



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3328

**Objector:** The headteacher on behalf of the Governing Body of South Wirral High School

**Admission Authority:** The Governing Body of Neston High School

**Date of decision:** 17 August 2017

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018, determined by the Governing Body for Neston High School, Cheshire West and Cheshire.**

**I uphold the aspect of the objection concerned with the consultation carried out before the arrangements were determined. I do not uphold the aspect of the objection relating to the determined arrangements themselves.**

**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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 12 September 2017.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the headteacher on behalf of the Governing Body of South Wirral High School, a foundation school (the objector), about the admission arrangements (the arrangements) for Neston High School (the school), an academy school for children aged 11 to 18, for September 2018.

The objection is to additions to the list of feeder schools.

2. The local authority for the area in which the school is located is Cheshire West and Chester. The local authority is a party to this objection. Other parties to the objection are the governing body of the school and the objector.

### **Jurisdiction**

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 12 May 2017. 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).
5. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 12 May 2017;
  - b. the admission authority's response to the objection and supporting documents;
  - c. the comments of the local authority on the objection and supporting documents;
  - d. the composite prospectuses of Cheshire West and Chester local authority and Wirral local authority for parents seeking admission to schools in these areas in September 2017;
  - e. maps of the area identifying relevant schools;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. copies of the minutes of the meeting at which the governing body of the school determined the arrangements and of other meetings of the governing body and its committees;
  - h. data supplied by the school and the objector showing the numbers of preferences and allocations made to each school in 2016 and 2017; and

- i. a copy of the determined arrangements.

## The Objection

6. In its admission arrangements for 2017 Neston High School listed three additional feeder schools, attendance at which would give priority for admission in accordance with the oversubscription criteria summarised below. All of these schools are situated in the area of Wirral local authority and two, Raeburn Primary and Poulton Lancelyn Primary, are situated close to the objector's school. According to the objector,

*"Historically, those two primary schools have sent the overwhelming proportion of students to Wirral secondary schools, including South Wirral High School... It is not clear for what reasonable and logical reason that Raeburn and Poulton Lancelyn have been named as "feeder" schools, whilst others have been omitted."*

Although he does not refer specifically to the Code at this point, the paragraph that is relevant to this part of the objection is 1.15, which reads as follows:

*"The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds."*

7. The objector also says that the consultation undertaken by the school did not meet the requirements of the Code. In its arrangements for 2018, two further primary schools were added to the list of feeder schools so consultation was necessary in respect of both the 2017 and 2018 arrangements, as in each case they had changed from the previous year. The objector says that neither his school nor Wirral local authority was consulted at any point, as he believes is required by paragraph 1.44 of the Code. In fact, I am unable to consider the part of the objection about the consultation that preceded the change to the arrangements for 2017 as my jurisdiction is limited to the arrangements for 2018 (the deadline for objections to the 2017 arrangements having been 15 May 2016). I am able to consider the objection to consultation about the 2018 arrangements.

## Other Matters

8. When I considered the arrangements as a whole I noted that the definition of previously looked after children did not reflect the introduction by the Children and Families Act 2014 of child arrangement orders, which replace residence orders. I also noted that the arrangements are incorrectly headed "2017-18", despite clearly stating that they apply to admission in September 2018.

## Background

9. Neston High School is located in the north-western corner of the area of Cheshire West and Chester local authority. The northern edge of its "local catchment zone" is formed by the boundary with the area of Wirral local authority. South Wirral High School, whose headteacher is

the objector, is close to the boundary between the two local authority areas.

10. In its determined arrangements for 2018, the Published Admission Number (PAN) for Neston High School is 270. This figure is the same as that determined for September 2017, when 300 places were allocated, as they also were in 2016. The school has confirmed its intention is to admit 300 pupils in 2018. The oversubscription criteria for 2018 can be summarised as follows:

- i) Looked after children and previously looked after children.
- ii) Children with medical or social reasons for attending the school.
- iii) Children with a sibling at the school.
- iv) Children living in the catchment area.
- v) Children attending a feeder school.
- vi) Children of staff.
- vii) Children living nearest to the school.

If the school cannot allocate places to all children within a criterion, the criteria that follow it are applied to determine priority for admission. Within each group thus created, pupils are then ranked by their distances from the school. If a final tie-breaker is required for children who cannot otherwise be differentiated, random allocation by drawing lots takes place.

11. For admission in September 2017, the school was made a preference by a total of 688 applicants, including 346 first preferences. This table shows on what basis the 300 places were allocated. The school was able to offer places to all siblings and to all children living in the catchment zone (criteria (iii) and (iv)) but has provided information as to how these criteria would have been sub-divided had it been necessary to do so. This illustrates how the oversubscription criteria operate.

**Table One: Oversubscription criteria and allocation of places in 2017**

<b>Criterion</b>	<b>Places allocated</b>
<i>Statement of Special Educational Needs or Education, Health and Care Plan</i>	4
i) Looked after and previously looked after children	2
ii) Medical or social reasons	0
iii) + iv) + v) Siblings living in catchment and attending a feeder school	45
iii) + iv) Siblings living in catchment not attending a feeder school	6
iii) + v) Siblings not in catchment attending a feeder school	25
iii) Siblings neither in catchment nor attending a feeder school	23

<b>Criterion</b>	<b>Places allocated</b>
iv) + v) Non-siblings in catchment and attending a feeder school	55
iv) Non-siblings in catchment not attending a feeder school	18
v) Non-siblings not in catchment attending a feeder school	104
vi) Nearest the school	18
<b>TOTAL</b>	<b>300</b>

12. The determined arrangements for 2018 list 15 feeder schools, which are called “*partner schools*.” The school has confirmed that “*partner schools*” are, for admissions purposes, the same as feeder schools. Eight of these schools are located in the area of Cheshire West and Chester local authority and seven are in the area of Wirral local authority. Of the seven Wirral feeder schools, three (including Raeburn Primary and Poulton Lancelyn Primary, which are referred to in the objection) were added in 2017 and two more (Gayton Primary and Thornton Hough Primary) appear for the first time in the 2018 arrangements. In total, parents of 19 children from Gayton and Thornton Hough made Neston High School their first preference in 2017 and 13 were allocated places.

### **Consideration of Case**

13. The objection covers two matters: the consultation that preceded the determination of the arrangements and the selection of feeder schools. I will consider the consultation first. As stated above, I am only able to consider the consultation that was undertaken prior to the determination of the 2018 arrangements.

14. The requirements for consultation on admission arrangements are laid out in paragraphs 1:42 – 1:45 of the Code. Paragraph 1:44 lists parties with whom admission authorities **must** consult when changes are proposed to admission arrangements. Those that are relevant to this case are:

- a) *parents of children between the ages of two and eighteen;*
- b) *other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed arrangements;*
- c) *all other admission authorities within the relevant area;*
- d) *whichever of the governing body and the local authority who are not the admission authority; and*
- e) *any adjoining neighbouring local authorities where the admission authority [for the school] is the local authority.*

The objector says that as his school and Wirral local authority were not consulted, sub-paragraphs b), c) and e) were not complied with.

15. The school told me that it informed Cheshire West and Chester local

authority of the proposed change to its admission arrangements. It also sent details to all of its partner schools, posted them on the school website and drew attention to them in its parent newsletter. Instructions were given for an email to be sent to Wirral local authority but, according to the objector, the Head of Admissions at Wirral local authority has confirmed that she did not receive any information about the proposed changes.

16. Paragraph 15 b) of the Code explains the purpose of consultation on admission arrangements:

*“This consultation period allows parents, other schools, religious authorities and the local community to raise any concerns about proposed admission arrangements.”*

In this case, those most likely to be concerned about the addition of new feeder schools would be parents of children who might be hoping to obtain a place at Neston High School in 2018 and whose chances of being allocated one might be affected by the change. In particular, those children who do not have a sibling at the school, live outside the catchment area and do not attend a feeder school (criterion (vii)) may well be less likely to be allocated a place as more feeder schools are introduced.

17. The consultation undertaken by the school was not specifically directed at parents, other than those who already had children at the school. Parents of children at feeder schools might have had the proposed changes drawn to their attention as the feeder schools were consulted, but there does not appear to have been a specific request for the feeder schools to do this. Other parents would have only been able to find the information on the school's website.
18. I have considered whether the school should have done more to draw attention to the proposed changes to parents who live outside its catchment area and do not attend a feeder school, that is, those most likely to be affected by the changes. These parents would be living in parts of the Cheshire West and Chester local authority area beyond the school's catchment area and in the Wirral local authority area. A press release to local media outlets and contacting electronically a wider range of primary schools in the two local authority areas would potentially have made more parents aware of the changes and their possible consequences. I consider that had the school undertaken these relatively straightforward methods of consultation, or other similar methods, it would have met the Code's requirements. However, it did not and as a result failed to comply with paragraph 1.44 (a) of the Code. Therefore, I uphold the aspect of the objection relating to consultation on this basis.
19. The objector says that his school was not consulted and that this contravenes paragraph 1.44. South Wirral High School is a Foundation School and is therefore an admission authority. The obligation placed by paragraph 1.44 (c) upon admission authorities proposing changes to

their arrangements is to consult other admission authorities “*within the relevant area.*” The relevant area is determined by the local authority. Cheshire West and Chester local authority has confirmed that it considers its “*relevant area*” to be the area of the local authority. Thus the school was not required to consult with South Wirral High School, nor any other persons in the area of Wirral local authority. It has not failed to comply with paragraphs 1.44 (b) and (c) of the Code.

20. The school was also under no obligation to inform Wirral local authority about the proposed changes. The requirement to consult with neighbouring local authorities in paragraph 1.44 (e) applies to schools, “*where the admission authority is the local authority*”, that is, community and voluntary controlled schools. As Neston High School is an academy and is its own admission authority, this sub-paragraph does not apply to it. Whether an email was sent to Wirral local authority or not is, in this respect, irrelevant.

21. I turn now to the arrangements themselves. I will consider first whether the requirements of paragraph 1.15 of the Code, relating to the selection of feeder schools, have been complied with. The objector says that there are other primary schools in the Wirral local authority area that are closer to Neston High School than Raeburn Primary and Poulton Lancelyn Primary. In a later submission from the objector’s school, signed by the headteacher, the chair of governors and the vice chair, it is said that some of the primary schools closer to Neston High School that are not feeder schools are in “*less affluent areas.*” It also says that public transport links to Neston High School from the part of Wirral where Raeburn Primary and Poulton Lancelyn Primary are located are poor. The submission continues,

*“The concept of “Partner” or “Feeder” primary schools where there is no other link with the Secondary School, such as being part of the same Academy Federation, has no basis in the legislation. It is a concept thought up to justify the particular admissions policy.”*

This submission says that “*objection is taken*” to three other schools named as feeder schools to Neston High School that are situated in the area of Wirral local authority: Barnston Primary School, Heswall Primary School and St Peter’s Church of England Primary School. These schools, it is said, “*traditionally send Year 7 pupils to other Wirral Schools.*”

22. Rather than restrict my considerations to the two feeder schools named in the original objection and the two additional schools added in the arrangements for 2018, I will consider the selection of the feeder schools as a whole. The school justified its selection on two main grounds:

- the headteachers of the schools have requested that the schools become feeder schools; and
- they are schools from which “*traditionally*” a “*significant number*”

of children had transferred to Neston High School for their secondary education.

A desire from the primary schools to reduce the number of parents “*having to go through the stress of appeals*” is also mentioned. I take this to refer to admission appeals lodged by unsuccessful applicants.

23. The Team Leader for School Admissions at Cheshire West and Chester local authority expressed the view that the selection of feeder schools met the requirements in paragraph 1.15 that they “*must be transparent and made on reasonable grounds*”. She referred to the two grounds stated by the school and also said that the schools are within “*a reasonable distance*” of Neston High School.
24. I am in no doubt that the selection of feeder schools is transparent. The feeder schools are clearly identified and the grounds for selecting them have been both explained and applied consistently. I have been provided with copies of correspondence (letters and emails) from the headteachers of the primary schools recently added as feeder schools making requests that they be selected. As can be seen in the Table Two below, an average of at least five children transferred to Neston High School in 2016 and 2017 from each of the feeder schools listed in the 2018 arrangements. This, in my view, constitutes a “*significant number.*”

**Table Two: Feeder schools listed in the 2018 arrangements**

School	Local authority	PAN	2016 allocated	2017 allocated
Barnston	W	45	21	16
Bishop Wilson CE	CW & C	15	8	3
Childer Thornton	CW & C	30	13	19
Gayton	W	30	4	8
Heswall	W	30	10	7
Little Sutton CE	CW & C	30	11	6
Neston	CW & C	30	21	18
Parkgate	CW & C	30	17	16
Poulton Lancelyn	W	60	5	12
Raeburn	W	60	13	31
St Peter’s CE	W	45	17	11
Sutton Green	CW & C	40	20	23
Thornton Hough	W	25	6	5
Willaston CE	CW & C	30	15	19
Woodfall	CW & C	60	46	51

*Key: CW & C – Cheshire West and Chester; W - Wirral*

25. In coming to a conclusion as to whether the grounds for selecting feeder schools are reasonable, I think there is a distinction to be drawn between schools located within the secondary school’s catchment area and those that are located outside it. A catchment area defines the location a school is principally intending to serve. When a secondary

school with a catchment area has feeder schools within its oversubscription criteria, I would expect primary schools in the catchment area to be selected as a matter of course, as they collectively serve the same location. An exception might be made for schools of a religious character if they feed a secondary school of their denomination or faith.

26. For primary schools outside the secondary school's catchment area, I believe there is more scope for a range of grounds to be considered reasonable in selecting feeder schools. The making of a request by a primary school to become a feeder school for a secondary school, in my view, falls within that range, provided that the primary school is not located so far away from it as to make it illogical to be a feeder school.

27. I therefore consider the selection of feeder schools by Neston High School to be reasonable. Primary schools within the catchment area, with the exception of St Winefride's Catholic School, are all included as feeder schools. The schools outside the catchment area that have requested to become feeder schools and have been selected all have some history of pupils transferring to Neston High School and are located within five miles driving distance of the school. The school is adamant that socio-economic factors have not been taken into account and I have been provided with no evidence to show that it has.

28. Finally, having concluded that the selection of feeder schools is transparent and made on reasonable grounds, I must consider whether the overall effect of the arrangements is "*reasonable*", as required by paragraph 1.8 of the Code and also that they are "*fair*" (paragraph 14).

29. Within the school's oversubscription criteria, priority for children attending feeder schools comes after the priority given to siblings and to those living in the catchment area. This means that no child living in the catchment area is at risk of failing to gain a place because of the priority given to those attending the feeder schools. It is the case that all siblings (whatever primary school they have attended and wherever they live) have a relatively high priority. Although that is not the objection made, I have considered the fairness of this matter also. As can be seen from Table Two above, the combined PANs of the eight feeder schools located in the school's catchment area, that is, the primary schools located within the Cheshire West and Chester local authority area, amount to 265. Neston High School's PAN is 270 and it intends to admit 300 pupils. Table One shows that in 2017 there was a total of 48 places allocated to siblings who did not live in the catchment area. Data provided by the school indicates that ten of these siblings attended feeder schools in the catchment area. Therefore, the total of the PANs of the feeder schools in the catchment area and the siblings allocated places in 2017 who neither live in the catchment area nor attend a feeder school within it is 303 (265 + 48 – 10), three more than the school intends to admit.

30. I make this calculation because it could be considered unfair if children living in the catchment area were unable to obtain a place at the

school, as a result of the higher priority being given to siblings living outside the catchment area. In reality, it is inconceivable that this will occur in 2018. In 2016 and 2017, the numbers of children from feeder schools within the catchment area making Neston High School their first preference was considerably lower than the combined PAN of 265. Table Two shows that, in total, only 151 and 155 children from the feeder schools within the catchment area (compared with the combined PAN of 265) were allocated places in 2016 and 2017 respectively. Although the figures can vary from year to year and will be affected by the number of siblings from out of the catchment area who are allocated places, it would be reasonable to expect that children who both live in the catchment area, and attend a feeder school within it, will continue to be allocated a place at Neston High School if it is their first preference.

31. I have also considered whether it is unfair that children living in the Wirral local authority area attending primary schools closer to Neston High School do not benefit from the priority given to those attending feeder schools that are further away. Those potentially most affected are children at Brookhurst Primary School, which is not a feeder school and is located closer to Neston High School than some of its feeder schools in the Wirral local authority area. In both 2016 and 2017, 13 children transferred from Brookhurst Primary School to Neston High School.
32. My conclusion is that the arrangements are not unfair, as I do not believe that there is a group of children that are likely to be unfairly disadvantaged by them. The criteria are ordered in such a way that all siblings and those living within the catchment area have priority over non-siblings at feeder schools. The breakdown of applications made in 2016 and 2017 shows that the school has considerably more places than can be expected to be required by these groups of children. The two new feeder schools introduced in the 2018 arrangements are both located closer to Neston High School than Brookhurst Primary School. Whilst precise predictions about the allocation of places in 2018 are impossible, if the pattern of admissions in 2017 were repeated, some places for children living outside the catchment area and not attending a feeder school may well be allocated. Even if they are not, it is not inherently unfair that, in some cases, children living further away from the school have priority for places before some who live closer. Children living in the area of Wirral local authority have access to secondary schools much closer to their homes than Neston High School. I also note that the school has confirmed that children who are allocated a place at Neston High School, who do not attend a feeder school, take part in the exactly the same transition activities as those who do.
33. I find, therefore, that the selection of feeder schools is both transparent and made on reasonable grounds and meet the Code's requirements relating to fairness. I do not uphold the objection.
34. The school's arrangements do not include the correct definition of

previously looked after children found in paragraph 1.7 of the Code. The date in the heading is also wrong. The arrangements fail in these matters to meet the requirements relating to admissions and the Code requires that the arrangements be amended accordingly.

### **Summary of Findings**

35. I find that the arrangements meet the Code's requirement that the selection of feeder schools **must** be transparent and made on reasonable grounds. I also find that arrangements do not cause any demonstrable unfairness to a group of children. Thus I do not uphold the aspect of the objection relating to the arrangements themselves.
36. Although it was not required by the Code to consult with admission authorities outside the Cheshire West and Chester local authority area, I consider that the school did not consult effectively with parents, as required by paragraph 1.44 (a) of the Code. I therefore uphold the aspect of the objection concerned with consultation. However, I do not believe that this of itself renders the arrangements themselves non-compliant with the legal requirements.

### **Determination**

37. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body for Neston High School, Cheshire West and Chester.
38. I uphold the aspect of the objection concerned with the consultation carried out before the arrangements were determined. I do not uphold the aspect of the objection relating to the determined arrangements themselves.
39. 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.

40. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 12 September 2017.

Dated: 17 August 2017

Signed:

Schools Adjudicator: Peter Goringe