



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3525
Objector: A member of the public
Admission authority: The trust for The Henrietta Barnett School, Barnet
Date of decision: 31 January 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2020 determined by the academy trust for The Henrietta Barnett School, Barnet.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector) about the admission arrangements (the arrangements) for September 2020 for The Henrietta Barnett School (the school), an academy grammar school for girls aged 11-18. The objection is that the arrangements are unfair in not providing late testing arrangements for girls whose parents had not completed the school's Entrance Test Entry Form by 17 July 2019.
2. The objector had also complained that the school's requirement that girls obtain minimum examination grades in order to progress from Year 11 to Year 12 was unlawful. This is a matter which concerns the progression of registered pupils from one year group to another and is not part of the school's admission arrangements. I therefore had no jurisdiction to consider the objector's view, and the parties were so informed.
3. The local authority (LA) for the area in which the school is located is the London Borough of Barnet. The LA is a party to this objection. The other parties to the objection are the trust for the school, which is its admission authority, and the objector.

Jurisdiction

4. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board on behalf of the trust for the school,

which is its admission authority, on that basis. The governing board determined the arrangements on 4 April 2019, which is after the deadline of 28 February 2019 for them to do so, and also after 25 March 2019 which was the date on which the objector submitted the objection. Although the arrangements were determined late by the school and after the date on which the objection was submitted, I have nevertheless decided to consider the objection to them. This is because the objector when he saw the arrangements would have believed them to have been determined, and since his objection was within the deadline of 15 May 2019 for objections to be made to determined admission arrangements. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

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;
- c. the objector's form of objection dated 25 March 2019 and subsequent correspondence, and
- d. the school's response to the objection, and subsequent correspondence;
- e. the local authority's composite prospectus for admissions to secondary schools;
- f. a map of the area identifying relevant schools;
- g. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it.

The Objection

7. The objector referred to an extract of the school's admission arrangements which sets out the provision which applies to "Late Applications", that is to say, to those parents who fail to complete the form used to register their daughter to take the school's entrance test by the date specified. He stated his view that this failed to comply with paragraph 1.31 of the Code, which has the following to say:

*"Tests for all forms of selection **must** be clear, objective and give an accurate reflection of the child's ability or aptitude...."*

His concern was that if girls were not permitted to take the test because of late registration, this could not be *"fair and objective and a true test of aptitude or ability"*.

8. The objector did not specify another paragraph within the Code he considered may be breached, but went on to express his objection in the following terms:

"I would like an adjudication whether this policy is fair or not and complies with the Admission Code 2014. The school basically says that if a girl applies late she cannot take the test. Her score will be recorded as zero."

I have understood the objection to be that the arrangements fail to comply with paragraph 14 of the Code, which says:

*“.....admission authorities **must** ensure that the practices and the criteria used to decide the allocation of places are fair, clear and objective.”*

Background

9. The school converted to academy status in 2012. Entry to Year 7 (Y7) is based on academic selection. The school is very heavily oversubscribed. For admission in September 2018, there were 2944 applications to take the school's selection test. The school has a published admission number (PAN) of 100.

10. The school's arrangements for selection for Y7 for 2020 involve testing carried out in two stages. The first tests were taken in early September 2019 and the girls with the top 300 scores identified. All those with scores below the top 300 were informed of this before the deadline for the submission of the Common Application Form, and could at that point request their daughter's standardised score and the cut off score for the top 300 candidates. The school has told me that it understands that if the parents of these children subsequently nevertheless choose to apply for a place at the school, that application would have to be considered, as would an application for a girl who has not taken the selection tests at all.

11. The arrangements state that children whose Education, Health and Care Plan names the school will be admitted, and then sets out the following oversubscription criteria:

- (i) Looked after and previously looked after children (as defined) who *“sit the second round of tests and are ranked in the top 300 applicants in the tests.”*
- (ii) Girls who are eligible for the pupil premium *“providing that the candidate is capable of following The Henrietta Barnett School education”* defined as being those who *“sit the second round test and are ranked in the top 300 applicants in the tests.”*
- (iii) Candidates who live within 3 miles of the school. The same condition is applied as for oversubscription criteria (i) and (ii). The arrangements at this point describe how the distance between the child's home and the school is measured but give no other indication of how priority among this group might be afforded if there are more girls than remaining available places.
- (iv) All remaining candidates in rank score order, with distance being used as a tie-breaker.

12. Based on the school's explanations of what it does, and a careful reading of the arrangements in full my understanding is that:

- (i) All those wishing to do so take the first round of tests, and the 300 highest-scoring girls are identified. All other girls are effectively eliminated, since they are not invited to take the second round tests. In practice, not all of the 300 take the second round of tests.
- (ii) The second round tests are combined with the first round test scores, and the rank order of scores is used to give parents feedback on the likelihood of their daughter being successful, should they decide to apply for a place at the school. It is also this rank order among those of the remaining

approximately 300 who do apply that is used in the relevant oversubscription criterion to determine which girls are admitted.

- (iii) After the admission of all children with an EHC Plan which names the school, oversubscription criteria state that priority is given to looked after and previously looked after children and girls eligible for the pupil premium provided, for both groups, that they were in the original 300 and have taken the second round of tests. Places are then allocated to girls living within 3 miles of the school in rank order of their combined scores and any remaining places go to other girls, also in rank order of their combined scores.

13. The arrangements also say:

- (i) *“The Henrietta Barnett School Entrance Test Entry Form is available from the School website and must be completed in order to enter your daughter for the entrance test. It must be returned to the School by 5pm on Wednesday 17th July 2019...”* and
- (ii) *“Late Applications: If you do not fill in the Entrance Test Entry Form, and submit it by the dates (sic) above, it will mean that your daughter will not be able to take the School’s Entrance Test. Any candidate who does not take the test will continue to be ranked, but missing the test will affect their priority; they will be ranked after those who have sat the test. If places continue to be available after the normal admissions allocation, and if there are no ranked candidates who have sat the test, the school will administer a further test.”*

14. An objection to these arrangements has also been submitted by a different objector. In ADA3535, published on 13 November 2019, I partially upheld this objection concerning the clarity of aspects of the arrangements. I also found that the arrangements failed to comply in further respects with the requirements concerning admission arrangements and so I have not used my power under section 88I of the Act to consider any of these matters as part of this present determination.

Consideration of Case

15. There are a number of related issues that I need to consider, and I begin by laying them out in the order in which I will address them. First, there is the objection that the school’s entrance test does not comply with paragraph 1.31 of the Code because late registrants are not tested and so a fair and objective test is not provided for some candidates. Second, there is the associated objection that the arrangements are unfair for the same reason. I have also decided that although they were not part of the objection and were not expressed by the deadline for making objections, I will also refer in what follows to the views of the objector concerning the extent to which the school has complied with the findings of previous determinations and to statements he has made concerning the nature of any late tests that the school might use.

16. Paragraph 1.31 of the Code says:

*“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.”*

The objector says that paragraph 1.31 is breached because the arrangements say that late applicants are not tested. He expresses his objection in the following way:

“How can not taking a test be fair and objective and a true test of aptitude or ability?”

In its response to the objection, the school stated its view that paragraph 1.31 *“is to do with the test itself being true and fair”* and is not concerned with the existence or otherwise of deadlines in the testing process. My view is that the second sentence of paragraph 1.31 makes it clear beyond doubt, if it were not already clear, that the requirement that testing is a true test of aptitude or ability is, as the school says, to do with the content of the test itself and not to do with how it is used (or not used) in a school’s admission arrangements. I shall consider below the issues associated with how the school’s arrangements deal with late applications for testing, but it is clear to me that paragraph 1.31 of the Code does not speak to that matter in the way the objector would like me to find. I do not uphold this aspect of the objection.

17. I turn now to the question of whether what the arrangements say concerning those who have not registered for testing by the school’s deadline of 17 July 2019 causes them to be unfair. The school responded to this element of the objection by explaining that it needs to set a deadline for test registration because of the logistical problems associated with arranging the testing on a single day of the large number of girls involved. However, it also stated that:

“If they [girls] apply after the July deadline but before the entrance test day, their entry form is accepted and they will be invited to sit the entrance test.”

As the objector has pointed out, there is no statement to this effect in the arrangements.

18. The school went on to say that if girls *“...apply on the day of the entrance test, or just turn up in the queue, they will be fitted in if there is any slot somewhere in one of the entrance test sessions.”* The objector has asked *“...what if there is no slot?”* and has referred to a previous determination, ADA3115, which was dated 19 July 2016 and which concerned the school’s admission arrangements for September 2017. In that determination, the adjudicator came to the view that late testing should be made available *“to a girl who applied late for a place should one become available after the normal allocation”*. The objector complains that the school’s arrangements for 2020 have failed to comply with this judgement because they say *“If they [girls] apply after the entrance test has happened then their score will be zero, but they can still apply through their Local Authority and they will be ranked as everyone else is ranked.”* I shall return to this matter below.

19. Parents might unavoidably miss a deadline for testing if they find out after the deadline for registration that they will be moving into the area served by the school. The lack of provision for late registration in similar cases has been found by adjudicators to be unreasonable if the length of time between the end of registration and the date of testing was long (ADA 3350, Chelmsford County High School for Girls). I emphasise that each case is considered by adjudicators on its merits and what is an acceptable time between the registration deadline and the test date may vary according to the different circumstances of the schools concerned.

20. In the school’s arrangements, the deadline for registration was 17 July 2019, and the first round of testing took place on Tuesday 3 September 2019. This is an interval of just under seven weeks, which seems to me to be a period of time which is reasonable given the logistics concerned with the organisation of the first round of testing in the school’s case. Therefore, the lack of any provision within the arrangements for late registrants to be

tested does not result in them being unreasonable, in my view. The period between registration and testing might indeed have been somewhat longer and I would have come to the same view. As I explain below, the school's willingness in practice to include late registrants up to the date of testing is not a matter within my jurisdiction. However, it is clear to me that the school already goes beyond what I consider is required by the Code. It follows that if it is not possible to accommodate girls who present themselves for the first time on the day of testing, the arrangements would still not be unreasonable.

21. I have been presented with no evidence that any girls missing the registration deadline and so not included in testing (as the arrangements state will be the case) would suffer an unfairness as a result, such as being unable to secure a school place elsewhere. In view of the fact that I find that the arrangements are not unreasonable in stating that those missing the registration deadline will not be tested, I do not consider them unfair and in breach of paragraph 14 of the Code as a result. I do not uphold this aspect of the objection.

22. For the sake of completeness, I will set out my views concerning the statement made by the objector that the school has failed to comply with a previous determination. In ADA3115 the adjudicator considered an objection that the school's admission arrangements for September 2017 failed to comply with the Code because they did not permit late testing of candidates. The adjudicator found (in paragraphs 20 and 21 of that determination), having considered the objector's view, also expressed in the current objection, that late testing should be allowed even if the second round of testing had begun, that it was reasonable for the school to decide that there should be a date beyond which no applicant would be included in the testing arrangements and that giving priority to those who were so included did not breach the Code. The adjudicator found that it would *"not be reasonable for the school to refuse to consider testing and possibly offering a place to a girl who had applied late for a place should one become available after the normal allocation."* The objector in the present case complains that the school has not complied with this finding. However, the arrangements explicitly state the following:

"If places continue to be available after the normal admission allocation, and there are no ranked candidates who have sat the test, the school will administer a further test."

The Code in a footnote to paragraph 15d) defines the normal admission round for a secondary school as *"..application in October for following year....admission"*. So any girl who had taken the school's tests and applied for a place by the national closing date for such applications of 31 October 2019 would have formed part of the normal admission round allocation for September 2020. This means that the arrangements comply with the adjudicator's ruling in 2017 by only administering a further test if there are no such remaining candidates when a place becomes available.

23. As I have noted above, and as the objector has pointed out, the arrangements state that any girl whose parent has not registered her to sit the school's selection test by the stated deadline will not be allowed to do so. The school has told me, by contrast, that its practice is to enable girls whose parents request them to be tested up to, and if possible on the day of testing, to be included. My jurisdiction is limited to what the arrangements provide and does not extend to what admission authorities actually do, including whether or not they follow those arrangements. Nonetheless, I have explained my view that the school does not breach the requirements of the Code by virtue of its stated policy in the arrangements, and so it would be perfectly compliant if it did not relax this policy in practice and provide for those whose registration is late. The fact of the matter is that it does so, and I consider that while there is nothing unclear about what the arrangements say, I can see

that it would be preferable – not least in terms of ensuring that parents have all relevant information - if the school were able to find a form of words which better reflected its practice of exercising discretion without guaranteeing testing for those who register after its stated deadline for doing so.

24. Also for the sake of completeness, I note here that in correspondence subsequent to his objection, but not in the objection itself, the objector has stated his view that any late testing should use a test which is not the same test as that use in the main round of testing. He also expressed his views as to why he considered that to be the case. As the objector's statements did not form part of the objection submitted in March, and were not expressed until December 2019, well after the deadline of 15 May 2019 for the submission of objections about school admission arrangements to the adjudicator, I have decided not to consider them further here.

Summary of Findings

25. For the reasons I have set out above, I have come to the view that the arrangements do not fail to comply with the requirements of the Code in the provision which they make for girls whose parents have not registered to take the school's selection tests by the deadline which they stipulate.

Determination

26. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for The Henrietta Barnett School, Barnet.

Dated: 31 January 2020

Signed:

Schools Adjudicator: Dr Bryan Slater