regard.

18. Paragraph 1.8 of the Code says, “*Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*” There is no final tie-breaker, such as the use of random allocation, described in the arrangements and therefore the arrangements do not comply fully with the Code.

19. Paragraph 2.14 of the Code says, “*Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.*” The school’s arrangements say, “*Where in any year the Merchants’ Academy receives more applications for places than there are places available, a waiting list will be maintained by the Academy from 1 September to 31 October of the year to which the allocation applies.*” This does not comply with the Code as the waiting list is not maintained until 31 December.

20. Paragraph 2.16 of the Code says, “Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:
- a) that child is entitled to a full-time place in the September following their fourth birthday;
 - b) the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and
 - c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.” The arrangements do not make these rights clear and therefore the school does not comply with the Code.
21. Paragraph 2.17 of the Code explains the right of parents to request a place for their child outside of their usual age group and says, “Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.” The arrangements contain some information on this matter but it refers only to children born in the summer and the entry to reception year and therefore the school does not comply with the Code.
22. The secondary school aspect of the arrangements includes allocation of places by banding. Banding is a form of selection permitted by the Act and the Code. A banding approach was originally part of the funding agreement for the school in 2006 which says, “all applicants will be tested prior to KS2 (key stage 2) results using a test such as the NFER non-verbal reasoning test and will be placed into one of five ability bands with the same number of applicants in each band.” The school continues to use banding in its oversubscription criteria on the basis of the national ability range using a non-verbal reasoning test, but explained that it has not been oversubscribed and so it has not applied banding.
23. Paragraph 1.6 of the Code says, “The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied.” The school has told me that it knows in advance that it will not have to apply its oversubscription criteria through reliable area forecasts from the local authority. Data provided by the local authority shown in table 1 for applications in 2013, 2014 and 2015 admissions indicate that the school has not been oversubscribed with highest preference applications.

Table 1: the number of preferences expressed for the school 2013, 2014 and 2015

Year	1 st Preference	2 nd Preference	3 rd Preference	Total
2013/14	108	69	42	219
2014/15	153	60	27	240
2015/16	135	53	40	228

24. The school has information that leads it to believe that the school will not reach its PAN of 182 for year 7 admissions in 2016, however every family can express up to three preferences and then, as paragraph 15d of the Code says *“When oversubscribed, a school’s admission authority **must** rank applications in order against its published oversubscription criteria and send that list back to the local authority.”* In terms of the Code the school is oversubscribed when it sees the applications; it must therefore apply its oversubscription criteria and it cannot do that if it does not have the results of the banding tests. The school does not comply with the Code in this regard. The arrangements overall concerning banding are not clear in several ways and so do not comply with the Code.
25. The arrangements say in paragraph 2.9, *“Students with a Statement of Special Educational Needs, that name the Academy will be included in the band allocations. Children in Care and Siblings will also be included in the banding process.”* It is not clear what this means. Paragraph 1.30 of the Code says, *“Children with statements of special educational needs or Education, Health and Care Plans may be included in banding tests and allocated places in the appropriate bands but, regardless of any banding arrangements, they **must** be allocated a place if their statement or Education, Health and Care Plan names the school.”* The arrangements do not make it clear that a child with a statement of educational needs or an EHCP that names the school **must** be allocated a place whether or not they have taken the test. Similarly, looked after and previously looked after children cannot be required to take any banding test, but must be allocated a place.
26. Paragraph 1.7 of the Code says, *“All schools **must** have oversubscription criteria for each ‘relevant age group’.”* Reception year, year 7 and year 12 are the relevant age groups for this school. The same general oversubscription criteria are applied for these points of entry and, after looked after and previously looked after children the next priority is for siblings of existing students. For reception year the next priority is based on distance as follows, *“Priority for admissions will be given to children who live nearest to the Academy as the crow flies. Distances are measured from the main entrance of the child’s home to the main entrance of the relevant phase.”* This appropriately creates a

priority beyond siblings of existing students for entry to reception year. No such additional oversubscription criterion exists for entry into year 7. Banding requires oversubscription criteria to differentiate when any band has more applicants than places and so criteria beyond consideration of siblings are needed. The arrangements are unclear and so do not conform with the Code.

27. Paragraph 1.2 of the Code defines Year 12 as a point of entry where, as is the case here, *“the school admits external applicants to the sixth form.”* Admission arrangements are therefore required for year 12, including setting a PAN for year 12 for external applicants. The arrangements say, *“Merchants’ Academy will admit up to a maximum of 250 students in Year 12 and Y13, including the students who transfer from Year 11 of the Academy.”* This describes the capacity for the sixth form, and there is no PAN for external students. The arrangements do not conform with the Code in this regard.
28. The oversubscription criteria for year 12 could be presumed to begin with the general admissions criteria as referred to above, but this is not made clear. The arrangements say, *“In the event of there being more applicants for new admission to Year 12 the following factors will be taken into account:*
- (a) The availability of courses which best suit the applicant’s preferences;*
 - (b) The effective use of staff resources.”*

The school explained to me that it had a small sixth form and so there was a consideration needed of what courses students wanted to follow and what could be made available. Paragraph 1.8 of the Code says that *“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.”* These arrangements are not clear or objective and so do not conform with the Code.

29. The application form for entry into year 12 asks for unnecessary information such as gender and *“Do you currently have any ideas about your future career choices?”* This information would not be necessary to apply any oversubscription criteria and so does not conform with paragraph 2.4 of the Code which requires that additional information should only be requested when it has a direct bearing on applying the oversubscription criteria. The form says, *“Following submission of this form you will receive a letter of acknowledgement and may be called for an interview.”* Paragraph 1.9m of the Code says admission authorities **must not**, *“interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.”* The school has told me that any interview does conform with paragraph 1.9m of the Code, but this will not be clear to a prospective student or parent reading the form.

30. The combined arrangements for entry for reception year, year 7 and year 12 are not clear so it is not easy to look at the arrangements and understand easily how places will be allocated. The Code requires arrangements to be clear.

Conclusion

31. The arrangements for the school have three points of entry: reception year, year 7 and year 12. The arrangements are not clear, as detailed above, in several matters including the oversubscription criteria and how banding is used. There is other information that is missing from the arrangements, such as information about the right to part-time education in the reception year, and a final tie-breaker.

Determination

32. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the Merchants' Academy Trust for Merchants' Academy, Bristol. I determine that there are matters which do not conform with the requirements relating to admission arrangements.

33. 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 by 28 February 2016

Dated: 25 November 2015

Signed:

Schools Adjudicator: Mrs Deborah Pritchard