



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: - ADA3517 Camp Hill School for Boys, Birmingham  
ADA3518 Camp Hill School for Girls, Birmingham;  
ADA3519 Aston School, Birmingham;  
ADA3520 Five Ways School, Birmingham;  
ADA3521 Handsworth Grammar School for Boys,  
Birmingham; and  
ADA3522 Handsworth School for Girls, Birmingham.**

**Objector: A member of the public**

**Admission authority: King Edward VI Academy Trust Birmingham**

**Date of decision: 11 October 2019**

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2020 determined by the King Edward VI Academy Trust Birmingham (the admission authority) for each of the six schools set out above.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), the objections have been referred to the adjudicator by a member of the public (the objector) about the admission arrangements for the six King Edward VI schools (the KEVI schools), each of which is a selective secondary academy for children aged 11 to 18. Of these Camp Hill School for Boys (Camp Hill Boys), Handsworth Grammar School for Boys (Handsworth Boys) and Aston School (Aston) admit only boys. Camp Hill School for Girls (Camp Hill Girls) and Handsworth School for Girls (Handsworth Girls) admit only girls and Five Ways School (Five Ways) admits both boys and girls.
2. The local authority for the area in which the school is located is Birmingham City Council (the LA) which is a party to the objection. The other parties to the objection are the objector and the admission authority which is the King Edward VI Academy Trust (the Trust) along with the Headteachers and Chairs of Local Governing Boards for Camp Hill Boys, Camp Hill Girls, Aston, Five Ways, Handsworth Boys and Handsworth Girls.

## 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 schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the admission authority on that basis. I am satisfied that the admission arrangements were determined at the latest on 18 March 2019 when the decision of the Directors of the admission authority by electronic vote was recorded in the minutes of a Directors' meeting. Although the deadline for determining admission arrangements was 28 February 2019, I do not find that any prejudice arose as a result of a late determination. A late determination does not affect the status of the arrangements or my jurisdiction to consider the objections (which can only apply to determined admission arrangements). The objector submitted the objection to these determined arrangements on 2 April 2019. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and are within my jurisdiction.

## Procedure

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

The documents I have considered in reaching my decision include:

- the objector's form of objection dated 2 April 2019 and supporting documents;
- the admission authority's response to the objection;
- the comments of the admission authority on the objection and supporting documents;
- maps of the area;
- details of the consultation on the arrangements; and
- a copy of the determined arrangements for each school.

## The Objection

5. In relation to the admission arrangements for 2020 the following matters are raised in the objection and are within my jurisdiction:

- 5.1. Whether the consultation was compliant with the provisions of the Code and/or relevant statute and common law.
- 5.2. Whether the catchment areas are compliant with the provisions of the Code and the law relating to admissions, including issues of unfair disadvantage and compliance with equalities law.
- 5.3. Whether section 104 of the Act allows selection by academic ability but does not allow catchment areas..

6. The objector also raised a concern about whether the admission authority had properly carried out an equality impact assessment in the context of the changes it subsequently made to the arrangements. While statutory duties arise in this respect consideration of whether these were fulfilled and the consequences of any non-compliance

are, in my view, outside my jurisdiction. Nevertheless, I have considered the points raised below. Equality issues in relation to the admission arrangements themselves are within jurisdiction and are considered below.

## Background

7. Each KEVI school is designated as a grammar school by order made by the Secretary of State under Section 104 of the Act. The published admission number (PAN) for entry to each school in September 2020 for Year 7 and the number deemed to constitute 25 per cent of the PAN (for the purposes of criterion 3 of the oversubscription criteria, relating to pupil premium) is as follows:

School	PAN	25%
Camp Hill Boys	120	30
Camp Hill Girls	150	38
Aston	140	35
Five Ways	180	45
Handsworth Boys	150	38
Handsworth Girls	160	40

8. Entrance to each of the schools is determined by a child's performance in an entrance test. The schools are all part of a consortium of schools, along with five other grammar schools in Warwickshire and two other grammar schools in Birmingham, which use a common entrance test (the Entrance Test).

9. The Entrance Test consists of standardised tests of verbal, numerical and non-verbal reasoning ability. Each child taking the Entrance Test will be awarded a combined score, standardised according to the age of the pupil. For admission to any of the schools all children must attain at least the "qualifying score". Admission under criterion 4 depends on a child attaining the higher "priority score". The "qualifying score" and the "priority score" are to be published prior to the date of the entrance test.

10. The oversubscription criteria are the same for each school save that the catchment areas differ and that the definition of siblings in the case of Camp Hill Boys and Camp Hill Girls and in the case of Handsworth Boys and Handsworth Girls includes older siblings (of the opposite sex) attending the twin school. In category 3 the number of places which constitute 25 per cent of PAN will, of course, vary according to the PAN for each school as set out in the table above. The oversubscription criteria in so far as they are common to all the KEVI schools are as follows:

*"Applicants are required to sit an entrance test and must achieve the qualifying score in order to be eligible for admission to the school. Where the number of eligible applications for admission exceeds the number of places available at the school, places are offered as follows:*

1. *Looked After Children / Previously Looked After Children who achieve the qualifying score. Applicants in this category will be ranked by test score and then by distance from the school.*

2. *Children attracting the Pupil Premium who achieve the qualifying score and live within the school catchment area. Applicants in this category will be ranked by distance from the school.*

3. *If fewer than [xx] places (25% of the PAN) are filled by applicants in category 2, offers will be made to children attracting the Pupil Premium who achieve the qualifying score and live outside the catchment area, until a total of [xx] children attracting the Pupil Premium have been offered. If [xx] or more places are filled by applicants in category 2, there will be no offers made from this category. Applicants in this category will be ranked by test score. Where scores are equal, priority will be given to those with a sibling at the school; then by distance from the school.*

4. *Applicants who achieve the priority score and live within the school catchment area. Applicants in this category will be given priority if they have an older sibling at the school; then ranked by distance from the school.*

5. *Applicants achieving the qualifying score. Applicants in this category will be ranked by test score. Where scores are equal, priority will be given to those with a sibling at the school; then ranked by distance from the school.”*

11. All of the KEVI schools are heavily oversubscribed, with many more applicants who meet the qualifying score than there are places available.

## Consideration of Case

### **Part 1. Whether the consultation was compliant with the provisions of the Code and/or relevant statute and common law.**

12. The admission arrangements for 2020 have changed significantly from those in preceding years. The number of children given priority because they are entitled to pupil premium has increased from 20 per cent to 25 per cent (2020 criteria 3 and 4). The schools have introduced catchment areas (2020 criteria 2 and 4). The “cut off” scores (the “qualifying score” and the “priority score” for 2020) have been standardised across all six schools, having previously differed from school to school.

13. Paragraphs 1.42 and 1.43 of the Code and paragraphs 12 to 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) set out the requirement for consultation, who is to be consulted and the manner of consultation. This is set out in paragraph 1.42 of the Code as follows “*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year*”. There are some changes for which consultation is not required but these do not concern me here as it is not in dispute that the introduction of the changes outlined above required consultation.

14. The Code sets out the requirements for consultation in paragraph 1.43-1.44 as follows:

*“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.*

*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.*

*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. 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.”*

15. The consultation was conducted by Birmingham City Council (the Council) on behalf of the admission authority. This is common practice. The responsibility for ensuring that the consultation is compliant with the requirements of the Code and the law relating to admissions and consultations remains that of the admission authority.

### **The timing of the consultation**

16. Paragraph 1.43 of the Code (reflecting paragraph 17(2) of the Regulations) requires that *“consultation **must** last for a minimum of 6 weeks and **must** take place between **1 October** and **31 January** in the determination year”*. The consultation lasted from 19 November 2018 to 7 January 2019, a period of six weeks falling within the specified dates. The objector correctly points out that the Christmas school holidays fall within this six week period. I note that any six week period between 1 October and 31 January commencing after about 9 November would include the holiday period. There is no stipulation in the Regulations or the Code that periods of school holiday should be avoided or that where the period of consultation does include the school holiday the length should be extended beyond six weeks.

17. I note that the solicitors acting for the objector state in a letter dated 23 May 2019 that they are “*extremely concerned over the misleading information produced by the [admission authority] here. It is stated that the period of consultation was between 1 October and 31 January*”. This is a reference to a statement in the admission authority’s response to points raised by the objector. The admission authority stated “*The length of consultation was for slightly longer than the minimum six weeks and took place between 1 October and 31 January, as set out in paragraph 15b of the Admissions Code*”. Paragraph 15b of the Code contains wording identical to that contained in paragraph 1.43 which is set out above. It is obvious, at least to me, that the admission authority is referring to the period within which the consultation is to take place, not to the actual duration of the consultation period. The admission authority uses almost exactly the same words as the Code. I find that the solicitors have misunderstood the admission authority’s statement and their extreme concern is misplaced.

18. I find that the timing of the consultation complies with the relevant provisions of the Code and the Regulations and consequently I do not uphold the objection on this point.

### **The persons who must be consulted**

19.

a) Paragraph 1.44 a) of the Code requires that “*parents of children between the ages of two and eighteen*” are consulted. Regulation 12 includes the additional words “*...who are resident in the relevant area*”. The precise definition of the “*relevant area*” is not in dispute and for my purposes it is sufficient to take it to be the wider area in which the KEVI schools are situated. I do not consider that it would be practical for an admission authority to identify the name and home address of every such parent and to write to each individually, nor that this is what was envisaged by the wording of the Code or the Regulations. Emails with information about the consultation were sent by the Council to the governing bodies of all primary and secondary schools in Birmingham and to all Birmingham nurseries. Information about the consultation was published on the admission authority’s website, the Council’s website and the Birmingham Be Heard website, where the Council publishes details of consultations by public bodies. Information was sent by the admission authority to parents of children at all the KEVI schools, to MPs and councillors together with regular posts and updates on social media. An open consultation meeting was held at Camp Hill Boys on 11 December 2018. The Trust arranged appearances on TV and radio and in the press publicising the proposals. Schools passed on information about the consultation to parents. In at least one case to which I have been referred, the school addressed in particular parents of pupils in Year 5. As this is the age at which parents will be focussing on their options for their child’s secondary education I find this is appropriate. It may be that some schools or other education settings did not pass on information about the consultation or only passed on that information to some parents, for example parents of pupils in Year 5. The objector herself publicised the consultation through her own website and through the media, including at least one national newspaper. The proposals were controversial and were widely known and discussed. I find that the steps taken to consult “*parents of children between the ages of two and eighteen*” were reasonable and I am satisfied that the great majority of parents with any interest in the proposals were aware of them and able to respond to the consultation.

- b) Paragraph 1.44 c) of the Code requires that “*all other admission authorities within the relevant area*” are consulted. The objector, through her solicitors, has provided a list of schools which, it is said, were not consulted. I have not been told how this was established. The admission authority have responded pointing out that at least one of these schools is an independent school. Independent schools are not admission authorities for the purposes of the Code. Some of the schools in the list are not within the area of Birmingham City Council. The admission authority have provided copies of newsletters from three of the schools on the list which include details of the consultation, suggesting that they were consulted and passed on the details of the consultation to parents. I have not been provided with evidence that every school on the list was or was not consulted. I do not think it is necessary for me to investigate further in order to establish this one way or the other. I find that at the least the great majority of admission authorities were directly consulted and that any that were not would be likely to have been aware of the consultation. I find that the requirements of paragraph 1.44 c) were sufficiently complied with.
- c) Paragraph 1.44 c) of the Code requires that “*any adjoining neighbouring local authorities where the admission authority is the local authority*” are consulted. The equivalent provision in the Regulations states “*where the admission authority for the school are the local authority, any neighbouring local authority*”. The admission authority for the KEVI schools is not a local authority and consequently this requirement does not apply. Nevertheless on 19 June 2019 solicitors for the objector wrote enclosing an email from Sandwell Metropolitan Borough Council (Sandwell) stating in response to a freedom of information (FOI) request that the “*the council was not directly contacted by Birmingham or King Edwards with regard to the consultation although we did find out from another source and responded accordingly*”. In response to this the LA provided a screenshot of an email sent on 19 November 2019 to a number of recipients, including Sandwell, notifying them of the consultation. I find that Sandwell were notified of the consultation. I have been provided with a response to an FOI request to Dudley Metropolitan Borough Council (Dudley) stating that “*The Authority cannot recall being notified of the changes during the consultation period*”. An odd response given that only an individual can recall or not recall something. The fact that it is not recalled does not mean that an email regarding the consultation was not received. The screenshot on an email sent by the Council and referred to above also includes Dudley as an addressee. The evidence does not persuade me that Dudley were not consulted. I note that despite this the solicitors acting for the objector reiterate in an email dated 29 August that Sandwell and Dudley were not directly consulted. I find that there was no requirement to consult neighbouring authorities, but that nevertheless such authorities were consulted.

I do not uphold the objection on this point.

### **The manner of consultation**

20. The requirement set out in paragraph 1.45 is that “*details of the person within the admission authority to whom comments may be sent*” must be published. This reflects the requirement in paragraph 16(1)(a) of the Regulations. The consultation was published on the Birmingham City Council website (the Birmingham website) and included a contact email address and number. Information published on the admission authority’s website

clearly referred anyone interested to the Birmingham website. No specific person was named. In that respect the consultation does not strictly comply with the requirement in paragraph 1.45 of the Code. However, it was in my view clear to anyone seeking to respond to the consultation how they could do so. No evidence has been presented to me to show that anyone wishing to respond was unable to respond or deterred from doing so by the omission of a named person and I think it very unlikely that this was the case. I do not find that any prejudice arose from this omission. I do not uphold the objection on this point.

### **The determination decision itself**

21. The objector complains of a number of matters which in my view go to the decision making process followed by the Trust in reaching the determination decision. These matters include the rationale for the changes to the admission arrangements, the Trust's equality duties, the Board's consideration of the responses to the consultation, and changes made to the proposed admission arrangements in the admission arrangements as they were finally determined. My jurisdiction is set out in section 88H of the Act which requires the adjudicator, where admission arrangements have been determined and where a person has made an objection about the admission arrangements, to decide whether, and (if so) to what extent, the objection should be upheld. I have found that the admission authority made a decision determining the admission arrangements for 2020. Indeed, had I not so found, then I could not consider the objection at all as my jurisdiction relates only to determined arrangements. I consider that a determination decision was made and that decision has not been quashed or set aside. I will however consider the points raised by the objector below.

### **The rationale**

22. Representatives of the Trust stated during the consultation that part of the purpose of the changes proposed for entry to the KEVI schools in 2020 was to "*improve accessibility for disadvantaged students from 20% to 25%*". The accuracy of this figure is questioned by the objector, with statistics cited to show that in fact just under 30 per cent of existing pupils "*attend from poor families*" and a quote from a newspaper article that "*almost a third of support is counted by the Government as disadvantaged*". The objector's argument is that this makes the Trust's statement as to this aspect of its rationale for changing the arrangements misleading. Seen in the context of the previous and new oversubscription criteria it is obvious that the reference to an increase from 20 per cent to 25 per cent is a reference to the proportion of pupils eligible for Pupil Premium to be admitted under criteria 2 and 3 in 2020 (25 per cent) compared to the proportion under the equivalent provisions in the previous arrangements (20 per cent). Eligibility for Pupil Premium is the measure of disadvantage the school has chosen to adopt. This approach is clearly endorsed by the Code, which states at paragraph 1.39A "*Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium and also children eligible for the service premium*". That there are other measures of disadvantage which would produce different percentages does not mean that the Trust's statement is misleading or that the stated rationale is not achieved by the change from 20 per cent to 25 per cent. I find that this aspect of the rationale is met by the 2020 arrangements.

23. It is also submitted that the stated rationale of a reduction in travel distances is not achieved by the introduction of catchment areas. I am told by the objector that the changes do not affect journey times, which relate to "transport nodes". It is common sense that where a school is highly oversubscribed, as all of these schools are, if priority is given to



applicants living in catchment areas which surround the schools then many of those admitted will live closer to the school. It is also the case that in the past where greater priority was given on the basis of scores in the entrance test, with less account taken of where children lived, that children travelled to the schools from significant distances. In some cases this involved lengthy travel within Birmingham, as it was necessary to achieve a higher pass mark to gain a place at some of the schools than at others. The admission authority drew attention to this point, for example in correspondence with a local MP which was submitted by the objector's solicitors. In other cases, children who achieved very high scores have travelled significant distances from beyond Birmingham to attend the schools. The schools' new arrangements do give priority to those who live in catchment areas and I find that this is likely to reduce travel distances. I find that this aspect of the rationale is met by the 2020 arrangements.

## **Equality duties**

24. The Code refers to the duty in section 149 of the Equality Act 2010 in the Appendix as follows:

*“7. Admission authorities are also subject to the Public Sector Equality Duty and therefore **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.*

*8. The protected characteristics for these purposes are: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.*

*9. Further guidance on the Public Sector Equality Duty is available on the website of the Government Equalities Office and from the Equality and Human Rights Commission.”*

25. The Code does not specify any actions that an admission authority are required to undertake in order to fulfil this duty. There is no specified requirement to carry out an Equality Impact Assessment before changing admission arrangements. I consider whether the admission arrangements themselves are compliant with the provisions of the Code and the Equality Act 2010 below.

The Trust have responded to the complaints made regarding consideration of the impact of the changes, as follows:

### *“Impact Assessment*

*We undertook extensive modelling in devising the new arrangements and the catchment areas that underpin them. We analysed application patterns for the past three years, looking particularly at geography, gender and social disadvantage.*

*Our school preference data does not request ethnicity or religion<sup>1</sup>, so to conduct any impact assessments or modelling around ethnicity/religion would not have been accurate and could only be based on current pupils under a different set of admission criteria. We considered wider demographic data from Birmingham City Council, but this presented an out-of-date snapshot and could not provide any accurate or relevant information about the distribution of young children who might succeed in the entrance test.*

*The broad catchment areas that we have set take in all parts of the city and some disadvantaged areas beyond, ensuring a mix of applicants from all backgrounds, particularly focusing on disadvantage which has no ethnic boundary. However, it would have been impractical (as the objection suggests) to include non-contiguous disadvantaged areas from further afield, especially when (in the examples cited) there are closer grammar schools that offer places for disadvantaged applicants.*

*Contrary to the assertion in the original objection document, catchment areas are a legitimate means of allocating places at selective schools (and indeed are relatively common). The objector misunderstands the School Admissions Code when she refers to paragraphs 1.18 – 1.20 of the Code not “refer[ing] to the ability to introduce catchment areas”.*

*Furthermore, the admission arrangements do not, as suggested by the objection (page 4 of letter of 8th May), prevent parents from outside the catchment area expressing a preference. On the contrary, our modelling suggests that there will be a significant number of out-of-area places available. We designed the catchment areas and proposed score thresholds to ensure, as far as possible and based on previous entry patterns, that the schools will be not oversubscribed purely by applicants from within the catchment area.”*

And in a further response:

*“Trustees will consider the new application and preference data for September 2020 entry when we have it and will, of course, keep the new arrangements under review in the light of this. The overriding objective remains to ensure that there is genuine priority for local (and especially disadvantaged) families, while not preventing high scoring pupils from further afield accessing a selective education”.*

26. Solicitors for the objector say in response:

*“It is stated that “extensive modelling” with regard to matters including social disadvantage was undertaken. From the information provided via FOI disclosure and otherwise, there is no evidence whatsoever that such an exercise did indeed take place. Simply amending catchment areas based on ward boundaries is not criteria that “research and thought” have been used.*

*It is stated that the school do not have data concerning ethnicity or religion. We believe that this statement is incorrect. In fact, this data is held by the Trust in respect of each student and it was disclosed within an FOI request made by affected*

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<sup>1</sup> I note that to request such information would in fact be a breach of the Code. Only information necessary to apply admission arrangements can be requested; that could never include information on race and could only include information in relation to religion where a school had faith-based admission arrangements which these do not.

*parents. In addition, section 149 of the Equalities (sic) Act 2010 expressly places a mandatory duty on all public authorities and other organisations who exercise public functions to have regard to the duties to eliminate discrimination, and to advance equality of opportunity based on “relevant characteristics”. This means, in effect, that in any major decision such as this the Trust is obliged to carry out an Equality Impact Assessment in order to demonstrate that it has paid due regard to its statutory duties. It is untenable for the Trust to indicate that it was not possible for the School to meet its legal duties due to lack of data. This would not prevent it from being susceptible to legal action in the form of Judicial Review proceedings (see for example the case of *Hunt v North Somerset (2013)* with regard to the implications of the failure of an education authority to take into account the Section 149 duty properly) in support of such breach if challenged...*”

27. I have not been given any document referred to as an Equality Impact Assessment. However, this has no prescribed form and is not specified as a requirement anywhere in the Code. The admission authority do not say that they have no data concerning ethnicity or religion. They say that they do not have such information for applications or offers under the 2020 admission arrangements. They say that they only have such data in relation to current pupils, who have been admitted under the preceding criteria. I note that the admission authority have stated that they will review the position once they have the 2020 applications and admissions data. The objector has not given examples of how it is alleged that any children or adults with a protected characteristic would be disadvantaged unfairly by the 2020 admission arrangements. I am satisfied that the Trust used the information available to it to consider the impact of the new arrangements in light of its policy objectives and will continue to do so in light of the pattern of applications and offers of places in future years. I find, on the balance of probabilities, that the admission authority undertook sufficient modelling and investigation of the likely impact of the 2020 admission arrangements to allow it to have due regard to its duties under section 149 of the Equality Act 2010. I do not uphold the objection on this point.

28. Were I to find that there was some failure on the part of the admission authority with regard to its duty under section 149 of the Equality Act 2010 and were I to uphold the objection on that point, that decision would be binding on the admission authority and “*the admission authority must, where necessary, revise their admission arrangements to give effect to the Adjudicator’s decision*” (paragraph 3.1 of the Code). I have no power to set aside the determination decision and, even if I could do so the effect would be that there would be no admission arrangements for 2020. Previous admission arrangements are only for the year in question. The admission arrangements for 2019 do not continue until changed, they are made for 2019 only. New arrangements must be determined for each year. Upholding the objection on this point would not mean that the admission authority would be bound to revise their admission arrangements in their entirety, still less that they would be bound to revert to the admission arrangements for 2019. I note in this context that in the case referred to above by solicitors for the objector the Court of Appeal found (in very different circumstances to those of this case) that the Council had failed to fulfil its public sector equality duty but nonetheless refused to make a quashing order. This was, in effect, the same result as would come from my upholding the objection on this point.

### **Consideration of the responses to the consultation**

29. The objector, through her solicitors, points out that the admission authority “*received 991 responses to the consultation, of which 56% being not in favour of the proposals and a further 17% suggested various amendments-leaving only 27% generally in favour of the*

*proposals made*". I accept these statistics but do not find that they in any way demonstrate that the responses to the consultation were not considered. A consultation is not a vote and there is no requirement that a decision maker follows the view of the majority of respondents.

30. The admission authority have helpfully set out a timetable of the consideration of the responses following the close of the consultation period. A working party, which included representatives of the local governing body (LGB) of each of the KEVI schools was set up to consider the admission authority's proposals in July 2018. That working party reconvened to consider the responses to the consultation on 16 January 2019. The working party suggested further consideration of provisions relating to catchment areas and siblings. This suggestion was endorsed by the admission authority's Board on 19 January 2019. The Board held a special meeting on 11 February 2019 at which it agreed to allow more time for discussion by LGBs. No meeting of the Board could be held during the half term holiday so papers were sent to the directors (who are also the trustees) setting out some further suggestions and asking that directors vote on a resolution to approve the new arrangements. On 25 February the Board voted electronically on the proposals. On 18 March the Board noted the outcome of that vote, which was unanimously in favour of the proposals.

31. The solicitors for the objector refer to a PowerPoint presentation prepared by the admission authority on the consultation and the responses. It is not clear from the information I have been given how this presentation was used but I will assume it represents information given to the Board. It states, and I have been given no evidence to suggest otherwise, that the responses submitted have all been read and categorised. The responses are analysed by numbers and percentages as set out above. The types of response are set out in general terms and examples are given, quoting from 36 of the responses. I have not been given any information to suggest that these extracts have been selected to provide a distorted view of the responses received. I think it likely that had any director thought that the information given was biased or insufficient they would have asked to see all the responses and these would have been provided. It is common practice for responses to a consultation by a public body, especially when they are very numerous, to be analysed and presented in this way. It is not necessary for decision makers to see and read every response, provided they are available if any decision maker does wish to see them. I find that the Board were able to give proper consideration to the responses to the consultation when making their decision.

### **Changes to the proposals following the consultation**

32. Any consultation would be meaningless if changes could not be made to proposals consulted on following the consultation. There is a specific requirement in relation to admission arrangements that it is the proposed arrangements which are to be consulted on rather than, say, a range of options. This requirement is set out in the Code, most clearly at paragraph 1.42. However, there is no reason why an admission authority should not revise those proposed arrangements in response to consultation and then determine arrangements which differ to some degree from those consulted on. As I understand the situation the catchment areas set out in the proposals consulted on collectively covered all the wards within the area of Birmingham City Council. Some of these wards are more deprived than others. Formerly, when the oversubscription criteria did not include catchment areas, pupils were drawn from a wider area. Following consultation, the admission authority, having received some 71 responses seeking the inclusion of deprived wards outside the Birmingham area, added a number of wards in order to include some

deprived wards outside Birmingham. These additional wards together comprise two blocks of wards adjoining the Birmingham area, seven are in Sandwell to the west and four in Solihull to the east. These changes represent alterations to the catchment areas in response to the consultation. They are not fundamental changes such that further consultation would be required. I do not uphold the objection on this point. The objector submits that the inclusion of the ward of West Bromwich Central is an example of how the additional catchment areas are illogical and arbitrary. As the Code states *“It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”*. Provided the choice of catchment areas does not give rise to a breach of the provisions of the Code (or of the law relating to admissions) it is for the admission authority to decide on the boundaries of a school’s catchment area.

### **Sibling priority**

33. The previous arrangements contained no provisions for priority for younger siblings of pupils at the schools. The 2020 arrangements allow for sibling priority where test scores are equal for criteria 3,4 and 5. The admission authority acknowledge that although there was no sibling priority under the prior arrangements some parents would have expected siblings to follow their older brothers or sisters provided they achieved a high enough score. For some applicants the new arrangements, and particularly the introduction of catchment areas, will make this less likely. The consultation asked for comments on this issue and it is clear that responses were received on this point and that these were considered by the Trust before the determination decision was reached. In the end the Trust decided, as it was entitled to do, that it would limit the sibling priority to that set out in the determined arrangements. I find that the provisions for sibling priority set out in the 2020 admission arrangements do comply with the provisions of the Code.

### **Part 2. Whether the catchment areas are compliant with the provisions of the Code and the law relating to admissions, including issues of unfair disadvantage and compliance with equalities law.**

and

#### **Whether section 104 of the Act allows selection by academic ability but does not allow catchment areas.**

#### **Whether catchment areas are allowed where a school selects by academic ability under section 104 of the Act**

34. In response to an enquiry as to whether this point remains part of the objection the objector responded that it did. Subsequently and separately, the solicitors acting for the objector responded: *“We are not suggesting that catchment areas are prohibited”*. This illustrates the difficulty of having the objector and solicitors acting on her behalf both corresponding directly with the OSA as they appear, at least to me, to be saying different and contradictory things. In the circumstances I will deal with this point. Section 104 of the Act provides for the designation of schools as grammar schools where *“all (or substantially all) of its pupils [are] to be selected by reference to general ability, with a view to admitting only pupils of high ability”*. Section 104(2) states that in *“deciding whether a school’s admission arrangements fall within [the criteria set out above] any such additional criteria as are mentioned in section 86(9) shall be disregarded”*. The additional criteria mentioned in section 86(9) are *“additional criteria where the number of children in a relevant age group who are assessed to be of requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group”*. The law is clear. The

application of additional criteria, such as catchment areas, to determine admissions where too many applicants have the necessary ability does not preclude designation as a grammar school. To put it another way selection by reference to general ability does not necessarily mean selecting the most able. It is perfectly lawful for a grammar school to set an ability threshold and then decide among those who have met that threshold are to be admitted on the basis of criteria which are not related to ability. Many grammar schools take this approach. Consequently I do not uphold the objection on this point.

**Whether the catchment areas are compliant with the provisions of the Code and the law relating to admissions, including issues of unfair disadvantage and compliance with equalities law.**

35. As a preamble to my consideration of the arguments by the objector and her solicitors I think it is helpful to make the following general points. As set out above my role is to consider whether or not the arrangements conform with the law and the Code and, if they do not, in what ways they do not. If arrangements are not compliant, the law and Code require that they be changed so that they do comply. An adjudicator can also set a timescale for the making of such changes. However, that is the end of his or her powers. No adjudicator can require an admission authority to adopt a particular set of arrangements. In addition, it is for the admission authority and no-one else to decide what set of compliant arrangements to adopt. This is made clear in the Code which says at paragraph 1.9: *“It is for admission authorities to formulate their admission arrangements”* and at paragraph 1.10 *“It is for admission authorities to decide which criteria would be most suitable for the school according to the local circumstances.”* I have dealt above with the question of whether grammar schools may have oversubscription criteria in addition to selection by reference to ability. It is clear that they may. Included in oversubscription criteria 2, 3 and 4 is a degree of priority based on catchment areas. These are included in the oversubscription criteria for 2020 for the first time. Previously applicants were ranked by score in each criterion. The objector does not raise any points to suggest that the admission authority have discriminated *“on the grounds of disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; or sexual orientation, against a person in the arrangements...”* (paragraph 3 of the Appendix to the Code).

36. The objector and the solicitors acting for her have not drawn to my attention any allegation that the introduction of catchment areas has given rise to any unlawful discrimination. The Trust have set out their intention in introducing the catchment areas. They wish *“to enhance our historic mission of providing high-quality education for the children of Birmingham, regardless of background”*. In pursuit of this aim they wish to improve accessibility for local pupils eligible for pupil premium. The 2020 admission arrangements achieve this by giving a high priority to this group of pupils. The effect of this is likely to be that every child eligible for pupil premium who achieves the qualifying score and lives within the catchment of one of the schools will be able to attend his or her catchment grammar school. I also note that by equalising the required scores between schools, pupils will be more likely to attend a school nearer their home, so reducing transport costs, which is particularly beneficial for less well off families. I find that these goals are both rational and lawful. I do note that five out of the six of the KEVI schools are single sex, three are boys only and two are girls only. Overall there are 500 places for boys and 400 for girls. This historic imbalance cannot be addressed by the admission arrangements, only by fundamental changes such as the expansion of one or more schools and it is not for me to suggest that such action would be appropriate. I find that the catchment areas in the 2020 admission criteria do not give rise to unlawful discrimination

and comply in all other respects with the provisions of the Code and the law relating to school admissions.

## **Determination**

37. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2020 determined by the King Edward VI Academy Trust Birmingham (the admission authority) for each of the six Birmingham Grammar schools, being:

Camp Hill School for Boys;  
Camp Hill School for Girls;  
Aston School;  
Five Ways School;  
Handsworth Grammar School for Boys; and  
Handsworth School for Girls.

Dated: 11 October 2019

Signed:

Schools Adjudicator: Tom Brooke