



DETERMINATION

Case reference:	ADA2960, ADA2972, ADA2989
Objectors:	The governing body of Willowfield Humanities College, the governing body of Walthamstow School for Girls and The London Borough of Waltham Forest
Admission Authority:	The Tauheedul Education Trust for Eden Girls School
Date of decision:	27 August 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements determined by the governing body of Eden Girls School in the London Borough of Waltham Forest for September 2016.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the adjudicator about the admission arrangements (the arrangements) for Eden Girls School (the school), an academy free school with a Muslim religious character for girls aged 11 to 18 for admissions in September 2016. The objections have been submitted by two schools and by the London Borough of Waltham Forest. The three bodies are referred to in this determination as the objectors. All the objections concern the use of an oversubscription criterion which gives priority to those who live close to Walthamstow Queens Road Railway Station (Queens Road Station). In addition, one objection concerned the priority given in the oversubscription criteria to children of staff and the arrangements for the admission of girls outside the normal age group.

Jurisdiction

2. The terms of the Academy agreement between the academy trust for the school – the Tauheedul Education Trust (the 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 trust has delegated responsibility for admissions to the Local Governing Body (the governing body) of the school and these arrangements were determined by the governing body, as the admission authority for the school, on that basis on 26 March 2015. The objectors submitted their objections to these determined arrangements on or before 30 June 2015 which is the

deadline for the submission of objections. I note that the two of the three objections referred to section 88I of the Act rather the section 88H which is the section governing objections. Notwithstanding these inaccuracies, I am satisfied that all the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objectors' forms of objection dated 29 June 2015 (Willowfield Humanities College (WHC) and Walthamstow School for Girls (the WSFG) and 30 June 2015 (London Borough of Waltham Forest – which is the local authority (LA) for the area) and subsequent submissions from the LA and from the WSFG;
 - b. the school's response to the objection and supporting documents dated 8 July 2015 and subsequent submissions and supporting documents;
 - c. the response of the Association of Muslim Schools UK (AMSUK) which is the school's religious authority to the response dated 17 August 2015 and supporting documents;
 - d. information about pupil numbers taken from DfE First Statistical Releases and published on its website;
 - e. the composite prospectus published by the LA for parents seeking admission to schools in the area in September 2015;
 - f. a map of the area showing the locations of relevant schools and Queens Road Station;
 - g. confirmation of when consultation on the arrangements last took place;
 - h. copies of the minutes of the meetings at which the governing body of the school discussed and determined the arrangements; and
 - i. a copy of the determined arrangements.

The Objections

5. All the objections argue that the priority given for some places in the school's oversubscription criteria to girls who live close to Queens Road Station is unfair in contravention of paragraph 14 of the Code on the grounds that it discriminates against girls who live closer to the school. All the objections also argue that this criterion is arbitrary and that parents will not be able to look at the arrangements and

understand how places are allocated. The objection from the WSFG also argues that the priority given to girls who live close to Queens Road Station also breaches paragraph 1.8 of the Code and that it also breaches paragraph 1.14 which is concerned with catchment areas. The WSFG argues in addition that the priority given to daughters of staff is discriminatory and that the school's arrangements for the admission of children outside the normal age group is not fair, clear or objective and "*is a means of introducing selection*" and breaches paragraph 1.17 of the Code which requires that selective schools publish the entry requirements for selective places and the process for such selection. The LA and the WSFG also argue that the arrangements may not have been determined properly as required by paragraph 1.46 of the Code.

Background

6. The school opened as an academy free school in September 2014. It is part of the Tauheedul Education Trust group of schools. The school has a published admission number (PAN) of 100 for year 7. It is due to open a sixth form in 2018. The school has a Muslim religious character and is designated as such by the Secretary of State in accordance with section 69 of the Act. Its funding agreement requires it to adopt admission arrangements which provide that, "*if oversubscribed, at least 50% of its places available each year will be allocated without reference to any faith-based admission criteria.*"
7. The school's admission arrangements are easy to find on its website, accessed from the information tab on the homepage. The school's admission arrangements for both 2014 and 2015 provided that, if the school were oversubscribed, once children with a statement of special educational needs (SEN) had been admitted under the relevant and separate process for such children, priority for up to half of all remaining place would be given to Muslim girls and priority for the rest would be given to girls without regard to faith. The latter were referred to as community places. For both faith and community places, priority was given in the following order:
 1. looked after and previously looked after girls;
 2. sisters;
 3. daughters of staff
 4. social and medical need;
 5. distance from the school.
8. The school was oversubscribed for 2015. The LA says that the school received 247 applications of which 148 were first preference applications. I note that the school disagrees with the LA's statement of the number of first preferences and says that 133 applications were first place preferences. I also note that schools are not told whether an

application is a first or lower preference application. In any case, the school was oversubscribed, had to apply its oversubscription criteria and was not able to offer a place to every girl who wanted one.

9. For admissions in 2016, the school decided to change its arrangements. It consulted from 30 December 2014 to 1 March 2015 which met the statutory requirement in terms of duration and timing of such consultations. The main change made was to remove the priority given for up to 50 per cent of places to Muslim girls and to introduce an element of priority for girls based on the distance of their home from Queens Road Station. Following consultation, the arrangements for 2016 were determined on 26 March 2015. I have summarised the 2016 arrangements below, setting out categories 3. and 5. in full as they are the categories with which the objections are concerned.

1. looked after and previously looked after girls;
2. sisters of existing pupils;
3. *“daughters of staff employed at Eden Girls’ School for 2 or more years at the time at which the application for admission is made and/or the member of staff has been recruited to fill a post where there is a demonstrable skill shortage”;*
4. social and medical need;
5. *“Up to a maximum of 50 per cent of remaining places will be allocated to girls who live nearest from their home to the nodal point of Walthamstow Queen’s Railway Station”;*
6. other girls with priority given to those who live nearest to the school.

10. The arrangements contain a clear statement that girls with a statement of SEN or Education, Health and Care (EHC) plan naming the school will be admitted and provide that if the PAN is reached and exceeded in any oversubscription category, then random allocation supervised by someone independent of the school will be used as a tie breaker.

Consideration of Factors

11. I deal first with the question of the determination of the arrangements. The LA and the WSFG expressed concern that the relevant minutes show that the meeting at which the arrangements were determined was short (lasting only for around 15 minutes in total) and that all those entitled to attend were present for only around five minutes. The LA and the WSFG draw attention to the detailed responses they had sent to the school’s consultation exercise on its arrangements and, in view of the length of the meeting, express doubt that these responses were properly considered. The LA states that it is concerned that the arrangements *“do not appear to have been determined effectively”*. I have been provided with the minutes of a meeting of the school’s governing body which took place on 18 March 2015. These minutes

give details of a discussion of the proposed admission arrangements and states that the “*objections received from the Council and the Schools were shared and discussed in detail.*” They show also that the governing body concluded its discussion by agreeing that it wished to consult the trust before finally determining the arrangements. The arrangements were then finally determined by the meeting of the Emergency Business Committee of the governing body held for this purpose on 26 March 2015. I consider that the arrangements have been determined properly and I do not uphold this aspect of the objections.

12. The objection from the WSFG argued that the priority given in the oversubscription criteria to daughters of staff was discriminatory as it could deny places to girls who lived closer to the school than did daughters of staff. The WSFG also pointed out that no other secondary school in the LA included priority for children of staff in their admission arrangements. Paragraph 1.39 specifically allows for priority to be given to children of school staff in certain circumstances. The school’s arrangements follow precisely the circumstances allowed for in the Code. I note that this provision was also included in the school’s arrangements for 2014 and 2015. It is for each admission authority to determine its arrangements in the light of its individual circumstances and in accordance with the requirements relating to admissions. The school has chosen to give an element of priority to children to staff as permitted by the Code. Distance is certainly one common oversubscription criterion but it is not the only approach allowed by the Code. Admission arrangements which give priority to children who live further away from the school than some other children are not axiomatically unfair or – as the WSFG puts it – discriminatory. Other schools in the area do not include priority for children of staff. That is a matter for their admission authorities but it does not affect Eden School’s ability to use this criterion. I do not uphold this aspect of the objection.
13. All of the objections express concern at the introduction of an element of priority for some places for girls on the basis of the distance from their homes to Queens Road Station. The LA thinks the school’s approach could prevent children who live closer to the school from gaining a place there and that this would be unfair. The LA has said that it accepts that using proximity to a “nodal point” (that it is a geographical point which is not the school premises and in this case is Queens Road Station) can be effective to prevent pupils being disadvantaged because of the location of their school. However, it does not consider there is any such disadvantage here as there are three schools closer to Queens Road Station than is Eden School for Girls which is 1.2 miles away from Queens Road Station. The LA also argues that the school did not explain its reasons for the proposed change when it consulted on the 2016 arrangements and that this also is unfair. The LA believes that parents would not be able to look at the arrangements and understand the rationale for giving priority for some places on the basis of living near to Queens Road Station. The LA considers that the school’s approach in giving priority to those who live

near to Queens Road Station is arbitrary and unclear. The LA argues that if the school wished to provide for girls who live close to Queens Road Station it could have chosen to do so by retaining the faith-based oversubscription criterion included in its 2015 arrangements which gave an element of priority to Muslim girls as the area around Queens Road Station has a high concentration of Muslim families. The WSFG argues that the giving priority for some places to those who live near to Queens Road Station could exclude girls who live nearer to the school and the rationale for this approach is arbitrary and not clear and thus that parents would not understand how places are allocated. The WSFG also notes the school's arguments that the community around Queens Road Station felt that there was a lack of high quality educational provision which served the particular needs of the Muslim community and that Eden Girls School was established in part at least to respond to this concern. The WSFG points out that it is a high performing multi-faith girls' school located less than half a mile from Queens Road Station. WHC similarly argues that giving priority on the basis of distance from Queens Road Station could exclude children who live nearer to the school; that the rationale for this is arbitrary and unclear and that prospective parents would not be able to understand how places were allocated from an area further away from the school. So far as specific breaches of the Code are concerned, the LA, the WSFG and WHC all argue that the school's arrangements are unclear and unfair in breach of paragraph 14. The WSFG also argues that the arrangements breach paragraphs 1.14 which is concerned with catchment areas and paragraph 1.8 which is concerned with clarity, objectivity and procedural fairness.

14. The school has in response explained its rationale for changing the arrangements to give priority to those who live near to Queens Road Station. It has explained that the school was established in large part in response to requests from the Muslim community based in the Queens Road area. The initial hope had been to establish the school in that neighbourhood but that had not proved possible and the school was duly set up in Blackhorse Lane, which, as has been pointed out, is some 1.2 miles from Queens Road Station. The school has become oversubscribed. It has reported to me that what it describes as the Queens Road Community was concerned that as it became ever more popular their daughters would not be able to gain entry if the arrangements continued to give priority for some places on the basis of the faith-based criteria and for others on the basis of distance from the school. This is not an unreasonable concern given that the criterion for faith places provided that in the event of oversubscription for these places, priority would be given on the basis of distance from the school. Thus Muslim girls living nearer to the school – whether in Waltham Forest or in neighbouring LAs – would have a higher priority for the faith-based places than Muslim girls living near to Queens Road. It was against this background that the school consulted on and determined the 2016 arrangements.
15. It is the case that the school's arrangements do not set out the rationale for giving priority for some places on the basis of distance

from Queens Road Station and it is also the case that the school's consultation did not explain this. However, the Code does not specify that the rationale has to be provided in consultation documents or arrangements. There is also a difference between the reason for something being clear and the thing itself being clear. The requirements are that arrangements **must** be fair, clear and objective and conform with the specific requirements set out in the Act, the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and the Code. I have accordingly tested the oversubscription criterion giving priority for some places to those who live near to Queens Road Station against those requirements. The objectors have all argued that parents looking at the arrangements would not be able to understand how these places would be allocated and it is the case that paragraph 14 of the Code states that "*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*" There is nothing difficult to understand or unclear about a criterion based on the distance between where someone lives and a railway station. As the school has pointed out, Queens Road Station is a well known fixture in the area. Those who are unfamiliar with the school's history may not be able to tell from the arrangements why it has this oversubscription criterion but they will easily be able to understand what it is and how it works and how places will be allocated. The criterion meets the Code's requirement for clarity. I note that the school has said in its response to the objections that: "*... if the Schools Adjudicator felt it would be helpful in future for the rationale behind the use of this catchment area to be set out in the admission arrangements, then the School would be more than happy for this to be included within its admission arrangements.*" This is not a matter within my jurisdiction and it is for the school to decide what if any contextual information it is helpful to include in its arrangements.

16. The WSFG has argued that by giving priority girls who live near to Queens Road Station, the school "*unreasonably encroaches on the catchment area of other established secondary schools*". The WSFG has drawn attention to the fact that it is located close to Queens Road Station. I have accordingly considered the possible impact of the new criterion on the WSFG. The WSFG offers single sex education for girls and has informed me that almost half of its intake is identified as Asian or Asian British (with the inference to be drawn that significant numbers of its pupils are Muslim). The WSFG is – at it says – a high performing school and was judged to be a good school in its most recent Ofsted inspection. It has a PAN of 180 and data from the DfE's First Statistical Release shows that it was either full or had 179 pupils in each year group as at January 2015. Notwithstanding its reference to catchment areas, the WSFG admission arrangements are not based on a catchment area. Instead, its oversubscription criteria give a significant element of priority on the basis of distance from the school and for admission in 2014 the girl who lived furthest from the school and was able to gain admission lived 0.72 miles from the school according to figures in the LA's composite prospectus. By comparison, a girl living

3.83 miles from Eden School was able to gain admission there in the same year. Against this background I do not consider that this school will be seriously affected by the change Eden Girls School has made to its arrangements.

17. I have already set out the school's reasons for changing its arrangements. The Code makes clear at paragraph 1.10 that *"It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances."* The school has provided me with a clear rationale for the oversubscription criteria it has adopted. I find that the school's arrangements are fair and I do not uphold this aspect of the objections.

18. Finally, I address the question of admission of girls outside the normal age group. The WSFG has said that it believes that the school's arrangements amount to *"a means of introducing selection as school's admission criteria, and, as such, is in direct conflict with the Waltham Forest Borough Council's determined scheme for co-ordinated admissions to secondary schools. Again this is neither transparent, fair, clear nor objective."* In support of this argument the WSFG quotes from the arrangements as follows: *"Parents of gifted and talented children, ... may seek admission outside their daughter's normal age..."*

19. I observe that the WSFG's quotation is partial and selective. What the school's arrangements actually say is:

"As a general rule, we would expect girls to be educated in their normal age group. Parents of gifted and talented children, or those who have experienced problems or missed part of a year, for example due to ill health, may decide to seek admission outside their daughter's normal age. The Governing Body will make a decision based on the circumstances of each case..."

20. The LA has made clear that it does not support this aspect of the WSFG's objection and in its response the school has refuted strongly any suggestion that it is seeking to introduce selection. It has pointed out that what it is doing is meeting the requirements of paragraph 2.17 of the Code which states that *"Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group."* The school is following closely the wording used in the Code in this context and is doing what the Code requires. The school's arrangements have not introduced selection by aptitude or ability and there is no breach of paragraph 1.17 of the Code. I do not uphold this aspect of the objection.

Conclusion

21. I have not upheld any part of these objections. The school's arrangements are clear and objective and parents will be able to understand how places are allocated. I have concluded that the arrangements are fair. I have concluded also that there is no breach of the provisions of the Code relating to the introduction of selection, to

catchment areas or to priority for the children of staff.

Determination

22. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements determined by the governing body of Eden Girls School in the London Borough of Waltham Forest for September 2016.

Dated: 27 August 2015

Signed:

Schools Adjudicator: Shan Scott