DETERMINATION

Case references:	**ADA2312 and ADA2328**
Objector:	**Two parents**
Admission Authority:	**The Governing Body of The Tiffin Girls' School, Royal Borough of Kingston-upon-Thames**
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 objections to the admission arrangements determined by the governing body of The Tiffin Girls' 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 42 and 43 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), objections have been referred to the Adjudicator by two parents (each of whom wishes their anonymity to be respected, but whose names and addresses are known to me), about the admission arrangements (the arrangements) for admissions in September 2013 for The Tiffin Girls' School (the school), an Academy School with a selective intake, in the Royal Borough of Kingston upon Thames, the local authority (the LA).

2. One of the objectors has also made similar objections to the admission arrangements of three other selective schools which are all also in the London area.

3. Both of the objectors say that the school does not meet the requirements of the School Admissions Code (the Code) concerning the timing of the information which they provide to parents about the performance of children on selection tests.

Jurisdiction

4. The terms of the Academy agreements between the proprietors and the Secretary of State for Education require that 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 objectors submitted their objections to these determined arrangements on 22 June 2012 and on 30 June 2012. As the objectors 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 objections have been properly referred to me in accordance with section 88H of the Act and that they are within my jurisdiction. I have also used my powers under section 88I of the Act to consider the arrangements as 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 objectors' forms of objection dated 22 June 2012 and 30 June 2012.;

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

c. the comments of the LA;

d. subsequent correspondence from one of the objectors 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. Both objectors have 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 one of these schools.

9. One 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. Both objectors believe 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. One of the objectors 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 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 School Admissions Regulations 2012) to consider these as part of this determination. The objector complained, on 18 July 2012, that the school had failed to consult properly concerning changes to its testing arrangements, including the introduction of two-stage testing, 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 they

> (i) contain wording concerning looked after children which is unclear; and
>
> (ii) contain an inappropriate statement concerning the admission of pupils with a statement of special educational needs which names the school.

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 admissions in September 2012 there were 1600 applications for 150 places.

15. The school became an Academy on 1 April 2011, and 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 consulted in December 2011 on changes to its admission arrangements for September 2013. The consultation paper which the school has sent to me contains a statement that "The Governors ….are currently considering the type of tests (sic) that are used for selection", but provides no details of what change might be possible, only that "The final details of the method of selection for September 2012 (sic) will be published as soon as possible on the school website and no later than 15 April 2012."

17. The Governing Body met on 27 March 2012 and determined the arrangements for admissions in September 2013. The determined arrangements include a first stage of testing in September, consisting of tests of non-verbal reasoning and of verbal reasoning. Girls scoring the same as or more than the 450th ranked candidate will be invited to take part in a second stage of testing in December, consisting of tests to assess numeracy and literacy their content will be "guided" by the content of the Primary National Curriculum. The minutes of this meeting set out the responses to the consultation and make it clear that the intention had been to introduce two-stage testing. In response to requests made during the consultation that no changes be made to the nature of the selection test procedure, the governors decided to "keep the first part of the new arrangements the same as the selection tests in previous years" but that "8 month's notice of the introduction of the new second stage of the new procedure is long enough given that it is based on what the applicants are studying in their current schools for maths and English".

The Response of the School

18. The school gave me its response on 12 July 2012. It had decided to introduce two-stage testing, it said, in response to the Code which came into force on 1 February 2012.

19. In order that all candidates should have a test outcome by mid-October, in order to meet what it sees as new requirements in the revised Code, a verbal and non-verbal reasoning test would take place in September instead of in November. The arrangements did allow for the candidate's score on this test, together with contextual information on all applicants and the cut-off score for invitations to sit the second test (in December), to be communicated.

The Response of the Local Authority

20. The LA says that it believes that the arrangements determined by the school comply with the requirements of the Code and makes essentially the same points as the school in support of this statement.

Consideration of Factors

21. The objectors have 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. However, I do not believe that the objectors are 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 they are saying is that the selection process should have run its course by that time, so that parents have 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 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.

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 objectors complain 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. One of the objectors 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 objectors are 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 at the school prior to 31 October and parents are informed of the outcome in these terms. The objectors take 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.

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) identifies for the school those girls who are of "the academic standard necessary to be offered a place at the school" (the school's letter dated 26 July 2012). 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. Parents are told the outcome of the first stage of testing before 31 October. The school has considered various alternatives, but because of the practicalities involved in testing the very large number of candidates has chosen, as an alternative to continuing its previous practice of testing later in the autumn term, to use the first stage of testing to determine which candidates are and which are not of "the academic standard necessary". It believes that this gives parents a clear indication of whether their daughter may be "eligible" for a place at the school before the CAF deadline and therefore helps them in making an informed choice. The school believes that it is particularly important that this new arrangement informs those parents who would not subsequently be offered a place at the school of this fact "as it is those parents who would definitely be wasting a choice by naming the school on the CAF."

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 to inform parents of the outcome of selection prior to 31 October, and secondly whether informing them of the results of first stage testing 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 testing in November, and to have argued the impracticality and inappropriateness of bringing that process forward into September and October. 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.

34. The school expects to give parents the outcome of the first stage test by mid-October, and will provide details as set out above, paragraph 19. I must consider whether informing parents of the result of the first selection test meets the requirement of the Code to inform parents of the “outcome” of testing. 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. 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 relation to some admission policies 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.

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. In addition to telling parents whether their child would be invited back for the second stage of testing, the school has chosen to provide details of first stage scores, which contribute 30% towards the overall scores used for ranking purposes after the second stage of testing, as I believe it is entitled to. This decision means, in my view that that the school has clearly determined arrangements in which the outcome of testing is communicated to parents, 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, one of the objectors has also raised further objections, but after the deadline of 30 June for doing so.

37. Firstly, 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.

38. In a letter dated 23 July 2012, the school says "The admission arrangements for the school have not changed. The school continues to offer places as it has done previously on the basis of selection by ability." It takes the view that since paragraph 1.31 of the Code states that "it is for the admission authority to decide the content of the test" and since the revised testing arrangements meet the other requirements of that same paragraph, concerning clarity, objectivity and accuracy, its consultation (which I have described in above) was adequate since "It is therefore within the school's decision making remit to decide on the contents of the tests and does not need to be the subject of consultation". The council wrote to me on 30 July 2012 stating that the school had consulted "duly" on the changes which it was making to its admission arrangements.

39. 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 information made available during the consultation carried out by the school (see paragraph 16 above) did not provide any meaningful details about the changes which it was proposing to make such that an informed response could be made about them. I consider the consultation to have been inadequate as a result.

40. I have considered the arrangements of the schools in accordance with section 88I (5) of the Act. I set out in paragraph 13 above the matters which I consider may contravene the Code. These are considered below.

41. The admission arrangements for the school contain the following statement concerning the admission of looked after children and 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):

"Applicants who are Looked After Children ……..who have taken the entrance test and achieved a score higher than or equal to the qualifying score, will be offered a place before other applicants."

42. The term "qualifying score" is not used elsewhere in the school's arrangements and could be used to mean the score which is used to decide which candidates are eligible for the second stage of testing (that of the 450th ranked applicant after the first stage) or the score of the 150th ranked applicant after the second stage. The second stage of testing acts as an oversubscription criterion (see paragraph 28 above) and so the admission of looked after children should be from within the larger group defined by the 450th ranked candidate on the first stage of testing. Since this is currently unclear, the arrangements are in breach of the Code.

43. The arrangements also explain procedures for the admission of children who have a statement of special educational need which names the school. They refer to "criteria" for naming a school which are given in the SEN (Special Educational Needs) Code of Practice, and attach an extract of these as an appendix. The arrangements go on to say that "once the criteria have been fully satisfied then children who have a statement of Special Educational Needs (sic) which names the school will be admitted automatically". 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), and this is repeated in the school's Funding Agreement. That requirement is absolute, even though the school's Funding Agreement gives it the right to ask the LA to reconsider the naming of the school on specified grounds, and a right of appeal to the Secretary of State if the LA maintains the naming of the school. The school does not have the right to lay down conditions for the admission, even those given in guidance to local authorities concerning the naming of the school in the statement. The arrangements of the school do in my opinion set such a condition and are therefore unlawful.

Conclusion

44. I have set out in paragraphs 22 – 35 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 such schools to make every effort to provide to parents prior to 31 October can include the results of the first stage of testing, but does not have to. The school does provide this information to applicants.

I therefore do not uphold the objections which have been made on these grounds concerning the admission arrangements of the schools.

2. Paragraph 39 above sets out why I am of the view that the consultation carried out by the school on proposed changes to its admission arrangements for September 2013 was inadequate.

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

45. 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.

47. Paragraph 42 explains why I believe that the admission arrangements of the school are unclear concerning the admission of looked after children and previously looked after children. I have indicated there how I believe the arrangements could be changed to make them compliant with the Code.

48. I have explained in paragraph 43 why I have concluded that the admission arrangements of the school do not conform with the requirements of the Code concerning the admission to the school of children who have a statement of special educational need in which it is named. The arrangements could be made compliant by the removal of what amount to conditions placed on the admission of these children.

48. 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

49. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements determined by the governing body of The Tiffin Girls’ School.

50. 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 42 and 43 of this determination

51. 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