



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference: ADA3378**

**Objector: A parent**

**Admission Authority: Marylebone School Ltd for Marylebone Boys' School, Westminster**

**Date of decision: 15 May 2018**

### **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 2019 determined by Marylebone School Ltd for Marylebone Boys' School, Westminster.**

**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**

- 1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent, (the objector), about the admission arrangements (the arrangements) for Marylebone Boys' School, an academy school for boys aged 11 to 16 with a mixed sixth form for September 2019.**
- 2. The local authority for the area in which the school is located is Westminster City Council. The local authority is a party to this objection. Other parties to the objection are the school's governing board, Marylebone School Ltd which is the academy trust for the school, (the trust) 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 board on behalf of the trust, which is the admission authority for the school, on that basis.
4. The objector submitted his objection to these determined arrangements on 17 April 2018. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 17 April 2018 and subsequent emails;
  - b. the admission authority's responses to the objection and to my other enquiries together with supporting documents;
  - c. the comments of the local authority on the objection;
  - d. maps of the area identifying relevant schools;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meeting at which the governing board of the school determined the arrangements; and
  - g. a copy of the determined arrangements.

## **The Objection**

7. There were two parts to the objection. The first was that the school was using Marylebone Town Hall rather than the location of the school as the point from which distance would be measured to children's homes when allocating places. The objector considered this did not comply with paragraph 1.13 of the Code.

8. The second part of the objection was that the school named all primary schools in Westminster as feeder schools. Paragraphs 1.9b and 1.15 of the Code set out requirements concerning feeder schools.

### **Other Matters**

9. When I considered the arrangements as a whole it appeared to me that the following matters did not, or may not, comply with requirements:
  - i) The definition of previously looked after children used in the arrangements referred to residence orders. The Children and Families Act 2014 replaced residence orders with child arrangements orders. This part of the arrangements may therefore not be clear; paragraph 14 of the School Admissions Code (the Code) requires that arrangements are clear.
  - ii) Paragraph 1.27 of the Code says "*The admission authority **must** publish the admission requirements and the process for such banding and decisions, including details of any tests that will be used to band children according to ability.*" Details about the banding tests for 2019 could not be found in the arrangements or on the school's website.
  - iii) The arrangements may not be clear to parents about how the oversubscription criteria are applied alongside banding.
  - iv) Paragraph 1.13 of the Code requires that not only must admission authorities set out how home to school distance will be measured, but also make provision for cases where a child lives at different addresses for different parts of the week. The arrangements did not appear to do this.
  - v) Paragraph 2.14 of the Code sets out requirements for waiting lists. The statement in the arrangements about waiting lists did not appear to meet those requirements.
  - vi) Paragraph 2.17 of the Code requires admission authorities to "*make clear in their arrangements the process for requesting admission out of the normal age group.*" This requirement did not appear to be met in the arrangements.

### **Background**

10. The school is a free school which opened in September 2014. It was established to meet the need for secondary school places in the area and to provide the option of a single sex school for boys. Since opening the school has at various times been based on three sites, two in the borough of Brent and one in the borough of Camden. It is expected that the school will move to its permanent site in the summer of 2018 which will be on North Wharf Road in the borough of Westminster.
11. The school has a published admission number (PAN) of 120; for September 2018 there were 493 applications, of which 84 were first

preferences, all 120 places were offered. Applicants are placed in one of four equally sized bands based on the result of a non-verbal reasoning test and oversubscription criteria are applied to each band. The oversubscription criteria can be summarised as:

1. Looked after and previously looked after children
  2. Children of members of staff
  3. Siblings of children attending the school
  4. Half of the remaining places for boys attending state primary schools in Westminster
  5. Boys living closest to the school
12. The arrangements say that within criteria 3 and 4 priority is given to boys who live nearest the “seed point” which is “*the Main Entrance, Westminster Council House, Old Marylebone Town Hall, 97-113 Marylebone Road, London NW1 5PT.*” Random allocation is used as final tie breaker.
13. Boys who do not sit the banding test are classified as “*unbanded*”; where places remain after all “*banded*” boys have been offered a place they are offered to “*unbanded*” boys in the order of the above criteria.

### **Consideration of Case**

14. The objector said “*School is using Marylebone Town Hall (NW1 5PT) as the address for the distance to school measuring point, rather than the address where the school is situated: 60 Christchurch Avenue, London NW6 7BH. Old Marylebone Town Hall is more than 2 miles away from the school location. I believe the school is choosing the Town Hall as the measuring point as families living nearer the Town Hall are generally more affluent than those living close to the School.*” He then quoted paragraph 1.13 of the Code which says “*Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.*”
15. In its response to the objection the school said that it had been established “*to address a shortage of secondary places in Westminster for families living in the centre and East of the borough, including on the borders of Camden where there is little provision in the south of that borough*”. The school explained the history of the various sites it had occupied and that the temporary nature of these sites meant they would not have been suitable points to measure home to school distance from. The choice of Old Marylebone Town Hall was intended to give priority to boys living in the area of central Westminster where a need for places had been identified.

16. The governing board had considered using the permanent site of the school as the point from which distance was measured and has consulted on this. Following comments from a parent the governing board commissioned research from which it concluded that if the school moved the “*seed point*” to the permanent school site, it “*would be offering more choice to parents who already have a lot of choices, but not addressing the geographical gap for boys in central and East Westminster.*” The school provided me with a map showing the evidence on which this conclusion was based.
17. The school acknowledged that some post codes near the “*seed point*” are among the most affluent in the country, and said the area also contains some of the most deprived post codes too. The school thought that relatively few of the most affluent families would choose state education and stated that 20 per cent of boys on roll were eligible for free school meals and 47.5 per cent were eligible for the pupil premium. I have confirmed that these figures agree with those published on the Department for Education (DfE) website.
18. Comments from the local authority echoed those from the school saying that the “*seed point*” would help the school serve the targeted area of need including areas of deprivation.
19. After seeing the comments from the school and local authority, the objector pointed out that one of the deprived areas was approximately equidistant from the “*seed point*” and the permanent school site. He also identified a deprived location in the north of Westminster which was farther from the “*seed point*” than the permanent school site. He maintained his view that the “*seed point*” was chosen to attract affluent families to the school. He also said “*the school admissions code is very clearly [sic] about this, seed point has to lie somewhere on the school.*”
20. Paragraph 1.13 of the Code does say “*Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.*” It does not say that home to school distance is the only way that priority for a place at a school can be decided, but if it is the distance from home to school that is used, then the point in the school where distance is measured to must be clearly set out.
21. Nowhere does the Code prohibit the use of the distance of a child’s home to other points being used as an oversubscription criterion subject to the general requirement set out in paragraph 14 of the Code that “*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” Oversubscription criteria must also meet the requirements of 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 that other policies around school uniform or school trips do not discourage parents from applying for a place for their child.”*

22. Old Marylebone Town Hall is a recognisable point in the area that the school was established to serve. I am satisfied that as the “seed point” it is reasonable, clear and objective and will give priority for places to boys living in an area which is located farther from other schools. The deprived area in the north of Westminster identified by the objector has six state-funded secondary schools within one mile of it, while the “seed point” has only one, which is a girls’ school.
23. At 20 per cent, the proportion of pupils eligible for free school meals is slightly lower than that for Westminster as a whole, which according to the most recent published figures was 26 per cent in 2017. However, at 47.5 per cent the proportion of pupils eligible for the pupil premium is slightly higher than the figure for the borough which was 41 per cent in 2017. These figures show that the level of deprivation in the school is similar to the local area and I am satisfied that the choice of the seed point is not leading to more affluent families taking up places at the school at the expense of boys from more deprived communities.
24. I do not uphold this part of the objection.

#### Feeder schools

25. In the second part of the objection the objector said that “schools cannot simply list every state school within a Local Authority as Feeder schools” because in a previous determination, ADA2404, the adjudicator had found this practice did not comply with the Code. Determinations do not set precedents. While it is important that findings in determinations should be consistent when the facts and circumstances are the same, the facts and circumstances in ADA2404 were very different. ADA2404 concerned the admission arrangements to sixth forms at several schools, not admission into Year 7 at one school and it was made in 2013 when a previous version of the Code was in place.
26. That is not to say that I cannot consider this aspect of the objection. The Code refers to feeder schools in paragraph 1.9b where it says “It is for admission authorities to formulate their admission arrangements, but they **must not**: ... b) take into account any previous schools attended, unless it is a named feeder school”. In paragraph 1.15 the Code says “Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.” In addition, paragraph 1.8 requires that all oversubscription criteria be reasonable (as well as clear, objective and procedurally fair).

27. I am satisfied that the requirements of paragraph 1.9b are met because all 42 primary schools located in Westminster are clearly named in the arrangements. This makes the selection transparent; I need to test the reasonableness of the grounds for their selection and the reasonableness of the effect of the selection.
28. The school said *“The intention of the school in making this provision was driven by the fact that the temporary accommodation was in a different borough to the school’s home borough and was located some considerable distance away. The basis on which the school was approved, and supported by Westminster, was that it would primarily address the shortage of places in the borough of Westminster. Furthermore in considering the establishment of a new secondary school and its aims to work with the borough’s primary schools and to provide suitable places for boys, this was felt to be a modest move to support those aims and to encourage these pupils to apply.”*
29. The school continued *“The effect of the 50% allocation to pupils attending a Westminster primary school has in fact been modest.”* It explained that after places are first allocated there is *“significant ‘churn’”* between national offer day on 1 March and the beginning of term in September. Because there are more applicants who attended primary schools outside of Westminster the proportion of those pupils increases. The school said *“Typically we would have 2 or 3 pupils (and in many cases only 1) from any one school, and each year group would contain pupils from around 60 different primary schools. The notion of a ‘feeder school’ in the more traditional sense is not really relevant in this area.”*
30. The local authority’s comments said that *“The intention of this criterion ... is to encourage applicants from pupils attending Westminster primary schools in areas where there is limited secondary school options, particularly for boys.”* It said *“The Code does not place a restriction on the number of feeder schools that can be named”* and that naming all primary schools in the borough was *“reasonable and fair and does not disadvantage applicants from non-Westminster primary schools in obtaining a place based on proximity.”*
31. Before considering the reasonableness of the criterion, I find it is unclear because the arrangements do not say what will happen if the number of remaining places after all boys meeting the first two criteria have been offered places is odd and cannot be split in half. Nor do the arrangements say what happens if there are not enough applicants who have attended a primary school in the borough to take up 50 per cent of the places.
32. I am of the view that the reasoning behind this criterion is flawed. The stated intention of the criterion was to support the admission of boys living in the part of Westminster where there was shortage of places when the school was located outside of the borough. In 2019 the school will be sited in the borough which begins to undermine this argument.

33. Even if the school continued to be located outside of the borough, giving priority to children attending any primary school in Westminster does not target children living in the area where there is a shortage of places. It is conceivable that a boy living in the area where there is a shortage of secondary school places may attend a primary school outside of the borough on the basis of parental preference, or even because there were no places available nearer to his home when he needed one. Such a child could find he has lower priority for a place at the school than a child not living in the area of need, but who attended a primary school in Westminster.
34. I comment on the waiting list in detail below, however, consideration of the waiting list illustrates the effect of this criterion. Waiting lists must be ordered according to the oversubscription criteria. If a single place became available to be allocated from the waiting list, a boy who had attended a primary school in Westminster would be offered it no matter how far they lived from the area of need ahead of a boy who had moved into an address much nearer the “*seed point*”.
35. Another aspect of the rationale for the feeder school criterion was to support the aim of working with the primary schools in the borough. This may have been a reasonable aim when the school was first established, however, in practice the pattern of admissions has led to the school needing to liaise with around 60 different schools, with a very small number of children transferring from each. The school itself has said that the idea of a traditional feeder school is not relevant in the area.
36. Because the reasoning behind the criterion is flawed, I find that naming every primary school in Westminster as a feeder school to be unreasonable and I uphold this part of the objection.

### Other Matters

37. The definition of previously looked after children used in the arrangements referred to residence orders. The Children and Families Act 2014 replaced residence orders with child arrangements orders. This part of the arrangements may therefore not be clear; paragraph 14 of the School Admissions Code (the Code) requires that arrangements are clear. When I raised this matter with the school it said “*we are happy to make this clear in our admissions arrangements.*”
38. Paragraph 1.27 of the Code says “*The admission authority **must** publish the admission requirements and the process for such banding and decisions, including details of any tests that will be used to band children according to ability.*” In the published arrangements for 2019 there are four paragraphs about banding. The first sets out the purpose of banding and that there will be an “*assessment test*”, the second explains how boys who do not take the test will be offered places. The third paragraph concerns looked after children and children with statements of special educational need while the last paragraph says there will be four bands with 25% of applicants placed in each one.

39. The paragraph about looked after and previously looked after children does not make it clear that if such children do not take the banding test, they continue to have highest priority ahead of all other children.
40. Details such as the type of test, the length of test and when the test would be taken and results made known to parents do not appear in the arrangements. When I raised this issue with the school it said *“Our website is currently showing the more detailed administrative arrangements for admissions in September 2018.”* It continued *“We normally update this to the next year’s arrangements in the summer term, partly to ensure that test dates have been set and partly in order not to confuse parents. In general we have found that parents who are considering the school for future years are reassured to see the current year’s information. In this material, it states that we use a “short non-verbal reasoning test”. The dates of our test are published by Westminster City Council in their secondary transfer booklet which is normally made available in July of the year of application.”* The school concluded *“We believe that the arrangements are made clear to parents on a timely basis and we do not want to publish test dates too soon and have them change subsequently. We are happy to make clear in the admissions arrangements that we use a short non-verbal reasoning test and the approximate test dates.”*
41. Commenting on this issue, the objector raised concerns about the clarity of what is said in the arrangements about alternative testing dates for boys unable to attend the, as yet unpublished, testing date. Responding to these concerns the school said it did have processes in place to test boys who were genuinely unable to take the test on the set date and to assess boys who did not take the test at all because of exceptional circumstances.
42. The objector also noted that the arrangements do not say if parents will be informed about the results of the banding test. The Code requires in paragraph 1.32c that *“Admission authorities **must** ... c) take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October**”*. Banding is defined as a form of selection by section 101 of the Act and so this requirement of the Code applies to banding tests. The school replied that it did tell parents which band their sons were in, but not the score in the test, although that was available on request.
43. The Code requires in paragraph 1.47 that arrangements are published on the admission authority’s website once they are determined and defines admission arrangements in footnote 4 as meaning *“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.”* This includes the banding process. I find that there is insufficient detail about the banding process in the published arrangements to meet the requirements of the Code. If full details of the banding process are not published until July as stated by the school, it is not possible for

parents or others who may be concerned about the process to lodge an objection with the Schools adjudicator by 15 May.

44. Nowhere in the arrangements does it explain how the oversubscription criteria are used alongside banding. Paragraph 14 of the Code requires that admission arrangements are clear and I considered this may not be clear to parents with no experience of banding systems. When I raised this matter with the school it said "*The oversubscription criteria are applied within each band ... We felt this was clear and it has not been queried by parents, but we are happy to specify this in the wording of the over-subscription criteria.*" I am of the view that such further clarification is necessary to make the arrangements clear to all parents.
45. Paragraph 1.13 of the Code requires that not only must admission authorities set out how home to school distance will be measured, but also make provision for cases where a child lives at different addresses for part of the week; the arrangements did not appear to do this. When I raised this matter with the school it responded that "*Whilst we are our own admissions authority, all applications for secondary transfer are handled through the London boroughs and this includes the detailed arrangements for checking the address of the pupil. The instructions are included in the secondary transfer booklet referred to above and apply to all state secondary schools in Westminster.*"
46. As set out in paragraph 1.51 of the Code, local authorities are not required to publish a composite prospectus until 12 September each year. Admission authorities must publish their arrangements once they are determined. This means that the requirements of paragraph 1.13 to set out how they make provision for cases where a child lives at more than one address must be met in the arrangements. My comments above about the late publication of details of banding also apply to this issue. Objections to admission arrangements must be lodged by 15 May each year, parents and others require access to all aspects of the arrangements well before the local authority is required to publish the composite prospectus in case they want to lodge an objection. I find that the arrangements do not meet the requirements to make provision for when a boy lives at more than one address.
47. Paragraph 2.14 of the Code sets out requirements for waiting lists. "*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.*" In the arrangements there is a section headed "Waiting List" which says "*On 15 September in the year of entry unsuccessful and late applicants will be placed on the in-year waiting list. From time to time, the school will ask applicants to re-confirm whether they wish to remain on the waiting list.*"

48. Waiting lists are also referred to in the arrangements in the previous section headed “*Offer of places*”, where it says “*After National Offer Day, the school will administer its own waiting list for places. Unsuccessful applicants will automatically be placed on this list. The waiting list will be by ability band as outlined above, and will be ordered according to the over-subscription criteria. Applicants who did not attend the banding test will be categorised as “unbanded” and they will be considered on the waiting list after all the banded applicants, but before the reserve list. Applicants who received a higher preference school under the coordinated process but who request to re-apply to Marylebone Boys’ School will be added to a reserve list, along with those whose applications were made late.*”
49. This describes, in effect, four waiting lists, one for each band ordered according to oversubscription criteria. Followed by a waiting list of “*unbanded*” boys; the arrangements do not say how these will be ordered. There is then a “*reserve list*” for boys who have rejected a place at another school and for late applicants; again the arrangements do not say how these boys will be ordered on the list.
50. I find this to be unclear. For example, a situation could arise where a place becomes available in the second ability band and there are no boys on the waiting list in the second ability band, the arrangements are not clear on which boy on the waiting list would be offered the place. The Code requires that waiting lists are clear.
51. The arrangements do not state that “*each added child will require the list to be ranked again in line with the published oversubscription criteria*” as required by the Code and place late applicants after other children when the Code says “*Priority must not be given to children based on the date their application was received or their name was added to the list.*” I find that the arrangements do not meet the requirements in the Code concerning waiting lists.
52. Paragraph 2.17 of the Code requires admission authorities to “*make clear in their arrangements the process for requesting admission out of the normal age group.*” The arrangements do not make any statement about the process for requesting admission out of the normal age group. When I raised this matter with the school it said “*Pupils who apply out of the normal age group for secondary transfer are specifically referred to us by Westminster*” and quoted the statement used by the local authority in its composite prospectus. The requirement in the Code is for the admission authority, not the local authority and I find it has not been met.

## **Summary of Findings**

53. For the reasons set out above I do not uphold the part of the objection concerning the use of the distance from a child’s home to Marylebone Town Hall rather than the school site as an oversubscription criterion.

54. For the reasons set out above I do uphold the part of the objection concerning naming every primary school in Westminster as a feeder school.

55. I also find that the arrangements do not meet the requirements of the Code in the six ways set out above.

### **Determination**

56. 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 2019 determined by Marylebone School Ltd for Marylebone Boys' School, Westminster.

57. 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.

58. 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: 15 May 2018

Signed: Phil Whiffing

Schools Adjudicator: