DETERMINATION

Case references: **ADA2311**

Objector: **A parent**

Admission Authority: **The Governing Body of The Latymer School, London Borough of Enfield.**

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 The Latymer 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 37 to 51 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 The Latymer School (the school), a mixed Voluntary Aided Grammar School in the London Borough of Enfield, the local authority (the LA).

2. The objector has made similar objections to the admission 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 admission arrangements of the school were determined under section 88C of the Act by the school's governing body, which is the school's admission authority.

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 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 Objection

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 practice of the school contravenes 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, but after the deadline of 30 June for doing so. The objector alleges that there are further breaches of the requirements of the Code concerning the admission arrangements 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) on 13 July 2012, that the school does not permit candidates who live outside the catchment area which it has defined to register for and take the school's entrance tests, in contravention of paragraph 1.14 of the Code ;

(ii) on 30 July 2012, that the school did not consult properly on changing its admission arrangements.

Other Matters

13. I have also given my consideration to the admission arrangements for the school, and I have noticed that the admission arrangements contain oversubscription criteria which:

(i) do not mention looked after children;

(ii) do not mention children with a statement of special educational needs which names the school;

(iii) give priority in an order which seems to me to be inappropriate; and

(iv) use an unclear form of words;

I shall discuss all these matters below.

Background

14. The school is a grammar school in an outer London borough to the north of the capital. It is heavily oversubscribed. There were 1675 applications for 186 places for admissions in September 2012.

15. The school's governing body determined the admission arrangements that would apply for September 2013 on13 March 2012. Changes had been made from those which had applied for September 2012 in order to accommodate changes brought about by the revised Code which was introduced on 1 February 2012.

16. For 2013, the governors have approved arrangements in which the results of a first round non-verbal reasoning test will be communicated to parents before 31 October, and in which a further test in literacy and numeracy will take place in November 2012.

The Response of the School

17. In its response of 5 July 2012, the school describes itself as “one of the most oversubscribed selective schools”.

18. It uses two-stage testing because the area which it serves has high levels of social deprivation and many children from “mixed backgrounds” - so the school uses as its stage one test a test of non-verbal reasoning which is “neutral for language skills”. To make coaching of candidates more difficult, this test is supplemented by tests in English and Mathematics, which present different challenges to the non-verbal reasoning test. The logistical challenge created by the large number of applicants means that it is not possible to carry out all of this testing prior to 31 October, and the school believes that the breadth of its testing arrangements is an aid to fairness since some pupils perform very differently on the different tests.

19. It has brought the timing of the first test forward in October to allow the outcome to be communicated before 31 October.

The Response of the Local Authority

20. The LA supports the school, and refers to the large geographical area from which children apply for a place at the school. In this situation parents enter their children for a number of selective schools, ranked by preference. It believes that providing more information than currently prior to completion of the CAF could discourage some parents from naming schools when in practice they may have achieved a place there as others scoring higher, but having a lower preference for the school, are removed during the process of co-ordination

Consideration of Factors

21. The objector has objected to the admission arrangements of the school 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.

22. 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.

23. 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 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.

24. 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 preferred 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.

25. 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.

26. 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.

27. What the objector complains about in the case of the school is that its 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.

28. 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.

29. In practice, selection - of which children are or are not of selective ability - occurs for 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 outcome” should consist of test scores or rankings when no more selective testing is used by the school, and where it is, that the tests should all take place before 31 October and the same detail should then be given to parents.

30. 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.

31. The first stage of testing (described above, paragraph 16) identifies for the school those boys and girls who “are deemed capable of following an education leading to the higher grades of GCSE in a full range of National Curriculum subjects”, and who are invited to take part in a second stage of testing. Parents are told whether their child has been included in this group, but no further details are given. The school has operated two-stage testing for a number of years, and for September 2013 admissions changed the date of the first stage in order to allow the results to be given to parents prior to 31 October. Its reasons for operating a two-stage testing regime are given above, paragraph 18.

32. 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.

33. On the first matter, the school might have chosen to continue its previous practice of first-stage testing in late October, and to have argued the impracticality and inappropriateness of bringing that process forward into September and October. The school has made a number of practical points concerning the logistical problems associated with testing a large number of entries, and has considered but rejected alternatives which might have allowed all stages of testing to have taken place in that time period. However, it chose to move the first stage of testing forward because this was not as unreasonable as the alternatives considered. It considers this 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 allowing its first stage of testing to take place earlier, 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.

34. 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. The LA has made it clear that it believes this would be the case in the circumstances of the school. 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. 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, as could well be the case for some admission arrangements for some of the children concerned, informing them of test outcomes was tantamount to telling them that they would be guaranteed a place. I believe this is another factor behind the Code not requiring detailed information to be given to parents.

35. 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.

36. As set out in paragraph 12, the objector has also raised further objections, but after the deadline of 30 June for doing so.

37. 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. The school did not respond until 5 September 2012 to my requests for clarification concerning the consultation which it may have carried out prior to the determination of its arrangements for September 2013, and no information has been received on this point from the LA. I requested this clarification since the minutes of the meeting of the governing body of the school on 13 March 2012 make no mention of any consultation which may have taken place, but do make it is clear that the governors' Admissions Committee had recommended changes required by the (new) Code concerning the timing of testing. Neither the school nor the council websites were able to throw any light on this issue.

38. The school has however now told me that it was not introducing two-stage testing for the first time in September 2013, as the objector implies in his letter of 30 July 2012. I can only conclude that the changes made by the school were to comply with a mandatory provision of the Code as set out in the minutes of the governing body, and therefore did not require there to have been any consultation.

39. Secondly, the objector says that the school restricts eligibility to take its first stage selection test to those living in a defined geographical area, and that this is contrary to the "Greenwich" ruling, which is referred to in the Code in a footnote to paragraph 1.14. While this ruling is concerned with the requirement for local authorities to comply with parental preferences of those living within and outside its boundaries on an equal footing, the Code itself states that "catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school".

40. The admission arrangements determined by the school do not make explicit reference to the need to live within a defined area to be considered for a place at the school, but the form which the school uses for parents to register for its entry tests gives a list of postcodes under the heading "postcode areas for a Latymer application" and explains that "If you do not reside in one of the specified postcodes as mentioned in our admissions policy and listed below, you will have to show the Governing Body your intention to move. Please…attach a solicitor's letter to this effect…. Applications will not be processed without this……priority is given to children who live in the named post areas (sic) before other applicants." The school's response to the original objection also says "….we have a non-verbal reasoning test for our first round test. All applicants in the postcode area take this if they complete our Supplementary Information Form to register for the entrance tests."

41. This objection was made known to both the school and the LA on 17 July 2012, and neither responded to it. I have sought again the comments of both the school and the council concerning the objection, and the school replied on 5 September 2012. I shall discuss this response below.

42. The school's oversubscription criteria say that places are allocated in the following order of priority:

"1. Those living in the following postcode areas: (listed)

2. A maximum of 20 students who show exceptional musical talent and achievement……..

3. The 166 candidates, or, if fewer than 20 music places are offered, 166 plus the unallocated music places, who, on the evidence of tests show the highest level of academic potential. Where two or more candidates have the same total score, the NVR score will be the deciding factor."

43. As listed, these criteria do not appear to me to have any logical explanation unless the postcode areas are used, as it would appear to be from the wording set out above of the supplementary form and the school's letter, as a means, by restricting access to the entry tests, for restricting applications to the school from those living in the geographical which they define, as the objector alleges. When I wrote to the school and council on 28 August 2012 I told them that this appeared to me to be the only explanation for setting out the oversubscription criteria in this way. When the school replied to me it told me that only if a parent can provide a solicitor's letter stating their intention to move into the area defined in its oversubscription criteria would the child sit the entrance test.

44. Oversubscription criteria are needed if priority for admission to a school has to be determined because it is oversubscribed. They cannot be used to limit those applications in the first place. Paragraph 1.14 is clear (as set out above) that catchment areas cannot be used to prevent the expression of a preference from those living outside it, and paragraph 2.1 sets out that "…parents may express a preference for any state funded school – regardless of whether it is in the local authority area in which they live ". I have come to the view that this is what the arrangements of the school do, and that they therefore breach these provisions of the Code.

45. As mentioned in paragraph 13, the admission arrangements for the school make no reference to looked after children or previously looked after children. (Further references in this determination to looked after children should be read to mean looked after and previously looked after children as set out in the Code, paragraph 1.7)

46. All schools must give first priority to these children (Code, paragraph 1.7), and unless a grammar school uses solely the highest scores on a selection test to determine priority for admission, it too should give first priority to looked after children who meet the pre-set standards of the ability test. Since the school sets a required level for all children who take the first stage test, it does not base admissions solely on the scores in tests, even though it uses these

at coordination as an oversubscription criterion. The school should therefore have as its first oversubscription criterion the admission of looked after children who have reached this standard.

47. Secondly, no mention is made of children who have a statement of special educational need which names the school. All schools must admit such children, and grammar schools are not exempt from this requirement (Code, paragraph 1.6). When the school wrote to me on 5 September 2012, it referred to the Special Educational Needs (SEN) Code of Practice and to the "criteria" there for naming a school. The requirement placed on the governing body of a school to admit a child whose statement of special education need names it is set out in primary legislation (section 324 of the Education Act 1996). That requirement is absolute and does not permit the governing body to lay down conditions for the admission, even those given in guidance to local authorities concerning the naming of the school in the statement. However, the school stated that the admittance of children with a statement of SEN naming the school "is conditional on satisfying the criteria for selection". It is for the local authority, and not the school, to determine the appropriateness of the school to meet the needs of such a child, and the school may not make any conditions as to their admission.

48. I discussed in paragraphs 13(iii) and 42, the order of the school's oversubscription criteria. The school clearly wishes to give priority to up to 20 students who show exceptional musical talent. However, as currently set out, the oversubscription criteria give a higher priority to children living in the area defined by a list of postcodes. So if the oversubscription criteria were applied as written, there would be no places remaining for the admission of musically talented children. Since I am sure that this is not the intention, and in view of the comments made by the school I can only conclude that the postcodes are not used as an oversubscription criterion but are in practice a priority area from which applications are accepted. I have set out above the reasons why this is a breach of the requirements of the Code. An oversubscription criterion for musically talented children must be sufficiently highly ranked within the oversubscription criteria as a whole if it is to be capable of achieving what the governors of the school intend. Since that is not the case, and since the arrangements purport to enable the admission of these children, I am of the view that they are unclear, and in breach of the requirement of the Code (paragraph 1.8) that requires oversubscription criteria to be "reasonable, clear, objective, procedurally fair".

49. The current admission criterion for musically talented children reads as follows:

"A maximum of 20 students who show exceptional musical talent and achievement provided that, on the evidence shown by achievement tests, they are also capable of maintaining the academic progress expected of the rest of the Latymer intake….."

50. The phrase "capable of maintaining the academic progress" seems to me to be neither clear, nor objective. If the intention is that this group of children must have achieved at least the "required level" on the first stage (NVR) test as those children who are invited to take the second stage tests employed by

the school, then the oversubscription criterion should say this. If not, it should say what different performance on the test is required in order to be considered for a place under this oversubscription criterion. The criterion goes on to indicate in objective terms how musical talent and achievement are to be judged, but does not say what would happen if more than 20 children met both the academic and musical achievement minimum criteria. If it is intended that the places would go to those children who met the minimum academic standard with priority being given to those showing the highest levels of musical ability, for example, it should say this, together with a means for parents to understand how relative musical achievement will be determined objectively.

51. The third oversubscription criterion in the school's determined arrangements for September 2013 is set out above in paragraph 42. The phrase "show the highest level of academic potential" is in my view unclear and not objective. The arrangements imply, but do not state, that candidates are ranked according to either their total scores on both the stage one and stage two selection tests, or on the stage two test scores alone. Applicants need to know how the scores are used.

Conclusion

52. I have set out in paragraphs 22 – 35 my reasons for concluding that

(i) the use of the first stage of existing two-stage testing to allow it to inform parents of the outcome of selection testing prior to 31 October has been a reasonable step taken by the school and that from the information available to me it did not have reasonable alternatives for doing so; 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.

I therefore do not uphold the parts of the objection which has been made on these grounds concerning the admission arrangements of the school.

53. The school did not change its arrangements to introduce two-stage testing for admissions in 2013, and from the information which I have it made only changes that did not require consultation.

I therefore do not uphold the objection which has been made concerning the school's failure to consult on proposed changes to its admission arrangements.

54. I have explained in paragraphs 39 - 44 why I am of the view that the admission arrangements of the school are in breach of the requirements of the Code by restricting applications to a defined geographical area.

I therefore uphold this objection to the admission arrangements of the school.

The school should therefore amend its arrangements in a way that makes it

clear that applications are not restricted to those living in any particular geographical area, and that registration for the entry tests is similarly not restricted, in order to comply with the Code. It can be madder clear at the same time that living in the designated area gives a higher priority for a place.

55. I have explained in paragraph 46 why I am of the view that the admission arrangements of the school do not comply with the requirement that they should give appropriate priority to looked after children and previously looked after children..

The school would be able when making changes of the sort mentioned in the previous paragraph to include revised oversubscription criteria which would also remedy this deficiency.

56. Paragraph 47 explains the need for all schools to comply with the requirement to admit children who have a statement of special educational need which names it. The school would be able to make it clear that this duty was recognised in making other changes required to comply with the Code.

57. I have set out in paragraph 48 - 50 why I am of the view that the admission arrangements of the school are unclear concerning the admission of children on the basis of their musical talent, and therefore in breach of the requirements of the Code.

The school would be able, when making the changes required above, to include revised oversubscription criteria which would remedy the deficiencies I have highlighted in order to make the arrangements compliant with the Code.

58. Paragraph 51 sets out the reasons why I have come to the view that the admission arrangements of the school are unclear concerning the use of test scores to determine the priority which children have for admission, and are therefore in breach of the Code.

The school could make changes to the arrangements which included a statement which states in objective terms how the arrangements determine priority for admission, in order to be compliant with the Code.

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

Determination

60. 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 The Latymer School.

61. 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 37 to 51 of this determination.

62. 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