



Office of  
the Schools  
Adjudicator

## DETERMINATION

**Case reference:** ADA2884

**Objector:** A member of the public

**Admission Authority:** The Colston's Girls' School Trust, Bristol

**Date of decision:** 1 September 2015

### **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 directors of the academy trust for Colston's Girls' School for admissions in September 2016.**

**I have also considered the arrangements in accordance with section 88I(5) of the Act and have found there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this 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 make the revisions to its admission arrangements within the timescale specified by the Adjudicator, and the school has already done so.**

### **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 2016 admission arrangements (the arrangements) for Colston's Girls' School (the school). The objection raises issues related to the School Admissions Code (the Code) and the Public Sector Equality Duty.

### **Jurisdiction**

2. The terms of the academy agreement between Colston's Girls' School Trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to

maintained schools. The arrangements were determined on 12 March 2015 by the local governing body of the academy trust which is the admission authority for the school on this basis.

3. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this objection. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

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

The documents I have considered in reaching my decision include:

- a. the form of objection, together with a copy of the consultation response and the 2016 arrangements sent by the objector on 29 May 2015;
- b. the school's response to the objection with attachments including a copy of the 2012 multi academy funding agreement, the supplementary application form, and the minutes of the meeting of the local governing body at which the arrangements were determined;
- c. the response on 17 June 2015 from Bristol City Council (the local authority) including a map of secondary schools in the area;
- d. the objector's further correspondence of 24 June to 17 July 2015; and
- e. further responses from the school in the period 2 to 25 July 2015 including a copy of the 2008 funding agreement, evidence of the consultation process, the amended arrangements for Year 7 and for the sixth form, and admissions data for the period 2013 to 2015.

5. I arranged a meeting with the objector, the school and the local authority on 13 July 2015 (the meeting). Correspondence was also submitted after the meeting as a result of my requests for further information and clarification, and this has been copied to the school, the local authority, and the objector as appropriate. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

### **The Objection**

6. The objection detailed a number of concerns about whether or not the arrangements determined for the school comply with the Code, which I summarise as follows

- i. the 2016 supplementary application form (SAF) was not available during the consultation period about the 2016 proposed arrangements (paragraph 2.4);
- ii. by not prioritising "*children entitled to pupil premium (FSM)*" the school indirectly discriminates against "*children from a particular social group*" (paragraphs 1.1 and 1.8) and also fails in its public sector duty to "*advance equality of opportunity*";

- iii. the financial implications of school requirements such as the school uniform policy, eating in the canteen, and school trips present a barrier to low income families applying for their child to be admitted to the school (paragraph 1.9(e), (f) and (n));
- iv. the banding arrangements operating together with the inner and outer catchment areas are not fair (paragraph 1.25); ); and
- v. lack of clarity about the independent verification of the random allocation process (paragraph 1.35).

## **Other Matters**

7. In reviewing the arrangements as a whole I noticed that the sixth form arrangements appeared to contravene the requirements of the Code.

## **Background**

8. The website of Colston's Girls' School details that it was established in 1891, funded by the Society of Merchant Venturers using the substantial bequest of Edward Colston made for the provision of education. Colston's Girls' School is situated in the heart of Bristol and pupils travel there from a wide catchment area composed of an inner area including addresses in the postcodes BS1 to BS16, and an outer area of postcodes BS17 to BS49, BA1 to BA3, GL9, GL12, GL13 and SN14.

9. Having previously been a fee-paying independent selective school, in September 2008 the school became a state-funded, independent all-ability academy school with a specialism in languages, and the funding agreement was updated in August 2012. The school's website states that *"the primary aim of the Trust is to ensure that all members of the family of schools develop a deep and sustained passion for learning and the academic and character skills necessary to achieve their ambitions and to prepare them for the opportunities, responsibilities and experiences of later life as global citizens."*

10. The published admission number for Year 7 is 140. If there are more Year 7 applications than the 140 places available, the arrangements state that after children with a statement of special educational needs or an education, health and care plan that names the school have been admitted, the remaining places will be prioritised according to the oversubscription criteria summarised below:

- a) Children in care with equal priority being given to looked after and previously looked after children;
- b) Children with an aptitude in foreign languages;
- c) Children with an older sibling on roll at the school at the time of admission;
- d) Children with a parent/carer employed by the school;
- e) Random allocation, banded, with 75 per cent of places to children living in the inner catchment, and 25 per cent of places to children living in the outer area;

- f) Remaining places will be allocated by random allocation to:
  - i. applicants who did not submit the SAF on time;
  - ii. those not attending the non-verbal reasoning assessment;
  - iii. children living outside the catchment area.

11. Families applying for their child to be prioritised for a place by reason of oversubscription criteria (b) to (e) are asked to complete the SAF by the closing date of 25 September 2015, and then for the child to attend the banding test at the school which is based on assessment of non-verbal reasoning skills. The school is also permitted to select 10 per cent of the Year 7 intake on the basis of aptitude in foreign languages, and the foreign language aptitude test related to criterion (b) is held on the same day as the banding test which applies to criteria (c) to (e). *“Places will be allocated, as far as possible, such that an equal number are given in each band.”* There are five approximately equal bands. Children with a statement of special educational needs or education, health and care plan which names the school, and looked after or previously looked after children do not have to complete the SAF or attend the tests.

12. The sixth form arrangements state that there will be a maximum of 200 students, with an admission number of 100 for Year 12. If there are more applications than places available, then after applicants with a statement of special educational needs or education, health and care plan which names the school have been admitted, places for applicants who meet the minimum academic entry standards *“will be considered against the oversubscription criteria”* which I have summarised below:

- a) Children in care with equal priority being given to looked after and previously looked after children;
- b) Internal applicants;
- c) Students with a sibling on roll at the school at the time of admission;
- d) The remaining places will be allocated by a random allocation supervised by an independent person.

The school states it will publish in September 2015, the beginning of the academic year prior to admission, *“the specific criteria in relation to minimum entrance requirements based upon GCSE grades or other measures of prior attainment. These criteria are the same for internal and external applicants.”*

### **Consideration of Factors**

13. The first matter of concern to the objector is that the 2016 SAF was not available in the consultation period 2 January to 27 February 2015 before the 2016 arrangements were determined, which the objector said was in breach of paragraph 2.4 of the Code. In its response of 17 June 2015, the school accepts that the SAF should have been included with the admission arrangements during the consultation period and then available on its website after the arrangements had been determined. The school uploaded the SAF to its website on 16 June 2015, which was soon after the objection was lodged. I uphold this part of the objection although the breach of the Code does not relate to paragraph 2.4 but to paragraph 1.42 which

states that *“when changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year.”*

14. The objector also commented in the objection that she was unable to find the determined arrangements on the school’s website on 29 May 2015 when the objection was lodged. The school responded that the determined arrangements were on the website from 28 April 2015 *“in the “Further Details” section at the end of the website page.”* There was also some doubt as to whether all the parties identified in paragraph 1.44 of the Code had been included appropriately in the consultation. The school accepts that any future consultations about the admissions arrangements must comply fully with the requirements of the Code specified at paragraphs 1.42 to 1.45.

15. The objector’s second concern is that the school does not prioritise *“children entitled to pupil premium (FSM)”* within the oversubscription criteria which the objector considers leads to indirect discrimination against *“children from a particular social group – namely those entitled to free school meals”* in breach of paragraph 1.8 of the Code, and the public sector duty to *“advance equality of opportunity”*.

16. Paragraph 1.8 requires that admission authorities *“**must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group...”*

17. The objector explained that she had contributed to the school’s consultation process and had *“asked that the school prioritise children entitled to pupil premium (FSM) within the oversubscription criteria to enable it to counter-act the overall impact on levels of pupil premium students the school admits.”* The objector says that this is evidenced *“in the % of the school cohort... that are entitled to free school meals. This % is one of the lowest of any secondary school in the city despite the school being very centrally located, on good transport routes and within a ward with some of the highest indicators of social deprivation in Bristol (and therefore the country). I suggest that the wide area that the school draws its’ [sic] cohort from contributes to this indirect discrimination as for any child not living within walking distance there is sizable transportation cost imposed on families wishing for their child to attend this school.”*

18. The school responded on 17 June 2015 that the objector’s comments (the only consultation response) had been considered at the meeting of the governing body’s admissions committee on 26 February 2015. The school added that the Code states *“that schools may prioritise those eligible for pupil premium (it does not reference Free School Meals)”*. .. and that at paragraph *“1.10 that it is for the admission authority to decide which criteria would be most suitable to the school in their local circumstances. The school is confident the criteria in place are the most appropriate for the school. The school recruits a diverse student population. In particular: 28.5% eligible for pupil premium (national average 28.5%) 52.7% from minority ethnic groups (5th quintile, national average 25.6%) 17.7% EAL pupils (4th quintile, national average 14.4%), school deprivation indicator 0.24 (4th quintile. National average 0.22). The school would therefore contend it meets its PSDR and*

*that it is a diverse and vibrant school community. In addition to the school being able to demonstrate its diverse and representative intake... giving priority to pupil premium students is not a requirement*" of the Code. The school comments further that it *"makes clear to parents at the open evenings that support is available for parents of low income in a wide variety of areas (uniform, trips, transport) both through the pupil premium budget"* and *"through the operation of the school's endowment fund to which parents can apply for support."*

19. It appears that the objector considers that *"children entitled to pupil premium"* are *"children from a particular social group – namely those entitled to free school meals"* and that by not prioritising children entitled to a pupil premium, the school's admission arrangements are indirectly discriminatory. However, I consider that there are several fundamental issues with this supposition.

20. I accept that one of the permitted exceptions to paragraph 1.9(f) of the Code is that schools *may* prioritise children *"eligible for the early years pupil premium, the pupil premium and the service premium."* All schools have the freedom to prioritise children eligible for a pupil premium in their oversubscription criteria but there is no requirement for them to do so. Paragraph 1.10 of the Code makes clear that it is for the admission authority *"to decide which criteria would be most suitable to the school according to the local circumstances."*

21. Furthermore, the children eligible for a pupil premium are not solely those entitled to free school meals. Pupil premium funding is paid to schools according to the number of children who have been registered for free school meals at any point in the last 6 years, and children who are looked after or those previously looked after and have now left authority care. The early years pupil premium is additional funding to support disadvantaged three and four year olds in early years settings. The service premium is to meet the specific pastoral needs of children whose parents are currently serving or have served in the Armed Forces in the last three years, and children whose parent(s) died serving in the Armed Forces. Children eligible for a pupil premium may have a variety of backgrounds and I am not persuaded that they constitute a discrete social group.

22. The school is not required by the Code to prioritise children eligible for a pupil premium, therefore there has been no breach of the Code in this respect. Furthermore, children eligible for a pupil premium do not constitute a particular social or racial group and so there has been no breach of the Code specifically at paragraph 1.8. Therefore I do not uphold this part of the objection.

23. However, the objector was also concerned that the school does not comply with *"its public sector duty to advance equality of opportunity"*. The objector suggests that *"the wide area that the school draws its' [sic] cohort from contributes to this indirect discrimination as for any child not living within walking distance there is sizable transportation cost imposed on families wishing for their child to attend this school."* It is the case that the school has a large catchment area composed of postcodes in the heart of Bristol close to the school, and extending well beyond the city to postcode areas in South Gloucestershire, Bath and North East Somerset. However, this large catchment area was stipulated in the 2008 funding agreement

when the school opened as an academy, and is clearly defined by postcode, which complies with paragraph 1.14 of the Code.

24. The objector had provided data which she said related to “*disadvantage by economic ward*” to show that the wide catchment area contributes to indirect discrimination. In the meeting I asked what was meant by “economic ward” and about the geographical relationship between the ward data and the catchment area defined by postcode as no link had been made. The objector was invited to supply further information to clarify the geographical relationship between the data she had provided previously and the catchment area defined by postcode but further information had not been supplied by the date of this determination. Accordingly, I am not in a position to ascertain whether or not the catchment area contributes in any way to indirect discrimination.

25. The objector was also concerned about the financial implications of school requirements such as the school uniform policy, eating in the canteen, and school trips and suggested that these present a barrier to low income families applying for their child to be admitted to the school, in breach of paragraph 1.9(e), (f) and (n). The objector explained further in the meeting on 13 July 2015 that the uniform policy does not clearly distinguish from the compulsory items in bold that are only available from the school supplier, and those items that may be purchased from other stores, as all items are displayed in bold. In addition, the second-hand uniform shop is not referenced in the “uniform” section of the school’s website. The school countered these concerns in the meeting and in the correspondence before and after the meeting. However, these matters relate to the everyday operations and procedures of the school. My role as adjudicator is to consider whether or not the arrangements comply with the Code and the law relating to admissions. As the detail about school policies and operational matters related to the uniform, trips, and lunchtime arrangements are not part of the 2016 determined arrangements, any continuing concerns are beyond this scope of this determination.

26. The objector expressed concern that the banding arrangements operating together with the inner and outer catchment areas are not fair and breach paragraph 1.25. The objector said the banding options the school “*is choosing to use*” regarding the random allocation split of 75 per cent to the inner area postcodes and 25 per cent to the outer areas “*to ensure a comprehensive intake into Year 7*” contravenes the Code because “*there is no use of the word ‘comprehensive’ appearing in code.*” The objector said the 75:25 postcode split will result in an ability range reflecting those postcodes rather than the spread of ability permitted by paragraph 1.25.

27. Paragraph 1.25 of the Code states that “*pupil ability banding is a permitted form of selection used by some admission authorities to ensure that the intake for a school includes a proportionate spread of children of different abilities. Banding can be used to produce an intake that is representative of: a) the full range of ability of applicants for the school(s); b) the range of ability of children in the local area; or c) the national ability range.*”

28. The school responded that “*the word ‘comprehensive’ has been used to describe an intake representative of the full range of ability of applicants for the school. The school is happy to change this to ‘representative’ if that would be*

*deemed clearer. The ability bands are determined irrespective of geographical area, therefore the banding absolutely reflects 1.25 (a) the full range of ability of applicants for the school. If the case were to arise that there were not enough applicants in a given band from the outer catchment area, we would then randomly select students in the same ability band from the inner area. This ensures that the intake reflects the full ability range of applicants."*

29. In fact, the requirement for banding to be applied to the random allocation of places to the inner and outer catchment area was stipulated in the 2008 funding agreement when the school opened as an academy. The 2008 funding agreement states that the reason for banding *"is to ensure a comprehensive intake."* As the 2008 funding agreement originally specified a 70:30 postcode split, it appears to me that the school has adjusted the catchment area to accommodate a greater number of girls living in the inner catchment, closer to the school. Although the use of the term *"comprehensive"* was reasonable, I note that the school has amended the wording of the arrangements to say that *"banding will be applied ... to ensure an intake that is representative of the ability range of applicants to the school"* which reflects the wording of paragraph 1.25(a) of the Code.

30. The objector referred to allocations data to assert that those applying from the inner catchment postcodes BS1 to BS16 are *"disadvantaged in terms of the chances of being 'randomly allocated' a place at this school"* and that those applying from the outer area have had an unfair advantage, which the objector said contravenes paragraph 14 of the Code that the allocation of places *"is procedurally fair."* The school has set out clearly the number of places available in the inner and outer catchment areas and that random allocation will be used to allocate places. As the use of random allocation was specified in the 2008 funding agreement and is permitted by the Code, I am not persuaded that the continued use of random allocation to allocate places would contravene paragraph 14 of the Code.

31. However, the objector was also concerned that any applicants missing the SAF completion date of 25 September 2015 would have the lowest priority for a place at the school. The objector noted that irrespective of whether or not the school is oversubscribed, applicants must to complete the SEF and sit the banding test in order to be considered for one of the higher priority oversubscription criteria. The objector expressed a further concern that parents/carers are expected to accompany children to the banding test which incurs expense unless families live within walking distance of the school. The objector suggests that the practical and financial cost of attending the banding assessment provides indirect support to the school as failure to attend the test has a direct impact on the chances of a child being allocated a place at the school.

32. The school said it sets the early deadline for completion of the SAF to comply with the Code. Paragraph 1.32(c) of the Code states that *"admission authorities **must** take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place... The test therefore needs to be administered in advance of this date. The only way the school can facilitate this test is through parents completing the SAF by a reasonable deadline (after the school*



*open evenings) to allow for the practical administrative elements to take place. This is highlighted on multiple occasions in the policy to ensure parents are aware of this need. The school would prefer to administer the test after 31 October... however this would be in contravention of the code...Not making parents aware of the implications of an applicant not sitting the test would make the process less fair.”*

33. The school helpfully suggested amended wording to provide further clarity for parents: *“Colston’s Girls’ School also uses a Supplementary Application Form. Parents are not required to complete this; however, in the event that the school is over-subscribed, if parents do not complete this on behalf of the applicant, the applicant will only be eligible for consideration under the last oversubscription criteria, as detailed in 6.1 f), Remaining Places. This may reduce their chances of gaining a place at Colston’s Girls’ School.”*

34. The school is required by its funding agreement to operate banding *“to ensure a comprehensive intake.”* As banding is a form of selection, the Code requires the school to administer the tests early enough so that parents will be informed of the test results and be in a position to make informed choices about school preferences before the deadline for secondary school applications. To ensure the test is administered fairly, applicants cannot sit the test in their own home, and so they have to travel to a test centre. It is reasonable for the school to use its own premises as the test centre, as the applicants are hoping to attend that school for five or more years. It is also reasonable for the school to expect children as young as 10 years of age to be accompanied to the test and supported by their parents/carers as they are the responsible adults. It is reasonable for the test to be administered at the school, and the requirement for parents/carers to accompany children to the banding test is necessary in those circumstances. Accordingly, I am not persuaded that the banding test arrangements contravene the Code at paragraph 1.9. I do not uphold this part of the objection.

35. The final aspect of the objection is the lack of clarity about the independent verification of the random allocation process. At the meeting I noted that the sixth form arrangements state that any places allocated by random allocation will be supervised by an independent person, and asked why the Year 7 arrangements do not include similar wording. The school explained that previously the Year 7 arrangements had included a similar statement but uncertainty about the suitability of the wording had arisen as a result of a recent adjudication process for another local school. Consequently, the statement had been removed altogether. The school accepted that paragraph 1.35 requires that the *“random allocation process **must** be supervised by someone independent of the school”* and agreed to work with the local authority to insert an appropriate statement in the Year 7 arrangements to comply with the Code. I uphold this part of the objection. The amended arrangements now state that the random allocation process *“will be independently verified in conjunction with the local authority”* which satisfies the requirements of the Code.

### **Other matters**

36. In reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my power under s88I of the Act to review the arrangements as a whole for

full compliance with the Code. I raised with the school the aspects below which appeared to me to contravene the Code and could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to comply with the Code, and agreed to note the progress in my determination. I gave the school a deadline of three weeks from the date of the meeting to send me the amended arrangements and it is to the school's credit that all the amendments required were completed so promptly.

37. The sixth form arrangements stated that admission number for Year 12 is 100, but this included internal students transferring from Year 11, who had also been prioritised in the oversubscription criteria. However, the sixth form PAN and the oversubscription criteria only apply to external students as new admissions because internal students are already on the school roll and would transfer into Year 12 automatically if they meet the minimum academic entry requirements. The Year 12 PAN is now 30, and the priority for internal students has been removed from the oversubscription criteria.

38. The sixth form arrangements referred to the minimum academic entry requirements but did not specify them. The arrangements now clearly state that *"the minimum academic standard for entry is six GCSEs or equivalent at grades A\* to C, including English and Maths."*

39. The sixth form arrangements stated that documentary evidence as proof of a sibling on roll may be required, but this statement has now been amended to clarify that this evidence would only be required after places have been allocated. This amendment has also been included in the Year 7 arrangements.

40. External applicants to the sixth form are required to complete an application form. However, the form did not comply with the Code as follows:

- i. The requirement to provide personal information about the mother, the father and the guardian/carers must be removed from the application form as this information is not required to operate the oversubscription criteria. I acknowledge that the amended form does not include this requirement; and
- ii. Similarly, the requirement for students to write a statement in support of their application is not required to operate the oversubscription criteria and must be removed. The amended form does not include this requirement.

## **Conclusion**

41. As the 2016 SAF was not available during the consultation period, I uphold this aspect of the objection, although the breach relates to paragraph 1.42 of the Code, and not to paragraph 2.4 which had been identified by the objector. In addition, the school accepts that any future consultations must comply fully with the requirements of the Code specified at paragraphs 1.42 to 1.45.

42. The arrangements also contravened paragraph 1.35 because the independent verification of the random allocation process was not specified for Year 7 admissions. I uphold this part of the objection.

43. The school is required by its funding agreement to operate banding “to ensure a comprehensive intake.” To access the banding test, it is reasonable for the school to require completion of the SAF by 25 September 2015 so that parents have the test results in good time to inform choices about schools before 31 October 2015, the deadline for secondary school applications. To ensure the test is administered fairly, it is also reasonable to expect applicants to sit the test at the school and to be accompanied to the test by a parent/carer as the appropriate responsible adult for their child. Therefore I am not persuaded that the banding test arrangements contravene paragraph 1.9 of the Code and I do not uphold this part of the objection.

44. The school is not required by the Code to prioritise children eligible for a pupil premium, and such children do not constitute a particular social group nor do they share one of the characteristics protected by the Equality Act 2010. The objector has not provided the further evidence required for assessment of whether or not the wide catchment area contributes in any way to indirect discrimination. Accordingly, the arrangements do not contravene paragraph 1.8 of the Code and no breach of the “public sector duty to advance equality of opportunity” has been shown. I do not uphold this part of the objection.

45. The other matters of concern to the objector which were brought to my attention are not within my jurisdiction. If the objector has any continuing concerns about these matters which are beyond the scope of this determination, she should contact the Education Funding Agency or the Department for Education.

46. For the reasons stated above I partially uphold the objection to the arrangements determined by the directors of the academy trust for Colston’s Girls’ School for admissions in September 2016.

47. In addition, whilst I was reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my power under s88I of the Act to review the arrangements as a whole for full compliance with the Code. It is to the school’s credit that it has acted so promptly to make all the amendments necessary to the 2016 arrangements.

### **Determination**

48. 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 directors of the academy trust for Colston’s Girls’ School for admissions in September 2016.

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

50. By virtue of section 88K(2) the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authority to make the revisions to its admission arrangements within the timescale specified

by the Adjudicator, and the school has already done so.

Dated: 1 September 2015

Signed:

Schools Adjudicator: Ms Cecilia Galloway