



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4113

Objector: An individual

Admission authority: The Governing Board of The Latymer School, Enfield

Date of decision: 31 May 2023

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 2024 determined by the Governing Board of The Latymer School for The Latymer School, Enfield.

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 1998 Act), an objection has been referred to the adjudicator by an individual (the objector), about the admission arrangements (the arrangements) for The Latymer School (the school), a co-educational voluntary aided selective school for pupils aged 11 - 18 for September 2024. The objection is to various practices underpinning an oversubscription criterion which gives priority based upon "exceptional music talent".

2. The local authority (LA) for the area in which the school is located is the London Borough of Enfield. The LA is a party to this objection. Other parties to the objection are the objector and the school's governing board.

Jurisdiction

3. The arrangements were determined under section 88C of the 1998 Act by the school's governing board, which is the admission authority for the school. The objector submitted their objection to these determined arrangements on 18 March 2023. The objector originally asked to have his identity kept from the other parties and met the requirement in regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. However, as the case proceeded the objector agreed to certain correspondence being circulated, so that I could take it into account, in the knowledge that it would disclose his identity. I am satisfied the objection has been properly referred to me in accordance with section 88H of the 1998 Act and it is within my jurisdiction.

4. I have also used my power under section 88I of the 1998 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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements as provided to me by the governing board entitled "The Latymer School Admission Procedures for Academic Year Commencing September 2024". These referred to a Supplementary Information Form but did not include such a form;
- c. the objector's form of objection dated 18 March 2023, additional representations and further documentation including a Guidance Note for the school's 2023 admission arrangements which related to oversubscription criterion 3; and
- d. the local authority's response which said that the authority would support the school in revising its arrangements for admissions to Year 11, and that it agreed that further clarity was needed about how oversubscription criterion 3 applies, including advance publication of additional information. Again, the authority offered support with this.

The Objection

7. There are two grounds of objection. First, the objector claims that some of the wording in oversubscription criterion 3 (exceptional musical talent) purports to limit parents' grounds of appeal, which is prohibited under paragraph 2.23 of the Code. Second, the objector claims that oversubscription criterion 3 is unclear as to whether the school is testing for music aptitude or ability; purports to take into account factors which have no

bearing upon either ability or aptitude; and enables the school to admit a higher number of applicants on the basis of musical ability than is legally permitted.

Other Matters

8. I raised a number of other matters with the school, which may be summarised as follows:

- a) The Supplementary Information Form (SIF) and Guidance Note, which are part of the admission arrangements, were not published alongside them. Indeed, there was a note in the arrangements saying that the SIF would only be available from 3 May 2023 to 16 June 2023.
- b) The arrangements appeared unclear as to how the home address for children with separated parents is determined.
- c) The tie breaker provisions appeared unclear.
- d) There were various provisions which appeared to allow the school to decline to admit applicants in circumstances other than those permissible under the 1998 Act (namely failure to meet the selection requirements and prejudice to the effective provision of education and the effective use of resources).

Background

9. The school is a co-educational voluntary aided selective secondary school for pupils aged 11 – 18 in Edmonton, London. The school was founded by Edward Latymer in 1624, and has been rated Good by Ofsted. I understand it to be popular and oversubscribed.

10. The school's published admission number (PAN) is 192. I have extracted the provisions in the arrangements which are relevant for the purposes of this determination and set these out below

“Admission to The Latymer School will be awarded based on academic ability determined by performance in the school's selection tests which are compulsory for all applicants. In normal terms the top 700 applicants will be deemed selective and only applicants deemed selective will be admitted.

There is one round of tests after which applicants will be ranked in order of their age standardised test score and places allocated according to the Oversubscription Criteria.

Inner Area The school will **only** admit students from the published Inner Area as shown below:...

Main Address means the place at which the applicant spends the weekday nights in the ordinary course of events.

The online SIF will be available on the school website **only**, from **3 May 2023 to 16 June 2023**.

Registered applicants will be invited to sit tests in Mathematics, Verbal Reasoning and English. Applicants are expected to show competence in skills appropriate to Key Stage 2 English and Mathematics.

Applicants with a ranking position between 1 and 700 will have their English papers marked by staff at the school and the raw score will be added to the Verbal Reasoning and Mathematics raw scores by the test provider to produce re-standardised age-related results for the top 700 cohort (rank 1 being the highest position, rank 700 being the lowest).

Please note that once the re-standardisation process has been applied, there will be variance to the original ranking positions. Applicants can move up or down the new ranking. Please note that due to several applicants sharing the same ranking position, it is likely that there will be more than 700 applicants in the top cohort.

Applicants with a ranking position below 700 in the Maths and Verbal Reasoning test will be deemed by the school Governors as not eligible for consideration to the school under academic ability and will therefore not have their English papers marked. The exception to this rule is applicants applying under our Oversubscription Criteria (1, 2 & 3) as mentioned on pages 3 & 4 of this document.

Oversubscription Criteria for Year 7 entry Applicants applying under our Oversubscription Criteria will be considered if they reside in the Inner Area and provide supporting evidence (at the time of registration for criteria 1 & 3) for the category for which they are applying in the following priority order:

1. Looked after children (Threshold top 900) ...

These children will be deemed selective if they are ranked within the top 900 applicants in the Maths and Verbal Reasoning test and only applicants deemed selective will be admitted. Those applicants ranked within the top 900 will have their English paper marked. There is no limit to the number of children admitted under this criterion

2. Universal Credit/Free School Meals (Threshold top 900)

Up to 20 applicants will be considered for a place provided they can submit supporting evidence (by 11 September 2023) showing receipt of Universal Credit, or Free School Meals. Confirmation from the primary school of Free School Meals being awarded will be accepted. Applicants will be deemed selective if they are ranked within the top 900 applicants in the Maths and Verbal Reasoning Test and their English test and only applicants deemed selective will be admitted. .. The number of applicants admitted under this criterion can vary from year to year but is capped at 20. Qualifying applicants applying under this category will have their

written English papers marked, as places are limited under this criterion. Offers will be made in rank order of the tests.

3. Exceptional Musical Talent (Threshold top 700)

Up to 20 applicants who show Exceptional Musical Talent will be considered for a music place if they are ranked within the top 700 applicants in the Mathematics and Verbal Reasoning test. Exceptional musical talent can be demonstrated on any instrument/s (including voice) based on assessment with a recognised board such as ABRSM and Trinity.

Applicants should usually have achieved at least Grade 5 distinction level, but this will depend on the instrument as well as previous opportunity and experience. Having a Grade 5 distinction is not automatic entry to the school. Some applicants may not have reached Grade 5 distinction because of their starting point, but this should not prohibit applicants from applying under the music criterion.

There is no music test for Latymer, but the school may audition no more than 32 applicants to gauge musicality. Please note that the school's decision to audition applicants (or not) or to offer music places is final. The number of applicants admitted under this criterion can vary from year to year but is capped at 20.

Qualifying applicants applying under this category will have their written English papers marked, as places are limited under this criterion. A separate music form will need to be completed for this criterion, supported by evidence showing musical ability.

4. Applicants resident in the Inner Area in rank order.

5. Applicants resident outside of the published criteria will not be considered until resident within the Inner Area.

To be considered for In Year admission to The Latymer School, all applicants must reside within our published Inner Area. The following postcodes are the only areas from which applicants are admitted: ...

For any vacancies that may arise in Year 11, we would only seek to fill a vacancy if the vacancy arose by the 15 September and that applicants wish to study subjects that are available at Latymer, and courses of study are compatible”.

Consideration of Case

Ground One

11. The objection was set out clearly and succinctly, and I am grateful to the objector for this. The arrangements say: “Please note that the school's decision to audition candidates (or not) or to offer music places is final.” Paragraph 2.34 of the Code states: “Admission

authorities **must** not limit the grounds on which appeals can be made.” The objector’s view is that, by telling parents that the school’s decision not to award priority based upon exceptional musical cannot be re-opened by an appeal panel, the school is restricting the grounds upon which a parent can appeal.

12. The relevant statutory provisions are set out in the sections 86 and 94 of the Act.

86(1) A [local authority] shall make arrangements for enabling the parent of a child in the area of the authority—

(a) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions, and

(b) to give reasons for his preference.

(2) Subject to [subsection (3)] and section 87 (children excluded from two or more schools), [the admission authority for a maintained school] shall comply with any preference expressed in accordance with arrangements made under subsection (1).

(3) The duty imposed by subsection (2) does not apply—

(a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources; [or]

(b) . . .

(c) if the arrangements for admission to the preferred school—

(i) are wholly based on selection by reference to ability or aptitude, and

(ii) are so based with a view to admitting only pupils with high ability or with aptitude,

and compliance with the preference would be incompatible with selection under those arrangements...

94(2) The governing body of a foundation or voluntary aided school shall make arrangements for enabling the appropriate person to appeal against any decision made by or on behalf of the governing body refusing a child admission to the school.

13. Paragraphs 3.2 – 4 of the School Admissions Appeals Code 2022 (the Appeals Code) describe the decision-making process followed by appeals panels:

First stage – examining the decision to refuse admission

3.2 The panel must consider the following matters in relation to each child that is the subject of an appeal:

- a) whether the admission arrangements (including the area's co-ordinated admission arrangements) complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998; and
- b) whether the admission arrangements were correctly and impartially applied in the case in question.

3.3 The panel must then decide whether the admission of additional children would prejudice the provision of efficient education or the efficient use of resources.

3.4 In all cases, the panel must refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements that do not comply with admissions law.

14. Paragraphs 3.13 and 3.14 of the Appeals Code refer to appeals for places at grammar schools:

3.13 An appeal panel may be asked to consider an appeal where the appellant believes that the child did not perform at their best on the day of the entrance test. In such cases:

- a) where a local review process has **not** been applied, the panel must only uphold the appeal if it is satisfied:

- i) that there is evidence to demonstrate that the child is of the required academic standards, for example, school reports giving Year 5/Year 6 SAT results or a letter of support from their current or previous school clearly indicating why the child is considered to be of grammar school ability; and

- ii) where applicable, that the appellant's arguments outweigh the admission authority's case that admission of additional children would cause prejudice

3.14 In either case the panel must not devise its own methods to assess suitability for a grammar school place unrelated to the evidence provided for the hearing.

15. The school is wholly selective and all admissions are determined based upon high academic ability. Meeting the required level of ability is essential in order for an applicant to be eligible to be considered for a place at the school. There is an additional process of selection for some eligible applicants, namely selection based upon "exceptional musical talent". Applying the above provisions to the circumstance of awarding priority based upon exceptional musical talent in the present case, since this is a form of selection, the principles of paragraphs 3.13 and 3.14 will apply. Where a parent is able to demonstrate that their child does have exceptional musical talent and that his/her admission would not be prejudicial, the appeal panel would have discretion to uphold the appeal. The question arising is whether it is incorrect and therefore misleading for the admission arrangements to say that the school's decision to audition candidates (or not) or to offer music places is final.

16. Section 94(2) of the 1998 Act provides that a parent has a right of appeal against a decision not to offer their child a place. This is not a right to appeal against a decision not to award priority under a particular oversubscription criterion. It is clear, therefore, in the sense that an appeal panel cannot require the school to offer priority under oversubscription criterion 3 (or require the school to audition the child), that the panel cannot re-open the school's rationale for not allocating a place under this particular criterion. The appeal panel is able to examine whether the method of selection was correctly and impartially applied in the case in question. However what it cannot do is decide that the child is a child of exceptional musical ability by re-opening the decision of the admission authority on this point. The panel members were not present during the auditions and so are not able to decide whether an applicant should have scored a higher mark. They cannot infer their own evidence. All they can do is consider alternative evidence adduced by the appellant.

17. Whilst it is of course open to an appellant to bring an appeal on the grounds of his/her choice, it would not be helpful (and indeed it would be incorrect) for a set of admission arrangements to suggest that there would be anything to be gained by the parent challenging either the validity of the selection tests or the refusal to offer an audition at an appeal hearing. The appeals panel cannot overturn the arrangements for selection or require the school to adopt a different test. Therefore the statement that the school's decision not to treat an applicant as having exceptional musical talent must be considered final is true – at least as far as it goes. The question in my mind is whether the wording is misleading by not saying more.

18. Whilst I understand fully the objector's reasons for thinking that the arrangements purport to limit parents' grounds of appeal, on balance I do not uphold this ground of objection. My view is that the effect of the statement in question is not to limit a parent's grounds for appeal – its effect is to explain that the appeal panel cannot require the school to re-open its own assessment of whether the child has exceptional musical talent.

19. I appreciate that there is a subtle difference between a statement saying that the school's assessment cannot be re-opened and a statement that a parent is not able to bring an appeal using the argument that their child does indeed have exceptional musical talent based upon alternative evidence. In light of the fact that the objector has (not unreasonably) misunderstood the meaning of the statement in question, my view is that it needs to be clarified further in order to be sufficiently clear to meet the requirements of paragraph 14 of the Code – possibly by saying that, although any parent has a right of appeal against a decision not to offer their child a place, an appeal panel is not able to require the admission authority to repeat the music selection test, or to offer an audition, or to substitute its own method of assessing suitability for a music place. This would reduce the possibility of parents being misled in the way the objector has been.

Ground two

20. In response to my questions, the school has explained that decisions to offer music places are not made by one individual. They are made by the Head of Music and a colleague from the music department and then approved by a sub-committee of the

governing body. The music audition is said to be a test of a child's musicality and "only tests the aptitude in music". The audition process was apparently introduced more than 30 years ago to "gauge the musical aptitude" of applicants applying for one of the 20 available music places. The school says: "There is no music test for Latymer. A small group of applicants may be asked to audition if they have a ranking position within the top 900 applicants in the Mathematics and Verbal Reasoning paper... Consideration will be given to candidates... who otherwise show evidence of exceptional musical talent and achievement. It may be that a pupil has studied a number of instruments to a high level, or has made very rapid progress; and it may be the case that a pupil has chosen not to take any grades yet. We may also consider the potential for the musician to be involved in ensemble music-making at the school... Those applicants whom we regard as being at an appropriate level for consideration will be invited for audition".

21. I asked the school how would it be possible to "otherwise show evidence of exceptional musical talent or achievement" on the SIF in the absence of grades. The school explained that there is a separate music form to be completed for those applicants applying for a music place. On this form, parents are able to provide details of instrument/grade/years of learning and are also able to support their application with certificates/tutor reports etc. The Head of Music and another colleague from the music department decides which applicants are selected to audition. The form was not provided with the admission arrangements.

22. I asked how applicants are selected for priority under oversubscription criterion 3 following auditions, and what steps are in place to ensure consistency, fairness and objectivity. The school explained:

"Music applicants are selected for audition according to the evidence provided in their application, including any relevant music examinations taken and the number of years learning; some instruments are not suitable to be learning from an early age and we regard it as appropriate for this is taken into account. Some pupils have not taken exams, or have not taken an exam recently, and some applicants submit references from an instrumental teacher.

Our Head of Woodwind, an experienced A Level Music Performance Examiner and our Head of Music audition all those selected. We have time (across two days) to audition 32 pupils; our Music Administrator acts in a stewarding capacity. Our in-house Piano Accompanist plays for all those who require piano accompaniment. The warm-up room and audition room pianos are tuned shortly before the auditions. All these measures are intended to promote consistency. We assess musicians based on their performance on the day and rank them according to our judgement as to their musical ability. The aural tests (given to all auditioned applicants) are used to help distinguish between pupils who are at a similar level of musical ability. Following the auditions we submit a list of pupils, in rank order, including those who we regard as 'outstanding', to the Admissions Officer, along with a written report (broadly in the style of an ABRSM or Trinity/Guildhall comments sheet) for

each pupil. In our view this is a rigorous process which ensures a high degree of consistency, fairness and objectivity”.

23. Before considering each of the objector’s points, I will explain some relevant legal provisions. First, the definition of “admission arrangements” is set out as footnote 4 to paragraph 9 of the Code as follows: “Admission arrangements means 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”. The significance of this definition is that supplementary information forms and guidance setting out the criteria and explaining the admissions process all form part of the arrangements and must be published alongside the policy and oversubscription criteria on the admission authority’s website by 15 March each year. The school was unaware that the the Musical Guidance Notes and SIF are part of the admission arrangements and are required to be published alongside them. The Notes and SIF are not published until May.

24. The school is a grammar school, therefore section 39 of the Education and Inspection Act 2006 is relevant, which provides that grammar schools (as opposed to non-selective schools), are able to select by general ability or ability in any particular subject:

(1) No admission arrangements for a community, foundation or voluntary school may make provision for selection by ability unless—

(a) they make provision for one of the permitted forms of such selection mentioned in [section 99\(2\)](#) of School Standards and Framework Act 1998, or

(b) the school is a grammar school.

(2) For the purposes of subsection (1) a school's admission arrangements make provision for selection by ability if they make provision for all or any of the pupils who are to be admitted to the school in any relevant age group to be so admitted by reference to ability.

(3) In this section—

“ability” means either general ability or ability in any particular subject or subjects;

“admission arrangements” has the meaning given by [section 88\(2\)](#) of SSFA 1998;

“grammar school” has the meaning given by [section 104\(7\)](#) of SSFA 1998;

“relevant age group” has the meaning given by [section 142\(1\)](#) of SSFA 1998.

25. There is no limitation in section 39 upon the number of pupils selected by either general ability or ability in a particular subject. Therefore a grammar school, unlike a non-selective school, could introduce priority based upon music ability at any time. Also, in the case of this school, priority based upon music ability is subject to the applicant having the required academic ability, namely being within the top 700 applicants, or 900 in the case of certain applicants, in terms of their score in the selections tests. This is the threshold which determines eligibility for admission to the school. Priority based upon musical ability is merely a means of distinguishing between eligible applicants in terms of which should have higher priority.

26. The school has explained that it introduced priority for applicants with musical talent 30 years ago, which is before the 1998 Act came into effect. Section 104 of the 1998 Act provides for the designation of grammar schools. Subsection (2) provides that a school has selective admission arrangements if its admission arrangements make provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils with high ability. This suggests that it is permissible for a grammar school to select some pupils by general ability and some by ability in a particular subject.

27. The objector has argued that the school cannot select more than ten per cent of its PAN by aptitude. I understand this to be a reference to section 102 of the 1998 Act and paragraph 1.24 of the Code which provide that schools that have arrangements to select by aptitude must not allow for more than 10 per cent of the total admissions intake to be allocated on the basis of such aptitude. In my view, this paragraph is not relevant to the school's admission arrangements. The school is not a partially selective school; it is not selecting based upon musical aptitude; it is selecting by general ability and, within that framework, using musical ability to decide which of the eligible candidates should have a higher priority than others.

28. Section 100 of the 1998 Act provides for the continuance of arrangements for partial selection by ability or by aptitude which were in operation before the 1998 Act came into force and have at all times since that date continued to operate in substantially the same form. This section limits the number of children selected to the lowest proportion of selective admissions provided for by the school's admission arrangements at any time since the beginning of the 1997–1998 school year. If the school was a non-selective school which had continued to operate partial selection since 1998, it would be subject to the number limitation in section 100 of the 1998 Act. This is not the case. Neither is the school subject to the 10 per cent limitation in section 102 and paragraph 1.24 of the Code which apply to partial selection in non-selective schools introduced after 1998. My reading of the legislation is that the number limitation on partial selection other than by ability does not apply to grammar schools. However, if I am wrong about this, since the school has had its current arrangements in place for 30 years, it will not have increased the number of selective admissions by ability since the 1998 Act came into effect.

29. The objector submitted further evidence at a late stage in the consideration of the objection. He had obtained some of this information at an appeal hearing and some by making a request under the Freedom of Information Act 2000. I found this information very helpful, and have copied the table of results and the list of instruments played at the auditions for September 2023 admissions below as Appendix A and B. There is a high percentage of pianists, however those selected have tended to combine piano with another instrument. There are some highly accomplished pianists who were not selected where piano is the only instrument played. However, more pianists who also played another instrument were auditioned than applicants who only played piano. A total of 259 applicants applied for priority under oversubscription criterion 3; 29 of those were auditioned; 20 were offered places under oversubscription criterion 3; the remaining 9 were also offered places based upon academic ability. The information set out in Appendix A is

broadly consistent with the process described to me by the school. The top six applicants were multi-instrumentalists all of whom played piano plus one other instrument. Four of the eligible applicants were ungraded.

2023 Entry Music Auditions

Students offered a music place

Instrument/ Mark	Grade	Board	Max Grade
Viola (D), piano (P)	Viola 6 - Piano 6	Trinity / ABRSM	6 D
Piano (D), violin (D)	Piano 6 – Violin 5	ABRSM	6 D
Piano (D), Singing MT (D)	Piano 6 – Voice 3	ABRSM	6 D
Violin (M), piano (P)	Violin 6 – Piano 2	ABRSM	6 M
Piano (D), Oboe (U)	Piano 5 – Oboe 5	ABRSM	5 D
Piano (D), flute (U)	Piano 5 – Flute 2	ABRSM	5 D
Drum kit (D), piano (U)	Drums 5 – Piano 0	Trinity	5 D
Drum kit (D)	5	Rock School	5 D
Violin (D)	5	ABRSM	5 D
Trombone (D)	5	Trinity	5 D
Piano (M), cello (M)	Piano 5 – Cello 3	ABRSM	5 M
Violin (M)	5	ABRSM	5 M
Piano, trumpet	Piano 5 – Trumpet 3	ABRSM / Trinity	5 ?
Drum kit (M)	4	RSL	4 M
Oboe (P), piano (U)	Oboe 4 – Piano 0	ABRSM	4 P
Piano (D), violin (M)	Piano 3 – Violin 3	ABRSM	3 D
Violin (U), recorder (U)	Violin 5 – Recorder 4	North London Conservatoire	N/A
Clarinet (3 Yrs), guitar (4 Yrs)	Clarinet 4 – Guitar 5	N/A	N/A
Classical guitar (U)	0	N/A	N/A
D bass (U), drum kit (U)	D Bass 0 – Drums 0	N/A	N/A

Students not offered a music place

Instrument/ Mark	Grade	Board	Max
Piano (D)	6	ABRSM / Trinity	6 D
Piano (M)	6	ABRSM	6 M
Piano (D)	5	ABRSM	5 D
Piano (5 Yrs)	5	ABRSM	5 ?
Piano (D), cello (D)	Piano 4 – Cello 3	ABRSM / Trinity	4 D
Violin (M), piano (M)	Violin 3 – Piano 2	ABRSM	3 M
Cello (P)	3	ABRSM	3 P
Piano, recorder, flute	Piano 3 – Recorder 3 Flute 3	ABRSM	3 ?

Key: (M) = Merit (P) = Pass (D) = Distinction (U) = Unknown (Yrs) Years learning

Note: One Auditionee (Piano and Guitar) was not eligible as the student received an offer through an oversubscription criteria (Pupil Premium) with higher priority . Hence excluded from above statistics.

Source:

https://www.whatdotheyknow.com/alaveteli_pro/info_requests/please_add_marks_to_current_foi

https://www.whatdotheyknow.com/request/music_allocation

 = Cas

 = Irregularities; Students with board but no grade, no listed grade level or Yrs info, A conservatoire is not a board, incorrectly auditioned student.

Appendix B

2023 entry

Music Audition Summary (Mon 10 Oct + Tue 11 Oct 2022)

Instrument

Piano, cello

Piano, flute

Piano, recorder, flute

Piano

Piano

Classical guitar

Drum kit

Clarinet, guitar

Drum kit

Piano (oboe)

Piano

Oboe, piano

Piano

Violin, piano

Violin, recorder

Piano, cello

D bass, drum kit

Piano, guitar

Trombone

Piano, Singing MT

Violin

Cello

Piano, violin

Piano, trumpet

Piano, violin

Viola, piano

Drum kit, piano

Violin

Violin, piano.

30. There are a number of elements to the second ground of objection. I have attempted to break these down in order to ensure that each is considered fully and answered:

i. Lack of clarity

31. The objector's view is that the arrangements are unclear as to whether the audition referred to in oversubscription criterion 3 is meant to measure ability or aptitude. The objector notes that under paragraph 1.31 of the Code "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”. He also has drawn my attention to paragraph 1.32 which states that “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...”. The objector feels that the additional information provided by the school in response to my questions about how the selection process works ought to be in the admission arrangements in order to make the assessment process clear to parents. He says that some statements are not at all clear, for example: “some instruments are not suitable from an early age is taken into account”, and “Aural tests are used to distinguish between students of similar ability.”

32. The objector considers that the auditions conducted by the school are a form of test, and said “The purpose of the auditions is said to be to “gauge musicality”, and use of the word “talent” represents selection by aptitude. However, the arrangements also say that typically at least Grade 5 Distinction is required and the usage of word ‘Achievement’ represents selection by Ability”.

33. I have no hesitation in upholding this aspect of the objection. The arrangements are not sufficiently clear. The local authority agrees with this, and has said that it will support the school to make the necessary revisions to its arrangements. The only available information for parents is that set out in paragraph 3 of the document entitled “The Latymer School Admission Procedures for Academic Year Commencing September 2024”. I have seen the Musical Guidance Note for September 2023 applications because the objector has provided it. The Note provides further clarity, but I have not been provided with a Guidance Note for September 2024 admissions by the school, and was unable to find one on the school’s website. I understand that the school publishes the Note at a later stage when the window for applications opens, and did not understand that SIFs and guidance notes form part of admission arrangements and must be published alongside them by 15 March each year.

34. Many admission authorities have complex arrangements, and provide additional guidance and information to assist applicants. Frequently these are in more than one document. The law requires that all of the practices, criteria, and supplementary information to be used in deciding on the allocation of school places must be published as a set of admission arrangements. As a rule of thumb, adjudicators generally consider that additional documents should feature alongside the admissions policy document on the same part of the school’s website or be accessible via a one-click link inserted in the main policy document.

35. The school has provided a clear explanation of how priority is awarded under oversubscription criterion 3, and has been transparent in its answers to my questions. However, the arrangements, as they stand, are not compliant with the requirements of paragraph 14 of the Code because they are not clear.

ii. The audition is a test of ability rather than aptitude

36. The objector argues that the school should not be testing on the basis of musical ability. His view is that an audition at which children are asked to perform on a musical

instrument is not an aptitude test, and that most schools who test for aptitude use standardised musical aptitude tests. When an applicant is auditioning, the period of time he/she has spent playing the instrument in question and the amount of practice will inevitably have an impact on the performance. The school maintains that it tests on the basis of musical aptitude.

37. I agree with the objector that the audition is a test of musical ability; however, my view is that it is legally permissible for the school to select based upon musical ability under section 39 of the Education and Inspection Act 2006. Therefore, I do not uphold this aspect of the objection. I considered whether the school was selecting by both ability and aptitude and whether this was permissible, however based upon the fact that an aptitude test is used only to distinguish between applicants of similar musical ability, my view is that what is in operation here is primarily selection based upon musical ability.

iii. The school is substituting its own assessment of ability in place of an assessment of grading by recognised objective bodies

38. The objector also argues that graded students have already objectively been tested on ability by Ofqual regulated boards which are allowed to award UCAS points. He asks whether the school themselves can effectively downgrade a student by substituting its own assessment of ability.

39. Again, I agree with the objector that the school is indeed substituting its own assessment of musical ability in place of an objective grading assessment by other bodies. However, the school is permitted to do this, subject to certain requirements. Therefore I do not uphold this aspect of the objection. Paragraph 1.31 of the Code makes clear that it is for the admission authority to decide the content of any test it employs. As the objector says, an audition is a test, and the school has chosen to determine 'exceptional musical talent' by auditioning applicants. Those applicants have been shortlisted based primarily upon ability as demonstrated by grades and reports, but it is clear from what the school has said and the evidence provided by the objector that grades are not the only significant factor. It is difficult to see what method other than a musical aptitude test could be used to distinguish between applicants on the same grades, probably with similar complimentary reports from music tutors and who all perform well at the audition. The school could simply provide that all shortlisted applicants simply undertake a standard musical aptitude test as opposed to performing a piece of music, but the school is not selecting by aptitude and is not required to do so. There is a limited number of places available under oversubscription criterion 3. In order to determine which applicants qualify for priority under this criterion, the school is permitted to devise its own means of distinguishing between them.

40. Paragraph 1.31 also provides that tests for all forms of selection must be objective and give an accurate reflection of the child's ability. There is a large amount of discretion involved in the decision-making process. It is difficult to demonstrate compliance with these requirements in the case of discretionary decisions. Those conducting the auditions and ordering the shortlist of applicants are experts in their field who are able to judge which applicants should fall under oversubscription criterion 3 and the order of priority. As an

adjudicator I must assure myself that the arrangements are objective. I am prepared to accept that the method of selection is objective based upon the information provided by the school. However, the lack of information and the absence of clarity in the information available to me and to potential applicants initially caused me to question this. Therefore, I return to the point I have made above that further detail must be made available in order to ensure transparency which in turn provides an assurance of objectivity and therefore fairness.

- iv. The school takes into account factors which do not relate to ability or aptitude**
- v. The school is placing conditions on its consideration that are not published in the admission arrangements**

41. I am considering these two aspects together as they are closely linked. The objector considers that the school bases decisions on questions which are not about either ability or aptitude, such as “the potential for the musician to be involved in ensemble music-making at the school”. He says: “One can understand that the music department wants to get a variety of instrumentalists who can take part in their ensembles. This is mentioned in the emailed “Musical Guidance notes” but not in the determined admission arrangements. This has a great effect on the outcome for some students. Top graded Piano players did not get a place during 2023-start admission due to a surplus of high graded Piano players in favour of lower graded instrumentalists (clarinet, oboe, cello). This needs to be clearly written in the published admission arrangements as per the Code”. The objector’s view is that, because the arrangements do not explain that the potential to be part of ensemble music-making is a relevant factor in determining priority under oversubscription criterion 3, this places them in breach paragraph 1.9 of the Code. This says that admission authorities must not place any considerations on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements.

42. Once again, I am in agreement with the objector. Indeed, I would go further and say that this is not only a question of publishing a clear and accessible statement that potential to be involved in ensemble music-making is a relevant factor, but that this is a factor which the school should not be taking into account. There is no reference to it in oversubscription criterion 3; the statement is unclear as to its meaning; and selection other than by musical ability or aptitude is not permissible under the Code.

43. I asked the school whether it is the case that priority is given to higher numbers of clarinet players or violinists, for example, than piano players simply because an orchestra requires more of one instrument than another. I also asked whether there are quotas for each instrument. I was concerned that one of the factors which appeared to be taken into account in determining priority was whether the applicant displays talent in playing an instrument which suits the purposes of the school, as opposed to displaying exceptional musical talent *per se*. The school responded by confirming that it does consider potential to be involved in ensemble music-making.

“In general terms the school would like to give priority order to the following families of instruments: 1. brass, 2. woodwind, 3. strings, 4. piano and percussion, 6. voice. However, we do not wish to disadvantage any child from applying for a music place as some children, for example, may play multiple instruments to varying levels, so it could be that one or more instrument(s) would be considered for audition. Currently, we do not have quotas for each instrument”.

44. The school has also sent me the wording it intends to use in order to make the point clear. I have set this out below (added words underlined).

“In considering exceptional musical talent, any instrument, including voice, is accepted. As a general guideline, we are looking for at least Grade 5 distinction level, but having Grade 5 distinction does not guarantee entry to the school. We take a number of additional factors into account, including the instrument as well as previous opportunity and experience. Consideration will be given to applicants without that level of qualification but who otherwise show evidence of exceptional musical talent and achievement. It may be that a pupil has studied a number of instruments to a high level or has made very rapid progress; and it may be the case that a pupil has chosen not to take any grades yet. The school often receives high numbers of applications from pianists; in such circumstances the school may need to consider less commonly played instruments and the potential for the musician to be involved in ensemble music-making at the school.”

45. Taking this in stages: First, there is no statement about taking into account the potential to be involved in ensemble music-making in the school’s admission arrangements for September 2024. Therefore, if this is a relevant factor, the school are indeed placing conditions on the consideration of applications other than those in the oversubscription criteria published in the admission arrangements. There is therefore a breach of paragraph 1.9m of the Code. Second, my view is that, if the arrangements were to state clearly the level of priority given to different instruments and explain the fact that higher priority may be awarded to instruments other than piano, they would be taking into account something other than ability or aptitude. This is not permissible. Third, if the 2023 results are representative of the general intake under oversubscription criterion 3, a statement indicating that higher priority might be given to less commonly played instruments (as opposed to piano) would appear to be untrue. 10 out of the 20 applicants admitted last year played piano; the top 7 applicants played piano; piano is more commonly played than any other instrument. What does appear to be the case is that high priority is given to multi-instrumentalists. Arguably, if playing more than one instrument is considered to be an indication of a higher level of musical talent, this could be a relevant factor in selecting by ability provided this was stated clearly.

vi. The school is selecting more than ten per cent of its intake based upon musical aptitude

46. The school last year admitted 20 applicants under oversubscription criterion 3, which is fractionally more than ten percent of 192. I do not uphold this aspect of the objection. For

the reasons explained above, I do not consider that the ten percent limit applies. If any number limitation applies, it would be that the school must not admit more applicants based upon music ability than was the case in 1998. I am told that the arrangements have remained unchanged for 30 years.

47. The objector has asked whether I have any role in overseeing the administration of arrangements – whether I can enforce transparency. My jurisdiction is limited to requiring the school to revise its arrangements. I am not able to police their operation. In a case where a Voluntary Aided school is operating arrangements which are different to those published, this might be a matter to raise with the Local Government and Social Care Ombudsman. However, I emphasise that I have no reason to believe that decisions are not being made objectively by the school. Problems inevitably arise when an application is refused and the parent is unable to understand the reasons for the decision. This should never be the case, which is why the Code requires that parents should be able to look at a set of admission arrangements and understand how places are allocated.

Other Matters

48. I raised four additional matters with the school which appeared not to comply with the Code and other legislative requirements.

a). The Supplementary Information Form (SIF) and Guidance Note, which are part of the admission arrangements, were not published alongside them. Indeed, there was a note in the arrangements saying that the SIF would only be available from 3 May 2023 to 16 June 2023.

49. The school responded by saying that it was not aware of any such requirement. I have dealt with this point above.

b). The arrangements appeared unclear as to how the home address for children with separated parents is determined.

50. Paragraph 1.13 of the Code states: “Admission authorities must clearly set out how distance from home to the school and/or any nodal points used in the arrangements will be measured. This must include making clear how the ‘home’ address will be determined and the point(s) in the school or nodal points from which all distances will be measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent...”. I am satisfied that the school has a procedure in place for dealing with this situation. The Code requires that the procedure must feature in the arrangements so that parents can understand what it is. The arrangements will need to be revised to explain how the home address for children with separated parents is determined.

c). The tie breaker provisions appeared unclear.

51. The arrangements say: “In the event of a ‘tie’ situation for the last available place, due to applicants achieving the identical aggregate age-standardised test score within a

category, preference will first be given to students who are on pupil premium but haven't been offered a place under this category, then to students who show exceptional musical talent but haven't been offered a place under this category and then those who live closest to the school using local authority measurement calculations." Following the school's explanation, I now understand how this provision is intended to work.

d). There were various provisions which appeared to allow the school to decline to admit applicants in circumstances other than those permissible under the 1998 Act (namely failure to meet the selection requirements and prejudice to the effective provision of education and the effective use of resources).

52. The arrangements state that the school will only admit students from the published Inner Area as shown, and "To be considered for In Year admission to The Latymer School, all applicants must reside within our published Inner Area". They also state "For any vacancies that may arise in Year 11, we would only seek to fill a vacancy if the vacancy arose by the 15 September and that applicants wish to study subjects that are available at Latymer, and courses of study are compatible. The same procedures apply as for other In Year vacancies (as above), testing in English and Mathematics with the addition of the Sciences; the results are ranked in order; and the applicant with the highest overall score will be offered the place. Applicants will be ranked in order of the test results (rank 1 being the highest). Each subject is equally weighted."

53. On the first point, whilst I appreciate that the school gives priority to applicants from its designated catchment area (inner area) and is entitled to do so, it is not permitted to prevent parents who do not reside in the area from making an application. I realise that the school may be so oversubscribed with applications from residents in its catchment area that there is little or no possibility that an applicant living outside the area will be offered a place but this is not the same thing as saying that they may not apply. It may be that the statement is intended to be helpful by not encouraging fruitless applications. Nevertheless my view is that the arrangements need to be revised, probably to say something along the lines that although applications will be accepted from applicants who live outside the catchment, such applications are rarely successful because the school is heavily oversubscribed with applications from those living in the inner area.

54. On the second point, schools may be reluctant to admit applicants to Year 11, but the legislation does not permit this. Some children are unavoidably out of school in Year 11, and have an entitlement to education albeit that Year 11 admissions can be problematic for schools. I asked the school whether the arrangements might be revised to signal that in general terms the school considers that it would be prejudicial to admit applicants after 15 September, particularly where the applicant had not been studying the subjects available at Latymer or the courses of study were not compatible – as opposed to saying that the school is operating a blanket policy of refusing admission to applicants to Year 11. The school has said it will consider changing its policy for admitting students to Year 11, and will need to do so. The local authority has said that it will support the school in this.

Summary of Findings

55. Based upon the evidence referred to above, my findings are as follows:

- The arrangements are not sufficiently clear as to how priority is determined under oversubscription criterion 3. They therefore do not comply with the requirements in paragraphs 14 and 1.8 of the Code and will need to be revised. The SIF and any supplementary guidance must be published alongside the admission arrangements as part of those arrangements. It is a matter for the school whether it should extend the wording of oversubscription 3 or provide a link to a separate guidance document.
- The school is permitted to devise its own method of determining priority under oversubscription criterion 3 provided that any test employed complies with paragraph 1.31 of the Code.
- The school is not permitted to determine priority for admission under oversubscription criterion 3 based upon the potential to be involved in ensemble music-making. If it chooses to give priority on the basis of musical ability, the school must select on the basis of musical ability.
- The school is selecting on the basis of musical ability. It is legally permitted to do so, and is not exceeding any number limitation.
- The arrangements are unclear as to how the home address of a child whose parents live separately is determined.
- The arrangements state incorrectly that applications are restricted to those living in the school's catchment area and purport to place restrictions upon the admissions of in-year applicants and applicants to Year 11 which are not permissible.

Determination

56. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2024 determined by the Governing Board of The Latymer School for The Latymer School, Edmonton.

57. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

58. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 31 May 2023

Signed:

Schools Adjudicator: Dr Marisa Vallely