



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3878

Objector: A member of the public

Admission authority: The academy trust for The Cardinal Vaughan Memorial Roman Catholic School, in the local authority area of the Royal Borough of Kensington and Chelsea

Date of decision: 3 August 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2022 determined by The Cardinal Vaughan Memorial Roman Catholic School Academy Trust (admission authority) for The Cardinal Vaughan Memorial RC School, in the local authority area of the Royal Borough of Kensington and Chelsea.

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 for the supervision of the music aptitude test must be revised by 30 September 2021 and for the supervision of the random allocation by 30 November 2021.

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 member of the public, (the objector), about the admission arrangements (the arrangements) for The Cardinal Vaughan Memorial RC Academy (the school), an 11 to 18 boys non selective school for September 2022. The objection is to random allocation of places and the testing for musical aptitude as stated in the admission arrangements.

2. The local authority for the area in which the school is located is Kensington and Chelsea. The local authority is a party to this objection. Other parties to the objection are the objector, the academy trust and the Archdiocese of Westminster which is the religious authority for the school.

Jurisdiction

3. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 15 May 2021. 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.

4. I need to make clear that my jurisdiction is for the arrangements. To the extent that the objector is concerned about the arrangements themselves, I am required to consider his objection and make a determination. However, the objector has also made comments about the way in which the arrangements may be applied to boys seeking places at the school. This is not within my jurisdiction, and I accordingly make no findings on this matter. However, I want to put on record that I have seen no indication that the arrangements have not been applied properly.

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. a copy of the minutes of the meeting of the academy trust at which the arrangements were determined;
- b. a copy of the determined arrangements, which includes the supplementary information forms;
- c. the objector's form of objection dated 15 May 2021, supporting documents and subsequent correspondence;
- d. the school's response to the objection and supporting documents; and
- e. the local authority's response to the objection, supporting documents and subsequent correspondence.

The Objection

7. The objection is in three parts:

1) The random allocation of places and whether or not they conform to paragraph 1.35 of the Code which says, 'The random allocation process **must** be supervised by some-one independent of the school, and a fresh round of random allocations **must** be used each time a child is to be offered a place from a waiting list.'

2) The test for selection by aptitude (music) and whether or not it conforms to paragraphs 1.31, 1.32 and 1.33 of the Code. Together those three paragraphs read as follows:

'1.31 Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.'

'1.32 Admission authorities **must**: a) ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability; b) ensure that tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation, and c) take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place.'

'1.33 Admission authorities **must not** adjust the score achieved by any child in a test to take account of oversubscription criteria, such as having a sibling at the school.'

8. The objector also believes that the admission arrangements do not conform to paragraphs 14 and 1.8 of the Code. Paragraph 14 provides: '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.' Paragraph 1.8, so far as is relevant to the objection provides 'Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.' I will consider these points with reference to 1) and 2) above.

Background

9. The school is an 11 to 18 non-selective boys' school which admits girls to the sixth form. It is a Roman Catholic school. It is heavily oversubscribed; the local authority reports that there were 871 applications in 2021 for a school with a published admission number

(PAN) of 128. The 2022 admission arrangements were determined by the academy trust on 10 February 2021 and published in line with the Code.

10. After admitting boys with an Education Health Care Plan (EHCP) which names the school, the remaining places are banded to ensure that the intake represents the ability of the cohort applying. The boys take an ability banding test and are allocated to three bands; Band 1 (above average ability) and Band 3 (below average ability) are allocated 25 per cent of the intake each and Band 2 (average ability) is allocated 50 per cent of the intake.

Within each band the oversubscription criteria can be summarised as follows:

- A. Catholic looked after and previously looked after children including boys previously in state care outside England
- B. Catholic boys with a Certificate of Catholic Practice (CCP) in the following order:
 - B1 Up to 12 boys eligible for a music aptitude place (three to each of bands 1 and 3 and six to band 2)
 - B2 Brothers of current or former pupils
 - B3 Boys whose parents are members of staff at the school
 - B4 Other boys
- C. Other baptised Catholic boys
- D. Other looked after and previously looked after boys
- E. Any other boys.

11. The arrangements also explain at note 8.7 which is headed Random Allocation, 'We use random allocation as a means of deciding between applicants who have an equal entitlement to a place on the basis of the oversubscription criteria A to E. The local authority generated a random number electronically for all on time applications. Offers will be made by random number electronically in ascending order (i.e., the lower the number, the better the chance). The process will be administered electronically by the local authority, which is independent from the school.'

12. The school gives priority to up to ten per cent of Catholic Boys with a CCP who can demonstrate an aptitude in music. Three places are offered to boys in each of bands 1 and 3 boys and 6 places to band 2 boys. To qualify boys must achieve a minimum score of 14 in the aptitude test.

13. For admission in September 2021 boys were admitted down to criterion B4 in each band. It is worth pausing at this point to note that the effect of the arrangements is that an applicant will be placed in one of 24 categories as there eight oversubscription criteria (A, B1, B2, B3, B4, C, D and E) and three bands. The random allocation element comes into play to distinguish between the applicants in each category, but it does not act to promote

or demote an applicant from one category to another. A boy in, say, band 2 who meets oversubscription criterion B2 will always have a higher priority than a boy in band 2 who meets oversubscription criterion B4 irrespective of the operation of the random allocation element of the arrangements.

Consideration of Case

14. The objector believes that the system used by the school to provide a randomly selected group within each of the ability groups is open to manipulation and does not conform to paragraph 1.35 of the Code which says that ‘The random allocation process **must** be supervised by some-one independent of the school.’

15. I requested more information about the way in which the arrangements conformed to the Code. The school, and the local authority provided me with the details. I also asked for comments from the Archdiocese but even after repeated reminders I have received no response from them.

16. The local authority responded that its school admissions team acts as an independent party to assign applicants random numbers on behalf of the school. The school sends a full list of all applicants to the local authority with each individual allocated a unique reference number (I shall call this the “applicant number”). The local authority then assigns a random number (I shall call this the “random number”) to each applicant number and returns the list to the school. The random numbers themselves are generated via Random.org. and I was sent a letter from the managing director of Random.org explaining the way in which the numbers are generated.

17. In its response the school explained the same system from its perspective; the school sends an Excel spreadsheet of unique reference numbers (applicant numbers) which have been automatically generated when an application is added to the admissions database, to the local authority. The school says that the spreadsheet contains no other data, so it does not, for example, include the names of the applicants. It is simply a list of numbers or “records” with a record for each applicant. This usually happens in mid-December once the local authority deadline for on-time applications has passed. The local authority emails the spreadsheet back to the school having randomly allocated a unique number (the random number) to each record.

18. The returned spreadsheet is used by the school’s admissions staff to upload the random numbers electronically onto the school database. The school says that applicants’ identification numbers which are unique are used to make sure the right random number is attached to the right applicant. The registrar checks that the data is correct.

19. After this has been done, applications are ranked on the basis of oversubscription criteria and random allocation if a tie break is required within a specific criterion. Ranked offer lists are reviewed by the Directors’ Admissions Committee and then sent to the local authority.

20. I am of the view that the process by which the local authority allocate random numbers to the applicant list is fair, clear and objective and in line with paragraph 14 of the Code. However, I do not believe that the approach taken complies with paragraph 1.35 of the Code as I do not consider that what is done amounts to the “random allocation process” being supervised by someone independent of the school.

21. The school receives a list of random numbers allocated to the applicants’ reference numbers and there the independent supervision of the system ceases. This is at an early stage in the admissions’ process. From that point the school matches the random numbers to the individual pupil records on the database and administers the allocation of place using the oversubscription criteria. I have seen no evidence that there have been any errors, still less any wrong-doing, on the part of the school in this matching of data on the database or in the allocating of places, but the Code requires that ‘The random allocation process **must** be supervised by some-one independent of the school’ and this does not happen in this case. In one sense, the random allocation process is entirely independent: the school has no involvement in the allocation of the random numbers to the applicant numbers. However, I am concerned that because this happens before the applicants have been assigned to oversubscription categories and because what is involved is matching of two numbers (the applicant and the random numbers) the whole process is opaque, and it would be very difficult to check if errors were made. I am not satisfied that the random allocation process in its entirety is being supervised by someone independent of the school. I am also concerned in this context that one of the requirements of paragraph 1.34 of the Code that “Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent....” is met. I do not find that the arrangements in this regard are transparent, and I find that they do not conform with the Code. The school is required to amend its arrangements to ensure that there is independent supervision of the random allocation process.

22. The second part of the objection concerns the arrangements for allocating places to boys who show musical aptitude. Again, I asked for comment from the school and the local authority although the latter offered no comment. The school sent me a copy of the test which is similar to many used in schools which admit pupils on musical aptitude; it covers pitch, rhythm, pulse, simple melodies and identification of a note within a chord. It tests aptitude and not ability and conforms therefore to paragraph 1.32 of the Code. I am satisfied that this is an appropriate test.

23. The issue raised by the objector is the administration of the test by a single member staff, usually the head of music. The school argues that this member of staff does not have any involvement in the admission process. Clearly, this is not the case because the testing, supervision, marking and recommendations for allocation of places makes the head of music’s role crucial in the allocation of places on the basis of musical aptitude. The objector is concerned that by only having one person in the test it might lead to a loss of objectivity. I emphasise again that I have been provided with no evidence that this has happened. This person has the knowledge and ability to administer the test but is employed by the school and, according to the objector, may well know some of the applicants. Paragraph 14 of the

Code says that ‘In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective’. The supervision of a test by a single individual who is known to some applicants in my judgement places the test at risk of not being objective. It is also the case that a child may perform differently (for better or worse) in front of one adult whom he knows than in front of an adult he does not know or two adults only one of whom he knows. It is not for me to tell the school how it should amend its arrangements to ensure that the test is objective, but I observe that the presence of at least one objective other adult independent of the school and with the musical background sufficient to understand the test and its assessment would ensure that parents scrutinising the arrangements would be satisfied that they were fair, clear and objective. I therefore uphold this element of the objection. The school is required to amend its arrangements so that the music aptitude test is objective.

24. I have considered carefully how long I should allow the school to make changes to its arrangements. In doing so I have taken account of the fact that the school will wish to consider how best to make the changes both to the random allocation process and to the testing process. It may take some little while to devise new arrangements for the random allocation supervision and this may not be practically possible before the admissions round for 2022 begins in the new term; I am therefore requiring amendment for this aspect of the objection by 30 November 2021. I note that the musical aptitude test is scheduled for the week beginning 4 October. I therefore specify 30 September 2021 and as the date by which the arrangements for the supervision of the music aptitude test be revised.

Summary of Findings

25. I am of the view that the arrangements do not conform to paragraph 1.35 because the random number exercise to allocate places is not appropriately and independently supervised. I am also of the view that a single person administering the aptitude test who is employed by the school and may know some applicants could bring the objectivity of the test into question which does not conform with paragraphs 14 and 1.8 of the Code. I therefore uphold the objection. It is important to state again in this summary that I have seen no evidence of any wrongdoing by the school or the local authority in these matters.

Determination

26. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2022 determined by The Cardinal Vaughan Memorial Roman Catholic School Academy Trust (admission authority) for The Cardinal Vaughan Memorial RC School in the local authority area of the Royal Borough of Kensington and Chelsea.

27. 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 for the supervision of the music aptitude test must be revised by 30 September 2021 and for the supervision of the random allocation by 30 November 2021.

Dated: 3 August 2021

Signed:

Schools Adjudicator: Ann Talboys