



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3876**

**Objector: An individual**

**Admission authority: City of London Academies Trust**

**Date of decision: 29 July 2021**

## 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 2022 determined by City of London Academies Trust for City of London Academy Shoreditch Park in the London Borough of Hackney.**

**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 person, (the objector), about the sixth form admission arrangements (the arrangements) for City of London Academy Shoreditch Park (the school), a coeducational secondary school for pupils aged 11 - 18 for September 2022. The objection is to the consultation which took place prior to the determination of the arrangements for admission to the school's new sixth form. Also, the sixth form admission arrangements are alleged to be unreasonable and to operate unfairly to a large number of pupils currently attending the school who are unlikely to meet the academic entry requirements. The objector claims that there is potential for the entry requirements to be applied in an arbitrary manner.

2. The local authority (LA) for the area in which the school is located is the London Borough of Hackney. The LA is a party to this objection. Other parties to the objection are the admission authority (the trust), the school's governing board and the objector. For the avoidance of doubt, I have only considered the sixth form admission arrangements. I have not exercised my jurisdiction to consider the arrangements for admission to Year 7 or the arrangements for in-year admissions.

## **Jurisdiction**

3. The terms of the Academy agreement between the multi-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 academy trust, which is the admission authority for the school, on that basis. The objector submitted his/her objection to these determined arrangements on 17 May 2021. The objector has asked to have his/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 (the 2012 Regulations) by providing details of his/her 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**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

- a. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 17 May 2021 and supporting documents;
- d. the school's response to the objection and supporting documents;
- e. comments sent by the LA; and
- f. confirmation of when consultation on the arrangements last took place, details of what was consulted upon and responses.

## **The Objection**

6. There are nine elements to this objection. They all concern the arrangements for admission to the sixth form. The trust helpfully responded point-by-point to each element of

the objection identified in my jurisdiction letter, and so I have replicated what was in the letter:

- a. The objector alleges that the consultation process conducted prior to the determination of the sixth form arrangements was flawed. In particular the consultation document published in advance of the sixth form admission arrangements being determined was:
  - difficult to read and comprehend which would have caused particular difficulties for parents whose first language is not English;
  - published at a time when those potentially affected by the proposed sixth form arrangements were pre-occupied with schools being closed due to the pandemic and educating their children at home;
  - provided no indication of who had published the document;
  - provided no indication of whether comments or feedback were expected;
  - provided no key point of contact.

When parents contacted the school with questions or to request further information, the schools were unable to provide clear responses.

- b. The objector considers that the consultation was not a genuine one as the trust had already made up its mind on the proposals before consulting. Concerns expressed by parents were simply dismissed.
- c. The objector considers that the entry requirements are unreasonable and unfair because they make no allowance for the fact that pupils have lost a year of in-school teaching, and many have been struggling to maintain and achieve grades. Also, the objector suggests that, on enquiry to the school, it became apparent that only a small minority of some 26 children from Y10 would meet the entry requirements for the sixth form in terms of GCSE grades or the ability to study for and achieve four A Levels.
- d. The objector alleges that the arrangements will lead to a reduction in the availability of sixth form places across two boroughs and are therefore unreasonable.
- e. The objector's view is that the arrangements are unreasonable because they limit educational opportunities rather than extend them, and that the arrangements are also unfair because they further disadvantage pupils who are already disadvantaged. The arrangements are 'damaging' to the majority of pupils at the school and only benefit a small number of 'elite' high achievers'.
- f. The objector considers that the arrangements need to make provision for pupils with Special Educational Needs (SEN) and that, in the absence of such provision, they operate unfairly to this group of children.
- g. The objector considers that it is unreasonable for the school to offer such a low number of sixth form places as it is resourced to offer more places than those being made available.

- h. The arrangements give an indication of ‘flexibility’ which the objector says raises the question of what purpose the entry criteria are for, particularly if the criteria are then not applied universally but seen to favour some. The arrangements are therefore unreasonable and may operate unfairly to some applicants.
- i. Existing pupils at the school will see these arrangements as a ‘rejection’, which may mean they are less motivated to seek a sixth form place.

7. Since the objector had alleged that the consultation process which was conducted before the arrangements were determined was flawed, I informed all parties that, whilst it is open to an adjudicator to determine that there has been a failure to consult in accordance with the relevant legal requirements and therefore a failure to comply with both the 2012 Regulations and the Code, an adjudicator cannot impose a requirement upon an admission authority to re-consult after it has determined the arrangements even if the consultation has not been conducted in accordance with the requirements of the Regulations and the Code. I also explained that an adjudicator cannot require the admission authority to put in place any arrangements which were proposed when the school was opened if different to the sixth form arrangements which have now been determined.

## Other Matters

8. There were a number of other matters in the arrangements which I was concerned did not comply with the Code. Again, I have summarised them in the order they were set out in the jurisdiction and further information paper as the school has responded point-by-point.

- j. The meaning of the term ‘vocational courses’ under the heading ‘General Criteria’ did not appear to be sufficiently clear to applicants as there was no definition or list of courses.
- k. The arrangements state that “Subject specific entry criteria will also apply to individual A levels, as outlined in the prospectus”. I was concerned that this was unclear to applicants. I asked whether the prospectus is intended to be published alongside the arrangements on the school’s website (where the arrangements are required to be posted) so that it could be said that the two documents can be alongside one another.
- l. The arrangements say that, “where GCSE grades are not available for the specific subjects, Shoreditch Park Hackney Collegiate Sixth form reserves the right to administer additional tests and/or assessments to assess students’ level of academic ability and suitability for the A level courses chosen”. I asked how this is intended to work in practice, or what is meant by the phrase “where GCSE grades are not available”.
- m. The arrangements were unclear as to what additional tests and/or assessments will be used to assess students’ level of academic ability and suitability for the A

level courses chosen, or how are applicants who take these tests will be 'ranked' against applicants who have taken the GCSE subject in question.

- n. It was unclear as to whether oversubscription criterion 1 includes LAC/PLAC already attending the school. The arrangements read as though all children already attending the school would fall under oversubscription criterion 2.
- o. The term 'non-standard qualifications' is not defined and is therefore unclear. The arrangements say that the academy will use nationally accepted benchmarks from QCA and/or the DfE, to assess GCSE equivalence on a case-by-case basis. Again, it was unclear what this meant.
- p. Paragraph 2.14 of the Code requires that waiting lists must be maintained until 31 December of the school year of admission and must be re-ranked in accordance with the oversubscription criteria when a new application is made for a place at the school. The arrangements do not provide for this.
- q. The nature and purpose of the enrolment meeting was not explained.
- r. The arrangements say that "The academy also reserves the right to reduce the minimum entry criteria for students who wish to study an A level subject or group of subjects where there are sound educational and/or organisational reasons to do so". It is unclear what is meant by the term 'sound educational and/or organisational reasons' or who decides this the question.
- s. Sections 86A and 86B of the School Standards and Framework Act 1998 provide that maintained schools are required to admit a post 16 applicant to the sixth form unless the admission would prejudice the provision of efficient education or the efficient use of resources, or unless the applicant does not meet the entry requirements. The law applying to maintained schools is applied to academies via their funding agreements, so the provisions in section 86A and 86B are applicable. The arrangements say that in year admissions will not be accepted after 31 October due to the specialist nature of the provision. This appeared to be unlawful in a case where the applicant meets the entry criteria and there are vacancies on courses which the applicant wanted to study. The law does not appear to envisage that admission authorities can lawfully refuse to admit all applications for sixth form places submitted after 31 October in Year 12.

## Background

9. The school was established as a new free school and opened in September 2017. The school is part of the City of London Academies Trust which comprises six secondary schools City of London Academy Southwark , City of London Academy Islington, City of London Academy Highgate Hill, City of London Academy Shoreditch Park, City of London Academy Highbury Grove and The City Academy Hackney; three primary schools Redriff Primary School, Galleywell Primary School, City of London Primary Academy Islington; and one sixth form facility Newham Collegiate Sixth Form Centre City of London Academy.

10. Because the school only opened in 2017 with Year 7 pupils, it does not yet have any sixth form students. The new sixth form is due to open in September 2022, which will mean that pupils who have just completed Year 10 will be due to start in Year 12 in September 2022. The objector has informed me that the school that has been operating out of a temporary building whilst the permanent site was being built. This is nearing completion and is intended to be in occupation by pupils in September 2021. Relevant extracts from the school's sixth form admission arrangements are set out below.

#### “Introductory statement

City of London Academy Trust offer a wide and varied sixth form provision enabling students to study a range of A levels and specialist BTEC courses. In south London this is provided at CoLA Southwark and in North London at City Academy Hackney, CoLA Hackney and CoLA Highbury Grove. It also offers an A level sixth form for high attaining students at Newham Collegiate Sixth Form which provides exceptional progression opportunities for the most academic students to the best universities in the UK and abroad.

Across all the CoLAT 16-19 provision there is a drive for excellence and to develop a more bespoke and specialist offer in each of its schools which in 2022/23 any CoLAT student will be able to apply for, whichever school they come from. This is planned to be part of our collegiate approach to post-16 study where every child who meets the basic entry requirements and wants to study at a local CoLAT sixth form will be offered a place at least one location. Within this broad strategy Shoreditch Park will be providing co-educational A level provision to our students in North London similar to that which we already offer to students in Newham. Shoreditch Park, Hackney Collegiate Sixth Form aims to provide outstanding A level education and exceptional examination outcomes for the most able students which will enable them to progress to the best and most competitive universities, including Oxford and Cambridge and other prestigious universities world-wide.

#### Capacity

Shoreditch Park, Hackney Collegiate Sixth Form will have a total capacity of 240 places (full-time equivalent) for students in the age range 16-19. It will admit up to 120 students to year 12 in September 2022. Priority for admission will be given to Year 11 pupils on roll at COLA-SP Academy who meet the general criteria outlined below. Remaining places will be allocated to qualifying external applicants.

#### Minimum Study Programme

All students will be expected to enrol on a programme of study comprising a minimum of 540 planned hours per year.

#### Minimum Entry Requirements

The Shoreditch Park, Hackney Collegiate Sixth form is academically rigorous and challenging, as such places will be offered to applicants who are assessed to meet our minimum entry criteria. All conditional offers are based on a student's predicted grades and/or actual GCSE grades submitted on their application form.

### General Criteria

In order to study A levels, students need a minimum of 56 points from their best 8 GCSEs (vocational courses e.g. BTEC and community languages will not be included in the best 8) Students must also have at least a GCSE grade 6 in English Language and Mathematics to study A levels. Subject specific entry criteria will also apply to individual A levels, as outlined in the prospectus. In addition, where GCSE grades are not available for the specific subjects, Shoreditch Park Hackney Collegiate Sixth form reserves the right to administer additional tests and/or assessments to assess students' level of academic ability and suitability for the A level courses chosen.

### Applications with non-standard qualifications

In case of applicants with non-standard qualifications, the academy will use nationally accepted benchmarks from QCA and/or the DfE, to assess GCSE equivalence on a case by case basis.

### Applying for places

The application process opens on Wednesday September 1st 2021 and the closing date for applications is Friday 12th February 2022

### Oversubscription criteria

After the admission of students with Education, Health and Care Plans (EHCPs), where Shoreditch Park, Hackney Collegiate Sixth Form is named on the EHCP, the following criteria will be applied in this order:

1. Looked after children or children who were previously looked after but immediately after being looked after became subject to an adoption, residence or special guardianship order provided they meet the entry criteria.
2. Applicants already attending Year 11 of COLA, Shoreditch Park at the time of application provided they meet the entry criteria.
3. An applicant whose parent is
  - (a) a member of staff at Shoreditch Park for two or more years at the time at which the application for admission is made or
  - (b) a member of staff recruited to fill a vacant post for which there is a demonstrable skill shortage provided they meet the entry criteria.

4. External applicants provided they meet the entry criteria and for whom places on their chosen courses are available.

...

#### Applications with non-standard qualifications

In case of applicants with non-standard qualifications, the academy will use nationally accepted benchmarks from QCA and/or the DfE, to assess GCSE equivalence on a case by case basis.

#### Waiting lists

It may be that some applicants do not achieve their predicted grades or decide not to attend the academy following acceptance of their offer. We will therefore establish a waiting list, with applicants prioritised in line with our over subscription criteria. The waiting list will operate up to the end of the first half term of any academic year (31 October). In year admissions will not be accepted after that due to the specialist nature of the provision.

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#### Confirmation of Enrolment

When a conditional offer holder receives their GCSE results, they must attend an enrolment meeting with an academy member of staff on GCSE results day (or a different date determined by the academy) to confirm their place. No offer is confirmed until the student or their adult representative has enrolled on GCSE results day (or a different date determined by the academy). Where a student or their representative fails to attend enrolment day then their place will be offered to another student...

The academy reserves the right to enrol a student where there is evidence of exceptional academic performance in a subject or group of subjects but who may have failed to achieve one or more of the entry criteria. The academy also reserves the right to reduce the minimum entry criteria for students who wish to study an A level subject or group of subjects where there are sound educational and/or organisational reasons to do so. An example may be where a student has secured 8s & 9s in maths and sciences but has not achieved a 6 in their English Language but wishes to study maths and the sciences only. Students who wish to change subjects from their original offer will be placed on the waiting list".

## Consideration of Case

### The Objection

11. The objector says that he/she is raising concerns shared by a number of parents of pupils attending the school who fear that their children will not be able to continue into the



sixth form from Year 11 at the school. He/she considers that the arrangements will be “damaging to a much greater number of pupils whilst helping a very small minority of existing high achievers”. Those parents would like to see more open, more inclusive arrangements which are beneficial to more pupils. The objector is also concerned about the “flexibility” of application of the entry requirements which raises the question of what purpose the entry criteria are for, particularly if those criteria are then not applied universally but are seen to favour some. He/she suggests that a better policy and one taking into consideration the impact of COVID would be a more open lower criteria with streaming for the more able pupils and a phasing in over a period of time, developing the school into a Centre of Excellence if it proved there were a demand. The objector considers that currently it appears unlikely that there is adequate demand for an untested new school without track record and proffering variability to their own admissions policy. I should explain to the objector that it is for admission authorities to determine a school’s admission arrangements. An adjudicator may require an admission authority to revise any part of those arrangements which does not comply with the Code or is otherwise unlawful, but an adjudicator cannot dictate the wording of any necessary revisions or specify a different set of arrangements which he/she considers to be what the school should have instead.

12. The trust has sent me a copy of the minute of the meeting of the trustees of the City of London Academies Trust at which the sixth form arrangements were determined (the minute of meeting). This indicates that both the school and the City of London Academy Highgate Hill were opening sixth forms for admissions in September 2022 which would offer pathways for high achievers. In light of the consultation responses both schools were said to have made changes to their proposed admissions arrangements, one of which was to highlight the discretion of the Principal to “adjust admissions criteria where there is a genuine case to be made”. It is clear from the minute that the trust’s intention was to develop a collegiate sixth form across the trust schools “offering more curriculum pathway choices whilst rationalising provision to avoid duplication”. The goal is to broaden opportunities for all students.

13. As I have said, the school responded point-by-point to the elements of the objection listed in the Jurisdiction and Further Information letter, which was helpful. I have summarised the points below.

- a. The consultation document was produced in English which provides for the majority of parents who attend the school. There were no requests for translations either by the local authority, who reviewed and circulated the document to their stakeholders, or parents. The trust can ensure that there is a note on the policy that explains that translations are available on request. As it was published in lockdown all children were at home and no families were away on holiday. Details of who published the document, where to provide feedback and the key point of contact were all set out in the document. The Principal is said to have responded personally to all enquiries from parents about the sixth form (approximately 11), providing detailed information about the collegiate strategy and the fact that all students at the school would be offered a place at a COLAT (City of London Academy Trust) sixth form. The Principal also responded live to around a dozen queries typed into the chat by parents on the

consultation Google Meet. It is said that the objector was present but did not contribute or ask a question in the chat during the meeting. The Principal informed parents whether their child was on track to meet the admissions criteria or not, and clarified what 56 attainment 8 points means in practice. Every enquiry or contact from parents was responded to and the Principal received several responses from the parents thanking her for clarifying and taking the time to respond so clearly and personally. The Principal did not receive any correspondence of any kind stating dissatisfaction that the school had not provided clear responses.

- b. The trust maintains that the consultation was a genuine one. Several meetings took place before the consultation document was published. There was also an online meeting for governors and one for parents and the public, which was advertised in the Hackney Gazette. The local authority reviewed the consultation document and distributed it to all local schools. Several changes were made to the final determined arrangements as a result of the consultation process.
- c. The trust considers that the objector has misunderstood the collegiate approach across five COLAT secondary schools which underpins the sixth form admission arrangements for the school. All students are expected to be offered a place at one of the schools in the collegiate group. It is said that this was set out in the consultation document
- d. The trust says that it is untrue that the school's arrangements will lead to a reduction in the availability of sixth form places across two boroughs, as alleged by the objector. This is because there is excess capacity in trust sixth forms and other sixth forms in Hackney.
- e. The trust disagrees fundamentally with the objector's view that the arrangements are unreasonable because they limit educational opportunities rather than extend them, and that the arrangements are also unfair because they further disadvantage pupils who are already disadvantaged. The trust says that the collegiate provision across the five COLAT secondary schools is being extended by the provision at Shoreditch Park. It is both educationally advantageous and economically efficient to provide specialist pathways across these five schools. Shoreditch Park is providing a pure A level Russell Group focused curriculum based on their site. Three other schools that already exist provide different curriculum pathways across a different range of subjects and qualifications. There are therefore a wide range of courses across the collegiate which all students are expected to apply for. This includes A levels, BTECs, VCerts as well as GCSE resits. The collegiate nature of the provision has been stressed throughout and was explained in the preamble of the consultation document.
- f. The trust says that pupils with special educational needs are given priority and catered for through the wider collegiate provision.
- g. The trust agrees that the school is resourced to provide more sixth form places, but there is a surplus of places in the local area. It is envisaged that the number of

places will be increased over time, presumably if the sixth form proves to be oversubscribed.

- h. It was explained that the 'flexibility' in the entry requirements was introduced in response to comments made during the consultation process (as is reflected in the minute of meeting). The trust's view is that the question of whether applicants meet the entry requirements or not will inevitably require some exercise of judgement.
- i. The trust does not consider that existing pupils at the school will see the sixth form arrangements as a rejection. It will be explained to pupils that the intention is that they will be offered a place at one or more of the COLAT secondary schools.

14. In reply, the objector made further comment about the consultation process, maintaining that the emphasis had been upon the provision for high-achievers as opposed to the offer for all pupils across the COLAT secondary schools which the objector says was not made sufficiently clear. He/she does not believe the consultation was a genuine one. Although changes were made following comments from consultees, these were peripheral. The core plan for the school's sixth form was never going to be changed. The objector says that the trust stated categorically at a meeting that there would be no change, although this was not minuted. Finally, the objector's view is that the trust's statement that "All students are expected to be offered a place at one of the Collegiate group" is welcome but impractical. The objector suggests that he/she is representing the views of a number of parents who are unhappy.

15. Although the objector has made nine separate points all of which I have considered carefully, I have divided my consideration of the objection into four broad sections. These are 'Consultation', 'Unreasonableness', 'Unfairness' and 'Clarity'. My high-level conclusions are that the consultation was lawful; the arrangements are not such that no reasonable admission authority would have determined; and that they are unlikely to operate unfairly to existing pupils at the school. There is one important caveat to these conclusions, which is that the arrangements confer discretion and, because it is unclear how this discretion is intended to be operated in practice, there is a risk that they may be operated unfairly. I will explain the reasons for these conclusions.

#### Consultation

16. As I have explained to the parties, although I am able to comment upon whether the requirements of the Code in respect of consultation were complied with, that is the extent of my jurisdiction. I cannot require the trust to re-consult or to adopt a different set of admissions arrangements even where the requirements in the Code on consultation have not been complied with. Therefore, although the objector feels strongly that the consultation process should have been better conducted, I do not propose to dwell extensively on this point. Rather, my focus is upon whether the arrangements are reasonable and operate fairly because, if this is not the case, they will need to be revised.

17. The relevant requirements in the Code are set out below.

#### Paragraph 1.43

For admission arrangements determined in 2015 for entry in September 2016, consultation must be for a minimum of 8 weeks and must be completed by 1 March 2015. For all subsequent years, consultation must last for a minimum of 6 weeks and must take place between 1 October and 31 January in the determination year.

#### Paragraph 1.44

Admission authorities must consult with:

- a) parents of children between the ages of two and eighteen;
- b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- d) whichever of the governing body and the local authority who are not the admission authority;
- e) any adjoining neighbouring local authorities where the admission authority is the local authority; and
- f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.

#### Paragraph 1.45

For the duration of the consultation period, the admission authority must publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought<sup>38</sup>. Admission authorities must also send upon request a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals.

18. The LA has informed me that the consultation was carried out by the LA on behalf of the trust. The school was also advised to display the proposed arrangements on its website. The proposed arrangements were emailed by the LA to Hackney schools, neighbouring education authorities and Diocesan Boards on 14 December 2020. They were also placed on Hackney Education's website, and an advertisement was displayed on 14 December 2020 in Hackney Today, a free newspaper that is distributed to every household in Hackney. This contained details about the consultation and informed consultees how to respond. Nine responses were received following the newspaper advertisement. Of the nine responses, two agreed with the proposed arrangements and seven neither agreed or

disagreed. No comments were provided with the responses, which were forwarded to the admission authority. I have set out the LA's response to the consultation in the next section as it is relevant to my consideration of whether the arrangements are reasonable and fair.

19. The trust says that it received a total of 11 responses from parents: two expressed interest in their child joining the sixth form; four were neutral and requested further information; five provided detailed feedback on the admissions policy, of which, two were opposed and three did not oppose the proposal but raised concerns about the admission arrangements. I have read the detailed responses from parents whose children are attending the school. These make points which are broadly similar to those made by the objector. The trust has sent me a copy of the draft arrangements which were consulted upon. Because there are simply the draft arrangements, they do not contain details of who responses should be sent to. However, on the basis of the trust's assurances, the information provided by the LA and the fact that responses were received and taken into account, I am prepared to accept that the requirements of paragraphs 1.43, 1.44 and 1.45 of the Code have been complied with.

20. The information provided in the consultation document was sparse (being apparently simply a copy of the proposed arrangements), and some parents had further questions. That said, it is clear from the opening statement in the proposed arrangements which were consulted upon that the sixth form provision at Shoreditch Park is intended to be part of a wider offer across the COLAT secondary schools. There is no detailed information about how the overall strategy is intended to work, which would have been reassuring for the parents of children currently attending the school, but parents were given an opportunity to ask questions at a meeting and the head teacher also provided responses to individual parents' detailed questions. There is no specific requirement in the Code to hold meetings, therefore there is an argument that the admission authority exceeded the Code's requirements.

21. The number of written responses to the consultation was low. This appeared odd to me, given the potential effect of the proposal upon sixth forms in neighbouring schools and upon pupils attending the school. This may have been due to the effects of the Pandemic or the timing; however, admission authorities have a limited window (which is set out in regulations and is not within their control) during which they must carry out any required consultation upon proposed admission arrangements. The consultation was conducted during the requisite period. So many aspects of our lives have been disrupted by the pandemic, and it may be that in 'normal' times, there might have been a wider response. It is also possible that views were expressed at the virtual meetings and those attending were re-assured by the responses given. The trust did, so far as I can ascertain, take into account the points made in the consultation responses. Moreover, I am bound to say that it would be unusual for an admission authority to make a fundamental change to a core policy on the basis of such a low number of responses which opposed that policy however heartfelt those responses were.

22. A number of those who made representations shared the concerns of the objector and it is understandable that parents will be upset and disappointed when faced with such a

low prospect that their children who have been through such difficult times and disruptions to their learning over the past two academic years will be able to secure places in the sixth form of their school and that they will in consequence need to move to another school when they would prefer not to do so. Against that, it must be borne in mind that moving institution at the end of Year 11 is not unusual; there are many schools which do not have sixth forms, including whole parts of the country where sixth form provision is made in separate institutions. Even where there are school sixth forms it is not unusual for young people to move to a different school or college depending on precisely what they wish to study. In all, I do find that the relevant consultation requirements in the Code were complied with and I do not uphold this aspect of the objection.

#### Unreasonableness

23. Paragraph 14 of the Code requires 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”. The LA’s response to the consultation provides helpful information. This says:

“We are pleased to hear you are taking forward plans for provision for post 16 for the COLA Shoreditch Park School. We do have some comments about the proposals which are below. The proposal to name the sixth form 'Shoreditch Park, Hackney Collegiate Sixth Form' rather than the 'City of London Academy, Shoreditch Park, Sixth Form' is disappointing. The LA would wish to see the sixth form reflect the official name of the school which was established to serve local pupils: we do not endorse the phrasing "Hackney Collegiate Sixth Form".

The introductory statement refers to the provision as a sixth form for children from all COLA schools but this is not explicitly stated in the published oversubscription criteria. There is currently a surplus of A level places in Hackney and a need for a range of courses for pupils of all abilities. This sixth form would therefore add to the number of surplus A level places in Hackney. We would prefer to see a range of courses across Level 1, 2 and 3 offered. The introduction of a highly selective sixth form may result in the provision not reflecting the immediate ethnic and social mix of the COLA Shoreditch Park (Year 7- 11), or pupils from the local area. The impact on COLA SP pupils who do not get a place could make them feel less valued than the high achieving pupils. This is a concern”.

24. The LA has also told me that Hackney has fifteen secondary schools, nine are academies, four are voluntary aided and two are community schools. All but two have post-16 provision. Two special schools provide for post-16 pupils; a third will open sixth form provision in autumn 2021. There is also one sixth form College, BSix, and New City College has a campus in Hackney. The LA has said in response to the Jurisdiction and Further Information paper:

“Hackney’s vision for post-16 education is “to develop comprehensive provision through partnership with schools and colleges in order to improve the life chances

and life opportunities of every child, young person and learner. The curriculum offer in our borough is broad and relevant to the needs and ambitions of our students. It allows the year 11 cohort in schools access to the borough sixth forms. The curriculum offered is largely A Level, but there has been considerable growth in Level 3 vocational courses, which now accounts for a third of the total cohort. One school offers a Level 2 vocational programme. Also the schools may have one or two students with SEND (special educational needs or disabilities) who have a specific learning difficulty but are able to meet the entry requirements for A Level or Applied General. Clapton Girls Academy has one small Level 2 vocational course for Health and Social Care which some students with SEND may access. The two colleges offer a range of Entry, Level 1, and 2 courses which give students progression routes into Level 3 courses or apprenticeships/employment.

The size of the school sixth forms in Hackney has been relatively stable over the last three years in spite of a very competitive environment. In two schools, Mossbourne Community Academy and Stoke Newington School and Sixth Form, provision is expected to expand. The 6th form places at the City of London Academy Shoreditch Park will add to the current number of places available in the borough. It may be that the objector is referring to a restriction on sixth form places available for pupils within the City of London Academy Trust rather than more generally. Is there available local sixth form provision for children with SEND? There is a requirement for more post 16 places in Hackney for children with SEND. This is being partially resolved through the implementation of an emerging Education Sufficiency and Estates strategy. However more mainstream sixth forms being open to pupils with SEND would be helpful. We currently have 135 young people of Post 16 age with SEND who attend out of borough or independent non-maintained settings". This information is helpful and I am grateful to the LA for helping me to form a clear picture of the availability of local sixth form provision.

25. I should make clear that, although academy schools frequently work with local authorities with a view to ensuring that there is a reasonable local offer in order to accommodate diverse ranges of ability and SEND, they have no statutory obligation to do so. It may well be the case that, if the school's arrangements made provision for children with SEND, this would enhance the local sixth form provision, but I cannot require the school to make such provision. The trust has said that there will be provision for SEND across the collegiate structure, which is welcome news.

26. The question I must consider in deciding whether the trust has acted unreasonably in adopting this particular set of admission arrangements is whether those arrangements are such that no reasonable authority would have adopted them in light of all relevant circumstances. This is a high threshold, and I do not find it to be met in this case. Given that there is a surplus of A Level places and a dearth of courses across Level 1, 2 and 3 arguably it might have been advantageous to some local children if this school were to offer a different type of sixth form provision, but this does not mean that it has to do so. Admission authorities are expressly permitted by statute to have selective entry requirements for school's sixth forms. It is also the case that it is for each admission

authority to “decide which criteria would be most suitable to the school according to the local circumstances”. For any school there will be more than one possible set of Code compliant arrangements. It is for the admission authority to decide what arrangements to have and for me to decide whether those arrangements conform with the relevant requirements. But it is not for me to decide which arrangements – out of all those that would be possible – the school should adopt.

27. In the same context I also note the LA’s concerns that the provision is not reflective of the immediate ethnic and social mix of children at the school or those living in the local area. The entrance requirements for the school’s sixth form are extremely high. I am told that only 26 children in Year 10 are likely to be able to meet those requirements. The question then is whether it is reasonable for an admission authority to adopt a set of arrangements which will result in the outcome that most of its pupils who wish to enter post-16 study will be forced go elsewhere. I might have answered this question differently had the school not been in an area of London which is very diverse in terms of culture and ethnicity and with a public transport system which enables children to travel to a wide range of educational institutions and had it not been for the trust’s assurance that its collegiate approach will facilitate a range of provision to accommodate students with varying levels of ability who wish to study a diverse range of courses.

28. If it is the case that the sixth form intake will not be from the school’s immediate locality, the trust must be envisaging that sixth form pupils will be able to, and will choose to, travel to school from other areas. The reverse must also be true. The trust will of course need to monitor the impact of its arrangements from the point of view of complying with the requirements in the Equality Act 2010 not to discriminate indirectly against applicants on the basis of ethnicity or race. The trust will of course also need to be mindful of its obligation to comply with the requirements in section 1A of the Academies Act 2011 as reflected in the school’s funding agreement to provide education for pupils who are wholly or mainly drawn from the area in which it is situated.

29. From the information I have, I do not believe that pupils at the school will be unable to access appropriate sixth form provision. One of the benefits of living in London is that there is a wide range of educational provision available in most areas. The unfortunate reality is that it is simply not possible for every child to go to the school of first choice and, although this is a slightly different situation, I do not consider that it is unreasonable for the trust to have determined the arrangements it has or that they are unreasonable arrangements. As I have said, unreasonableness is a high threshold to establish.

30. Given that there is a surplus of A Level provision locally, I have concluded that pupils at the school who wish to study A Levels but who will not meet the entrance criteria for admission to the school’s sixth form are likely to be able to study A Levels at an alternative institution in Hackney in addition to having the opportunity to attend one of the other COLAT secondary schools. There may also be additional suitable provision in neighbouring boroughs. Further, the trust maintains that it is both educationally advantageous and economically efficient to provide specialist pathways across the five COLAT secondary schools with Shoreditch Park providing a pure A level Russell Group focused curriculum



based on their site and three other secondary schools providing different curriculum pathways across a different range of subjects and qualifications. Given that I am informed that there are a wide range of courses across the collegiate which all students are expected to apply for, including A levels, BTECs, VCEs as well as GCSE resits and that the A Level entry requirements for these three other schools is much lower than for the school, I do not conclude that the sixth form arrangements for admission to COLAT Shoreditch Park are unreasonable. I do not uphold this aspect of the objection.

## Unfairness

31. The question of fairness is at the heart of this objection. It is clear that the objector and others who responded to the consultation consider that the sixth form arrangements will operate unfairly to their children. They were not expecting such high level entry requirements and may have chosen to send their child to a different school had they known these sixth form arrangements would be put in place. However, the trust has told me that, when the school was established, no detail was given about what the sixth form arrangements would be. Indeed, given that the arrangements for the sixth form could only sensibly be finalised at a time when there would be some students actually able to join that sixth form, it could not have been known what the arrangements would be. Similarly, the parents of a child joining Year 7 this September cannot know for certain what the arrangements for Year 12 will be several years hence.

32. My view is that an assumption that one's child would be able to continue into the sixth form is not an entirely justifiable assumption. Many sixth forms have academic entry requirements and it can never be guaranteed that any individual child will meet those requirements or will want to remain at the school. Where a child is happy at school and wishes to continue to study there post-16 but will be unlikely to do so, this may well be perceived as unfair by that child and his/her parents. The school may be close to home and friendships will have been established. The number of children able to fulfil the ambition of staying on in the sixth form at the school (in September 2022 at least) will be very small. Inevitably some existing pupils at the school will feel disappointed. Indeed, the objector suggests that they will feel rejected and less motivated to seek a sixth form place. The LA is also concerned that pupils at the school may feel less valued than the high achieving pupils. However, whilst the disappointment of some parents and children is understandable, this does not necessarily mean that their perception of any unfairness would be considered objectively reasonable.

33. In reaching a conclusion about whether admission arrangements are unfair, the key question for me to consider is to whom are they unfair and why? The identifiable group to whom the entrance criteria are potentially unfair is the existing pupils at the school who are unable to meet the entrance requirements, and the reason that the arrangements are potentially unfair is that these requirements are too difficult for most pupils at the school to meet. Generally, the argument that arrangements are unfair simply because some applicants will be unable to meet them would not be sustainable. There are entrance criteria in place for a large number of sixth forms and not everyone at the school who applies will be able to meet them.

34. But this situation is different. As mentioned previously, I have been told that only 26 children in Year 10 are potentially capable being offered a place. I do not know how many pupils there are in Year 10. The school's Published Admissions Number for Year 7 is 180. If there are 180 pupils in Year 10, only 14 per cent are likely to be offered a place. This may be considerably lower than the number of pupils unable to meet the sixth form entry requirements in many other secondary schools. The arguments are that these arrangements are unfair because for most children at the school there is a much lower likelihood that they will be able to stay on in sixth form at the school they are currently attending than many other children in secondary school; that it will be much more difficult for them to meet the entry requirements because those are extremely high and because their education has been substantially disrupted due to Covid; and because they will feel rejected and de-motivated. I have considered this aspect very carefully indeed.

35. On balance my conclusion is that these arrangements are not unfair to this group of pupils for the following reasons: There appears to me to be a good range of alternative options for sixth form. The wishes and feelings of all pupils currently attending the school cannot be predicted and many children move to different schools post GCSEs. No child is guaranteed a sixth form place and many will not have the range and diversity of options open to them as those available to pupils at Shoreditch Park; all children applying for a sixth form place will have been through the same disruptions to their education as a result of the implications of the Covid pandemic so there is not an unequal playing field. Any child who does not meet the entry requirements for a place in their school's sixth form may feel upset or rejected, the fact that this is likely to happen to more children does not make it more or less painful for any individual child. Indeed, there is a possibility that children at the school may simply not apply, seeking to pursue one of the many alternative available options and be offered a place at a sixth form facility appropriate for them. Those children may not feel disappointed or rejected. There is the possibility that a child applying to a sixth form with very high entry requirements will feel less sure of succeeding and so have a lower expectation of success.

36. The trust has virtually guaranteed that there will be places for all across the various COLAT schools. I accept the objector's point that the trust is not able to give such a guarantee in terms of the definite promise of a place, but this cannot be guaranteed for any child in an educational context where most sixth forms will have entry requirements. Nevertheless, it does appear to be a genuine statement of intent by the trust. I have not dismissed the objector's concerns lightly. This is not to say that, as a parent, I may not have had similar concerns or that as a local authority I may have wished that the school had put in place a different range of courses suitable for more diverse levels of ability. As an adjudicator however I am required to determine this objection as a statutory appointee with no personal interest, and I do not find these school arrangements to operate unfairly in principle – although there is a risk that they may operate unfairly in the operation of discretion if they are not made clearer.

37. Since the school currently does not have a sixth form, manifestly, the opening of the new sixth form cannot reduce the number of available sixth form places in the area. By restricting admission to 'high- achieving' pupils, this will mean that others will not have the

opportunity to study at the school, but it will lead to more places being available at other schools which may not otherwise have been the case.

#### Clarity and the exercise of discretion

38. The objector has raised the issue of unfairness due to what he terms a 'flexibility' which he/she says will allow the entry level requirements not to be applied universally but to favour some. I have raised this with the trust as I too have concerns on this point, however my view is that presently this is an issue of clarity as opposed to any intended unfairness. Each year there will be some applicants who miss exams due to illness, bereavement or other good reason. The question is whether some sympathetic allowance should be those applicants and, if so, what that allowance should be. My view is that it is entirely reasonable for admission authorities to make such an allowance should they choose to do so. Indeed, I can see that the allowance was made in response to comments expressed by consultees. In order for these allowances to operate fairly and reasonably, the process must be transparent and operated consistently. The Code does not allow for decisions to be made at the whim of one person. The proper operation of discretion is not easily described. If there were an exhaustive list of circumstances in which a child who has missed exams or who has not achieved the expected grades for good reason, the risk is that a genuine circumstance would have been omitted from the list and could not therefore be considered. If the arrangements were to say that these decisions are entirely at the discretion of the trust or the governing body, there is a risk that the arrangements could be considered arbitrary as the objector argues is the case here.

39. Re-visiting the actual wording of the arrangements, they say: "The academy reserves the right to enrol a student where there is evidence of exceptional academic performance in a subject or group of subjects but who may have failed to achieve one or more of the entry criteria". The arrangements need to say who makes these decisions; what the process is; what the decision-maker will take into account; and what evidence they will need to see. These decisions cannot be made by an individual member of staff at an enrolment meeting and must be made consistently. In order to comply with the requirement for clarity in paragraph 14 of the Code, all of this needs to be explained clearly either in the arrangements themselves or in the prospectus which must be published alongside the arrangements and immediately accessible to applicants so that it can be read alongside the arrangements as part of those arrangements. Paragraph 2.7 of the Code says: "Admission authorities must allocate places on the basis of their determined admission arrangements only, and a decision to offer or refuse admission must not be made by one individual in an admission authority. Where the school is its own admission authority the whole governing body, or an admissions committee established by the governing body, must make such decisions". Also, paragraph 1.9 of the Code says that "It is for admission authorities to formulate their admission arrangements, but they must not:

- a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;...

m) interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.

40. The arrangements also say that “The academy also reserves the right to reduce the minimum entry criteria for students who wish to study an A level subject or group of subjects where there are sound educational and/or organisational reasons to do so. An example may be where a student has secured 8s & 9s in maths and sciences but has not achieved a 6 in their English Language but wishes to study maths and the sciences only. Students who wish to change subjects from their original offer will be placed on the waiting list”. I have asked the trust what is meant by the phrase “sound educational reasons” means and have been told that “This may be due to factors identified above, illness, bereavement or where the numbers achieving the entry standard are too low to be able to run a particular A level course. In such cases, the Principal would decide”.

41. Whilst it is neither unfair or unreasonable to introduce discretion into a set of arrangements which contain entry level criteria, the arrangements as they stand are insufficiently clear for me to determine whether its exercise will be compliant with the Code. It is intended that a more detailed explanation of terms will appear in the prospectus which is not yet drafted, however I am bound to say that if the prospectus says that admission is in any way at the discretion of the Principal or that the entry level criteria can effectively be re-written where not enough applicants meet them, this would be in breach of the Code. When operating selective arrangements, an admission authority can only refuse places in cases where the published entry level criteria are not met. Any discretionary decisions cannot be made by the Principal alone, although there is nothing to prevent her from making recommendations to the governing body or a committee of the governing body. To the extent that the arrangements are unclear, I uphold this aspect of the objection. I welcome the fact that the trust has said it will provide detail in the prospectus on the points I have drawn to its attention, and I hope that it will take into account what is said here when drafting the prospectus. As the arrangements stand, they are simply unclear and so in breach of paragraph 14. If clarified to reflect the intended operation, they would be in breach of paragraphs 14, 2.7 and probably 1.9 of the Code.

### **Other matters**

42. Again, the trust has replied to the other matters I have raised on a point-by-point basis. I have set out my findings under each sub-heading. I do not find the arrangements to be sufficiently clear to comply with the requirements of paragraph 14 of the Code in a number of respects. Indeed, I am not entirely clear how the admission authority would distinguish between applicants who all meet the entry requirements in the event that the sixth form is oversubscribed. The trust has said that it does not anticipate that this will be the case in September 2022, which is all the more reason to be clear about what the entry requirements are. Unless the admission authority establishes clearly that the sixth form is selective, it will need to admit all applicants if undersubscribed. The trust has informed me that further detail will be set out in the prospectus. I am aware that this is standard practice

for sixth form arrangements, and I am re-assured that the trust has said that the prospectus will be drafted taking into account the points I have drawn to its attention.

- j. The trust has said that it would be impractical to list the vocational courses which are not counted as there are thousands of 'vocational courses.' It would be possible to indicate examples of general qualifications such as BTECs, City and Guilds or VCerts. This could be added if deemed helpful. My view is that this would go some way to improving the clarity of the arrangements. There are various websites which contain definitions, such as [What are vocational qualifications? | Vocational subjects \(successatschool.org\)](https://www.successatschool.org/what-are-vocational-qualifications/). It should be possible to give a clear description of what is meant by the term illustrated by some examples.
- k. The trust has said that it is standard practice for sixth forms arrangements to specify subject specific entry requirements in the prospectus and publish this alongside the admission arrangements on the school's website. As this is a new sixth form, the prospectus is not yet published. It will be available to read alongside the admissions arrangement document. My view is that without further detail, a number of aspects of the arrangements are insufficiently clear to comply with paragraph 14 of the Code. The trust has said it intends to remedy this. I am grateful for the trust's cooperation in this matter.
- l. The trust has offered to add an additional sentence which gives examples of circumstances where GCSE grades are not available and where the school would administer additional tests and assessments. These, I am told, would include illness or other exceptional events such as bereavement. The trust has also offered to add a sentence explaining how this is intended to work in practice. This would be helpful and needs to be done in order for the arrangements to be sufficiently clear.
- m. The "additional tests and/or assessments to assess students' level of academic ability and suitability for the A level courses chosen" are described by the trust as tests which would be set and administered by the school using a selection of subject appropriate questions taken from past GCSE papers. This needs to be set out in the arrangements or in the prospectus.
- n. The Code requires that all looked after (LAC), previously looked after (PLAC) and (WEF 1 September 2021) looked after children previously in State care abroad (IAPLAC) must be given first priority in any oversubscription criteria. This must include LAC/PLAC and IAPLAC already attending the school who would fall within oversubscription criterion 1 as opposed to oversubscription criterion 2. The arrangements need to be revised to make this clear.
- o. The trust says that it would not be possible to list all alternative non-standard GCSE qualifications, but a list of examples could be added as a point of clarification. This would be a start. There will be a number of applicants with GCSEs who may have no idea whether these are standard or non-standard. An explanation of the term plus a list of examples is needed.

- p. The arrangements could be revised to say that a waiting list will be maintained until 31 December of the school year of admission and re-ranked in accordance with the oversubscription criteria when a new application is made for a place at the school, however the school is unlikely to be oversubscribed in the first two years of operation that these arrangements apply to. I am grateful to the trust for agreeing to do this. The arrangements must be clear even if the school is not oversubscribed.
- q. The trust has explained that, at the enrolment meeting, students are registered and enrolled after checking their qualifications and the appropriacy of their course choices. I am grateful for this explanation. The arrangements appeared to suggest that applicants underwent some form of interview to determine admission, which of course would be contrary to paragraph 1.9m) of the Code.
- r. The arrangements say that “The academy also reserves the right to reduce the minimum entry criteria for students who wish to study an A level subject or group of subjects where there are sound educational and/or organisational reasons to do so”. I asked the trust to clarify the term ‘sound educational and/or organisational reasons’ and explains who decides whether the term applies in an individual case. The trust has said that this may be related to factors such as illness, bereavement or where the numbers achieving the entry standard are too low to be able to run a particular A level course. In such cases, the Principal would decide. I have dealt with this point above.
- s. I explained to the trust that sections 86A and 86B of the School Standards and Framework Act 1998 provide that maintained schools are required to admit a post 16 applicant to the sixth form unless the admission would prejudice the provision of efficient education or the efficient use of resources, or unless the applicant does not meet the entry requirements. The law applying to maintained schools is applied to academies via their funding agreements, so the provisions in section 86A and 86B are applicable here. The arrangements say that in year admissions will not be accepted after 31 October due to the specialist nature of the provision. This appeared to me to be unlawful in a case where the applicant met the entry criteria and there are vacancies on courses which the applicant wanted to study.

The trust has said that it is difficult to see how a student could start what is effectively a 35-week A level course and be successful after missing the first half term. They would probably need extra teacher support and guidance to catch up with the work missed in that crucial first seven weeks, which would impair the ability of staff to ensure the progression routes to Russell Group universities this pathway is expected to provide for. However, the trust has agreed to add in a clarification note that, where this does not compromise the offer (e.g. a transfer from another school), the Principal would be able to consider the application. I understand fully the difficulties to which the trust refers, and I am grateful for the suggestion of compromise. There may not be a problem where a student is seeking to move from another school and has been following the same course curriculum. Also, it would be possible to allow admissions by discretion in cases where it is considered that an individual student might be able

to join successfully. As above, though, there would the process of exercising discretion must be transparent and operated consistently. It will need to be described clearly and decisions could not be made by the Principal alone. The law does not appear to envisage that schools can refuse all applications for sixth form places submitted after 31 October in Year 12, therefore as the arrangements stand they are unlawful and will need to be revised.

## Summary of Findings

43. I find that the consultation process which was followed leading up to the determination of the school's admission arrangements was meaningful not in breach of the requirements of the Code. I do not find the arrangements to be unreasonable or unfair, however they are unclear about the exercise of discretion in relation to the entry requirements and will need to be revised. The arrangements will need to be further revised in order to clarify that first priority is given to all LAC, PLAC and IAPLAC and to make clear that there will be some admissions after October 31 2022 (although it can of course limit the circumstances) in order to be lawful. There are a number of other aspects of the arrangements which are unclear, and this will need to be remedied either in the arrangements themselves or in a prospectus which is published alongside the arrangements as part of those arrangements.

## Determination

44. 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 2022 determined by City of London Academies Trust for City of London Academy Shoreditch Park in the London Borough of Hackney.

45. 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.

46. 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: 29 July 2021

Signed: Dr M Vallely

Schools Adjudicator