



DETERMINATION

Case reference:	ADA 3115
Objector:	A member of the public
Admission Authority:	The governing body of The Henrietta Barnett School, Barnet
Date of decision:	19 July 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2017 determined by the governing body for The Henrietta Barnett School, Barnet.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in 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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of 30 November 2016.

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 member of the public (the objector) about the admission arrangements (the arrangements) for the Henrietta Barnett School (the school), a non-denominational academy grammar school for girls aged 11-18. The objection is to aspects of the entrance test which applicants are required to sit.
2. The local authority (LA) for the area in which the school is located is the London Borough of Barnet. The LA is a party to this objection. Other parties to the objection are the governing body of the school (the admission authority) and the objector, a member of the public who has asked to have his identity withheld.

Jurisdiction

3. The terms of the academy agreement between the academy trust and

the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the education committee of the governing body on 10 February 2016 and ratified by the Chair of Governors on behalf of the governing body, which is the admission authority for the school, on 15 February 2016. The objector submitted his objection to these determined arrangements on 1 May 2016. The objector has asked to have his identity kept from the other parties and has met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 1 May 2016;
 - b. the objector's subsequent emails;
 - c. the admission authority's response to the objection and supporting documents, and its response to my subsequent enquiries;
 - d. the comments of the LA on the objection and supporting documents;
 - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
 - f. a letter from the Centre for Evaluation & Monitoring at the University of Durham;
 - g. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - h. a copy of the determined arrangements for September 2017.

I have also consulted the school's and the LA's websites.

The Objection

6. The objection first refers to paragraph 2.9e) in the Code, contending that the school's arrangements "*are not clear and [do] not take into account of [sic] late applications*" if a girl has missed the dates set for the two-stage entrance tests. The objector is also concerned that information about the content of tests might be passed to those who sit the first test at an alternative

later date, thus calling into question the fairness and reliability of the test. The objector further contends that the arrangements are not compliant with paragraph 1.31 in the Code, in that, because of what are seen as shortcomings in the administration and processing of the tests by the development agency, they are “*not an accurate reflection of the child’s ability or aptitude*” in the case of late sitters. He also questions how applications on behalf of children living in other European Union countries might be handled as this is not mentioned in the arrangements. The objector subsequently brought to the adjudicator’s attention an issue concerning the testing of applicants outside their normal age group, questioning why the arrangements state that this would be considered by governors rather than automatically allowed, and the lack of clarity as to the grounds on which such an application might be either accepted or rejected, together with issues around the standardisation of test scores for candidates outside their normal age group.

Other Matters

7. In considering the arrangements as a whole, I noticed that the statement “*Where candidates are equally ranked, geographical proximity to the School as measured by the London Borough of Barnet*” does not comply with the requirement set out in paragraph 1.8 in the Code, which says that “*arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*” I asked for the school’s comments on this and also asked to be provided with further details about the distance measurement between the school and an applicant’s home.

Background

8. The school, which was founded in 1911, is a non-denominational grammar school for girls aged 11 to 18. It converted to academy status in April 2012. There are about 730 girls on roll, including more than 250 in the sixth form. The school has not been inspected by Ofsted since 2007, at which time it was judged to be outstanding in every aspect. Admission to Year 7 is by academic selection. At the start of the school year before entry, applicants sit a first round entrance test in verbal and numerical reasoning; the highest ranked 300 candidates are then invited to take a second round test in English and mathematics. In brief, the results of this second round test are combined with those from the first round, then standardised and placed in rank order before being submitted to the LA, which offers the appropriate number of places to the highest ranked candidates in accordance with parental preferences. In order to facilitate decisions regarding applications to other schools prior to the deadline for submitting the LA’s common application form (CAF), parents of candidates are informed during the October following the first round tests whether the candidate has achieved a score which meets the standard required to be eligible for consideration for admission to the school, or whether she will not be invited to sit the second round test.

9. The school is heavily oversubscribed. The published admission number (PAN) is 93; for entry in September 2016, there were 2026 applications to sit the first round test; the LA states that the school received 516 applications, of which 267 were first preferences.

10. The arrangements include the following statement: *“In order to apply to sit the tests, candidates must be born between 1 September 2004 and 31 August 2005 and/or be in Year 6 at the time of the entrance tests.”* It is further stated that *“A supplementary date ... will be available for candidates who, due to illness, are unable to attend the Entrance Test on the original date.”* No supplementary date is offered for the second round of tests. Candidates may sit the tests once only.

11. There are three oversubscription criteria in the arrangements for 2017.

These are, in summary:

1. Looked after or previously looked after girls capable of following the school’s education as evidenced by her having been ranked in the top 300 applicants in the tests.
2. A maximum of 20 girls eligible for pupil premium funding capable of following the school’s education as evidenced by her having been ranked in the top 300 applicants in the tests.
3. Applicants whose education, health and care (EHC) plan names the school and who is capable of following the school’s education as evidenced by her having been ranked in the top 300 applicants in the tests.

Where candidates are equally ranked, geographical proximity to the school, as measured by the LA, is used to decide the final placings.

Consideration of Case

12. I shall begin by setting out in greater detail the various elements of the objection. The first point raised by the objector is whether it is allowed or not for a girl to apply to take the tests (that is, starting with the first round test) after the second test has been completed according to the timetable laid down in the arrangements, and if not, why not? The objector cites paragraph 2.9e) in the Code, which states that admission authorities *“**must not refuse to admit a child solely because ... they have missed entrance tests for selective places.**”*

13. The objector also questions the fairness of the alternative date allowed for sitting the first round test, suggesting that girls who took the test on the first (main) date but were not invited to sit the second round test might pass on the contents of the first round test to those sitting it on the alternative date. He states, *“They have no incentive to keep quiet as they failed to reach stage 2.”* The objector makes a similar point in relation to the second round test, contending that its content might also be passed to late sitters by girls who sat the test at the scheduled time. As noted above, however, the arrangements do not in fact include any alternative date for sitting the second test, nor is there any reference to late applications, that is, those made after the end of the scheduled testing period.

14. The objector argues that children *“do remember test content and there is no scientific evidence to prove they do not.”* He develops this point to

contend that “every year tutors pay girls to sit the test to gain content and there is [sic] systematic campaigns to gain content of the tests” as the test development agency “refuse[s] to release past content.” On this basis, the objector concludes that it “appears [to be] a compromised testing system designed to force children to be tutored. This is not a true indication of ability ... The testing process is not an accurate reflection of the child’s ability or aptitude for late sitters.” Whether or not the practices suggested here take place is not a matter with which I can be concerned in this determination as they have no relevance to the Code and its requirements.

15. A final point in the objector’s original submission is that “It is not clear how applications are handled for children living in other EU countries. All EU citizens have freedom of movement and this includes schools.” The school’s arrangements make no specific reference to a candidate’s nationality or place of residence other than proximity of residence to the school being used as a tie-breaker in the event of oversubscription. It is thus implicit, in my view, that the admission authority would observe paragraph 2.19 in the Code, which requires it to “treat applications for children coming from overseas in accordance with European Union law ...”. The response on behalf of the admission authority comments that it acts in accordance with the Code in this regard but that “there is no requirement to put any such process in the arrangements.” I agree, and therefore do not uphold this aspect of the objection. I will not consider it any further in this determination.

16. An email from the objector sent after the submission of the initial objection raised a further issue, concerning the testing of children outside their normal age group. The objector contends that if a girl were one year behind her normal age group, for example through being “summer born”, then “the testing should be automatic and not up to governors.” The objector also states that the arrangements are “not clear in respect to why an application to test outside age groups would be accepted or rejected.”

17. I shall now consider each of the issues raised by the objector, other than those concerning children from other European Union countries, which I have already dismissed, and the supposed practices of private tutors in relation to the tests and the development agency, which are not a matter for the adjudicator.

18. Although the LA supplied me with details of its CAF, a map of local schools and some admissions data for September 2016, it made no comment on any of the specific points raised by the objector.

19. The admission authority, through its solicitor, responded in detail to all matters raised in the objection. In response to the first element of the objection, it stated that the school does not contravene paragraph 2.9e) of the Code since it does not refuse to admit any girl solely because she missed the entrance test. The response goes on to say that the arrangements “state that any girl who does not take the test will continue to be ranked, but missing the test will affect her priority.” In my view, this is not precisely what the arrangements say, which is, “If you do not fill in the Entrance Test Entry Form, and submit it to the school by the dates above, it will mean that your daughter will not be able to take the School’s Entrance Test, which will affect where she

is placed within the rankings.” I am not able to find within the arrangements, or in the response to the objection, any indication of how an applicant who has not sat the test would be placed within the rankings which, even in respect of the three categories of applicant given priority as explained in paragraph 11 above, appear to be based entirely on standardised scores obtained in the entrance tests. The admission authority concedes that, although late applications are accepted up until the date of the first round test, *“the arrangements do not specifically state this.”*

20. The objector’s query about the possibility of a girl applying to take the test after the end of the second round testing is answered on behalf of the admission authority by reference to paragraph 1.32c) of the Code, which requires admission authorities to *“take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications of 31 October ... “* and further states that *“it would be in the interests of security and fairness to other applicants to refuse testing after this time.”* This response clarifies the situation, and addresses one of the objector’s overriding concerns about fairness in the testing process. It is obvious and self-evident that the timely and efficient administration of admissions can work only if applications are made and places allocated some while before the children concerned will join the school. This is reflected in the mandatory provisions of co-ordinated schemes, including the deadlines for applying for places and the national offer dates for both primary and secondary schools. The Code expects tests to be taken and results given before the deadline for applications. It is possible to apply to a selective school having not taken the test. However, it is also reasonable and in conformity with the Code for the school to give priority to those who have taken the test. This does not breach paragraph 2.9e – the place is not being refused solely because the child has not taken the test but because places were allocated to those who had done so and been ranked accordingly.

21. That said, it would not be reasonable for the school to refuse to consider testing and possibly offering a place to a girl who had applied late for a place should one become available after the normal allocation if, for example, a girl previously allocated a place had moved away. The offer of this place to another girl clearly would be dependent on her place in the ranking and again calls into question the clarity of the arrangements regarding the means of ranking applicants who have not taken the entrance test. In my view, that part of the arrangements concerned with late applications, or with applicants who have missed the entrance test entirely, does not meet the requirement of paragraph 14 in the Code that *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*. I therefore uphold this aspect of the objection, since the arrangements are not easy to understand regarding late applications, and the ranking of candidates who, for whatever reason, are unable to complete the tests at the time laid down in the arrangements.

22. With reference to the objector’s concerns about test content being passed to candidates attending the additional date provided for the first round test, the response on behalf of the admission authority notes that the second date is used for fewer than two per cent of candidates, that is, those with a medical certificate, and that since it is within five school days of the main date,

opportunities for passing information are limited. The admission authority's response makes the point to which I have previously alluded in paragraph 13 above, that since *"there is such fierce competition for places, there would be no motivation to pass on the content of the test to another candidate, unless a candidate had already been rejected. Any Stage 1 rejection comes after the supplementary test date ... therefore there would be no motive for any candidate to pass on content of the test."*

23. Any risk to fairness relies on girls who have taken the tests remembering and sharing the content with others who have not yet sat the test. The former would have to remember a large number of items and convey them accurately to other girls, who would need to recall this material at a later date. On this point, the test development agency comments that *"it is highly unlikely that a given child will be able to remember sufficient information about the test content and then be able to pass it on to another child who is then able to benefit from this information and as such display a significant improvement in their test score, as compared with if they had not received this information. Passing on information of this type cannot [emphasis in the original] make a difference (in terms of qualifying or not) for the vast majority of candidates at the qualification 'borderline'."*

24. Taking the two statements quoted above into account, I do not uphold this element of the objection as I believe it unlikely that any significant sharing of confidential test content would take place or that, if some collusion should occur, it could have any significant effect on the outcomes of the testing and thus on the offer of places at the school.

25. In response to that element of the objection concerning the lack of reference in the arrangements to children not in their usual age group, the admission authority's response acknowledges that while the arrangements for entry to the sixth form refer to such circumstances, those for entry to Year 7 do not, and it has proposed adding wording that would clarify the situation for applicants whose child might be either younger than expected, but of outstanding academic ability, or older but with educational and/or personal reasons for having missed a year of schooling. I uphold this aspect of the objection, but recognise the admission authority's readiness to amend its arrangements appropriately.

26. The objector sent a series of emails responding to the admission authority's comments on the objection and raising a number of additional points concerning the reliability and validity of the tests used by the school, the appropriateness of standardising results, the cut-off point that means only 300 candidates are permitted to sit the second round test, the commercial probity of the test development agency and matters related to whether children retain test material or not. Not all of these issues relate directly to the Code and I shall not consider them. Paragraph 1.31 of the Code says that *"It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability."* I am of the view that the test materials are appropriate and that the school's approach to testing, given the clarifications it has already agreed to make in its arrangements concerning late applications and applications on behalf of girls outside the normal age group, is acceptable. On this latter point, and concerning the objector's

questions about the standardisation of test scores for candidates outside their normal age group, the test development agency's conclusion is that *"they should be compared with children in the same school year as they will be in. After all, they will be taught the same curriculum and be expected to perform at the same standard as others in their class."* The numbers of children outside their normal age group tested in any year would be very small and so any attempt to standardise their marks by age would not be statistically robust. The fairest method of comparing them with others is that described by the test development agency and so I do not uphold that part of the objection concerned with the process of standardising the test results of candidates outside their normal age group.

27. In connection with the previous point, the objector also queried why the admission of girls outside their normal age group would not be automatic, but rather would be "considered" by governors. As the response on behalf of the admission authority points out, this is entirely in accordance with paragraph 2.17A of the Code, which states that *"Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned"* and sets out a number of factors that should be considered in such applications. Admission arrangements are required only to make clear the process involved in such decisions and, given that the circumstances of each individual case will inevitably differ, cannot be – and are not – required to give reasons as to why certain decisions might be made. I therefore do not uphold this aspect of the objection.

Other matters

28. Considering the arrangements as a whole I noticed that the statement, *"Where candidates are equally ranked, geographical proximity to the School as measured by the London Borough of Barnet"* does not comply with the requirement set out in paragraph 1.8 in the Code, which says that *"arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated."* I asked for the admission authority's comments on this matter and asked as well to be given more detail about how the distance between the school and an applicant's home is measured by the LA. In response, the admission authority submitted a form of words to be inserted in the arrangements that explain the measurement used is a straight line distance, and explain also which address is to be used for a child living with more than one parent. It was accepted by the admission authority that a final tie-breaker was needed, and it has proposed to add this wording to the arrangements: *"Where two or more applicants ranked equally in the test live equidistant from the School, places will be allocated by random allocation. This process will be supervised by somebody independent of the School."* I find that the admission authority did not comply with paragraph 1.8 of the Code in its arrangements, but that it has already taken appropriate steps to rectify the situation. However, I consider it could be more transparent for applicants if the additional wording in the arrangements were to specify who the person *"independent of the school"* might be.

29. Although not raised in the objection, or as another matter by the adjudicator, the admission authority has nevertheless also undertaken to

clarify other wordings in the arrangements; these concern the PAN, the admission of girls with a statement of special educational needs or an EHC plan, the definition of looked after or previously looked after children, how offers are made by the LA and the timescale for appeals. While the arrangements were not demonstrably in breach of the Code in these matters, the proposed clarifications are helpful for applicants' ease of understanding.

Summary of Findings

30. For the reasons explained above, I partially uphold this objection. Those elements of the objection I upheld are:

- a lack of information and clarity in the arrangements concerning late applications for places at the school; and
- the lack of reference in the arrangements to the admission of pupils outside their normal age group.

Those elements I did not uphold are:

- the lack of explicit reference in the arrangements to the admission of pupils from European Union countries;
- the perceived unfairness and unreliability of the entrance tests used by the school; and
- the inappropriateness of methods of standardising the test results for pupils outside their normal age group.

Regarding the other matters I considered using my power under S88I of the Act, I found that the arrangements:

- lacked sufficient detail concerning the measurement of distance between the school and a candidate's home; and
- did not include an effective final tie-break.

However, the admission authority has already undertaken to rectify these omissions and to clarify some other wordings in the arrangements to improve transparency and ease of understanding.

Determination

31. 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 for the Henrietta Barnett School, Barnet.

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

33. 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 within two months of the date of the determination unless an alternative deadline is specified by the adjudicator. In this case I specify a deadline of 30 November 2016

Dated: 19 July 2016

Signed:

Schools Adjudicator: Mr Andrew Bennett