



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA 3178

Objector: Wakefield Council

Admission Authority: The Governing Body of St Helen's Primary School, Hemsworth, Wakefield acting on behalf of the Directors of the Enhance Academy Trust previously known as the Wakefield Diocesan Academies Trust, Wakefield.

Date of decision: 21 October 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for St Helen's Primary School acting on behalf of the Directors of the Enhance Academy Trust previously known as the Wakefield Diocesan Academies Trust, Wakefield.

I have also considered the arrangements in accordance with section 88I(5) and find 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 the determination.

The referral

- Under section 88H (2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Wakefield Council (the objector), about the admission arrangements for September 2017 (the arrangements) for St Helen's Primary School, Hemsworth, Wakefield (the school), an academy for children aged 3 to 11. The school is designated as having a religious character; it is a Church of England school within the

Diocese of West Yorkshire and the Dales. The objection is to the higher priority given in the oversubscription criteria to children who live outside the catchment area and have attended the academy's lower foundation stage (that is, its nursery) over those children who live outside the catchment area and who have brothers and sisters in attendance at the academy.

Jurisdiction

2. The terms of the academy agreement between the multi-academy trust (MAT) 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 on behalf of the academy trust, which is the admission authority for the school, on that basis.
3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:
 - a) the objector's form of objection dated 12 May 2016;
 - b) the academy trust's response to the objection and supporting documents;
 - c) the response from the Diocese of West Yorkshire and the Dales (the Diocese) to the objection and supporting documents;
 - d) the academy funding agreement;
 - e) maps of the area showing parish boundaries and catchment area;
 - f) the LA's composite prospectus for parents seeking admission to the school in September 2016;
 - g) confirmation of when consultation on the arrangements last took place;
 - h) copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - i) a copy of the determined arrangements.

The Objection

4. The objection concerns the amendment of the previous arrangements which introduced a new oversubscription criterion in the arrangements for September 2017. The new criterion gives a higher priority to "*children who have attended the academy's lower foundation stage at the time of application*" above "*children who live outside the catchment area who have brothers and sisters in attendance the academy*". The objector states that the arrangements for admission in September 2017 contravenes paragraph 1.8 of the Code as "*it would indirectly disadvantage children from particular social groups who are unable to access nursery provision*".

5. The objector expresses the view that the arrangements will make parents of non-catchment children who have older children already in attendance at the school feel “duty bound” to take their younger children to the nursery provision. The objector goes on say that if parents do not want their children to attend the nursery provision they are decreasing their chances of gaining a place at the school because children who have attended the nursery will have a higher priority. The objector thinks this will “split” families with established sibling links to the school whilst giving higher priority to other children with no sibling in attendance at the school.

Other Matters

6. I have reviewed the arrangements as a whole and believe that the following elements may not conform with the Code;
- the availability of the Supplementary Information Form (SIF);
 - the absence of reference to children whose Education, Health and Care (EHC) plan names the school;
 - the absence of reference to previously looked after children;
 - the availability of information concerning parish and catchment area boundaries;
 - the lack of a tie breaker to decide between two applications that cannot otherwise be separated; and
 - the clarity of criterion ten in the oversubscription criteria.

Background

7. The school is an academy primary school for 3 to 11 year olds in Hemsworth, Wakefield. It became part of a multi-academy trust in 2013. The trust at that time was the Wakefield Diocesan Academy Trust (WDAT) and has since changed its name to the Enhance Trust. The school has a Church of England religious designation and is within the Diocese of West Yorkshire and the Dales. The school has a nursery provision which is described as the Lower Foundation Stage. This is an established part of the school and is run by the school. The published admission number (PAN) for reception (YR) is 35. The school has been undersubscribed for the last three years and all those applying as a first preference for the school have been admitted. The number on roll at the school is 192 and it has a capacity of 270. A consultation process on the new arrangements took place between 9 November 2015 and 20 December 2015 and the governing body determined the arrangements on behalf of the trust at a meeting on 28 January 2016. The oversubscription criteria can be summarised as:

- 1) Looked after children.
- 2) Attendance at regular worship defined as; ‘at the heart of the

church' or 'attached to the church'. [Suitable objective definitions of these terms are included in line with the Diocesan guidance.]

- 3) A child whose parents have moved to become resident in the parish of Hemsworth having been on the Electoral Roll of another Anglican parish.
- 4) A child whose parents/guardian reside in the parish and are members of another Christian church.
- 5) Siblings of children who live in the catchment area.
- 6) Other children who live in the catchment area.
- 7) Other children with priority being given to those who have attended the Academy's Lower Foundation Stage at the time of application.
- 8) Siblings of children who live outside the catchment area.
- 9) Any other children residing outside the parish
- 10) Other children.

The seventh criterion is the main subject of this determination.

8. In the last three years the school has been consistently undersubscribed with all children applying to the school as a first preference being admitted to the school. This includes children who have attended the nursery who live within and outside the catchment area.

Consideration of Case

9. In its response to the objection the trust said that it believed the addition of the new criterion did not contravene paragraph 1.8 of the Code which says "*Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and those other policies around school uniform or school trips do not discourage parents from applying for a place for their child.*"
10. The trust said that the change was made following a review of existing admission patterns and taking into account the views of parents from outside the catchment area who wanted their children to attend the school. The Trust states that it made the change to make the academy more inclusive and more attractive to the communities it serves. It went on to say that the new priority will strengthen links with families and help to secure a continuous and stable education for pupils as attendance at the nursery will secure attendance at the school. It suggests that the new criterion will provide reassurance for parents of pupils attending the nursery and will provide additional stability for the pupils as it allows academy staff to establish good relationship with the pupils

and parents.

11. The Trust is adamant that it could find “*no example of an outside of catchment area pupil who had a sibling at the school who did not voluntarily attend the lower foundation stage and therefore all pupils in this category have been admitted.*” This has certainly been the case for the last three years as undersubscription has meant that all children applying have been allocated a place at the school. The oversubscription criteria only come into operation when there are more children applying than there are places. The objector is concerned that, should the situation change and the school become oversubscribed, then the oversubscription criteria will be unfair. If the school is oversubscribed after all catchment area children have been admitted, then children who live outside the catchment area and who are attending the nursery will be given priority over those living outside the catchment area who have a brother or sister in the school and who have not attended the nursery. The school has made the decision to place attendance at the nursery as a higher priority than siblings at the school for those living outside the catchment area. The objector believes that the new arrangements would be unfair to out of area children not attending the nursery but with sibling in the school.
12. The Trust concludes by stating that it cannot think of an example where a younger child with an older sibling at the school has not been admitted to the school. The Trust says it is “*struggling to understand why a parent would send an older child to St Helen’s and then choose not to send a younger child to lower foundation stage – if this was going to be the case we would expect the parent to be looking to find an alternative place for the older child.*”
13. The Code does not explicitly prohibit using attendance at a nursery as an oversubscription criterion. It does give specific permission in paragraph 1.39B for oversubscription criteria to include such priority for a restricted group of children attending a restricted type of pre-school provision; “*Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium or the service premium who: a) are in a nursery class which is part of the school; or b) attend a nursery that is established and run by the school. The nursery must be named in the admission arrangements and its selection must be transparent and made on reasonable grounds.*”
14. Criterion 7 of the oversubscription criteria does not give preference for the categories of pupil premium pupils identified in paragraph 1.39B but covers all those children who have attended the nursery. The objector believes that the criterion contravenes paragraph 1.8 because it would indirectly disadvantage children from particular social groups who are unable to access nursery provision. I have received no evidence of this but the positioning of the criterion above the out of area siblings leads me to test the fairness of the arrangements against paragraph 14 of the Code which states 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.*”

15. Although it is part of the school it is important to record that priority for admission from the nursery cannot be considered on the basis of the nursery being a named feeder school as provided for in paragraph 1.15 of the Code. (“*Admission authorities may wish to name a primary or middle schools as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be “transparent and made on reasonable grounds.”*”)
16. I have noted above the trust’s statement that it struggles to understand “why a parent would send an older child to St Helens and then choose not to send a younger child to lower foundation stage”. In fact, there are many reasons why a parent may choose not to send a child to a particular nursery even if an older sibling is at the school of which the nursery is part. They may have other arrangements or childcare within the family or employment or they may choose not to send their child to nursery on educational grounds, they may also not send them to nursery because of the cost of transport or uniform. In this case, the families may choose to send their pre-school children to more local provision. These would be entirely valid and reflect also the fact that nursery provision is not compulsory. A parent may have good reasons for choosing a different or no nursery and yet wish their child to attend St Helens from YR. I find the trust’s statement that if a parent does not choose to send a younger child to its nursery that “we would expect the parent to be looking to find an alternative place for the older child” perplexing in this context. I also consider that the trust’s approach could place inappropriate pressure on families to send their children to the nursery so that they may have an enhanced chance of gaining a place in YR.
17. The introduction and positioning of the new criterion reinforces the trust’s stated view that all siblings of children in the school who live outside the catchment areas should attend the nursery if their parents wish them to subsequently attend the school. This implies requirement of attendance at the nursery. This is unfair to those families who choose not to send their children to the nursery for whatever reason.
18. The current criteria rightly place all catchment area children above those living outside the catchment area. This determination is concerned only with a situation when the school is oversubscribed and only to the criteria which refer to out of area children who either do or do not attend the nursery and may have siblings at the school. Out of area families seeking admission to the school are dependent on places being available after all catchment area children have been admitted. The introduction of the new criterion as a priority over out of area children with a sibling attending the school, prioritises children who attend the nursery and would decrease the priority for those families with younger children who do not attend the nursery but with older children who attend the school. I am therefore of the view that the introduction of the new criterion above children living outside the catchment area but with a sibling in the school, would be unfair as it would apply pressure to these families to send their younger children to the nursery as failure to do so would decrease their chances of gaining a place for the sibling. This would inevitably lead to younger child (who has not attended the nursery) attending

a different school. The objector suggests that this would ‘split families’ and it would certainly mean that families would have siblings attending different schools.

19. I have concluded that the positioning of the seventh oversubscription criterion above out of area children with a sibling in the school is unfair and contrary to paragraph 14 and I therefore uphold the objection.

Other Matters

20. In correspondence with the school I have outlined a number of issues relating to the admission arrangements. The school has indicated that it is keen to comply with the law and the Code. There were six areas of non-compliance;

- the availability of the Supplementary Information Form (SIF); paragraph 14 of the Code says that *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*. Reference to the SIF in the arrangements signposts parents to collect a form from the school. This is not sufficiently clear for parents who are not aware of what the form requires them to do. Footnote 4 to paragraph 5 of the Code defines admission arrangements and states that they mean *“the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered”* The SIF is clearly part of the admission arrangements of this school and it must be published on the website in accordance with the requirements of paragraph 1.47 of the Code. In order to conform with the Code the SIF needs to be published with the arrangements.
- the absence of reference to children whose Education, Health and Care (EHC) plan names the school; paragraph 1.6 of the Code says that *“All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted”*. The arrangements make no reference to EHC plans and this requires amendment.
- the absence of reference to previously looked after children; paragraph 1.7 of the Code states that *“All school **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order”*. The arrangements make no reference to previously looked after children and this requires amendment.
- the availability of information concerning parish and catchment area boundaries; paragraph 14 of the Code says that *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*. This information is part of the admission arrangements (as is the SIF as noted above) as it too falls within the

definition in footnote 5 and is subject to the requirements as to publication. Reference to the boundaries in the arrangements signposts parents to maps held at the school. This is not sufficiently clear for parents and does not meet the Code's requirements for publication of the admission arrangements. In order to conform with the Code these maps need to be published with the arrangements.

- the lack of a tie breaker to decide between two applications that cannot otherwise be separated; paragraph 1.8 of the Code states that "*Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated*". The arrangements do not have such a tie-breaker and this requires amendment.
- the clarity of criterion ten in the oversubscription criteria; criterion ten in the arrangements simply reads "*Other children*". Criterion 9 refers to children residing outside the parish of Hemsworth. The school has two priority areas; its catchment and its parish and these are different geographically. Catchment area children are included at criterion 6 and those living in the parish and attending church are included at criterion 2. The difference between criteria 9 and ten is unclear and therefore contrary to paragraph 14 of the Code which states 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*". This requires amendment.

Summary of Findings

21. The Code specifically permits schools to use attendance at a nursery as an oversubscription criterion in a limited range of circumstances. None of those circumstances is met in this case so I tested the criterion against the Code's requirement for fairness in paragraph 14, I have concluded that the positioning of the new criterion above children who have siblings in the school is not fair. I therefore uphold the objection.
22. In addition I have identified six areas within the arrangements which do not conform with the Code and require amendment.

Determination

23. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for St Helen's Primary School acting on behalf of the Directors of the Enhance Academy Trust previously known as the Wakefield Diocesan Academies Trust, Wakefield.
24. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

25. 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 the determination.

Dated: 21 October 2016

Signed:

Schools Adjudicator: Ann Talboys