



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4354

Objector: A parent

Admission authority: Lowbrook Academy Trust for Lowbrook Academy,
Maidenhead, Berkshire

Date of decision: 2 October 2024

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 for September 2025 determined by Lowbrook Academy Trust for Lowbrook Academy, which is in the local authority area of Windsor and Maidenhead.

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 3 November 2024.

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). The objection is about the admission arrangements (the arrangements) for Lowbrook Academy (the school) for September 2025. The objection relates to the fairness and reasonableness of the oversubscription criteria.
2. The local authority for the area in which the school is located is Windsor and Maidenhead Council (the local authority). The parties to the case are the objector, the

single academy trust which is the admission authority for the school (the trust), and the local authority.

Jurisdiction

3. The objector has asked to have her 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 her name and address to me.

4. 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 of the academy trust on that basis. The objector submitted her objection to these determined arrangements on 14 May 2024. 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 powers 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. evidence that the arrangements were determined;
- b. a copy of the determined arrangements for 2025;
- c. the objector's form of objection dated 14 May 2024;
- d. the trust's response to the objection;
- e. the local authority's response to the school's most recent consultation on its admission arrangements, dated 26 January 2024 (the local authority's consultation response);
- f. further information provided by parties at my request or invitation;
- g. information available on the websites of the school, the local authority and the Department for Education (DfE); and
- h. a previous determination in respect of the school (case references ADA3180 and ADA3181) (the previous determination).

The Objection

7. The objection is to the oversubscription criteria within the arrangements. The objector asserts that these criteria contravene paragraph 1.8 of the Code as they are unreasonable and unfair in that:

- i. they disadvantage siblings of current pupils who do not live in the catchment area of the school; and
- ii. this disadvantage has increased due to admissions to the school in recent years being well in excess of the published admission number (PAN).

8. Paragraph 1.8 of the Code states:

“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. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

9. I have identified other relevant paragraphs of the Code when I come to my detailed consideration.

10. The objector stated:

“I wish to lodge an objection against the admission arrangements, in particular the oversubscription criteria (“the Criteria”) for Lowbrook Academy (“the School”), an academy school for children aged 5 to 11 for (a) the current academic year of September 2024-2025; and (b) for all future admissions.”

11. As was explained to all parties, I have considered the objection in respect of the 2025 arrangements only. The Code requires objections to admission arrangements for 2024 to have been made to the Schools Adjudicator by 15 May 2023; as this deadline was missed objections to the arrangements for that year could not be made. Although the adjudicator does have power, under section 88(5) of the Act, to consider arrangements after the deadline in certain circumstances, I have not used this power. This is because the allocation of school places for 2024 had already been made and an adjudicator’s determination does not and cannot affect the offering of places in accordance with the local authority’s coordination of admissions. That is, even if I had found that there were aspects of the 2024 arrangements which did not conform with the requirements relating to admission arrangements, the offers of school places that had already been made would be unaffected. I am also unable to consider the objection in respect of “all future admissions”. That is because the adjudicator can only consider admission arrangements which have been determined by the admission authority. The admission authority has not determined its arrangements for 2026 and beyond and is not yet required to do so.

12. During the course of this case, the objector raised a concern that the distance from the family home to the school had been inaccurately calculated by the local authority when allocating places for September 2024. I must make it clear that it is not within my jurisdiction to consider how the administrative process was operated for September 2024; therefore, it is not for me to seek out or consider evidence relating to this. Any complaints about the mishandling of this administrative process would need to be made to the DfE. My jurisdiction is to consider whether the 2025 arrangements comply with the Code.

Background

13. The school is a co-educational academy school for children aged five to eleven; it does not have a religious character and has a single-academy trust, Lowbrook Academy Trust. The PAN for the school in September 2025 is 30. The school is situated in Maidenhead, within the local authority area of Windsor and Maidenhead Council. The DfE website “Get Information About Schools” (GIAS) records the location of the school as an “urban city and town”.

14. The school opened in April 2011 and was last inspected by Ofsted in December 2022, when it was judged to be Good. The school described itself to me as follows:

“Lowbrook Academy (the School) is an oversubscribed primary school in Maidenhead whose goal is to inspire all children to be the best they can be. It is located in the Royal Borough of Windsor and Maidenhead (RBWM). The School focusses on wellbeing and developing the whole child and that drives outstanding results and progress. The School converted to academy status in 2011.”

15. The oversubscription criteria which are applied in the event of oversubscription to the reception year (Year R), after the admittance of all applicants with an Education, Health and Care Plan (EHCP) which names the school are, in summary:

1. Looked after children (LAC) and previously looked after children (PLAC).
2. Children of staff who have been employed by the school for at least two years, or who have been recruited to a post “where there is a demonstrable skills shortage”.
3. Siblings of pupils who will be attending the school at the time of admission, and who live within the catchment area of the school.
4. Other children living within the catchment area of the school.
5. Siblings of pupils attending the school at the time of application.
6. Other children, with those living closest to the school given priority for admission.

16. The arrangements state:

“Random allocation will be used as a tie-break in criterion 6 above to decide who has highest priority for admission if the distance between two children’s homes and the school is the same. This process will be verified by an appropriate independent

person not involved in the operation and running of the school. If a tie-break is required in earlier categories to decide who has priority for admission between two children, distance from the school will be used to decide as described above.”

Consideration of Case

17. The objector alleges that the oversubscription criteria are unreasonable and unfair in that they disadvantage siblings of current pupils who do not live in the catchment area of the school; and that this disadvantage has increased due to admissions to the school in recent years being well in excess of PAN.

18. The objector stated:

“recently, the school has consistently admitted a two-form intake of children, doubling from 30 to 60 children. . . only 30 students will be offered a place this admissions year (2024-2025) and I believe the following 2 admission years. It is my understanding that this “pattern” i.e. 4 years at 60 and 3 years at 30 is planned to continue into the foreseeable future.

The issue lies during those years where the school has accepted 60 pupils. Owing to the particularly small size of the catchment, where, the School is unable to satisfy and fulfil the usual 60 intake, without taking children from outside of catchment, it needs to be serviced by surrounding children from other catchments which in practice has created a semi-hybrid / overlapping catchment area.

Whilst I appreciate the PAN has not officially changed, the consistent admission of pupils from outside of the catchment has created greater unfairness and disadvantage which has now fundamentally shifted back to those siblings (and their parents/carers), that are located out of catchment. . .

The unfairness arises whereby the out of catchment families and children are called upon to fill spaces when the intake is 60, but are entirely disregarded and unfairly overlooked when the lesser usual PAN of 30 is applied, prioritising in catchment students over out of catchment siblings. This directly results in the increased separation of out of catchment siblings (who are forced to attend different primary schools) and places an unnecessary and long lasting (5 days per week for 7 years) burden on those parents/carers who are usually in full time employment and are expected to make arrangements to collect from multiple educational institutions at the same time. . .

It is entirely unreasonable and unfair. . . that the initial inconvenience for families in catchment who do not have a sibling already on the roll would be prioritised over those with a sibling on the roll. A one-off requirement to apply to several local schools for in catchment families clearly pales into insignificance in comparison to daily and long-lasting extenuating (sic) demands that are currently being imposed on families under the current Criteria. Practically speaking, there are numerous other primary schools (many under subscribed) available within a 2-mile radius to the School. . .

Given the reasons stated above, the greater unfairness and disadvantage is now unreasonably placed on those families with siblings already on the roll and who are firmly embedded within the school but fall outside of the catchment at the time of the application.”

19. Paragraphs 1.11 and 1.12 of the Code permit admission authorities to give priority to the siblings of current or former pupils; however, there is no requirement to do so. Across the country many admission authorities choose between prioritising siblings and prioritising children in a school’s catchment area; in most circumstances it would be fair and reasonable to adopt either order and I do not find that there is any reason to prefer one over the other in principle.

20. The annual report by the Chief Adjudicator for 2016 (paragraph 15) stated the following on the matter of sibling priority:

“It is common for priority to be given to some or all siblings. Arrangements were likely to be found to be reasonable and fair when they struck a balance between giving a high priority to siblings, especially in primary schools (where it can be very difficult for parents to have to take children to different schools), and the needs of first born or only children to be able to attend a local school. This can be challenging for admission authorities. An approach which works well in many situations is to give priority to in catchment siblings, then other catchment children, then out of catchment siblings and finally other children. However, it will always be crucial for each admission authority to consider what approach is best in the circumstances of the school and area concerned.”

21. The first oversubscription criterion prioritises looked after and previously looked after children as required by paragraph 1.7 of the Code. The second criterion prioritises children of members of staff, and the third criterion prioritises siblings of children attending the school at the time of admission who live within the catchment area. These siblings are afforded the highest priority possible under the Code, other than the children of staff, and I do not need to give any consideration to their position.

22. The matter for consideration is the order of the fourth and fifth criteria. The school has chosen to prioritise children living within catchment who do not have a sibling at the school above siblings outside of the catchment area. The objector believes this is unfair and has suggested it is remedied by including all applicants with siblings at the school in the third criterion, so that out-of-catchment siblings are prioritised above children in the catchment area who do not have a sibling at the school.

23. All admission arrangements advantage some applicants over others. This is because all arrangements must contain oversubscription criteria which prioritise certain applicants in the event of oversubscription. The Code requires that oversubscription criteria are reasonable and fair; I will first consider whether the arrangements are reasonable. The Code uses the term ‘reasonable’ but does not define it. It is the requirement of public bodies, including admission authorities, that they must act reasonably in adopting any

policy or making any decision. The common law test for ‘unreasonableness’ in this context is that, for a decision to be considered unreasonable it would have to be a decision that no rational admission authority would have made having taken into account all relevant factors, placing sufficient weight upon each of those factors and disregarding any irrelevant factors.

24. I asked the trust for an explanation of the rationale for the oversubscription criteria. The trust responded with reference to the previous determination:

“the arrangements were amended following an Adjudication in 2016 - Case reference: ADA3180 and ADA3181. In that case the objectors complained that the School’s arrangements were unreasonable because the School gave priority to all siblings regardless of where they lived. The objectors then said that the arrangements led to children from the Lowbrook area not being allocated places.

The Adjudicator in the previous objection recognised the disadvantage to families who live outside of the catchment area who might have accepted places at the School in the expectation that younger siblings would have high priority for places, but was of the view that those children would also have high priority for their own catchment area school. The Adjudicator’s view was that children living in the Lowbrook catchment area who are not offered a place at the school find that they have low priority for places at all other nearby schools and that low priority continues for any siblings. The Adjudicator found this to be a greater unfairness and therefore upheld the objection. The Adjudicator went on to say that if a school has a catchment area, then families living in it will have the expectation that their children will normally be able to be offered a place there. The School therefore decided to prioritise those living within catchment for admission.

The very nature of admissions for a popular school means that inevitably there are some families who are going to benefit and some families who are going to lose out. The School would like to offer a place to all those who apply but unfortunately space limitations means that they cannot.

The Objector also complains that fluctuations in the number of children admitted to the School each year, which in some years has resulted in a large number of out-of-catchment applicants being admitted, has caused greater unfairness and disadvantage to those siblings. . . The School submits there is nothing unlawful about the fluctuations. Indeed, the School would argue that it is doing all that it can to work together with RBWM [Royal Borough of Windsor and Maidenhead] to satisfy local demand for school places. It is unfortunate therefore that siblings may be disadvantaged by this.”

25. There is nothing inherently unreasonable about an admission authority prioritising children who live in the catchment area of the school above siblings who do not, and provided the school gives a coherent explanation for doing so (as it has) such oversubscription criteria will be reasonable. I am satisfied that the school has a clear rationale for the oversubscription criteria contained within the arrangements. As such, the arrangements cannot be said to be unreasonable.

26. I will now consider whether the arrangements are fair. Fairness is a concept which, like that of reasonableness, is used in the Code but is not defined. Fairness can be described as a 'protean concept' in that it cannot be defined in universal terms; its requirements will depend on the circumstances. Fairness is focussed upon the effect of the arrangements on any relevant group. I stress here that oversubscription criteria create advantage for some applicants and disadvantage to others; indeed, that is their purpose.

27. It is the view of the referrer that the arrangements are unfair as the prioritisation of applicants under the oversubscription criteria "results in the increased separation of out of catchment siblings" and "places an unnecessary and long lasting" burden on parents.

28. Data supplied by the school and local authority shows that, each year from 2020 to 2023, the school admitted 60 or 61 pupils and all first-preference applicants with siblings at the school were offered a place. In 2024, 30 children were admitted and two first-preference applicants who have siblings at the school but do not live in the catchment area, were denied entry and instead offered places at their catchment schools.

29. Simply not being able to obtain a place at your school of choice is not of itself unfair. There might be unfairness if it was demonstrated that there were no reasonable alternatives for children. Local authority data also shows that whilst the school has been oversubscribed in recent years there are other schools, near to the objector's home, which have been significantly undersubscribed. According to the DfE website "Compare School Performance", the address of the objector has five other schools which admit children to Year R within one mile. There are fourteen schools other than the school which admit children to Year R within two miles of the objector's home. The objector's catchment school is within 0.28 miles of her address; Lowbrook Academy is the second closest school to the objector at a distance of 0.4 miles.

30. The objector's catchment school has a PAN of 60; in 2024 they received 28 first preference applications and 34 children were admitted. Of the fourteen schools other than Lowbrook Academy which admit children to Year R within two miles of the objector's home, ten received a number of first-preference applications below the level of their PAN, and eight schools admitted fewer children than their PAN. The combined PANs of these schools is 720; 649 children were admitted in 2024, resulting in 71 surplus places (equivalent to 9.8 per cent).

31. I am satisfied that any siblings who do not gain a place at the school are likely to be able to gain a place at another school which is local to them. Indeed, the two such children who were denied a place in 2024 were both admitted to their catchment school.

32. In relation to admission arrangements, fairness is often best evaluated by undertaking a balancing exercise. I have considered the balance of fairness if the oversubscription criteria were changed to afford greater priority to children who have siblings at the school and who do not live within the catchment area. That is, I have weighed the advantage that would be afforded to those applicants against the disadvantage that would be caused to children within the catchment area who do not have siblings at the school, and who would be 'displaced'.

33. The determined arrangements disadvantage younger children of families with a child already at the school who live outside the catchment area. Hence, when the school is oversubscribed, a child living outside the catchment area with an older sibling at the school may be displaced by a child living within the catchment area who does not have an older sibling at the school.

34. If the arrangements prioritised siblings over children living in the catchment area this would disadvantage children living within the catchment area who do not have an older sibling at the school. If the school were oversubscribed then these applicants, usually first born or only children, may be displaced by a child living outside the catchment area who has a sibling at the school.

35. I have examined data provided by the school and the local authority; the school has been significantly oversubscribed in at least the last four years. In 2024, the school received 57 first preference applications for 30 available places. Table 1, below, shows the number of children admitted to the school each year from 2021 to 2023, and the number offered places for 2024, under each oversubscription criterion. I have noted that during these years no children were admitted due to having an EHCP which named the school.

Table 1: The number of children admitted to the school (2021 to 2023) or offered places (2024) under each oversubscription criterion

Oversubscription criteria	2021	2022	2023	2024
Criterion 1 (LAC / PLAC)	0	2	0	0
Criterion 2 (children of staff)	0	0	0	0
Criterion 3 (sibling in catchment)	12	12	12	8
Criterion 4 (catchment)	26	18	19	15
Criterion 5 (sibling)	6	15	6	7
Criterion 6 (distance)	16	13	24	0
Total	60	60	61	30

36. The data in table 1 shows that, if the school had admitted only up to the level of the PAN, then under the current arrangements: eight children living in the catchment area of the school would have been refused entry in 2021; two such children would have been refused entry in 2022; and one in-catchment child would have been refused a place in 2023. In each of these years, no children outside of the catchment area (save for any admitted under the first criterion) would have been admitted. If the oversubscription criteria had afforded greater priority to out-of-catchment siblings than to those in-catchment who do not have a sibling at the school, then: fourteen children living in the catchment area of the

school would have been refused entry in 2021; seventeen such children would have been refused entry in 2022; and seven in-catchment children would have been refused a place in 2023.

37. The popularity of the school is such that in years when 30 children are admitted (as is intended for 2025), some in-catchment children may be denied a place. If the oversubscription criteria were to be revised as the objector proposes, the likelihood of this increases, and the likely number of in-catchment children who would be displaced rises. I have considered the position of these children; that is, the disadvantage that would be caused to them in the event that they were afforded lower priority for entry to the school than out-of-catchment siblings.

38. I have looked at the 2025 admission arrangements for the ten primary schools which admit children to Year R that are within two miles of the school's postcode, as published online. These schools were identified using GIAS. Five of the schools are community or voluntary controlled schools for which the local authority is the admission authority; the other five are academies. The five local authority schools prioritise applicants who live in their catchment area ahead of those who have a sibling at the school but live outside of the catchment in their 2025 arrangements, as do two of the academy schools. The third academy does not appear to have published its arrangements for 2025; its 2024 arrangements also afford higher priority to in-catchment applicants than to out-of-catchment siblings. The fourth academy is a Catholic primary school which does not use a catchment area and prioritises applicants largely on the basis of faith. The final academy does not have a catchment area and prioritises all siblings before allocating places on the basis of the proximity of an applicant's address to that school; their website states "whilst we do not have a defined catchment area, our previous admissions have been allocated to families residing less than 0.7 miles from our school site".

39. Putting aside the Catholic school which has distinct faith-based oversubscription criteria, within two miles of Lowbrook Academy all schools, except one, prioritise applicants living in their catchment area ahead of those who have a sibling at the school but live outside of that area. If the criteria were changed as the objector suggests, then children living in the catchment area for Lowbrook Academy, who would be displaced from the school by out-of-catchment siblings, would be afforded low priority for entry to at least eight of the nine non-Catholic schools within two miles of the school. However, if the criteria remain as determined, children with an older sibling attending the school, who live outside the school's catchment, are likely to live within the catchment of one of the other schools and consequently would have a high priority for that other school.

40. The objector has referred to a "burden" on parents who may end up with children attending different schools and cited various practical considerations in respect of this, including:

- "the extenuating (sic) demands it places on parents/carers whose young children are entirely dependent on them to physically attend the school twice daily;
- the forced separation of siblings and the breaking of familial bonds;

- the additional and unnecessary costs imposed on parents for different school uniforms, the expense of different whole school photographs (unable to obtain joint sibling school photos) and the expense of child minders/carers to assist in the facilitation of collecting children from multiple primary schools at the same time;
- the loss of annual leave for the parents required to facilitate the two sets of separate inset days, attendance at two separate sports days and other separate school events; and
- the daily burden of administering two separate club activities, after school care programs, online platforms (e.g. scopay, Teachers2Parents) and school policies etc.”

41. The objector also stated that, in respect of what she described as “the initial inconvenience” for families in catchment who do not already have children at the school, “A one-off requirement to apply to several local schools for in catchment families clearly pales into insignificance in comparison to daily and long-lasting extenuating (sic) demands that are currently being imposed on families under the current Criteria”. The objector has considered the inconvenience that the current arrangements cause to some out-of-catchment families; I must acknowledge that which may be caused to in-catchment families in the event that the oversubscription criteria were changed as the objector proposes.

42. An applicant who did not have an older sibling at the school may equally have a younger brother or sister at home. If a family does not secure a place at the school despite living in the catchment area because of oversubscription criteria which give higher priority than currently to siblings, then the older child would have to be admitted to a school for which they were out-of-catchment, their younger siblings may be afforded low priority for admission at that school, and all the issues which concern the objector would apply to that family. I am not satisfied that, for in-catchment families, being displaced from the school would amount to nothing more than an “initial inconvenience”.

43. I have considered the point made by the objector regarding the number of pupils admitted to the school in recent years. The objector stated:

“It is understood that the School’s current Criteria is [sic] based on a former determination, made by the School Admissions Adjudicator [sic], dated 2 September 2016 (case reference ADA3180 and ADA3181) (“the Determination”). . . The School itself has previously supported the sibling first criteria, whereby in the previous Determination at clause 16, stated,

“it is the School’s submission that it is entitled to prioritise siblings regardless of where they live ahead of children living in the designated area. The reasons for using siblings as an oversubscription criterion are well established. Thousands of schools up and down the country prioritise siblings in the same way. The very nature of admissions for a popular school means that inevitably there are some families who are going to benefit and some families who are going to lose out.”

It is pertinent to note that this Determination was made in 2016, where the Published Admission Number (“PAN”) of the school was 30 and the normal intake of the school

was also 30 pupils per year. The Determination held at paragraph 42 that, “on balance, with a PAN of 30, the greater unfairness lies with the catchment area children...

with the intake operating at the higher level for more years than not i.e. 4 years at 60 and 3 at 30, it is important to again refer to the Determination at 39. which states, “This determination however, must be on the arrangements referred to me; with a higher PAN a different conclusion may have been reached.””

44. As the objector has noted, although the school has in some years chosen to admit 60 pupils, the PAN of 30 has not changed. The Code allows for admission authorities to admit above the level of the PAN and makes it clear that a decision to do so does not amount to an increase in PAN. I also make the following points: first, the adjudicator must consider each objection afresh, and any previous determination does not set a binding precedent. Second, where an adjudicator notes that they may have reached an alternative decision in different circumstances, this does not necessarily mean that they would have done so. Third, the school has stated that it does not intend to admit more than 30 pupils in 2025, which is the year under consideration.

45. In respect of the numbers of pupils admitted in different years the school stated:

“In 2013 agreement was reached with RBWM [Royal Borough of Windsor and Maidenhead] to take an additional 30 children into Reception (YR) in response to local demand. Thirty additional children were also admitted in 2014 and 2015, but in 2016 the School could only offer 30 YR places as its accommodation was then full. The School admitted 30 children in 2017, 2018 and 2019 as well.

On each occasion that an additional 30 children were admitted, new accommodation has been added to the school. . .

However, it has not been possible to expand the infrastructure of the buildings. . . to formally increase the PAN and become a two form entry school. . . The PAN has therefore remained at 30 throughout. Without further significant investment from RBWM the School cannot formally increase its PAN to 60.

At any one time, the school has 4 year groups with 60 pupils and 3 year groups with 30 pupils. It has a total of 14 classrooms and therefore the admission number must drop back to 30 periodically so that there is sufficient accommodation for all pupils. Having dropped back to 30 children in 2016-2019, the School was then able to admit 60 again and did so in 2020, 2021, 2022 and 2023. New intakes of 60 are only able to be admitted again to Reception once a previous year group of 60 has left the top of the school. That is why the School must again admit 30 in September 2024.”

46. A number of children living outside the catchment area of the school have been admitted in recent years; siblings of some of those pupils have since been unable to gain a place at the school and this may also be the case in 2025. This is what the objector alleges is unfair. To put it another way, the objector asserts that the admittance of 60 pupils in some years of entry has increased the disadvantage to out-of-catchment siblings. I note that

although admission arrangements must be determined every year and therefore there can be no reasonable expectation that they remain unchanged, parents of out-of-catchment children who currently attend the school applied for places in the knowledge that they did not reside in the school's catchment area and that the school's PAN remained at 30. Such families would also be aware, had they given careful consideration to the position, that it was likely that only 30 pupils would be admitted in some future years. Consequently, it would have been apparent to a family living outside the catchment area that gaining admission for an older sibling would give no guarantee of a future place for a younger sibling. Sending the older sibling to the local catchment school would have provided a much greater chance of a younger sibling obtaining a place at the same school.

47. In my view the higher admissions in some years are a factor which would be likely to cause greater disadvantage to in-catchment children without siblings, if the oversubscription criteria were revised to afford them lower priority than out of catchment siblings. Over time, this could result in fewer in-catchment first born or only children gaining places at the school. That is, the greater the number of children from outside the catchment area who have been admitted, potentially the greater the number of siblings that would be prioritised ahead of in-catchment children without siblings at the school.

48. As I have said above, all schools must have oversubscription criteria which, by their very nature, disadvantage some applicants compared to others. In order for the arrangements to be unfair the disadvantage must also be unfair. To be clear: I am sympathetic to the issues the objector has described and the difficulties that parents may experience in having primary aged children attending different schools. However, this does not negate the disadvantage that may be caused to children without siblings who live in the catchment area of the school, if the arrangements were revised as the objector proposes.

49. I have weighed this case very carefully and find that the disadvantage which the arrangements cause to out-of-catchment siblings is no greater than that which would be caused to in-catchment children without siblings at the school in the event that those children were given lower priority for admission. I find that the oversubscription criteria are reasonable and fair.

Other Matters

50. As I considered the arrangements other matters came to my attention which may not comply with the Code. I have set out these matters below, stating the relevant paragraphs of the Code and where the arrangements do not conform to requirements. Paragraph 14 of the Code states: "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." That paragraph of the Code is relevant to the matters set out below unless otherwise specified.

51. When I raised these matters with the school and the local authority, both provided me with a helpful, comprehensive response. I have included these responses where they serve to better illustrate the revisions that are required. I make it clear that it is not within my

jurisdiction to confirm whether any alternative wording proposed by the school would comply with the Code; it is for the school to revise its arrangements to address the matters I have set out.

52. The arrangements do not include a date by which applications must be submitted, stating only: “Lowbrook Academy will use RBWMs timetable published online”. The weblink which appears above this statement does not take users to a timetable for admissions. The arrangements therefore fail to provide the necessary clarity for parents.

53. The arrangements prioritise the children of staff but it is not clear what is meant by “a demonstrable skill shortage” or how a member of staff would be aware of whether that priority was afforded to them. In this respect the arrangements fail to comply with the Code. (Code 1.40).

54. The arrangements prioritise applicants on the basis of residence in the catchment area of the school. This includes the third oversubscription criterion, which states:

“Children whose normal home address is within the designated catchment area of the school. Parents residing in RBWM can check if they are in catchment for the school using the Neighbourhood View tool here.” (link provided)

55. Paragraph 1.14 of the Code requires that catchment areas are clearly defined. Neighbourhood View is a tool which allows users to input an address and be presented with the schools to whose catchment area that address belongs. Although undoubtedly useful, this does not fulfil the requirements of the Code. Consequently, I find that the definition of the school’s catchment area is not compliant with the provisions of the Code. I note that the trust has recognised the need for the catchment area to be clearly defined.

56. In respect of this, the local authority stated:

“Neighbourhood View is the exact tool used by admissions staff when processing applications to determine the designated area schools for an address. Parents within the borough have free access to this tool, and provision of an interactive website is in line with all our surrounding local authorities. For all primary schools, the designated areas are fully within the boundaries of RBWM, so parents living outside the borough are not disadvantaged. For clarity, we also provide the current designated area maps here [link provided]. Digital versions of the maps can be ‘zoomed in’ to a significant degree, so parents can see individual roads and other features.

Until notified otherwise via REF4238 (p.8, pghs 30-32) and the OSA Report 2023 (p.10, pg18), this was the provision made for all schools with designated areas. As a result of that notification, we have created and issued all schools in the borough with a high resolution map, the same as the ones used on the borough’s website, which can be added to their determined arrangements and their admissions policies, and placed on their own websites.”

57. For the avoidance of doubt, catchment areas must be clearly defined, and this includes the ability for parents to view or understand the catchment area for the school irrespective of where they live. Neighbourhood View does not fulfil this requirement. It is the responsibility of the school, as its own admission authority, to ensure that its catchment area is defined as part of its arrangements. If choosing to use a catchment map provided by the local authority, the school must ensure that this fulfils the requirements of the Code. I have used the link provided by the local authority but have been unable to clearly view the catchment area of the school, receiving a “page not found” error message when I attempted to do so.

58. The section “Multiple Birth Applications” on page 3 of the arrangements states that “In the case of twins or other multiple births, where there is only one place available in the school, all will be considered together as one application. The school will be allowed to go above its PAN for this purpose.”

59. The reference to being “allowed” to admit above PAN is unclear. Admission authorities may admit above PAN at any time and for any reason they decide, as stated in paragraph 1.4 of the Code. Indeed, in several years the school has chosen to do so. The school has told me that this section of the arrangements is intended to relate to paragraph 2.16 g) of the Code, which provides for siblings from multiple births to be admitted as excepted pupils under the Infant Class Size Regulations. The arrangements must be revised to provide clarity for parents.

60. In respect of deferred entry to school the arrangements state, on page 3, “to request deferred entry you must submit a request by writing or emailing the school”. This implies that deferred entry is something that may be requested, rather than a right as set out in the Code. (Code 2.17). The arrangements must be revised to provide clarity for parents.

61. Appendix 2 refers, on page 13, to a Supplementary Information Form. This reference is superfluous as the arrangements do not use such a form, and the trust has confirmed that this reference should be removed.

62. Appendix 2, on page 11, lists the admission authorities for different types of school (with the exception of foundation schools) and states that for academies, “the governing body is the admission authority”. As the admission authority for such schools is the academy trust this may not be clear. The school has confirmed that this list should be removed. (Code 11).

63. The arrangements prioritise siblings of children at the school, as is allowed under the Code. However, the definition of siblings on page 2 of the arrangements differs from that on page 13, including that page 2 implies that all foster children placed by a local authority are included in this definition but page 13 that only “a foster child permanently living in the same family unit” is included. It is also unclear what is meant by “permanently living”. The arrangements are therefore contrary to the Code. (Code 1.11).

64. The arrangements deal, on page 3, with the admission of children outside their normal year group. The arrangements do not make clear the additional rights of parents of

summer born children to defer their entry until the September following their fifth birthday and may imply that all parents have this right. It is also not clear that, where a parent's request for their child to be admitted out of their normal age group is agreed, the application for a place will be processed as part of the main admissions round. (Code 2.18, 2.20). The arrangements must be revised to provide clarity for parents.

65. A form included as Appendix 1 in the arrangements is untitled; the school has confirmed that this is for in-year admissions. This form asks parents:

- if they have been advised to seek a transfer from their child's current school;
- whether they have had contact with an Education Welfare Officer; and
- whether Social Services or any other agency has been involved with the child.

66. These questions are contrary to the Code as they ask for personal details which do not have a direct bearing on decisions about oversubscription criteria. The school has confirmed that they will be removed. (Code 2.4, 1.9).

67. Appendix 2 on page 11 of the arrangements defines the PAN as "the maximum number of pupils that a school is required to admit into each Year [sic] group". This is not correct. The PAN is in effect a minimum which applies only to the normal year of entry as stated in paragraph 1.2 of the Code. That is, if sufficient applications are received then the admission authority must admit at least the number specified in the PAN. The PAN is not in any sense a limit or cap on admissions to the normal year of entry and does not apply to other year groups. The arrangements must be revised to provide clarity for parents.

68. The arrangements state "intake numbers" for each year group in the school. As stated in paragraph 1.2 of the Code the PAN applies only to the relevant age group, which in the case of the school is Year R. Admission to other year groups may not be refused on the basis that PAN (or any notional maximum number) has been reached, but only where the admission of another child would prejudice the provision of efficient education or efficient use of resources. The arrangements do not therefore comply with the Code, and I note that the school intends to remove any reference to intake numbers. (Code 1.4).

69. In respect of this matter, I note that the local authority's consultation response stated (my underlining for emphasis):

"You give the PAN as 30 for Reception, but do not state what the admission number will be for your other year groups. While the PAN only applies to reception, the OSA is making a lot of judgements of non-compliance because admission numbers are not stated for in-year transfer groups. . . You could add a sentence. . . stating the number of places available in each year group".

70. When I raised this matter with the local authority they referred to previous determinations made by adjudicators and stated (my underlining for emphasis):

"REF3895 (p. 8, pgh 22) states, "The Code defines admission arrangements as "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.” It continues, stating, “Succinctness is to be welcomed, but the omission of essential explanations and definitions renders a set of admission arrangements open to [...] criticisms.” This is why the information was provided. . . Furthermore, it is important to make the admission numbers transparent and understandable to parents as per pgh. 14 of the Code. It is not believed that this is in contravention of 1.4, because advising parents of the number of children that have been admitted into that cohort does not mean that new admissions will be refused without reference to prejudice of provision. It is simply providing clarity as to whether that year group currently has one class, or two. . . Acknowledging the size of a cohort is a vital part of parental school choice”.

71. Although the local authority is correct that admission arrangements must be clear to parents and must contain all that is required by the Code, this does not mean that arrangements may include information which is contrary to the Code. In my view, stating “admission numbers” or “intake numbers” in arrangements implies to parents a maximum number of pupils who may be admitted, rather than the number of children who have been admitted. Indeed, this would seem to be the intention of the local authority in advising the school, ““You could add a sentence. . . stating the number of places available in each year group”. I also note that it is not necessarily true that providing the number of pupils in a year group indicates how many classes there are in that year; many schools operate classes of a size other than 30.

72. I asked the local authority to provide an example of an OSA determination which has judged that arrangements are non-compliant with the Code “because admission numbers are not stated for in-year transfer groups”. They responded:

“This statement is in reference to pgh 14 and 1.4 of the Code. As previously stated, REF3895 asserts, “Succinctness is to be welcomed, but the omission of essential explanations and definitions renders a set of admission arrangements open to [...] criticisms.” Paragraphs 16 to 18 of the Chief Adjudicator’s 2020 report (p. 10) make clear that it is insufficient for information pertinent to parental decisions to be found in another document such as the composite prospectus or coordinated scheme, as they “are different things which serve different purposes and must each be produced and published in accordance with the relevant prescribed timetable.” ADA4204 (p.7, pgh 27) states, “I note that admission authorities can work with numbers for other years which will relate to how many children were originally admitted and what could be justified at appeal if the admission authority believes that further admissions would prejudice the provision of efficient education or the efficient use of resources.” This is the process Lowbrook was undertaking by the addition of these numbers in their arrangements.”

73. A number of children originally admitted is not the same as a limit on the number that may be admitted. As I have noted above, it is the latter interpretation which I am concerned may be drawn by parents who encounter “intake numbers” in arrangements and which I

believe the local authority has advised the school to include. The local authority continued (my underlining for emphasis):

“Further clarity was sought at the Admissions Network Meeting of 9th October 2023 (18 LAs present), on how best to express previous admission numbers and PANs in determined arrangements, to make clear that PAN’s apply only to the relevant age group, but the numbers of pupils admitted in each cohort is a factor in parents understanding in-year transfers. This wording reflects the understanding of those 18 LAs.

The most recent references supporting these conclusions include the 2022 OSA report (p.28, pgh 76). As previously referenced, REF4238 states, “it is not sufficient to refer to the document of another body” as this was considered in contravention of pgh 14. Furthermore, REF 4237 states, “It is self-evidently the case that accurate published admission numbers should be easily available to parents and any other interested party who looks at the arrangements” (p. 3, pgh 15). Combined, these references imply that the LA interpretation was acceptable to the OSA, and that cohort numbers should be included in determined arrangements for the reasons stated above.

The statement specifically made to Lowbrook in the email [the local authority’s consultation response] referenced in this question was intended to make clear that the phrase ‘PAN’ should only be applied to the relevant age group. Furthermore, as cohort size is a factor when determining parental choices, the admission numbers should be included in the determined arrangements to fulfil pgh 14, and to be fully transparent. If different language is preferred, or this understanding is not accurate, please do advise us. We will then ensure that it is implemented at all relevant schools in the LA, and that it is also fed back to the 18 LAs of the Admissions Network.”

74. I note that the local authority has interpreted a determination that “accurate published admission numbers” should be easily available, as meaning that cohort numbers should be included in arrangements. However, the published admission numbers referred to by the adjudicator in the case REF4237 are the PANs for the normal years of entry. I am that adjudicator and believe that my meaning was clear, including that explicit reference was made to paragraph 1.2 of the Code.

75. Paragraph 76 of the OSA annual report for 2022, referenced by the local authority, states:

“In previous years I have drawn attention to the practice of some schools of using the PAN which applied when a particular cohort joined the school to determine if that particular year group is full. I do not miss an opportunity to draw attention to paragraph 1.4 of the Code which states unequivocally that the PAN applies only to the relevant age group. The test for whether a child should be admitted as part of a normal in-year application for admission to all other year groups is whether prejudice to the efficient use of resources or efficient provision of education will arise. Whether

or not there will be prejudice is not simply a function of whether or not the number of children in the year group will be higher or lower than the PAN that applied when that cohort joined. I remain concerned about an apparent lack of awareness of what the legislation as well as the Code provide.”

76. I acknowledge that parents may wish to know how children in a school are currently organised; this does not mean that it is correct under the Code to seek to prescribe intake numbers for each year of entry. The school is its own admission authority and as such must decide, subject to the requirements of the Code, the content and wording of its arrangements. If the local authority believes that, say, the number of classes in a year group is a factor considered by parents when choosing a school, then when advising schools (or determining arrangements for schools for which it is the admission authority) it should make clear that any wording used to present this information should not give parents to understand that there is a maximum number of pupils which may be admitted to any year group.

Determination

77. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2025 determined by Lowbrook Academy Trust for Lowbrook Academy, which is in the local authority area of Windsor and Maidenhead.

78. 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.

79. 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 3 November 2024.

Dated: 2 October 2024

Signed: 

Schools Adjudicator: Jennifer Gamble