

DETERMINATION

Case reference: ADA 2741

Objector: Comprehensive Future

Admission Authority: The governing body of the academy trust of the City of London Academy Southwark

Date of decision: 16 September 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of the Academy Trust of the City of London Academy Southwark for admissions in September 2015.

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

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 make any remaining revisions to its admission arrangements as quickly as possible.

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 representative of Comprehensive Future (the objector) about the 2015 admission arrangements (the arrangements) for the City of London Academy Southwark (the school). The objection raises issues related to the clarity of the wording in the arrangements about the aptitude test for the school's specialism. The objector asserts that the arrangements are not clear and breach paragraphs 14, 1.8 and 1.24 of the School Admissions Code (the Code).

Jurisdiction

2. The terms of the academy agreement between the academy trust of the school and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the governing body of the academy trust which is the admission authority for the school on this basis.

3. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this

objection. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering these matters I have had regard to all relevant legislation and the Code.

The documents I have considered in reaching my decision include:

- a. the form of objection, together with a copy of the Funding Agreement and consultation documentation sent by the objector on 30 June 2014;
- b. the proposed 2015 arrangements supplied by the school on 11 July 2014 and also downloaded from the website together with the 2014 determined arrangements;
- c. a copy of a letter dated 28 March 2013 from the school to the Secretary of State;
- d. a copy of a letter from the Education Funding Agency dated 29 May 2013;
- e. Annex 2 of the Funding Agreement sent by the school on 24 July 2014;
- f. a copy of a report to the governing body dated March 2013 regarding the outcomes of the consultation process before the 2014 arrangements were determined, emailed by the school on 24 July 2014 ;
- f. a copy of a letter from Southwark Council (the council) to the school dated 6 February 2013;
- g. the minutes of the governing body meetings of 9 December 2013 and 25 March 2014;
- h. the application form for the sixth form and the reference request form downloaded from the school's website on 7 July 2014;
- i. further comments from the objector in the email of 21 July 2014;
- j. further evidence from the school sent after the meeting on 23 July 2014;
- k. an email from the chair of governors dated 2 August 2014;
- l. emails from the school in the period 23 July to 8 September 2014 regarding the nature of the aptitude paper, and the timing of the aptitude and banding tests; and
- m. the amended 2015 determined arrangements downloaded from the school's website at the time of this determination.

5. I arranged a meeting with representatives of the school and the council on 23 July 2014 (the meeting). Being unable to attend, the objector sent by email on 21 July 2014 a number of points to be discussed at the meeting. Correspondence was also submitted after the meeting as a result of my requests for further information and clarification, and this has been copied to the council, the school and the objector as appropriate. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

The Objection

6. The objection raises a concern about the lack of clarity in the wording of the 2015 arrangements related to the aptitude test for the school's specialism. The objection also questions the nature of the aptitude test called "*ICT for Business and Enterprise*" because this is not in the list of specialist subjects for which a school may select by aptitude as specified in paragraph 1.24 of the Code.

Background

7. The school opened on 1 September 2003 as a state-funded, independent, co-educational academy school with a planned capacity of 1200 pupils aged 11 to 19 years, sponsored by the City of London Corporation. The funding agreement confirms that the school has a business and enterprise specialism and is permitted to select up to 10 per cent of pupils by reference to aptitude in the specialist area. Since the school opened, it has provided particular provision for pupils with hearing impairment.

8. The school is located in the north of the London borough of Southwark and admits students from 35 primary schools, drawn mainly from two catchment areas in the City of London and in the London Borough of Southwark. In a letter to the Secretary of State dated 28 March 2013, the school describes itself as serving "*an area of high deprivation, with 33 per cent of the students claiming free school meals, 25 per cent having English as a first language, and 16.4 per cent of students with a statement of special educational needs or categorised as on School Action Plus.*"

9. The school confirmed that Sir John Cass's VA Foundation Primary School is a feeder school named in the funding agreement. It has been a named feeder to the school since it opened as there were no state-funded/ maintained secondary schools in the City.

10. The other named feeder school is Redriff Primary School (Redriff) with which the school has been working closely for some time, and the close partnership was formalised when Redriff joined the school in the same multi academy trust. The letter of 28 March 2013 indicates the intention that the new resource base at the school for 15 children with autistic spectrum conditions, operational from September 2014, will provide secondary provision for children who had attended a similar unit at Redriff.

11. I note that in a letter dated 6 February 2013, the council helpfully drew the school's attention to paragraph 1.15 of the Code which requires that "*the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds*" and suggests that the school confirm the reasons for naming Redriff as a feeder school. The same point was discussed in the meeting on 23 July 2014, and I note that since then, the school has included at paragraph 8.8 in the 2015 arrangements now available on the website that the school and Redriff:

"share the same ethos and values and are federating to secure a closer working relationship and provide a foundation for joint development. The shared vision is to develop an integrated and aspirational structure of education from early years to 19 for children of all abilities and naming Redriff

as a feeder primary school is a key part of the strategy to achieve this outcome. Our aim is to secure Lifelong learning to all students.”

12. Although the funding agreement for the school shows that the published admission number (the PAN) for Year 7 is 180, a letter dated 29 May 2013 from the Education Funding Agency confirms that the Secretary of State approved an increase in the PAN to 240 from September 2013. The school had consulted in accordance with the Code on the inclusion of Redriff as a named feeder school, and included in that consultation the increase in the PAN before the 2014 arrangements were determined.

13. The 2014 determined arrangements for admissions to Year 7 explain that if there are more Year 7 applications than places available at the school, the school will prioritise places according to the oversubscription criteria as summarised below:

1. Applicants who are looked after and children who were looked after but ceased to be so because they were adopted or subject to a residence or special guardianship order;

Then a banding system is adopted for the remaining places. Each applicant will be required to take a non-verbal reasoning test which places the applicant in a rank order. Those pupils (maximum 24) selected on the basis of assessed aptitude for the business and enterprise specialism will be admitted. The remaining applicants will be placed in one of five bands according to their performance in the test, and places will be allocated so that an equivalent number of applicants are admitted from each band as follows:

2. Eligible applicants residing in the catchment area in the City of London (estimated as 30 places at most);

3. Eligible applicants residing in the Southwark catchment area;

4. Siblings of Year 7 to 11 pupils already attending the school;

5. Children with special medical or social needs;

6. Children attending Redriff Primary School;

7. Children who live nearest to the school, measured by the shortest safe walking distance from their normal family home to the corner of Lynton Road and St James Road by the main school building; and

8. Eligible applicants residing outside the catchment areas and where there are more applicants than places available, children attending the Sir John Cass VA Foundation Primary School in the City of London will be prioritised.

Applicants with a statement of special educational needs which appropriately names the school will be admitted, subject to separate arrangements.

14. For sixth form admissions, the 2014 arrangements state that up to 400 students (200 per year group) will be admitted each year to the predominantly academic sixth form. All entrants must have six GCSE passes at grades A* to C. *“Where there is over subscription, the following preference criteria will be applied:*

- *Children in public care (looked after children) or young people who were looked after but ceased to be so because they were adopted (or became*

subject to a residence order or special guardianship order);

- *Children already enrolled at the Academy, who have progressed through the Academy, meeting the entry criteria;*
- *Children with a Statement of Special Educational Needs;*
- *Children of parents in the armed forces; and*
- *Students living nearest to the school measured by the shortest safe walking distance*

Young people who have exceptional special medical or social need for whom the course is appropriate will be considered on an individual basis.

[The school] will reserve up to 40 places in Year 12 for students applying from schools in other local authorities.

[The school] will not give priority admission to the sixth form for siblings of students already studying at the academy.

15. The 2014 arrangements for entry to the sixth form also indicate that the school “*will publish in its prospectus information about the arrangements for admission to the sixth form, including oversubscription criteria, in the following September (e.g. in September 2014 for admission in September 2015) and ... shall determine its admission arrangements by 1 May of the relevant year...*”

16. Following a meeting of the governing body on 9 December 2013 at which changes in the arrangements were proposed, the school consulted on the proposed 2015 arrangements. The proposed changes were to:

- extend the special educational needs provision to children with an “*autistic spectrum condition*” as well as “*hearing impaired*”;
- extend the sibling priority to applications for sixth form places;
- reduce the sixth form entry requirements from six to five GCSE passes at grades A* to C;
- remove the oversubscription criterion which reserves 40 places in Year 12 for out of borough applicants so that applications are welcome from all; and
- with respect to the new Basketball Academy, to introduce up to 10 places in Year 12 for applicants on the basis of the academic criteria and additional fitness criteria.

17. The objector submitted the objection on behalf of an organisation called “*Comprehensive Future*” which states that it campaigns for “*a comprehensive secondary school system with fair admissions to all publicly funded schools and an end to selection by ability and aptitude.*”

Consideration of Factors

18. The objector’s concerns are twofold: firstly that the information about the aptitude test lacks clarity and that, as a result, the 2015 arrangements breach paragraphs 14 and 1.8 of the Code. The second part to the objection is that the subject nature of the test is not in the list of specialist subjects for which a school may select by aptitude as specified in paragraph 1.24 of the Code.

19. I note that the funding agreement confirms that the school has a business and enterprise specialism and that the school is permitted to select up to 10 per cent of pupils by reference to aptitude in that specialist area.

20. However, the objector is concerned that the wording relating to aptitude testing in the arrangements is not clear and therefore breaches paragraph 14 which states *that “parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* The objector refers specifically to the wording at paragraph 5(d) that the school has *“reserved the position of admitting up to 10 per cent of pupils on the basis of assessed ICT aptitude in Business & Enterprise”* and explains that her first concern is that the statement *“has reserved the position”* is not clear and is confusing for parents, and breaches the Code at paragraph 1.8 which requires that *“oversubscription criteria **must** be clear.”*

21. During the meeting on 23 July 2014 I explained the ambiguity of the phrase that the school has *“reserved the position”* with respect to paragraph 5(d) of the arrangements, as it could be misinterpreted by a parent as meaning that the school does not test for aptitude at the moment but would hope to do so at some time in the future. The school confirmed that it does admit 10 per cent of pupils on the basis of aptitude and explained that the wording may have originated from the funding agreement which states at section B paragraph 3(c) to Annex 2 that the school has *“reserved the position of admitting up to 10 per cent of pupils on the basis of assessed aptitude for its business and enterprise specialism. This assessment will take the form of a test for aptitude for ICT.”* The school accepts that the term *“reserved the position”* may be misleading, and at the meeting agreed to change the wording so that it was clear that up to 10 per cent of pupils would be admitted on the basis of assessed ICT aptitude.

22. However, the objector was also concerned that paragraph 5(d) of the arrangements refers to a test in *“ICT for business and enterprise”* which is not in the list of allowed aptitudes in paragraph 1.24 of the Code. In the email of 21 July 2014, the objector also drew attention to comments in the school’s prospectus that *“prospective students are able to complete an online test that evaluates their enterprise skills and knowledge. Each year the Academy is able to allocate up to 24 places (10% of the cohort) to students through the Business and Enterprise test. If you would like your child to complete the test, an application form is included in the School Prospectus. Alternatively, you can collect a form from Reception at the Academy. The Business & Enterprise Test will take place on Saturday 7th December 2013. More details of timings of the test will be sent to Business and Enterprise Test applicants near the time.”* I note that the test application form is called *“Business and Enterprise test form.”*

23. Paragraph 1.24 of the Code confirms that the specialist subjects on which a school may select by aptitude are physical education or sport, the performing arts, the visual arts, modern foreign languages, design and technology and information technology, and therefore the objector is correct in saying that *“ICT for business and enterprise”* is not in the list of allowed aptitudes in the Code. The objector accepts that *“the funding agreement refers to ICT to be used until a test for business and enterprise aptitude could be found which would satisfy the Secretary of State. Clearly such a test has not been found and in any case would be a contravention of the*

Code so the reference should merely be to ICT aptitude.”

24. I note that in a letter dated 6 Feb 2013 the council provided a range of helpful advice including that *“we recognise that the academy admits 10 per cent of pupils based on their aptitude in business and enterprise and that this is assessed in the form of a test in ICT as confirmed by your funding agreement. We suggest that your arrangements also specifically state that ICT forms the basis of the business and enterprise specialism.”* I am also aware that Annex 2 of the funding agreement at section B paragraph 3(c) makes clear that the assessment regarding aptitude for business and enterprise *“will take the form of a test for aptitude for ICT.”* A further note clarifies that *“this is an interim assessment measure and the [school] has reserved the position for selecting on the basis of a test for aptitude for business and enterprise as and when an acceptable method of assessment is formulated and agreed with the Secretary of State...”* During the meeting the school confirmed that the aptitude test is an on-line ICT test and to ensure fair access, applicants are invited into school on a Saturday in December to sit the test using the school's facilities. The school confirmed in the meeting, and then in writing afterwards, that the test would be referred to as a test for ICT aptitude. The arrangements on the school's website now show clearly that the school admits *“up to 10% of students on the basis of assessments of aptitude in Information Technology.”*

25. I therefore uphold the objection in the matter of the name of the aptitude test and the wording in the arrangements relating to the test. I also acknowledge that, without delay, the school has taken the required steps to address the points raised by the objector which contravened the Code. The amendments were made by the school as a variation permitted by paragraph 3.6 of the Code.

Other matters

26. In reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. I raised with the school the aspects below which appeared to me to contravene the Code and could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to comply with the Code, and agreed to note the progress in my determination. As the 2015 determined arrangements had not been published at the time of the meeting (and there was some doubt whether they had actually been determined) the discussions centred on the 2014 determined arrangements and on the proposed 2015 arrangements which had been the basis of consultation.

The timing of the ICT aptitude test

27. During the meeting, when the school said that the aptitude test administered at the school is usually held on a Saturday in December, it became clear that the school was unaware of the requirement that parents are notified of the results of the test before deadline for applications. I drew the school's attention to the requirement in the Code at paragraph 1.32(c) that *“admission authorities **must** take all reasonable steps to inform parents of the outcome of selection tests before the*

closing date for secondary applications on 31 October so as to allow parents time to make an informed choice of school." In an email dated 1 August 2014, the school confirmed that adjustments have been made to bring forward the test date to 25 October 2014, so that it would be possible to inform parents of the results before the 31 October deadline for applications for a place at the school. The school also sent a copy of the draft letter to parents regarding the change to the test date and, at the time of this determination I note that the school's website clearly informs parents that *"the Information Technology Aptitude Test will take place on 25 October 2014 at the City of London Academy Southwark. This is an online assessment. Students do not have to prepare for their test as it is designed to assess aptitude in Information Technology."* Although there are only a few days between the test and the deadline for submission of applications, I am satisfied that the school has adjusted the timing of the test so that parents will be notified of the result before the deadline, as specified at paragraph 1.32(c) the Code. However, I am of the opinion that in future years, parents would find it helpful to have more time to consider the outcome of the aptitude test before the deadline for applications, and so the school may wish to review whether it would be possible to set an earlier date the date for the test.

The sample paper and the application form for the test

28. In the meeting I referred to the section on the school's website called *"test information."* I asked for further information about the comment that *"the test offers an opportunity for students that do not live close to the academy and those that live out of our catchment area to gain a place here."* The school's representatives were not aware of this comment and presumed that it was a remnant from the early information when the school first opened. I note that the whole section has now been removed from the website.

29. I also drew the school's attention to another comment in the same *"test information"* section that *"prospective students are able to complete an online test that evaluates their business and enterprise skills and knowledge."* I referred to the email of 21 July 2014, in which the objector comments about the same area of the website which encourages applicants to prepare for the aptitude test by looking at several websites providing resources related to money and finance. I asked the school whether the test assessed aptitude or knowledge and was assured by the school that the test related to ICT aptitude. After the meeting, the school sent an example of the test which was a multiple choice past paper from December 2012. However, I noticed that most of the questions appear to test financial knowledge, with a few testing grammar and mathematical problem solving. I recognise that the Code at paragraph 1.31 confirms that *"it is for the admission authority to decide the content of the test"* but in my opinion the test does not appear to assess ICT aptitude. I accept that applicants are expected to access the multiple choice test using the school's computer facilities, but that appears to be the only connection with ICT. Accordingly, I am of the opinion that the school should review its selection test for the specialism as a matter of urgency to ensure that the questions do test ICT aptitude, and thereby comply with the school's funding agreement and with the Code. I acknowledge that in the email of 8 September 2014, the school confirmed that the ICT test paper would be reviewed by 25 October 2014 to ensure that the questions will test aptitude.

30. In the meeting I also drew the school's attention to the test application form found in the same *"test information"* section of the school's website. I suggested that, as paragraph 2.4(e) states that an admission authority **"must not ask both parents to sign the form"** then the contact information for just one parent/guardian should be sufficient. I note that in signing the form, the parent/guardian is confirming that *"the information provided on this form is accurate and correct"*, which is a reasonable expectation. However, at the same time, the parent/guardian is also signing a declaration that *"the information you provide on this form may be shared with other admission authorities in order that school places offered and/or accepted can be checked."* The parent/guardian at this stage is only applying for their child to sit a test before considering whether or not to apply for a place at the school. I consider that, at this stage, the information should be confidential and therefore the expectation that the school should be allowed to share confidential information with another party is not reasonable. I note that the application form now available on the school's website requires the contact information for just one parent/guardian, and that the unreasonable declaration has been removed so that signing the form confirms only that *"the information provided on this form is accurate and correct."* The application form is now called *"Information Technology Aptitude Test Form."* I am pleased to note that the school has made the necessary revisions to the form without delay.

Banding arrangements

31. In the email of 21 July 2014, the objector commented that *"all applicants must take the banding test including those taking the aptitude test. Those passing the aptitude test are then taken out of the ranking. Do these students also represent the full ability range as established by the banding? Or is banding in practice applied only to 90% of the intake?"* As the school's representatives at the meeting were not sure how the banding process worked, they agreed to send further information after the meeting about how the banding process operates in practice. The school has revised the arrangements which now state that the children selected on the basis of the aptitude test are included in the banding process, so it appears that banding in practice is applied to the whole of the intake. The Code at paragraph 1.29 states that *"schools that operate admission arrangements which include both banding and selection of up to 10% of pupils with reference to aptitude shall set out clearly in their admission arrangements how these two methods of selection will be applied."* I consider that the methods for banding and aptitude assessment have now been explained in accordance with the Code.

32. However, the school appears to administer the banding test to prospective students in December. In the meeting I explained that the requirement in paragraph 1.32(c) of the Code that *"admission authorities must take all reasonable steps to inform parents of the outcome of selection tests before ... 31 October ..."* also applies to the results of banding tests. The school accepted that the timing of the banding test would have to be brought forward to comply with the Code, but also expressed concern that having notified many hundreds of families about the dates for the banding tests, there may not be sufficient time to resolve all the practical considerations for the 2015 admissions. In the email of 5 August 2014, the school confirms that it needs more time to change the date of the banding test because the change will also impact on another academy school which normally administers the same test at the same time. The school regrets that it is unable to make the

necessary changes to comply with the Code in time for admissions in September 2015, but confirms that changes will be made for admissions in September 2016.

Determination and publication of the 2015 arrangements

33. The school provided evidence that before changes in the 2015 arrangements were determined, there was a consultation period which ran from 19 December 2013 to 28 February 2014, and therefore longer than the eight week period specified by paragraphs 15(b) and 1.43 of the Code. The school also provided evidence that it had consulted with the persons and/or bodies specified in paragraph 1.44, and so I am satisfied that the consultation was in compliance with the Code. The school confirmed that no comments to the consultation were received other than a telephone call from a school asking why it had been informed. The school was therefore not called on to consider any changes to the proposed 2015 arrangements. It is clear from the minutes of the governing body meeting on 25 March 2014 that the 2015 arrangements were discussed, but the minutes do not record formally that they were determined. In addition, the 2015 arrangements were not available on the school's website by the date of my meeting with the school on 23 July 2014 except as the version proposed within the consultation documentation. In the email of 2 August 2014, the chair of governors confirmed that during the March governing body meeting the 2015 arrangements *"were approved although this was not formally recorded in the March minutes. I will see that the matter is brought up at our next Governors' meeting in order to be formally recorded in those minutes."* I accept that the 2015 arrangements were determined by the governing body at the meeting on 25 March 2013, and before the 15 April deadline specified in the Code at paragraph 1.46. I acknowledge that the 2015 determined arrangements are now on the school's website, but they should have been published on the school's website as soon as possible after the governing body meeting at which they were determined, and certainly in good time before 30 June, the deadline for the referral of objections to the Office of the Schools Adjudicator.

34. I note that paragraph 17 in the 2014 arrangements suggests that the school considers the requirement to publish the arrangements *"is discharged ... by arranging with [the council] to publish this information on its behalf. In this instance the [school] provides information for any composite prospectus."* However, I explained in the meeting that the school cannot delegate its responsibility to publish the arrangements. In order to comply with the Code, the governing body as the admissions authority needs to ensure that it follows the correct procedure so that the arrangements for both Year 7 and for the sixth form are formally determined by 15 April and published on the school's website as soon as possible afterwards, and then to send a copy of the determined arrangements to the council by 1 May.

35. In the meeting we noted the timetable in the arrangements which says that the school should consult every year and considered that this may have been taken from the original funding agreement, which itself is likely to have been based on a much earlier version of the Code. There is no requirement in the Code now in force for the admission authority to consult every year. Paragraph 15(b) of the Code requires that admission authorities **must** consult if changes to the arrangements are proposed, or at least once every 7 years, even if no changes have been made during that period. The requirement which is on an annual basis is that admission

authorities “**must set** (*determine*) *admission arrangements*” and by 15 April each year.

Issues particularly related to the arrangements for Year 7 admissions

36. During the meeting I drew the school’s attention to a number of matters of terminology in the arrangements for admissions to Year 7 that needed to be amended as soon as possible, including:

- at paragraph 2, that the School Admissions Code and the School Admissions Appeals Code are mandatory codes and are therefore not “*codes of practice*.” This matter has been addressed in the 2015 arrangements now available on the school’s website;
- the timetable for the admissions process needs to take account of the deadlines stated in the Code, already explained in the paragraphs above. I acknowledge that the timetable has now been amended appropriately;
- at paragraph 8, the terms “*looked after*” and “*previously looked after*” must be defined in accordance with the Code at paragraph 1.7 and footnote 17. I note there has been some amendment but the word order is confusing and needs to be reorganised;
- at paragraph 10 summarising the right of appeal, in order to comply with the Code at paragraph 2.24, parents **must** be informed that, if they wish to appeal, they **must** set out their grounds for appeal in writing. I note that this has not yet been included; and
- as the term “*eligible*” in the oversubscription criteria at paragraphs 2.2.1 to 2.2.3 is unnecessary and likely to cause confusion, it should be removed. I acknowledge that the term “*eligible*” has now been removed.

The sixth form arrangements

37. The school states in the sixth form arrangements that “*a predominantly academic sixth form of up to 400 students will be admitted each year. The sixth form in each of its two years will comprise of 200 students per year group.*” However, the wording is confusing for parents and applicants because it is only external students who would be “*admitted*” at this stage. Students who had been in Year 11 at the school are already on roll, having already been admitted at an earlier age. As it is likely that many of the 200 students in each of the two year groups may have been Year 11 at the school and automatically transferring to the sixth form having met the academic entry requirements, the school needs to be clear about how many places are available for external students. At the meeting I explained that the school needs to set a PAN for Year 12, the relevant age group for sixth form admissions. The Code at paragraph 1.2 requires that “*as part of determining their admission arrangements, all admission authorities **must** set an admission number for each relevant age group.*” The Year 12 PAN is the number of places that the school would offer to external applicants who meet the academic entry requirements.

38. Paragraph 1.4 states that if the school “*is unable to offer applicants a place ... [the school] will hold applications on file.*” During the meeting I explained that the school should hold the applications on a waiting list, rather than “*holding applications*”

on file” which is a phrase more familiar in the field of employment. The Code requires at paragraph 2.14 that the school “**must maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission... ranked ... in line with the published oversubscription criteria.**” I note that in the letter dated 6 Feb 2013 the council had offered the school appropriate advice on the requirement for a waiting list which the school appears to have followed in the 2015 arrangements for Year 7 admissions but did not do so for sixth form admissions. In the meeting it was made clear that the sixth form arrangements must also comply fully with the Code.

39. In the meeting I drew the school’s attention to the oversubscription criteria in the sixth form arrangements. The five criteria are listed but the order of priority is not clear which could lead to confusion. To comply with the Code at paragraph 14 the criteria should be numbered in priority order so that “*parents [and applicants] should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” A number of other issues about the criteria were also brought to the school’s attention:

a) The wording of the first criterion refers to children in public care but needs to be revised to comply with the Code at footnote 17 and paragraph 1.7 of the Code. The criterion must clearly identify that the highest priority will be given children who are looked after or previously looked after but immediately after being looked after became subject to an adoption, residence, or special guardianship order. The criterion also needs to explain that a “*looked after child*” is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions at the time of making an application to a school;

b) The second criterion in the list refers to children already enrolled who meet the entry criteria, but as explained in the paragraphs above, these children have already been “admitted” at an earlier age and should not be included in the oversubscription criteria. This priority must therefore be removed from the list of oversubscription criteria to avoid confusion;

c) The third criterion relates to children with a statement of special educational needs, but if the statement names the school, then the child would have to be admitted before any other applicants. Therefore, it may be helpful for parents and applicants to move the reference that “*children with a statement of special educational needs which names the school will be admitted*” out of the oversubscription criteria and into the introductory paragraphs above so as to make clear that the oversubscription criteria apply *after* any children with a statement of special educational needs have been admitted;

d) The penultimate criterion indicates the school will prioritise the children of parents in the armed forces. Whilst this may be laudable, there is no provision in the Code, or in admissions legislation, which permits the school to include this priority. In fact, the Code at paragraph 1.9(f) states that “*admission authorities must not give priority to children according to the occupational ... status of parents (although children of staff at the school may be prioritised in arrangements).*” This criterion must therefore be removed from the list;

e) The final criterion in the list prioritises students living nearest the school as measured by the shortest safe walking distance route. However, the arrangements do not make clear the method by which the distance is

measured. The Code at 1.13 states that “*admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.*”

40. Paragraph 1.3 of the sixth form arrangements appears to be a further priority for young people on the basis of medical or social need, but this needs to be included within the oversubscription criteria to indicate at which point this priority becomes effective.

41. Furthermore, in the event that two or more applications cannot otherwise be separated, the school must be in a position to decide to whom to allocate a place. Paragraph 1.8 of the Code requires that “*admission arrangements **must** include an effective, clear and fair tie breaker to decide between two applications that cannot otherwise be separated.*” I note that in the letter dated 6 Feb 2013 the council had already offered appropriate advice on the requirement for a final tie breaker. To comply with paragraph 1.8 of the Code, the school must provide an effective final tie breaker such as random allocation.

42. Having seen the 2015 sixth form arrangements now displayed on the school’s website, I acknowledge that the school has worked hard and quickly to make many of the required amendments. The oversubscription criteria are now numbered in priority order; there is a PAN of 25; the priority for the children of parents in the armed forces has been removed; and the distance criterion now explains the method by which the distance will be measured, and also how the address of the home and the school will be determined. Furthermore, a final tie breaker of random allocation has been included, the entry regarding the waiting list has been properly structured, the deadline for determining arrangements has been properly identified, and a closing date for receipt of sixth form applications has now been included.

43. Nevertheless, in the arrangements now on the school’s website some issues still remain and some new problems have been created. There are now two sets of “*criteria*” with the first set for “*entrants*” and the second set called “*preference criteria*” which would apply in the event of oversubscription, as summarised below:

1. Entrants will have to satisfy the following criteria:

1.1 all students must have five GCSE passes at grades A* to C (and meet the individual subject requirements);

1.2 children with a statement of special educational needs;

1.3 applicants who are looked after or those previously looked after;

1.4 young people with exceptional special medical or social need;

1.5 children already at the Academy, who have progressed through the [school], meeting the entry criteria; and

1.6 students (maximum 10) selected on the basis of the sports specialism in basketball based on a skills based assessment.

2. Where there is oversubscription, the following preference criteria apply:

2.1 Children living nearest to the school measured by the shortest safe walking distance;

2.2 Random allocation supervised by a person independent of the school.

44. The school must review the criteria again to make them clearer so that external applicants and parents are able to understand easily the likelihood of a place being allocated. Section 1 appears confused and cannot apply as drafted as all “entrants” will not have a statement of special educational needs, nor will all the entrants be looked after or previously looked after children, and the basketball selection only applies to a maximum of 10 students. Furthermore, as explained in the paragraphs above, Year 11 pupils transferring to the sixth form are not “entrants” because they had already been admitted at a younger age. It may be helpful for parents to limit the first section to the academic requirement that applies to all students (both internal and external) and to include the reference that children with a statement of special educational needs will be admitted. The second section would then relate to the oversubscription criteria which would apply only to external applicants if there are more applications than places available in the PAN, starting with applicants who are looked after or previously looked after as the Code at paragraph 1.7 is quite clear that “*all schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given... to looked after children and previously looked after children.*” It would then be for the school to decide the order of priority for the other criteria regarding young people with exceptional special medical or social need; students selected on the basis of their aptitude in basketball (the actual number to meet the limits set by the Act and the Code); and distance, with random allocation as a final tie breaker. The school must revise its oversubscription criteria as soon as possible to comply with paragraph 1.8 of the Code that “*oversubscription criteria **must** be reasonable, clear, objective, and procedurally fair...*”

The sixth form reference request and the application form

45. The school made available on its website the application form for external applicants to the sixth form. I explained at the meeting how several parts would need to be amended to comply with the Code. However, the form no longer appears to be accessible from the school’s website, so I am unable to comment on any changes to the form that may have been made after the meeting. The aspects that needed to be amended are:

- the form asks for a list of other schools and colleges applied for, but this information is not needed by the school, and should be deleted. The Code at paragraph 1.9(b) makes clear that admission authorities “***must not** take into account any previous schools attended, unless it is a named feeder school*” and no feeder schools have been named in the sixth form arrangements;
- either the applicant or a parent may be expected to sign the application form, but both signatures should not be required; and
- applicants are expected to tick whether they wish to be considered for the Basketball Academy, but are then expected to detail their basketball experience. This request may breach the Code at paragraph 1.9(i) which specifies that admission authorities “***must not** prioritise children on the basis*

of their own ... past or current hobbies or activities.” In any case this section is surely unnecessary when the school says it will select up to 10 applicants on the basis of their basketball aptitude; and

- the number of applicants selected on the basis of their basketball aptitude may need to be reviewed to ensure that the total number of students selected on the basis of aptitude does not exceed 10 per cent. The school is permitted to have more than one specialism and so applicants for the sixth form may be selected in aptitude for the sport of basketball in addition to students admitted previously on the basis of aptitude in ICT as long as the total admitted on the basis of aptitude tests does not exceed 10 per cent of the Year 12 cohort. The Code at paragraph 1.24 of the Code states that the school “**must not allow for more than 10 per cent of the total admissions intake to be allocated on the basis of ... aptitude (even if the school has more than one specialism).**”

46. The reference request form was also available on the school’s website before the meeting, and the school would send this to an external applicant’s current school so as to assess their suitability for sixth form study. At the meeting I explained that the Code at paragraph 1.9(g) states that the school “**must not take account of reports from previous schools about children’s past behaviour, attendance, attitude or achievement...**” Accordingly, the school must remove the section which asks about the applicant’s attendance, punctuality, attitude to staff /students, effort in class, self-discipline to study independently, and whether the applicant has been excluded (with details), together with the request for further comments. I explained that the school is permitted only to ask for courses studied and predicted grades, and suggested that for the avoidance of doubt, the school should change the title of the form. I acknowledge that the school’s website now displays a form called “*Sixth Form Supplementary Information Request*” which complies with the Code.

47. Given the range of changes required to ensure that the 2015 arrangements for both Year 7 and the sixth form comply with Code, the school agreed in the meeting that quality assurance procedures would need to be developed to ensure that the amendments are published consistently throughout the website, and that the wording is easily understood by parents and by sixth form applicants.

Conclusion

48. I have considered carefully the two-fold objection about selection by aptitude and have found that the aptitude test was incorrectly named, and that the wording in the arrangements relating to the test was not clear. For the reasons stated in the paragraphs above, I therefore uphold the objection. However, I acknowledge that the school has made the necessary amendments quickly to comply with the Code, and that the 2015 determined arrangements now available on the school’s website comply with the Code on both of the matters raised by the objector.

49. In addition, whilst I was reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code.

50. I have drawn the school’s attention to a range of matters in the arrangements

for Year 7 including the requirement that parents should have the results of the banding and the aptitude tests before the 31 October; and that the selection paper must test for ICT aptitude.

51. The school has also been made aware of the need to ensure that the sixth form arrangements also comply with the Code. Accordingly, I brought a number of issues regarding the sixth form arrangements to the attention of the school, such as the need to set a PAN for Year 12; that school forms must not ask for unnecessary information; and that oversubscription criteria must be well constructed so as to comply with paragraph 1.8 of the Code that “*oversubscription criteria **must be reasonable, clear, objective, and procedurally fair...***”

52. The 2015 determined arrangements now include key deadlines that comply with those specified in the Code. It is the responsibility of the academy trust as the admissions authority to ensure that the correct procedures are followed so that the arrangements for both Year 7 and for the sixth form are formally determined by 15 April and are published on the school’s website as soon as possible afterwards. The governing body must ensure that the remaining amendments to the 2015 arrangements are made as quickly as possible.

Determination

53. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the governing body of the Academy Trust of the City of London Academy Southwark for admissions in September 2015.

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

55. 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 make any remaining revisions to its admission arrangements as quickly as possible.

Dated: 16 September 2014

Signed:

Schools Adjudicator: Ms Cecilia Galloway