



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3261

Objector: A member of the public

Admission Authority: The governing body of Ashlawn School Rugby, Warwickshire on behalf of the Transforming Lives Educational trust

Date of decision: 30 August 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Ashlawn school.

The objection

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual (the objector) about the admission arrangements (the arrangements) for September 2018 for Ashlawn School (the school), a mixed secondary bilateral academy for children aged 11 to 18. The school is located in Rugby, Warwickshire. The local authority for the area is Warwickshire County Council.
2. The objection is that the arrangements are unfair because there will be no provision for admission to the selective places at the school after the waiting list is closed. It argues that the arrangements do not clearly set out how applications on the waiting list are managed while it is in operation from March 2018 until December 2018 and expresses particular concerns about how late applications are considered.
3. The parties to this case are the school's trust and its governing body, the local authority and the objector.

Jurisdiction

4. The terms of the funding agreement between the Transforming Lives Educational 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. These arrangements were determined by the school's governing body on 7 December 2016 on behalf of

the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 23 March 2017.

5. The objector has asked to have his identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. 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.
6. The first part of the objection was that there is no provision for admission to the selective part of Ashlawn School after the waiting list is closed because the arrangements state that applications after this date will only be considered for non-selective places. The objector argues that this effectively denies admission to the selective stream for late applicants and as a result the arrangements are unfair. My jurisdiction is limited to the determined and published admission arrangements and whether or not they conform to the requirements relating to admissions and, if not, in what respects they do not so conform. Paragraph 1.7 of the Code makes clear that schools must have oversubscription criteria for each "*relevant age group*" (which in the case of this objection means children applying for a Year 7 place). Paragraph 2.14 of the Code sets out requirements as to waiting lists and provides that "*each admission authority must maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission....*". There are no such requirements in the case of this school in relation to admission after 31 December for Year 7 or for admission at the beginning or during year groups such as Year 8 and Year 9. This is because, for this school, these are not relevant age groups. Accordingly, I cannot consider this part of the objector's concerns about the school's arrangements.

Procedure

7. In considering this matter, I have had regard to all relevant legislation and the School Admissions Code (the Code).
8. The documents I have considered in reaching my decision include:
 - a) the objector's email and form of objection dated 23 March 2017 and subsequent correspondence;
 - b) the school's response to the objection and supporting documents, and subsequent correspondence;
 - c) the comments of the local authority concerning the objection together with subsequent correspondence and supporting documents;
 - d) a map of the area; and
 - e) a copy of the determined arrangements.

The Objection

9. The objection is that the arrangements do not clearly set out how applications on the waiting list are managed while it is in operation from March 2018 until December 2018. It says that there is no provision for a late applicant who misses the testing date to be considered for a selective place and added to the relevant part of the waiting list. The objector also asks which test late applicants would take and what happens if the late applicant is age 12. The objector considers that the cut off date for applications for testing is too early and is concerned that there is a statement that a successful application that is found to have used an incorrect address for the purpose of making an application will be withdrawn.

Background

10. Ashlawn School is a bi-lateral academy school situated in Rugby, Warwickshire. It has partially selective admissions permitted by section 100 of the School Standards and Framework Act 1998. As such, it is permitted to maintain a maximum of the 12 per cent proportion of selective admissions set in 1998. The school has a published admission number (PAN) of 256 for Year 7. Within that number, up to 12 per cent (30 pupils) are admitted on ability based on assessment tests taken by applicants to establish eligibility for a selective place. The remaining places are allocated without reference to ability, however, up to 10 per cent (25 pupils) are admitted on the basis of their aptitude for modern foreign languages because the school has a specialism in modern foreign languages. Admission arrangements for each group of places are set out in what the school calls its “selective” and “non-selective” arrangements respectively.
11. The school’s published admission arrangements for 2018 make it clear that an applicant can apply for a place at the selective school or can apply for a non-selective place, or can apply for both using two of their preferences on their local authority’s common application form (CAF).
12. The arrangements explain that eligibility for application for a selective place is based upon the following:
 - “ - returning the 11+ registration form by the closing date
 - naming Ashlawn selective on the common application form
 - achieving a qualifying score.”
13. The closing date referred to is 7 July 2017 and testing will take place on 9 September 2017. The arrangements explain that there is no guarantee of a selective place being available to eligible children. The qualifying score is not stated, as this is set each year through a process overseen by the local authority and which is described elsewhere in the arrangements. The arrangements say that additional test sessions will be held in late November / early December and late January / early February, primarily to accommodate families moving into the area. Late applicants are given a lower priority than on time applicants unless an applicant can provide evidence of a move of address into the priority areas by 1 February 2018.

14. If more than 30 children are eligible for a selective place, first priority is given to looked after and previously looked after children who have met the selective entry requirements. Then, the remaining places are offered to eligible children living in two defined areas in equal proportions with priority given to those eligible for the pupil premium. If any places remain they are offered first to eligible children who live within a defined area and who are on a waiting list created by the Committee of Reference and then to other eligible children.

15. The arrangements make the statements that:

“Within all criteria first priority is given to those achieving the highest score in the 11+ test. Where there is a need to split any category or group of pupils, places will be offered in accordance with distance between the child’s home and school (shortest distance = highest priority).”

A final tie-breaker of random allocation which the arrangements say will “be administered by Warwickshire County Council Admissions Service” is also included.

16. Paragraph 20 of the arrangements describes the selection test as follows:
“there will be two papers, each of approximately 50 minutes. The papers will be divided into smaller, individually timed sessions, which test verbal reasoning, non verbal reasoning and numeracy.”

17. Paragraphs 38 to 41 of the arrangements say the following:

“38. In addition to the right to appeal, all applicants who achieve the waiting list score on the 11+ examination and named Ashlawn selective as a preference will be placed automatically on the waiting list.

39. The waiting list will be operational between March 2018 and December 2018. Any vacancies arising from declines of initial offers within this time will be re-offered from the waiting list as appropriate.

40. The waiting list will not be maintained after 31st December 2018. After this date applicants must apply for an in-year place to Ashlawn Academy. This is done through the local authority.

41. Ashlawn School is a bilateral school, applications received from January 2019 for a year 7 place will only be considered against the oversubscription criteria for a non selective place.”

18. In correspondence the school and the local authority clarified that the waiting list score in paragraph 38 of the arrangements and the qualifying score are set by the Warwickshire Committee of Reference with the waiting list score set slightly lower than the qualifying score.

Consideration of the case

19. The objector argues that the arrangements do not clearly set out how new applications on the waiting list will be managed between March and December 2018. His main argument is that late applicants are prevented from

making an application to the selective part of this school because the cut off date for the tests is earlier than he thinks it needs to be, and that if tests are not taken, how it can be possible to be placed upon the waiting list. In the follow up correspondence the objector also expressed concern that the local authority had said that applications which were found to have used an incorrect address where the applicant did not reside in order to gain a place would be withdrawn. He thought that this was not reasonable.

20. I begin by noting that this is not a grammar school with a wholly selective intake; it is a partially selective school. This is significant because a wholly selective school may retain vacant places if there are insufficient applicants who meet the required academic standard. In contrast, a partially selective school may not keep any unfilled selective places empty but must make them available to any applicant. Paragraph 1.21 of the Code applies here and says *“partially selective schools select a proportion of their intake by ability. Where schools can partially select, they **must** publish the entry requirements for a selective place, and the process for such selection. They **must** offer places to other children if there are insufficient applicants who have satisfied the published entry requirements for a selective place.”*
21. As a partially selective school, the Code permits the selection of a proportion of the applicants for place. In this case the school is permitted to admit up to 12 per cent of its PAN selectively. This is the maximum permitted level but it places no requirements on the school to have admission arrangements designed to support the admission of this number by reference to ability. Nor does the Code place any requirement on the school as to how it subsequently organises these places. It will be for the school to decide whether to run a separate class for the selective intake or whether to organise the school in some other way. This is an important point because, in the objection, the objector writes as though this is two separate schools run on one site: one for selective students and one for the other applicants. This is not the case, the school is one school with permission to select some applicants and it may decide how to organise the resulting intake.
22. The school provided figures that show the level of preferences expressed for the 30 selective places.

Year	Total number of preferences	First preference
2014	495	137
2015	489	160
2016	519	119
2017	523	155

23. In each of the four admission years from 2014 until 2017, there have been more than 490 preferences for the selective places. Of these, between 119 and 169 were first preferences depending upon the year. There is no reason to think that the number of preferences in 2018 will be different. If this is the case, it is almost certain that the maximum number of 30 selective places will be allocated in the main admission round. The school runs a waiting list and the arrangements say that all those who achieve a “*waiting list*” score and who named Ashlawn selective as a preference will automatically be added to the waiting list. The arrangements go on to say that “*any vacancies arising from declines of initial offers within this time will be re-offered from the waiting list as appropriate.*” In these circumstances it seems unlikely that there will be any vacancies for selective places on 31 December when the waiting list closes. The school reports that there has not been a vacancy in its selective stream since 2012.
24. 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. Priority must not be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on waiting list.*” The arrangements clearly state that a waiting list will be maintained until 31 December 2018 so in this respect I am satisfied that they comply with the Code.
25. The objector considers that the arrangements are unclear about how the waiting list is managed and what testing arrangements are used in order to add children to the waiting list if they apply after the selection tests have taken place. The Code requires that the waiting list is ranked in order of the oversubscription criteria. The objector argues that the policy does not state which test will be used for late applicants and asks what happens if a child is aged 12 during the period of the waiting list (which could alter the age standardisation of the test results) or takes a test as a late entrant. If different tests are used then the objector argues that comparisons are unlikely to be fair and if the same test is used then the applicant may have the advantage of knowing what is in the test from other applicants or may gain advantage because of the age standardisation applied to the tests. In either case, the objector believes the requirement to re-run the ranking before a place is offered from the waiting list set out in paragraph 2.14 of the Code is not being complied with.
26. The arrangements set out how an applicant can be eligible for one of the 30 selective places in this partially selective school. This requires applicants to have registered for the 11 plus test by the closing date, named the school on the CAF and achieved the qualifying score in the tests. Elsewhere the arrangements describe how the qualifying score is set by the local 11 plus Committee of Reference. There is also note about how the Committee of Reference can consider special cases.
27. The arrangements assume that all applicants on the waiting list are eligible for

a selective place and to be eligible the arrangements say that applicants must register by the closing date (7 July 2017) and have achieved a qualifying score in the tests taken. The test date is 9 September 2017. Paragraph 38 in the arrangements says that all unsuccessful eligible applicants are automatically placed on the waiting list. In order to be eligible they must have reached the required standard in the 11 plus test.

28. The Code in paragraph 14 says 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 places for that school will be allocated.”*
29. In this case there is a clear and objective definition of eligibility. The objector suggests that this is an unfair process and asks which test is taken by those on the waiting list. Under the arrangements, many eligible applicants will have taken the test and not have been offered places because the oversubscription criteria were applied, they were, however, added to the waiting list. The arrangements say that late tests will be offered if required in December and in January/February, these will be the same tests as those used in September. Late applicants can be advised of the test dates when they apply for a place. The objector quotes information he obtained from the test provider that advises that it is difficult to rank children if they have taken different tests. The objector then wrote to say that if the same test is used there is a risk that late applicants may have knowledge of some of the questions if they have spoken to any applicants who have already sat the test. This may be possible but unless someone is systematically publishing such information in order to undermine the tests, the risk of shared knowledge appears low given the number of questions in the tests and the scope for children to remember accurately what those questions are. A child who has taken the test may talk to a friend taking a late test but could incorrectly report the information and in doing so provide misleading information, which could be detrimental rather than advantageous. This school has chosen to use the same test; other schools may choose to use a different test. I consider that this school's approach is reasonable and complies with the Code as the chance of a child gaining information such that would affect the chances of who is and is not to be offered a place is so very small. It is worth observing that the same child taking the same test on different days may not score the same mark for a range of reasons including other factors in their lives outside the test room.
30. The arrangements say that late applicants are considered after on-time applicants unless the applicant can show that they have moved within the catchment area before February 2019, so the likelihood of a late applicant gaining a selective place is small. Applicants on the waiting list are ranked using the oversubscription criteria so a late applicant who is moving into the area by February would be ranked accordingly. For those already planning to move to the area, it is likely that they will have arranged for their child to have taken the test as an on-time, since there is no residency restriction on who may take the test. Paragraph 1.21 of the code requires the school to publish the entry requirements for a selective place and the process for such selection and in my view it has done this.

31. On a separate point, the objector does not consider that the arrangements should state that an offer of a place could be withdrawn if an application is shown to have used an incorrect address in order to gain the place. I do not accept this argument. The Code in paragraph 2.12 permits an offer of a place to be withdrawn if the offer was obtained through a fraudulent or misleading statement.
32. In subsequent correspondence, the objector questions whether it is fair to set the closing date for registration as 7 July and gives examples of other schools where the date is set in early September. From an applicant's point of view this requires them to be thinking about registering for the test in the summer term of Year 5 in primary school rather than at the beginning of Year 6. The Code, in paragraph 1.32c, requires an admission authority to "*take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October.*" In order to achieve this, the tests in this area are scheduled for Saturday 9 September 2017 and the results of the tests will be posted to applicants on 16 October 2017. It is for the admissions authority to set a clear timetable for the process and to ensure that it is able to meet the required timescale. The registration date of 7 July may be earlier than that used by some other admission authorities but the arrangements are quite clear and judging from the number of applications for the 30 available places, the registration date does not discourage applications and the dates meet the requirements of the Code. I do not think that a July registration date could be described as unfair.
33. I considered the case of a family that relocates to the area. In such a case, if the family knew that it was to move to the area it would be able to register for the test by the deadline and thus seek to become an eligible applicant for a place. If they did not register by the deadline and made a late application then there is the option to take a late test and thus become eligible to apply for a selective place with the understanding clearly set out in the arrangements that late applicants are considered after on-time applicants unless they move into the area before February. The school is clear is that such applicants may apply for a non-selective place in the school and there is no requirement for such an applicant to take a selection test. As a partially selective school this is a reasonable approach that complies with the requirements in paragraph 14 of the code "*for parents to be able to understand easily how places for that school will be allocated.*" The school also comments that the selective stream and the non-selective part of the school are different elements of the same school and are not entirely separate, and as such it is possible for there to be some movement between classes during a child's school career if it is in the best interests of an individual child.
34. In the eventuality that the 30 selective places are not filled from the waiting list, paragraph 1.21 of the Code would apply and the school is clear that if there are any unfilled places these would be filled on a non-selective basis. The objector is concerned that the arrangements do not clearly explain the operation of the waiting list and how the needs of late applicants are accommodated. I am satisfied that the arrangements explain how the waiting list is managed and I do not uphold this part of the objection.

Summary of issues

35. This objection is about a specific part of the admission arrangements for this partially selective school. I considered the objector's points against paragraph 1.21 of the Code. Unlike a fully selective school, which can only admit eligible applicants, this paragraph of the Code requires a partially selective school such as Ashlawn to offer places on a non-selective basis if there are insufficient applicants who have satisfied the published entry requirements for a selective place. The school sets out the eligibility requirements for selection and adds any eligible but unsuccessful applicants onto the waiting list, should a place become vacant between allocation day and 31 December 2018. I note that there are likely to be eligible applicants on the waiting list who are unlikely to be offered a place given the current level of oversubscription for these places. Applicants who arrive after the normal admission round will not meet the published entry criteria for a selective place but can take a late test and if they reach the qualifying score can be considered as late applicants for places after any eligible on-time applicants have been offered places. They can also be considered for any vacancies in the school on a non-selective basis. I have concluded this to be a reasonable approach that is compliant with the Code and in consequence, I do not therefore uphold the objection.

Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Ashlawn school.

Dated: 30 August 2017

Signed:

Adjudicator: David Lennard Jones