DETERMINATION

Case references: **ADA2310**

Objector: **A parent**

Admission Authority: **The Governing Body of Sutton Grammar School, London Borough of Sutton**

Date of decision: **14 September 2012**

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of Sutton Grammar School.

I have also considered the arrangements in accordance with section 88I (5). I determine that these do not conform with the requirements relating to admission arrangements as set out in paragraphs 45 and 46 of this determination.

By virtue of section 88K (2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements 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 parent (who wishes their anonymity to be respected but whose name and address are known to me), about the admission arrangements (the arrangements) for admissions in September 2013 for Sutton Grammar School (the school), an Academy School for boys with a selective intake, in the London Borough of Sutton, the local authority (the LA).

2. The objector has also made similar objections to the arrangements of three other selective schools which are also in the London area.

3. The objector says that the school does not meet the requirements of the School Admissions Code (the Code) concerning the timing of the information which it provides to parents about the performance of children on selection tests.

Jurisdiction

4. The terms of the Academy agreement between the proprietors and the Secretary of State for Education require the admissions policy and arrangements for an Academy School to be in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the Academy school, on that basis.

5. The objector submitted their objection to these determined arrangements on 22 June 2012. As the objector provided the Adjudicator with their name and address, an anonymous objection is allowable under Regulations 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations). 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. I have also used my powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

a. the objector's form of objection dated 22 June 2012;

b. the school's response to the objection and supporting documents;

c. the comments of the LA;

d. subsequent correspondence from the objector and the comments of the school;

e. copies of the minutes of the meeting at which the school's arrangements were determined; and

f. a copy of the determined arrangements.

The Objections

8. The objector has complained that the school has two-stage selection tests and that since the second stage is conducted after 31 October each year, the national closing date for applications for places at secondary schools, it is not possible for parents to complete their Common Application Form (CAF) in the knowledge of the outcome of their application for a place at this school.

9. The objector also raises the question of whether first stage test results should be given not only earlier, but also as actual scores or rankings to indicate to parents the likelihood of success in the second stage

10. The objector believes that the practices of the school contravene paragraph 1.32c of the Code, which says the following:

*"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 - while making it clear that this does not equate to a guarantee of a selective place."*

11. The Code came into force on 1 February 2012, meaning that this requirement, which replaces a similarly worded statement using the word "should" instead of "must", has its effect for the first time in respect of admission arrangements for September 2013.

12. The objector has raised further matters in subsequent correspondence. The objector alleges that there are further breaches of the requirements of the Code concerning the admission arrangements of the school. The matters raised are in my view contingent to those contained in the on-time objection and I have decided to use the discretion available to me as described in the Code, paragraph 3.5 (regulation 23 of the regulations) to consider these as part of this determination. The objector has complained as follows:

(i) on12 July 2012, that the school had failed to consult properly concerning the introduction of two-stage testing, which was a change in the admission arrangements requiring consultation according to the Code, paragraph 1.42;

(ii) on 23 July 2012, that the determined admission arrangements for September 2013 were not available on the school's website, as required by the Code.

Other Matters

13. I have also given my consideration to the admission arrangements for the school, and I have noticed that the arrangements do not make it clear how the "scores in the selection tests" are used to produce the rank order which is used as an oversubscription criterion to determine admissions, and do not explain what is meant by the sentence "As the scores are banded there will usually be several boys with the same final score".

I shall discuss these matters below.

Background

14. The school is a grammar school in an outer London borough to the south of the capital. It is heavily oversubscribed. For entry in September 2012, there were 1498 applications for 120 places.

15. The school became an Academy on 1 June 2011. Its Funding Agreement with the Secretary of State states that it is permitted to continue to select its intake by reference to ability since it was previously a maintained grammar school designated as such under section 104 of the Act and the Education (Grammar School Designation) Order 1998.

16. The school's admission arrangements for September 2012 used rank order of score in a single selection test, and if necessary proximity of equally qualified boys' homes to the school, to allocate places. Minutes provided to

me by the school of a meeting of the Trust's Admissions Committee on 16 January 2012 show that a revised policy for admissions in 2013 was approved on that date. The minutes record that it was expected that these would be the subject of consultation. However, no consultation took place, and the school says that the arrangements were therefore determined on that date (see below).

17. That policy included the use of two-stage testing, and stated that there would be an eligibility test on 6 October 2012, the results of which would be forwarded to parents by 11 October 2012. The additional test, for those considered eligible, is scheduled to take place on 17 November 2012.

The Response of the School

18. The school wrote to me on 3 July 2012, responding to the objection.

19. The school referred in this letter to the pressure which the deadline of 31 October places on children in south London, many of whom are entered for the selection arrangements at several grammar schools. It chooses to use a multiple-choice test of basic skills in English and Mathematics to identify about 600 boys from about 1500 applicants who are "broadly of selective ability", each of whom has "a reasonable chance of success", and to avoid subjecting the remaining 900 candidates to the stress of further testing.

20. The school believes that the use of two-stage testing is within the spirit of the Code and the legal requirements it imposes.

21. In its letter, the school also says that "we were not changing any of the oversubscription criteria or the planned admission number, so there was no need to formally consult……The arrangements were therefore determined on 16 January 2012".

The Response of the Local Authority

22. The LA says in its letter of 5 July 2012 that the Code does not require test scores or cut-off points from previous years to be given to parents. It considers that if this were the case, it would have a distorting effect on the pattern of preferences expressed by parents which could be detrimental to their interests since places are not confirmed places until March.

23. The authority also says that there is already significant pressure within the short time available on students who are entered for several selective schools. There is also pressure on the resources which schools can devote to testing arrangements and further requirements would endanger the ability to meet existing closing dates.

Consideration of Factors

24. The objector has objected to the admission arrangements on the grounds that they do not result in parents knowing the final outcome of the selective admission procedures prior to 31 October. This is because a further process is involved - further selection testing acting effectively as an oversubscription criterion.

25. The Code requires that “all reasonable steps” are taken to inform parents of the outcome of testing. The wording of paragraph 1.32c also makes it clear that what is meant by “outcome” is not the same as the final allocation of a selective place.

26. However, I do not believe that the objector is under the impression that applicants for a place at a selective school are entitled to know that they have a confirmed place (or that they definitely do not) prior to the CAF deadline. What the objector is saying is that the Code requires that the selection process should have run its course by that time, and also that parents should then be given the maximum possible information, short of a confirmed place, when completing the CAF.

27. In order to understand clearly what is at issue I think it is helpful to consider the processes in play after the completion of the CAF by parents in this situation. One such process is the co-ordination of offers, in which the preferences expressed by parents are compared with the availability of places and the extent to which their application meets each school’s oversubscription criteria. This results in the offer of the highest ranked available place to each child at the end of the co-ordination process. A selective school is part of this process in the same way as a non-selective school, but it has used selective means to determine the rank order which it gives to applications, together with any further oversubscription criteria that it employs. It will not have determined a closed list of those to be offered a place in advance of the co-ordination process, unless of course it is undersubscribed with qualified applicants. In effect, for a selective school as for any other, the process of making admissions takes place through co-ordination.

28. For some selective schools, the rank order of qualified candidates is based on a single phase of selective testing which takes place prior to 31 October. In that case, parents are still not told that they have a guaranteed place, only that they would (or would not) enter the co-ordination process for a place at the selective school if they named it on their CAF.

29. But in the case of a selective school that has not completed its selective ranking of applications by the CAF deadline, there is the second process in which it proceeds to do that, prior to the commencement of co-ordination.

30. What the objector complains about in the case of the school is that the arrangements only allow for a partial completion of the selection process prior to the CAF deadline. The objector wishes the second phase of testing to be brought forward and for parents to be told the score pupils achieve on the selection tests to enable them to gauge their likelihood of admission if the school is named on the CAF. I have come to the conclusion that the objector is unhappy with two-stage testing not because it involves testing after the CAF deadline, but because it makes it impossible to have detailed information before the CAF is completed of the likelihood of actual admission.

31. I have considered whether parents applying for a place at a selective school that completes its selection testing prior to 31 October who are told that their child is of selective ability are likely to be any more certain of securing a confirmed place at the school on 1 March than are the parents of

children of a selective school that operates two-stage testing in which the outcome of the first stage is known before the CAF is completed. The answer to this must be no, since that chance will in all cases be determined principally by the relationship between the number of children who are deemed to be of selective ability and the available number of places. For schools that use a second phase of selection testing, the effect is that the test results act as the oversubscription criterion in the same way as some other factor or factors will work for selective schools that use single stage selection testing.

32. In practice, selection - of which children are or are not of selective ability - occurs at the school prior to 31 October and parents are informed of the outcome in these terms. The objector takes the view that compliance with the requirements of the Code means that the exhortation to communicate “the outcome” implies that all the tests should take place before 31 October and that test scores or rankings should then be given to parents.

33. The Code does not define what is meant by “the outcome”, although it is clear that it must be information which allows an “informed” choice of school to be made by parents, and that it does not mean a guarantee of a place at a selective school.

34. The first stage of testing (described above) identifies for the school those boys who are “broadly of a selective ability”. Parents are told whether their child has been included in this group, but no further details are given. The school introduced this change to meet what it saw as a new mandatory requirement to take all possible steps to inform parents of the outcome of selection prior to 31 October. It takes the view that this requirement, applied to the south London context, “puts an unreasonable pressure on children to be tested at multiple selective schools, potentially all in September”. As a result, it has chosen, as an alternative to continuing its previous practice of testing later in the autumn term, or of subjecting all candidates to intensive testing in the September and October window, to employ a short test to determine which candidates are and which are not, “suited for a selective education”. It argues that this allows the great majority of parents who have entered their children into its testing arrangements to be “given the clear guidance that they are not suitable for selective education”. It believes that releasing the result in the form of “a pass/fail result is fair and in line with the Code”.

35. In considering the objection, I believe that I must come to a view on two matters. Firstly whether the school might reasonably have taken other steps in an attempt to inform parents of the outcome of selection prior to 31 October, and secondly whether informing them of the results of first stage testing without giving actual scores also meets the requirements of the Code concerning the information provided as the “outcome” of testing.

36. On the first matter, the school might have chosen to continue its previous practice of testing in November, and to have argued the impracticality and inappropriateness of bringing that process forward into September and October. I believe that the points made by the school about its circumstances, and those of the candidates for places in this context, may have enabled it to make a case for doing so. However, it chose not to, and has taken what it considers to be a reasonable step, beyond the minimum requirement of the

Code, which is intended to meet the spirit of what the Code intends – that parents should have the best information that can reasonably be provided in order to guide their CAF preferences. My view of this is that in terms of the structure and timing of testing, the step which the school has taken of introducing early testing to determine selective ability, so that parents can have this information in October, is strong evidence that the school, which had clearly considered the alternatives, had taken “all reasonable steps”, in line with the Code.

37. Secondly, I must consider whether informing parents of the result of the first selection test in a “pass/fail” format meets the requirement of the Code to inform parents of the “outcome”. As already pointed out, the Code does not define “outcome” other than by the effect which is intended of allowing “parents time to make an informed choice of school – while making it clear that this does not equate to a guarantee of a selective place”. I am mindful here that the wording of the Code emphasises that it is the timing that matters for parents, and that their choice should be “informed”. The Code does not specify how far “informed” should go, and I believe that there are good reasons for this. If for example all parents are informed of the detail of their child’s performance on the test, the effect could vary considerably depending on the local circumstances. In some circumstances, for example in London, where parents normally have up to six allowed CAF preferences, and where as a result a given child may be highly qualified for more than one selective school, the coordination process may well result in actual offers of places at a particular school in a given year being made to other candidates who might easily have been discouraged from naming it because of a perception that their chance of gaining admission was low on the basis of their apparent standing at the end of October. There can be significant differences, year on year, as to how the final coordination process results in the making of offers for any given school given the complexity and inherent variability associated with the process. As well as potentially being unfair to particular parents, admission authorities will in these circumstances also be conscious of the potential effect on the pattern of applications and therefore admissions to their school. In its own thinking, the school has been conscious, it tells me, of the fact that releasing detailed information can effectively for some amount to the effective offer of a place. The wording of the Code requires admission authorities to make it clear that the “outcome” does not amount to the offer of a place, and it is clearly extremely difficult for them to do this if in some circumstances and for some children this would effectively be the case. I believe this is another factor behind the Code not requiring detailed information to be given to parents.

38. My view is that the Code leaves the decision of how far to go in informing parents to admission authorities. The exhortation to them contained in paragraph 1.32c is to “allow parents time to make an informed choice”. Knowing in time for your expression of preferences that your child would continue to be considered for a place at the school if you named it (or conversely that he or she would not) meets that requirement, in my view. For those (the majority) who are informed that their child has been considered not to be of selective ability, this is full and complete information. For the minority who “pass” the test, parents will know the school’s remaining procedures, which might be further testing, or the application of oversubscription criteria

which do or do not use test scores, and will be aware from the relationship between the number of successful candidates and the number of places what the minimum chances of their application being successful are. Detailed information at that point may allow some to assess their chances more accurately, depending on all the factors that might make that information capable of being used in that way, but its release can also have complex and unforeseen consequences. For good reasons, I believe the Code leaves this matter at the discretion of the admission authority. The school has chosen not to provide detailed scores to parents, as I believe it is entitled to, and have explained their reasoning. This decision does not mean that the school has failed to communicate to parents the outcome of testing, in the terms of paragraph 1.32c of the Code. The arrangements of the school therefore do provide what the Code requires it to, or rather to have "taken all reasonable steps" to have done, in my view.

39. As set out in paragraph 12, the objector has also made further objections.

40. First, the objection made is that changes to the admission arrangements made by the school were not the subject of prior consultation which meets the requirements of the Code (paragraph 1.42) and the regulations.

41. The school accepts that it did not consult on the introduction of two-stage testing. As stated previously, its letter to me dated 3 July 2012 says "We were not changing any of the oversubscription criteria or the planned admission number, so there was no need to formally consult."

42. The Code, in a footnote to paragraph 5 of the Introduction, gives a definition of what is meant by "admission arrangements". It says;

"Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered."

Consultation must be carried out when changes (other than those listed) are proposed (Code, paragraph 1.42). It could not be clearer, in my view, that changes to the arrangements for selection testing from a single stage to a two-stage process are just such changes, and must be the subject of consultation. It is indeed for the admission authority to decide on the contents of selection tests, just as it is for them to decide on the oversubscription criteria which they use, but (in the same way as for oversubscription criteria) only within the limitations imposed by the Code and only after consultation with the prescribed parties if changes are proposed. While I can accept that it would not be required to consult, for example, on the wording of tests themselves, changing the type of test or the testing arrangements from one-stage to two-stage testing would be a change requiring prior consultation. The school should have consulted on the changes which it was making, and did not.

43. Secondly, the objector has complained that the admission arrangements for the school were not published on its website when this was looked at on 23 July 2012. On 3 August the objector wrote again, providing copies of the

relevant pages of both the LA's website and of the school's own website in support of this assertion. The Code (paragraphs 1.46 and 1.47) requires admission authorities to determine admission arrangements by 15 April each year, and once they have done so to publish them on their website. From the evidence which has been supplied to me, I am of the view that the school has failed to do this.

44. I have considered the arrangements of the school in accordance with section 88I (5) of the Act. I set out in paragraph 15 above the matters which I consider may contravene the Code. These are considered below.

45. The admission arrangements have as their second oversubscription criterion "rank order of the scores in the selection tests" but do not state whether these scores are those obtained at both stages of testing combined in some way, or whether they are only the scores from the second stage of testing. The arrangements are therefore unclear in my view, and do not meet the requirements of paragraph 14 of the Code.

46. The arrangements also say that "As the scores are banded there will usually be several boys with the same final score". The term "banded" is not explained, and it is not possible to follow the meaning of this statement in order to understand how the arrangements operate. The arrangements are therefore unclear in my view, and do not meet the requirements of paragraph 14 of the Code.

Conclusion

47. I have set out in paragraphs 25 – 38 my reasons for concluding that

(i) the introduction of two-stage selection testing by the school has been a reasonable step which it has taken to allow it to inform parents of the outcome of selection testing prior to 31 October; and

(ii) that the outcome of selection testing (which the Code requires schools to make every effort to provide to parents prior to 31 October) can take the form of pass/fail information on the first stage of two-stage testing and need not contain detailed information about the scores achieved by children on tests, or of their rank order compared to other candidates.

For these reasons, I do not uphold the objection which has been made on these grounds concerning the admission arrangements of the school.

48. Paragraph 42 above sets out why I am of the view that the school failed to consult on changes which it proposed to make in its admission arrangements for September 2013.

I therefore uphold the objection which has been made on this matter concerning the admission arrangements of the school.

49. The objector has invited me to rule that changes to the admission arrangements made without appropriate prior consultation "are not valid" and should be removed. That is something which I have no power to do.

50. For the reasons given in paragraph 43 I am of the view, from the evidence available to me, that Sutton Grammar School has failed to publish its determined admission arrangements for September 2013 in the manner prescribed by the Code.

I therefore uphold this objection to the admission arrangements of Sutton Grammar School.

The school should take steps to remedy this deficiency in order to comply with the Code.

51. I have given in paragraphs 45 and 46 the reasons why I consider the admission arrangements of the school to be unclear. They could be made compliant with the Code if the matters which I have highlighted were explained within the arrangements.

52. The Code (paragraph 3.1) requires admission authorities to make necessary changes as quickly as possible, and it is now for them to do so.

Determination

53. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of Sutton Grammar School.

54. I have also considered the arrangements in accordance with section 88I (5). I determine that these do not conform with the requirements relating to admission arrangements as set out in paragraphs 45 and 46 of this determination.

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 revise its admission arrangements as quickly as possible.

Dated: 14 September 2012

Signed:

Schools Adjudicator: Dr Bryan Slater