DETERMINATION

Case reference: **ADA/002562**

Admission Authority: **Langley Grammar School**

Date of decision: **20 December2013**

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Langley Grammar School for admissions in September 2014. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) of the Act the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

The referral

1. The admission arrangements (the arrangements) of Langley Grammar School (the school), a mixed selective academy school, for September 2014 first came to the attention of the schools adjudicator as a result of an objection concerning them made on 20 May 2013.

2. In correspondence resulting from that objection, the school provided me with a copy of what it had posted on its website as its determined admission arrangements for September 2014, saying that these had been determined by the governors' admissions committee on 20 November 2012 and "ratified" by the full governing body on 13 December 2012.

3. However, the school subsequently confirmed my understanding that the school's governors had merely approved proposed admission arrangements for the purpose of consultation on 13 December 2012. Although comments on the proposed arrangements had been received as a result of this consultation, these were not formally considered by the governing body. The school had assumed that the "provisional" approval on 13 December 2012 was sufficient in itself, and no meeting of the governors to determine the arrangements took place in the period between 1 March 2013, at the end of the period set out in the School Admissions Code (the Code) for consultation, and 15 April 2013, the date by which arrangements must be determined. The school was also unable to provide any evidence that the arrangements were determined by the governors in accordance with section 88C of the School Standards and Framework Act (the Act) either before or after 15 April 2013, and so I came to the view that the school had no determined admission arrangements and that, as a consequence, I had no jurisdiction under section 88H of the Act to consider the objection which had been raised. I wrote to the parties to that effect on 22 July 2013.

4. The school was asked to provide the schools adjudicator with a copy of the arrangements immediately they had been determined, and it e-mailed these on 20 November 2013 together with the minutes of the meeting of the school's governing body on 22 October 2013 at which they were determined.

5. Having looked at the arrangements I considered that there may be matters that did not comply with the Code and I therefore wrote to the school on 22 November 2013 seeking its comments on these concerns and, in view of the pressing need for the school to have compliant arrangements, requesting an early meeting with the school.

6. As a matter of courtesy, I informed the local authority and the person who had raised the initial objection of the date of my meeting with the school and its purpose, informing them that the school's determined arrangements were posted in its website, and asking whether either wished me to raise any matters with the school. Neither party has contacted me.

Jurisdiction

7. The terms of the academy agreement between the proprietor 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 proprietor, which is the admission authority for the Academy school, on that basis.

8. These arrangements came to the attention of the adjudicator on 20 November 2013, in the manner described above. I am satisfied that it is within my jurisdiction under section 88I(5) of the Act to consider them.

Procedure

9. In considering this matter I have had regard to all relevant legislation and the Code.

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

a. the school's email dated 20 November 2013 and the attached admission arrangements and governing body minute of 22 October 2013;

b. the school's response to my letter of 22 November 2013 dated 25 November 2013;

c. the school's arrangements for testing for musical aptitude set out on the school's website, and

d. the school's funding agreement with the Secretary of State.

I have also taken account of information received during a meeting I convened on 28 November 2013 at the school.

Matters of concern

11. The matters of potential non-compliance which I raised with the school in my letter to them and at the meeting on 28 November 2013 were:

(i) the need to ensure that applicants for places who live outside the school's designated admission area but who are not offered a place are included with other unsuccessful applicants in a single waiting list drawn up in the way set out in paragraph 2.14 of the Code;

(ii) that the restriction of the priority afforded to looked after and previously looked after children to those living within the school's admission area appeared not to meet the requirements of paragraph 1.7 of the Code;

(iii) that the wording of the arrangements appeared not to provide a final tie-breaker as required by paragraph 1.8 of the Code;

(iv) that the admission number for the school's sixth form appeared to be incorrectly described and that the arrangements for the sixth form appeared not to conform to the general requirements of the Code concerning admission arrangements, including making clear how any oversubscription concerning the places available to external students would be resolved;

(v) that the arrangements for selecting some pupils on the basis of musical aptitude appeared to involve testing for musical ability. The Code makes it clear that there is a distinction between ability and aptitude (paragraph 1.32a) and the arrangements therefore seemed not to describe the process of selection accurately.

Background

12. Langley Grammar School is a popular and heavily oversubscribed school. It became an academy school on 1 April 2011 and introduced into its admission arrangements for September 2012 an admission area, defined by a list of postcodes which are in the school's immediate geographical vicinity. Priority for students demonstrating musical aptitude was introduced as an oversubscription criterion for admissions in September 2013.

13. The objection which brought the arrangements to the attention of the school's adjudicator was to the absence from what were understood to be the arrangements for admissions in September 2014 of any description of how priority would be given to applicants who meet the school's entry requirements but who live outside the defined admission area.

14. As determined on 22 October 2013, the school's arrangements for admissions to year 7 in September 2014:

(i) set an admission number of 150;

(ii) state that a score of 111 or above in the school's entrance tests make an applicant eligible for admission to the school;

(iii) provide for the admission of children who have a statement of special educational needs which names the school, in line with the requirements of the school's funding agreement with the Secretary of State;

(iv) state that in order to resolve issues of oversubscription, the school operates an admission area (which is clearly defined) together with oversubscription criteria for students achieving at least a score of 111 in the selection test.

15. These oversubscription criteria are given as:

"a) Looked After Children and Previously Looked After Children who reside within the admission area

b) Up to 10% of places will be allocated to students with a permanent home address within the school's admission area who demonstrate an aptitude for music as measured as measured by the school's assessment procedures

c) Children of permanent members of the school staff who have been continuously employed by the school for a period of not less than 2 years prior to the closing date for applications

d) Applicants with a permanent home address within the admission area, in rank order of performance in the admission tests."

16. The arrangements then state that

(i) if there is a tie for a final place, "places will be allocated to the candidates whose permanent home address is nearest to the school", that

(ii) a waiting list will be held for unsuccessful applicants scoring 111 or above, and that

(iii) qualified applicants living outside the admission area "will be offered places only if there are spaces available after all applicants residing within the admission area have been considered and the last applicants from the waiting list allocated places".

Consideration of Factors

17. Firstly, I have considered the matter that caused the arrangements to be brought to my attention. The arrangements determined by the school on 22 October 2013 do make it clear that qualified applicants not residing within the admission area will be admitted after all qualified applicants living within this area. However, this statement follows the description of a waiting list for places and adds that students from the waiting list will be admitted before any applicant living outside the admission area, and does not make any provision for those living outside the admission area also to be part of this waiting list. In other words, the waiting list as described applies in the arrangements only to those living within the school's defined admission area.

18. The Code states in paragraph 2.14 that admission authorities **must** maintain *"a clear, fair and objective waiting list …….stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria."* This means that all admission arrangements must provide for there to be a single waiting list, drawn up in the order dictated by the oversubscription criteria. The school's arrangements do not in my view meet this requirement, since children residing outside its admission area are not included in the waiting list which they describe.

19. Secondly, the arrangements give highest priority to looked after and previously looked after children but state that this applies only to children living within the admission area.

20. Paragraph 1.7 of the Code places a requirement on admission authorities to have oversubscription criteria for each relevant age group – that is for each age group for which admissions are normally made. In this case, that means for years 7 and 12. The paragraph goes on to say that the highest priority in these criteria, for each such age group, must normally be afforded to looked after and previously looked after children. The exception is set out in paragraph 1.19 of the Code, which says in respect of grammar schools that *"where arrangements for pupils are wholly based on selection by reference to ability and provide for only those pupils who score highest in any selection test to be admitted, no priority needs to be given to looked after children or previously looked after children"*. The school allocates some places on this basis, but not all of them. In addition to the second highest priority given to a limited number of pupils demonstrating musical aptitude, the third priority for admissions is given to children of permanent members of the school staff who have been employed at the school for two or more years. As a result the school is bound by what paragraph 1.7 requires concerning looked after and previously looked after children.

21. The arrangements determined by the school do give first priority at year 7 to looked after and previously looked after children, provided they live in its admission area. Paragraph 1.7 of the Code does not allow for any qualification based on geography, and paragraph 1.20 states explicitly that a grammar school such as Langley Grammar School which does not use highest scores to prioritise all admissions must give priority to all looked after and previously looked after children who meet the standards of the school's selection test. That means priority must be given to all such children who apply for a place at the school, not only to those who live in its admission area. The arrangements therefore fail in my view concerning the priority given to looked after and previously looked after children to meet the requirements of paragraphs 1.7 and 1.20 of the Code in respect of year 7 admissions.

23. Thirdly, the arrangements state that second priority for admission is for up to 10 per cent of the available places to be allocated to qualified children who live within the admission area and who "demonstrate an aptitude for music as measured by the school's assessment procedures".

24. Details of the tests used by the school to assess musical aptitude are to be found on its website, and consist of two stages of testing. The first

comprises an aural perception test of pitch, melody, texture and rhythm for which it is stated no previous knowledge of musical theory is needed and for which no practice papers exist. At the second stage, a limited number of applicants are invited to perform a solo piece on their chosen instrument, including voice. The website says that this is intended as a test of musical ability.

25. Paragraph 1.32a of the Code says that admission authorities "**must** ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability". That is, a distinction is drawn between aptitude and ability in the Code, such that if the arrangements say that admission is on the basis of musical aptitude, then that is what must be tested for. Ability testing is likely to involve tests in which prior learning and experience (or coaching and practice) improve performance. The first stage of aptitude testing used by the school appears to me to be consistent with testing for musical aptitude, since it does not test for such abilities. However, performance on a musical instrument or singing (perhaps other than humming) is clearly likely to be improved by coaching or practice, and is in my view an expression of a musical ability as opposed to a mere musical aptitude. The school's arrangements in my view therefore fail to conform to what the Code requires. The school says that it tests for musical aptitude, but it goes beyond doing so and tests in addition for musical ability, which is not the same thing.

26. The arrangements state that if there is a tie for a final available place or places, priority will be given to the student whose address is nearest to the school, and make clear how that distance would be measured. However, no means of deciding between otherwise equally qualified applicants living at the same distance from the school is provided.

27. Paragraph 1.8 of the Code states that *"admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated"*. The arrangements as determined rely on the measurement of distance from the school to parental homes to perform this function. While it is unlikely that the distances to more than one home will be identical, this is nevertheless possible, for example for children living in the same block of flats. A final tie-breaker is therefore required.

28. Finally, I have also considered, since they are part of the school's determined arrangements, the provisions that apply to the admission of students at year 12. Paragraph 1.2 of the Code requires admission authorities to set, in addition to oversubscription criteria, an admission number for each relevant age group. The arrangements state that the admission number for the school's sixth form is 160 and that the "intended number of students to be admitted from outside the school is a minimum of 20".

29. Section 88D(1) of the Act defines the admission number as " the number of pupils in each relevant age group that it is intended to admit to the school in that year". In the case of a school's sixth form, students transferring from year 11 do not constitute new admissions and so the admission number, if there is one, is the number of places available to external students. The admission

arrangements of the school as determined therefore incorrectly describe the year 12 admission number and breach paragraph 1.2 of the Code.

30. It is to the number of places available to external applicants that the oversubscription criteria described above must apply. Although reference is made in the arrangements to the existence of different entry requirements for sixth form courses, and to where these requirements may be found, they provide no oversubscription criteria that would apply if the 20 available places were oversubscribed with qualified applicants. However, the arrangements do state that "a supportive school report from the applicant's current Headteacher will be required" for any applicant. Oversubscription criteria for any relevant age group **must** give highest priority to looked after and previously looked after children as set out above, and in respect of admissions to the sixth form paragraph 2.6 of the Code requires that this be the case for children who meet any academic entry criteria. So by failing to provide any oversubscription criteria for available sixth form places, the school is in breach of what is required by the Code at paragraphs 1.7 and 2.6 concerning looked after and previously looked after students.

31. In constructing oversubscription criteria for sixth form admissions, admission authorities must have regard to all the requirements of the Code concerning such criteria as applied to other admission groups. Paragraph 1.9g forbids a school from taking into account "reports from previous schools about children's past behaviour, attendance, attitude or achievement", and so the statement in the school's determined arrangements concerning year 12 admissions that "a supportive report from the applicant's current Headteacher will be required" offends against this stipulation.

Conclusion

32. I have set out in the preceding section my thinking about each of the matters of potential non-compliance raised with the school concerning its determined admission arrangements for September 2014. For the reasons set out there, I am of the view that they are in breach of the requirements

(i) of paragraph 2.14 of the Code concerning the school's waiting list;

(ii) of paragraphs 1.7 and 1.20 of the Code concerning the priority afforded to looked after and previously looked after children for admissions to year 7;

(iii) of paragraph 1.32a of the Code in using tests of both musical aptitude and musical ability when selecting pupils on the basis of their musical aptitude;

(iv) of paragraph 1.8 of the Code concerning the provision of a final tie-breaker to decide between otherwise equally qualified applicants, and

(v) of paragraph 1.2 of the Code concerning the setting of an admission number, of paragraphs 1.7 and 2.6 of the Code concerning the admission of looked after and previously looked after children, and of paragraph 1.9g concerning the taking into account of reports from previous schools in relation to admissions to year 12.

Determination

33. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Langley Grammar School for admissions in September 2014. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

34. By virtue of section 88K(2) of the Act the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 20 December 2013

Signed:

Schools Adjudicator: Dr Bryan Slater