



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA2999

**Objector:** A member of the public

**Admission Authority:** The Harris Federation for the Harris Girls' Academy, East Dulwich

**Date of decision:** 24 September 2015

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for the Harris Girls' Academy, East Dulwich determined by the Board of Governors on behalf of the Harris Federation.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.**

**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 arrangements within a specified timescale and in this case the revisions must be made within two months of the date of this determination with the exception of the matter concerning the date of the selection tests where the revision must be made by 28 February 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 September 2016 for the Harris Girls' Academy, East Dulwich (the school), an academy school for girls aged 11 to 18. The local authority (LA) for the area is the London Borough of Southwark. The objection concerns a change from the use of distance to the use of random allocation when prioritising within the oversubscription criteria in the school's admission arrangements.

### **Jurisdiction**

2. The terms of the funding agreement between the academy trust, in this case the Harris Federation, and the Secretary of State for Education requires that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. The 2016 arrangements were determined on 3 March 2015 by the school's governing body on behalf of the Harris Federation, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 30 June 2015. The objector asked to remain anonymous, but provided both name and address to the adjudicator as required by regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations).

3. 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(5) 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). The documents I have considered in reaching my decision include:

- a. the objector's email and form of objection dated 30 June 2015;
- b. the school's response to the objection, supporting documents and subsequent letters and emails;
- c. the LA's comments on the objection and supporting documents;
- d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
- e. a map of the area showing where pupils who attend the school live;
- f. details of the consultation held and copies of responses made;
- a. the minutes of the meetings of the school's governing body held on 29 January 2015 and 3 March 2015 when the governing body discussed and then determined the arrangements for 2016; and
- g. a copy of the determined arrangements.

### **The objection**

5. The school uses a banding test and allocates applicants to nine different bands. The objection is about the change the school has made to the way that it prioritises applicants within the bands. Previously this was done by distance and now one third of places in each band are allocated by distance and the remaining two thirds of places are allocated by random allocation.

6. The objector believes that introducing the random element to the oversubscription criteria will expand the area from which the school receives applications and admits children, with the result that the number of children living close to the school is likely to reduce and those living further away will increase. The objector is also concerned that parents from further away are likely to realise that the new system will give them a chance of a place that did not exist when distance was the only criterion and that it will only be those who can afford it who will be willing and able to transport their children a greater distance.

### **Other matters**

7. The school uses a banding test for all its applicants, the arrangements say that this is administered in November. I drew the school's attention to paragraph 1.32c of the Code that says that "*admission authorities **must**....take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary application on 31 October...*"

8. I asked the school to clarify how the banding tests applied to children with an education and health care plan or children who are looked after or have been previously looked after.

9. The arrangements refer to in-year admissions and it is unclear if the banding tests are used for these and if so how.

10. The consultation document made reference to "*....making a commitment to our academy....*" and I sought reassurance that this was not a matter that was taken into account when allocating places.

### **Background**

11. The school is an academy for girls aged 11 – 18 and is a school within the Harris Federation. There are 818 pupils on roll and the published admission number (PAN) is 150. The school is not oversubscribed and in recent years all pupils who have sought a place have been admitted. The school has a sixth form that is part of the federation of Harris academies' sixth form provision. The Department for Education (DfE) statistics as shown on edubase state that 40.8 per cent of the pupils are eligible for free school meals. Ofsted inspected the school in April 2012 and judged it to be outstanding. The report includes the following comments: "*the school serves a disadvantaged area and the proportion of students known to be eligible for free school meals is more than twice the national average. Around 85 per cent of students are from minority ethnic groups with the largest groups having Black Caribbean or Black African heritages..... The proportion of disabled students and those with special educational needs is above average.*"

12. The school operates a banding system and all applicants are required to take a standardised non-verbal reasoning test that allocates them to one of nine groups. Where the number of applicants exceeds 150, the following oversubscription criteria will apply to each of the groups where

there are more applicants than places available:

- Girls who are looked after or have been previously looked after;
- Girls with special medical or social needs;
- Girls with a sister at the school at the time of admission;
- One third of remaining places in each band to be allocated to those living within one kilometre of the nodal point with those living closest having priority;
- The remaining places in each band to be allocated by random allocation; and
- Any girl who does not take the banding test allocated by random allocation.

### **Consideration of Factors**

13. I shall deal first with the objection. The objector believes that introducing the random element to the oversubscription criteria will expand the area from which the school receives applications and admits children with the result that the number of children living close to the school is likely to reduce and those living further away will increase.

14. The school responded to this point by saying that in recent years it has been undersubscribed and has been able to allocate places to all those who wish them. The school recognises that it is nearly full in some year groups and anticipates that it may need to use its oversubscription criteria in the future. However, at present it believes that there are parents who might be interested in seeking a place for their child at the school but who do not apply because of the distance criterion. The school says that it is committed to providing places for local children if they wish to attend but that in fact, many of the children who live close to the school choose to attend other schools in the area. The school does not wish to operate with surplus capacity if this can be avoided and so must consider how to make places available more widely without disadvantaging local children.

15. The school consulted on changing the priority within its oversubscription criteria from distance to random allocation. The consultation took place between 17 November 2014 and 30 January 2015. Eighteen responses were received, all of which took the view that the proposed change would reduce the ability of the school to provide places for children who live close to the school. When the governing body determined its arrangements it took account of the comments that had been made in the consultation and decided to modify its proposal to change the priority from distance to random allocation. It decided to reserve a third of the places for those who live within one kilometre of the school and prioritise this group on the basis of distance if required. The remaining two thirds of the places would be prioritised using random

allocation if there were more applicants than places available. The minutes of the meeting show that there was discussion about how to protect children who live close to the school and ensure that they can gain a place and on current figures it appeared that one third of the places allocated in this way would be sufficient. The governing body commented that it would wish to keep this matter under review and check that the revised arrangements did allow local children to attend.

16. The school provided maps that illustrate the distribution of its pupils across the area and that also showed the super output areas from the Index of Multiple Deprivation. Under the existing arrangements the school admits all pupils who seek a place and the maps show that alongside the local population of pupils there are some who travel longer distances. The 2012 Ofsted report quoted in paragraph 11 above describes a school with a pupil profile that could not be considered to be selective. The school has not given any indication to suggest that it wishes to change this. I am not persuaded by the objector's argument that a change to random allocation for some of the places will result in local children being unable to obtain a place at the school and am reassured that the school does not wish this to happen and will keep this matter under review.

17. The objector is concerned that if parents from further away from the school apply for places, these applications are likely to be from those who are able to afford the additional travel costs that will be required. I consider that this is a reasonable point, however, I also think that the same would be true if distance is used as the criterion to prioritise places, with those living further away having the greater transport costs.

18. The school has decided to give greatest priority to those who live closest to the school and has made a judgement about how big to make the radius of the circle based on the information that it has about admission patterns. It has said that it will keep the matter under review as it is committed to ensuring that local children can attend the school if they wish to. I do not think that the introduction of random allocation for a proportion of the places will disadvantage families who live further away any more than the current distance criterion would if it was applied. The introduction of the random allocation process will make it less likely that parents living outside the one kilometre circle can predict the outcome of an application for a place, however, I am satisfied that the change that the school made to its original proposal following the consultation will help to ensure that local children are able to attend this school if they wish. I am also satisfied by the school's explanation concerning the changes and that it is not seeking to disadvantage any particular group of children and that its motivation for the change is to try and encourage more people to apply so that the school can operate at full capacity. The oversubscription arrangements have not been used in recent years and all pupils who wish to attend have been allocated places. It is difficult for the school, therefore, to judge whether it is the use of the distance criterion that discourages applications. In this context, I observed in my correspondence with the school that the banding tests that all applicants are required to take do not currently serve a purpose within the allocation

of places to the school.

19. I raised some other matters with the school and I shall now consider these. The first was that the arrangements say that the banding test used for all applicants is administered in November. I drew the school's attention to paragraph 1.32c of the Code that says that "*admission authorities must...take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary application on 31 October...*"

20. The school responded that it would be very difficult to test all potential applicants before application as suggested by the Code and that it is better for both families and the school to be able to operate the testing system in November once the school knows who has applied.

21. The Code is clear in paragraph 1.25 that "*pupil ability banding is a permitted form of selection*". Paragraph 1.31 refers to all forms of selection and sets out specific requirements for the tests. Paragraph 1.32 sets out the processes that "**must**" be followed. This includes section c) quoted above and is the reason why I have drawn the school's attention to it. I do not have discretion to consider any mitigating arguments that the school might put forward and must test the school's arrangements against the mandatory requirements set out in legislation and the Code. The Code as it is currently written requires schools to "*take all reasonable steps to inform parents of the outcome of selection tests before...31 October.*"

22. I asked the school to clarify how the banding tests apply to children with a statement of special educational need or an education health and care (EHC) plan that names the school, or children who are looked after or have been previously looked after. The school responded that it allocates places to children with a statement or EHC plan first before applying the admission oversubscription criteria. The school hopes that any of these children will accept the invitation to take the tests so they can be allocated to bands. They would be the first children to be allocated to the respective bands. If a child from one of these groups does not take the test for whatever reason, the school asks the LA to randomly allocate the child to a band as the first allocated child. I am satisfied that the school has considered this matter and conforms with the Code in this respect, however, it does need to ensure that these points are made clear within the published arrangements in order to meet the Code's requirement in paragraphs 14 and 1.8 for arrangements and oversubscription criteria to be "*clear*".

23. Although not within my jurisdiction, I commented in a letter to the school that the arrangements refer to in-year admissions and that the arrangements are unclear whether the banding tests are used for these and if so how. The school responded that if there is an application for an in-year place then, if there is a place in the appropriate year group, the application is accepted and a place allocated with no need to take a test. However, if there were to be a waiting list in then it would be necessary for applicants to have taken the banding test so that the ability band of

the person leaving the school to create the vacancy could be matched with a new applicant from the same ability band. It is clear that the school has an explanation for what it intends but it could usefully include this additional information in its arrangements to help parents understand clearly what is intended.

24. The consultation document made reference to “...*making a commitment to our academy...*” and I sought reassurance that this was not a matter that was taken into account when allocating places. The school reassured me that this was not taken into account in allocating places and I am satisfied that the school complies in this respect with paragraph 1.9a of the Code which says that an “*admission authority must not ...place any conditions on the consideration of any application...*”

### **Conclusion**

25. I have looked carefully at the submissions made by the objector, the school and the LA. I have also considered the relevant paragraphs in the Code. The school has followed the proper procedures in determining its arrangements and has taken account of consultation responses in its decision making to ensure that local children are able to attend the school if the oversubscription criteria were to be applied. I am satisfied that the school has done all that it can to ensure that there are no groups who are likely to be disadvantaged by the changes made and will keep this under review.

26. There are matters where the arrangements do not comply with the Code. These concern the date of the banding tests which does not comply with paragraph 1.32c of the Code and other matters concerning the banding tests that do not comply with paragraphs 14 and 1.8 of the Code because the explanation is not sufficiently “*clear*”.

27. Paragraph 3.1 of the Code says that “*admission authorities must, where necessary, revise their admission arrangements...within two months of the decision unless an alternative timescale is specified...*”. I have considered the revisions that are required and require the revisions that make the arrangements clearer to be made within two months. The revision concerning the date of the banding tests will require more time and must be made by 28 February 2016.

### **Determination**

**28. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for the Harris Girls’ Academy, East Dulwich determined by the Board of Governors on behalf of the Harris Federation.**

**29. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to**

admission arrangements.

**30. 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 arrangements within a specified timescale and in this case the revisions must be made within two months of the date of this determination and by 31 October 2015 with the exception of the matter concerning the date of the selection tests where the revision must be made by 28 February 2016.**

Dated: 24 September 2015

Signed:

Schools Adjudicator: David Lennard Jones