



DETERMINATION

Case reference: ADA3058

Referrer: Sefton Council

Admission Authority: The Academy Trust for Tarleton Academy,
Lancashire

Date of decision: 20 May 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined for Tarleton Academy for admissions in September 2017.

I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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 of the date of this determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of the Schools Adjudicator (OSA) by a representative of Sefton Council (the objector) about the 2017 admission arrangements (the arrangements) of Tarleton Academy (the school), an academy school for boys and girls aged 11 to 16 years in Preston, Lancashire. The referral concerns the lack of consultation before five Sefton primary schools (the Sefton schools) were named as feeder schools in the arrangements. Tarleton Academy is located in the area of Lancashire County Council (the local authority).

Jurisdiction

2. The terms of the academy agreement between the academy 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. The arrangements were determined on 8 December 2015 by the governing body on behalf of the trust, which is the admission authority for the school, on that basis.

3. The objection was received on 9 March 2016. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code) in force now and the earlier version of the Code in force in 2010 and 2011. I have taken account of the provisions of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) and the School Admissions (Admission Arrangements) (England) Regulations 2008 which were in force in 2010 and 2011.

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

- a. the objector's form of objection and subsequent correspondence including Sefton parental preferences data for the period 2010 to 2016;
- b. the 2017 determined arrangements published on the school's website;
- c. the school's response to the objection, supporting documents and subsequent submissions;
- d. the minutes of the meeting at which the governing body determined the 2017 arrangements; and
- e. the local authority's submission including allocations data for the period 2014 to 2016.

6. I arranged a meeting at the school with the objector, and representatives of the school and the local authority on 28 April 2016. The meeting was constructive. I have also had regard to the representations made to me at the meeting and the correspondence submitted afterwards.

The Objection

7. The objection relates to the lack of consultation before the Sefton schools "*Churchtown, Marshside, Larkfield, Norwood Road and St John's Crossens Primary Schools*" were named in the arrangements at oversubscription criterion 6. The objection does not concern the other three primary schools named in criterion 6 which are located in Lancashire. As the admission authority for the Sefton schools, the objector is concerned that the arrangements were determined without the consultation required by paragraph 15 of the Code.

Other Matters

8. When I reviewed the arrangements as a whole, I noted that some other aspects appeared not to conform with the requirements relating to admissions. The aspects that appeared not to comply with the Code (relevant paragraph in brackets) include:

- the published deadlines for consultation (1.42 and 1.43), determination and publication (1.46 and 1.47) and the waiting list (2.14);
- the inclusion of children with statements of special educational needs as an oversubscription criterion (1.6);
- the lack of clarity about how distance will be measured (1.13); and
- by referring in the oversubscription criterion 7 to other children living in Lancashire or Sefton, the arrangements may suggest that children living in other areas cannot apply to the school (15(d)).

Background

9. Tarleton Academy is a comprehensive school for boys and girls aged 11-16 years with a published admission number (PAN) of 150. The funding agreement confirms that the school has a planned capacity of 750 pupils. On its website, the school says its ethos is *“to encourage all children to achieve their potential through: high expectations; good behaviour; a curriculum which engages all children; an emphasis on developing effective learning strategies and a commitment to extending the skills of its employees as forward thinking educators.”* Admissions data from the local authority shows that the school has not been oversubscribed in recent years, and the school has confirmed that the oversubscription criteria have not yet had to be used.

10. The school converted from community status to become a foundation school with a foundation (commonly known as a trust school) on 1 January 2009, and then changed status again to become a state-funded, independent academy school on 1 January 2012. The current headteacher took up post in September 2011 and there is a new chair of governors since the school became an academy.

11. The 2017 arrangements published on the school’s website at the time of the objection say that if there are more applications than the 150 places available in Year 7, places will be allocated according to the oversubscription criteria which I have summarised below:

- 1) Children looked after and previously looked after children;
- 2) Children with a statement of special educational needs that names the school;
- 3) Children who have specific medical, social needs or special needs;
- 4) Siblings of children on the school roll at the time of admission;
- 5) Children living in the geographical priority area (GPA) or attending one of the primary schools in the GPA;

- 6) Children attending Little Hoole Primary, Longton Primary, Bretherton Endowed C of E, Churchtown, Marshside, Larkfield, Norwood Road and St John's Crossens Primary Schools;
- 7) Any other children living in areas served by either Lancashire County Council or Sefton Council whose permanent address is closest to the school. Distance will be measured as a straight line from home to school using the local authority computerised measuring system.

In the event that the distance between two applicant's homes and the school is the same, random allocation operated by the local authority will be used as the final tie breaker to decide which applicant has the highest priority for the final place

12. The objector said it was during the consideration of an appeal about home to school transport for a Sefton pupil to attend Tarleton Academy in the 2015/16 academic year that the objector discovered the Sefton schools had been named in the arrangements. The objector said *"it was a complete surprise to find that these schools were included in the admission arrangements for an Academy School located close to the boundary for Sefton Local Authority."* The objector was concerned that, as the admission authority for the Sefton schools, it had not been consulted before they were named as feeder schools. As the deadline for making an objection to the arrangements for admission in September 2016 had expired, the objector said it had contacted the school to request information about the consultation process that had taken place before the Sefton schools were included in the arrangements but had received no reply. When the Sefton schools were named again as feeder schools at criterion 6 of the 2017 arrangements, and there had been no consultation before this was done, the objector submitted a formal objection to the OSA.

Consideration of Case

13. The objection concerns the lack of consultation before the Sefton schools were named in the arrangements as feeder schools at oversubscription criterion 6, in contravention of paragraph 15(b) of the Code which requires that *"where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements."*

14. The Code at paragraph 15(b) of the Code summarises the requirements for consultation and further detail is provided at paragraphs 1.42 to 1.45. Paragraph 15(b) states that *"where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements. If no changes are made to admission arrangements, they **must** be consulted on at least once every 7 years."* The purpose of consultation is so that parents, admission authorities, the local community and other interested parties have the opportunity to consider the proposed admission arrangements and submit their views. Similar provisions were made in the previous versions of the Regulations and the Code in force in 2010 and 2011 and this is pertinent because the priority for children attending the Sefton schools was first published in the 2011 arrangements.

15. The school said that paragraph 15(b) of the Code requires admission authorities to consult only when changes are proposed to admission arrangements.

As no changes were proposed, no consultation was required before the 2017 arrangements were determined. The school said that there had been no changes since the priority for the Sefton schools was introduced.

16. As the school said the change to name the Sefton schools first appeared in the 2011 arrangements, I asked for evidence of the public consultation which should have been conducted in the year before the 2011 arrangements were determined. The school said it thought there had been a consultation about the proposal to name the Sefton schools, and that Sefton Council would have been consulted. However, neither the Chair of Governors nor the headteacher was in post at the time and I have not been provided with any evidence of consultation. The objector confirmed it had not been consulted before the change was published in the 2011 arrangements.

17. I acknowledge the considerable efforts made by the school and the local authority to find historical documentation relating to the change in the arrangements which named the Sefton schools. Having reviewed the evidence available, it seems there was a consultation process in May 2008 which did include Sefton Council but it related to the proposed change to trust status. As the school's admission arrangements at that time did not include a priority for the five Sefton schools, this consultation was not about the change which named the Sefton schools as feeder schools.

18. There is evidence of discussions by the governing body on several occasions about the need to have a public consultation process about the proposed change to include the Sefton schools, but no evidence that the required consultation ever took place. The objector maintains that *"at no point has Sefton Local Authority been consulted on the addition or inclusion of these primary schools in to the admission arrangements for Tarleton Academy..."*

19. It could be that after seven or more years the school may simply not have retained the evidence of any such consultation process, but this seems unlikely as so much documentation from the relevant period has been found. It is clear and accepted by all the parties that the school's determined and published arrangements for every year since at least 2011 have included at oversubscription criterion 6 the priority for children who have attended the Sefton schools.

20. Irrespective of whether or not there was a consultation process seven years ago, the Code at paragraph 15(b), reflecting the requirements of the Regulations, specifies that even *"if no changes are made to admission arrangements, they **must** be consulted on at least once every 7 years..."* As the same arrangements have been determined unchanged each year since 2011, and there has been no consultation in any of those years, the school will, in any case, need to consult before determining its arrangements for 2018.

21. The school does not appear to have publicly consulted before naming the Sefton schools as feeder primary schools. The school did not meet the requirements for consultation set out in the earlier versions of the Regulations and the Code in force at that time. On that basis I uphold the objection.

22. I have also used my power under section 88I of the Act to consider the arrangements as a whole and whether they conform to the requirements relating to admissions. I considered first the inclusion of the Sefton schools as feeder schools in the oversubscription criteria. The Code states at paragraph 1.9(b) that *“it is for admission authorities to formulate their admission arrangements, but they **must not** take into account any previous schools attended, unless it is a named feeder school”* and specifies further at paragraph 1.15 that *“the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”*

23. The Sefton schools have been named in oversubscription criterion 6 and their inclusion is transparent. However, the Sefton schools are located some five to eight miles from Tarleton Academy. The further question to consider is whether the selection of the Sefton schools was based on reasonable grounds.

24. At the meeting I asked why the Sefton schools had been named in the arrangements at oversubscription criterion 6 as they are not close to the school. The school said it is not unusual for their pupils, even those residing in the GPA, to travel some distance to get to school. The headteacher and chair of governors explained they had not been in post when it was decided to include the five Sefton schools in the arrangements but it was their belief that the schools had been included at the request of parents who did not live in the GPA, and that children had been transferring from these schools at Year 7 for a number of years.

25. The objector thought it unlikely that the inclusion of the Sefton schools was based on requests from Sefton parents because few Sefton parents in the last few years had nominated Tarleton Academy as one of their three preferences in their application for a secondary school place. After the meeting the objector supplied the preference data for Sefton parents for the period 2010 to 2016 which shows that only a small proportion of Sefton parents had expressed any preference at all for a place at Tarleton Academy in the last seven years. Furthermore, less than one per cent of Sefton parents had nominated Tarleton Academy as their first preference for a secondary school in the period and the parents of children at one of the named schools, Norwood Primary School, had never nominated Tarleton Academy as their first preference in the seven year period.

26. The headteacher said the school visited the Sefton schools as part of the transition process, and had recently begun to work with the Sefton schools as part of its academy outreach programme, for example, to provide enrichment activities for gifted and talented children. The headteacher also said that from the number of parental enquiries on open days, she expected an increase next year in the number of Sefton parents expressing a preference for the school.

27. The local authority provided admissions data which showed that the school has been undersubscribed for several years and confirmed that there are insufficient children residing in the GPA to fill the places available in Year 7. There are 150 places available in Year 7, but the data from the local authority shows that, after each admission round, 30 or more places are unfilled. I am not persuaded that this justifies naming the Sefton schools as feeder schools. Paragraph 15 of the Code sets out a fundamental principle of admission arrangements, that parents choose

schools and that any school (other than a grammar school) which has places available must admit all who would like to go there. There is no reason why a parent whose child attends one of the Sefton schools should not apply for a place at Tarleton Academy and, as things stand, the school is not oversubscribed and a place would be offered. However, as noted above, the Sefton schools are some distance from the school and there are a number of other primary schools which are closer or at a similar distance and for which there is no priority given. Should the number of applicants increase, I do not consider that a case has been made for giving a priority to those who attend the five Sefton schools rather than other primary schools. At the meeting there was a constructive discussion about including a review of the GPA as part of the consultation process which must be undertaken before the 2018 arrangements are determined.

28. At the meeting I also raised with the school the aspects of the arrangements below which appeared to me to contravene the Code (relevant paragraph in brackets) and could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code.

29. Although documentation showed that the school had gone to considerable effort recently to amend the arrangements, I noticed that an out-of-date reference document had been used for the updates so that the published deadlines with respect to consultation (1.42 and 1.43), determination and publication (1.46 and 1.47) and the waiting list (2.14) do not comply with the Code. I also drew the school's attention to sections of the arrangements which are not required. The school accepted that the arrangements had become lengthy as information had been added but little removed over recent years. The school readily agreed to work with the local authority to review the arrangements and make the necessary amendments to comply with the Code.

30. Oversubscription criterion 7 relates to the distance from home to school, but the measurement of distance lacks the clarity required by paragraph 1.13 of the Code and it is not clear whether the "*system*" refers to that used by Lancashire County Council or to the system used by Sefton Council. The school confirmed that all measurements would use the Lancashire County Council system, and agreed to work with the local authority to ensure the wording of criterion 7 complies with the Code. Linked to this point, by referring in criterion 7 to other children living in Lancashire or Sefton, the arrangements might be taken to mean that children living elsewhere could not apply for a place at the school. This would contravene paragraph 15(d) of the Code which makes clear that "*a parent can apply for a place for their child at any state-funded school in any area. If a school is undersubscribed, any parent that applies **must** be offered a place.*"

31. The reference regarding children with a statement of special educational needs which names the school is not an oversubscription criterion, as the Code at paragraph 1.6 requires that all such children **must** be admitted. The school agreed to relocate the reference from the oversubscription criterion to an earlier part of the arrangements. In doing so, the school will need to update the wording to include a reference to children with education, health and care plans which are replacing statements of special educational needs.

Conclusion

32. I have upheld the objection for the reasons given. As required by the Regulations, and paragraph 15 of the Code, the school must publicly consult before determining the 2018 admission arrangements and the consultation process must comply with the requirements detailed at paragraphs 1.42 to 1.45 of the Code.

33. I have also identified other ways in which the arrangements do not comply with the requirements relating to admissions, which the school has acknowledged and has agreed to address. With respect to these other matters, the arrangements must be revised within two months.

Determination

34. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined for Tarleton Academy for admissions in September 2017.

35. I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

36. 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 of the date of this determination.

Dated: 20 May 2016

Signed:

Schools Adjudicator: Ms Cecilia Galloway