Office of the Schools Adjudicator

DETERMINATION

Case reference: **ADA2984**

Objector: **A parent**

Admission Authority: **The academy trust for Dame Alice Owen's School, Hertfordshire**

Date of decision: **4 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 academy trust for Dame Alice Owen's School in Hertfordshire for admissions in September 2016.

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 this determination.

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 parent (the objector), about the admission arrangements (the arrangements) for Dame Alice Owen's School (the school), a partially selective academy school for pupils aged 11 to 18 for September 2016. The objection is to the provision in the school's oversubscription criteria which restricts priority for those places awarded on the basis of a) aptitude in music and b) academic ability to children living in particular geographical areas.

Jurisdiction

2. 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 school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 29 June 2015. The objector has asked for his or her identity not to be disclosed, but has satisfied the

requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) by providing both name and address to the adjudicator. 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.

3. My jurisdiction is limited to the question of whether or not the determined arrangements conform with the requirements relating to admissions and if not in what respects they do not. I have no jurisdiction over the application of the arrangements in order to allocate places to individual children. I say this as the objector has argued that the school has failed to consider his/her child's application on its merits but has instead applied a rigid rule. I cannot and have not considered this matter as it is outside my jurisdiction. However, I think it is pertinent for me to make clear that the admission arrangements are not policies which have to be applied in the light of individual circumstances. They are rather rules which must be applied to all applicants as set out in paragraph 2.7 of the School Admissions Code which states that "*Admission authorities **must** allocate places on the basis of their determined arrangements only …".* The objector has also drawn attention to paragraph 2.17A of the Code in this context. Paragraph 2.17A of the Code, however, is concerned solely with the admission of individual children outside their normal age group and is thus not relevant to this case which is about the admission arrangements governing the admission of children generally to the school.

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 29 June 2015, supporting documents and subsequent submissions;

   b. the school's response to the objection dated 9 July 2015 and subsequent submissions and supporting documents;

   c. the response of Hertfordshire County Council which is the local authority (LA) for the area to the objection dated 14 July 2015;

   d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;

   e. maps of the area showing the school's Local Priority Areas (LPAs);

   f. the adjudicator's determination ADA2264 dated 1 August 2012;

   g. confirmation of when consultation on the arrangements last took place;

h. copies of the minutes of the meeting at which the academy trust determined the arrangements; and

i. a copy of the determined arrangements.

The Objection

6. The objection is to the provisions in the oversubscription criteria which give priority for a number of places to children on the basis of their performance in musical aptitude tests and academic ability tests. The priority for these places is limited to children who live in one of the school's LPAs or who have been educated in the London Borough of Islington. The objector argues that:

    a. the requirement for children seeking priority under these criteria to live in particular areas or be educated in Islington breaches paragraph 1.14 of the Code which is concerned with catchment areas;

    b. it is unfair to restrict priority for these places on the basis of where a child lives or is educated at all as the purpose of the tests is to identify children with high academic ability and/or musical aptitude;

    c. it is unfair and a breach of the Human Rights Act 1998 to base eligibility to take the tests on where the child lives at the closing date for registration (which was 12 June 2015 for admission in September 2016) rather than a later date as a family might move house into an LPA after 12 June 2015.

Background

7. The school became an academy in 2011 converting from voluntary-aided status. It is a partially selective school in accordance with the provisions of section 100 of the Act and it also selects up to ten pupils on the basis of aptitude in music in accordance with section 102 of the Act. It is a very long established school under the trusteeship of the Worshipful Company of Brewers. It is now located in Potters Barr in Hertfordshire, but was previously located in London and has a historical association with the London Borough of Islington which is recognised in its admission arrangements. The school has a published admission number (PAN) of 200 for Year 7 (Y7). The school is oversubscribed, having received 865 applications in 2013, 909 in 2014 and 789 in 2015. It thus has to apply its oversubscription criteria each year.

8. The elements of the oversubscription criteria which are relevant to the objection are as follows:

    "Places will be allocated under oversubscription criteria 4 and 5 only to children who have their permanent home address within one of the Local Priority Areas for the School or are educated

within the London Borough of Islington.

4 Children demonstrating musical aptitude ….(not more than 10 places)….

5 Up to 65 children selected by academic ability

As many children from the Islington Priority Area as, when added to the number from that area already admitted under criteria 1 to 4, will ensure that at least 20 children are admitted from Islington.

As many children from the non-Islington Local Priority areas as, when added to the number from Islington already admitted under the paragraph above, will total not more than 65 children."

9. An objection was made in 2012 to the requirement for children applying for priority on the basis of academic ability or musical aptitude to be resident in an LPA or educated in Islington. That objection was the subject of determination ADA2264 and was not upheld. The school last consulted on its admission arrangements in 2014 for admissions in 2015. The arrangements for 2016 were determined by the academy trust on 16 March 2015. The arrangements are easy to find on the school's website. It is important that I note that the objector in describing the school's arrangements at times refers to priority for some places being given on the basis of musical ability. When I quote from the objection or subsequent correspondence I follow the objector's phrasing. However, I am quite clear – and the arrangements themselves make clear – that priority in relation to music is given on the basis of musical aptitude. I note also that subsequent to the objection the school made a number of changes to its admission arrangements in accordance with paragraph 3.6 of the Code in order to comply with mandatory requirements of the Code. None of these changes was germane to the objection and the varied arrangements have been published on the school's website.

Consideration of Factors

10. Before addressing the objections, I note that in correspondence the objector stated that – as a parent – he or she had not been consulted when the school last consulted on its arrangements in 2014. The requirement in the Regulations and in the Code in relation to consultation of parents is that admission authorities must consult with "*parents of children between the ages of two and eighteen*". There is, however, no requirement to consult with all parents on an individual basis and, indeed, it would hardly be practicable for schools to do so. The school has provided me with evidence that it consulted as required by the regulations and Code. I note also that the aspects of the arrangements which are the subject of the objection were not changed in 2015 and, indeed, have been unchanged for many years.

11. The objection raises two separate but related issues. The first is the restriction on priority for places on the basis of academic ability and

musical aptitude to those who live or (in the case of Islington) have been educated in certain areas. The objector argues that this restriction breaches a number of the Code's provisions. The second is the requirement to be living in one of the priority areas by a given date which is earlier than the deadline for applications for a school place and by extension significantly earlier than the date by which a child could be admitted to the school and the objector argues that this is unfair and may restrict parents' rights to freedom of movement and residence and hence contravene the Human Rights Act.

12. I consider first the requirement to live or be educated in certain areas in order to gain priority for one of the places allocated on the basis of musical aptitude or academic ability. The objector argued that this breached paragraph 1.14 of the Code which is concerned with catchment areas. The school's arrangements actually refer to "Local Priority Areas" rather than catchment areas, but I consider that the school's LPAs do collectively amount to a catchment area for the purposes of paragraph 1.14 and I have considered the objection on that basis. Paragraph 1.14 states: *"Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school".* The objection does not raise any questions about the reasonableness or clear definition of the school's LPAs. I note, however, that they are clearly defined in the arrangements and have existed for many years based on the school's history as outlined above. The school's arrangements do not prevent any child from applying for a place at the school. Indeed, oversubscription category 8 in the school's oversubscription criteria "Any other child" means a child who lives outside the school's LPAs and who does not fall within a higher oversubscription category which is not restricted to those who do live in an LPA (that is, looked after and previously looked after children, siblings and children of staff). The school's catchment area is reasonable and clearly defined and the arrangements do not prevent a child who lives outside the catchment area from applying to the school. The arrangements do not therefore breach paragraph 1.14 of the Code and I do not uphold this aspect of the objection.

13. The arrangements do, however, prevent a child who lives outside a LPA (or alternatively has not been educated in Islington) from gaining priority for a place on the basis of academic ability or musical aptitude. The objector maintains that this is not fair, arguing that: "*The purpose of the Entrance Tests is to select children displaying high Academic and Musical abilities. Applying an additional Post Code criteria [sic] is therefore discriminatory and excludes many children with high Academic and/or Music abilities from siting [sic] the Entrance Tests simply because the School suggests the children live in the wrong location."* The objector's view is that it is only fair for places awarded to those of high academic ability or musical aptitude to be open to any who choose to sit the tests wherever they may live. In support of this argument the objector quotes paragraph 1.31 of the Code which states that "*Tests for all forms of selection **must** be clear, objective and give*

an accurate reflection of the child's ability or aptitude", arguing that a child's post code is not an accurate reflection of the child's ability or aptitude.

14. Different provisions of the legislation and Code govern academic selection and selection by aptitude in a particular subject. Paragraphs 1.21 to 1.23 of the Code are concerned with schools such as Dame Alice Owen's which select a proportion of their intake by ability. Paragraph 1.24 is concerned with selection on the basis of aptitude in certain subjects, one of which is music. These paragraphs set out a number of requirements but do not cover the issues raised by the objector. They do not accordingly prohibit the approach taken by the school but nor do they specifically allow for it. However, paragraph 1.23 provides that selective places in such schools can be allocated either on the basis only of highest scores in any tests or not only on the basis of highest scores. This paragraph is primarily concerned with the treatment of looked after and previously looked after children in such schools. In the case of Dame Alice Owen's, all looked after and previously looked after children will already have been given a higher priority as noted above and so will not need to be considered under the oversubscription criteria related to its selective places. Nonetheless, the import of paragraph 1.23 is that there is no absolute requirement that selective places in partially selective schools must be allocated to those of the very highest ability without any other criteria being used.

15. I have also considered the school's approach against the overall principles set out in the Code that it is for admission authorities to decide their oversubscription criteria according to local circumstances (see paragraph 1.10 of the Code) and that in doing so they must ensure that the criteria used to decide the allocation of places are fair (see paragraph 14 of the Code). The school wishes to give significant elements of priority to those who live in its LPA. It is entitled to take this approach and in addition it is entitled to give priority for some places on the basis of academic ability and musical aptitude. The school has argued that it is the combination of these elements that gives it its character as a school which is both partially selective but also serves particular geographical areas. These areas have a longstanding association with the school. The school is popular and places are highly sought after. It is in a relatively densely populated area which is well served with public transport. If the school were to take the approach advocated by the objector and not restrict its selective places to those living in the LPAs, it is likely that many children from outside those areas would apply. This would result in both the score necessary to gain a place rising and the number of places allocated to those living in the LPAs falling – perhaps significantly. The school has told me that the provisions in the arrangements relating to LPAs notwithstanding, for 2015 it had 60 applications to take the tests from people living outside its LPAs. The school's expectation and concern that removing the restriction relating to the LPAs would mean that very large numbers of people from outside these areas would apply to take the tests seems well founded. I have concluded – as shown above – that by restricting eligibility to

take its tests of academic ability or musical aptitude to those who live in the LPAs or have been educated in Islington the school is not in breach of the specific prohibitions set out in the Code. In addition, I consider that the school's arrangements are in this regard fair and I do not uphold this aspect of the objection.

16. The objector also argued that the requirement in paragraph 1.31 that "*Tests for all forms of selection **must**…give an accurate reflection of the child's ability or aptitude"* effectively prohibited the school's approach on the grounds that where a child lives is not an indication of their ability or aptitude. I consider that paragraph 1.31 concerns purely the question of whether the test itself will give an accurate reflection of the ability or aptitude of those who take it; it is not concerned with eligibility to take the test.

17. I turn now to the question of the date by which a child must live in one of the LPAs or have been educated in Islington in order to be able to take the tests. The objector has argued that by allowing children to take the tests if their parents are moving and complete a house move into one of the LPAs before the closing date for registration for the tests they discriminate against children who move house after the registration date and that this is unfair. The objector considers that the school's admission arrangements incorrectly assume that a child's permanent address in June of one year will be the same as that child's address in October of that year when applications must be made for secondary school and that this is also unfair. In its initial response to the objection the school referred to the requirement in paragraph 1.32c of the Code for admission authorities *"to take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October**"* and that it had to hold its tests early enough for them to be marked and results given in time to comply with these requirements. In relation to those planning to move house the school said it was aware that:

"the registration date can cause difficulties for parents who are planning a relocation to our designated areas. We have therefore made provision for such cases by allowing any child to sit the admissions test if the parent provides us with evidence of their plans to move. Parents who inform us they are intending to move into the Local Priority Area before the test date (1st September) but after the registration date (12th June) are given until the last day before the test (this year 28th August) to complete their move. If they are able to move and can provide proof that the move has taken place by this date we will make last minute arrangements for the child to take our test."

18. When I reviewed the arrangements I could not see any information about the date by which a child was required to live in one of the LPAs in order to take the tests or about the arrangements which the school had explained it would make for those moving into the area. I did not understand, therefore, how parents would know about these aspects of the arrangements. The objector had pointed out that the standard letter sent by the school to families who applied for their child to take the

tests but who did not live in one of the LPAs did not say anything about prospective house moves but rather stated that those whose permanent address was not in one of the Local Priority Areas could not register to take the tests. I accordingly asked the school to provide me with any information given to parents about the arrangements made for those who were planning to move house. In a letter dated 13 August 2015 the school acknowledged that its arrangements and, indeed, the more extensive information about admissions on its website did not cover this issue. The school said in that letter:

> *"it is incumbent on the parents to make contact ….the School would be subject to an even greater degree of claims by parents of their claimed intention to move should we make this overt in our written requirements (it is our view that it is not required of us to do so). This is something we use our discretion to offer, where a parent provides any evidence that indicates a serious intention to move."*

19. The school helpfully provided me with an example of an email sent by a parent of a child who had not been allowed to register for the tests as the current address was not in an LPA but whose family planned to move. The school's email response asks the parent to keep the school informed of progress with the move and that if evidence could be provided that this had taken place by 28 August the child would be allowed to sit the tests. The school has also set out its concern that allowing children to take the tests on the basis only of the parent's assertion that the family was planning to move would lead to large numbers of children taking the tests when the family had no real intention of moving or making an application to the school. This would result in significant costs for the school. The objector has argued in response that he doubts that large numbers would actually present themselves to take the tests, but – even if this were the case – the school would still need to plan on the basis that all those who registered would take the tests.

20. Subsequent to the objection and in the light of the school's responses, the objector has suggested that parents could reasonably infer from the school's arrangements that any date before the child was due to start secondary school could be acceptable as a date for moving into one of the LPAs. I do not accept this argument. The mandatory system of co-ordinated arrangements is predicated on a national deadline for applications (which is 31 October for secondary places) and a national date for offers of school places (1 March for secondary places). As noted by the school, admission authorities are also expected to provide test results before the 31 October deadline. Home addresses are extremely common features of admission arrangements, being used for the purposes of home to school distance and catchment areas, both of which are recognised as acceptable oversubscription criteria by the Code. It would accordingly simply not be possible to construct an admissions system which allocated places on 1 March but took account of addresses some six months later. Allocating places on the basis of assertions by parents that they were planning to move to an address

close to a school would result in places not being offered to other children who perhaps lived slightly further away.

21. I have determined that the school's use of LPAs and the restriction of priority for its selective places to those who live in those areas (or have been educated in Islington) does not contravene the Code. I consider it reasonable and sensible for the school to seek to ensure that those who secure places in part on the basis of living in the LPAs actually live in these areas. The school's arrangements are silent on the question of when a child must be living in a Local Priority Area for the purposes of admission to the school on the basis of performance in the tests. I consider that this makes the arrangements unclear in breach of paragraphs 14 and 1.8 of the Code. I describe above the school's practice of sending a first letter which simply rejects the application to register for the tests on the basis of current address but then allowing a child to take the tests if the parent pursues the matter with the school and if the move takes places before the test date. I consider that because the arrangements do not make clear the scope for children to register to take the tests if the family can provide evidence that they have moved before 28 August, the arrangements are not clear and hence breach paragraphs 14 and 1.8. They are similarly not fair in contravention of paragraph 14 as they rely on the tenacity of individual parents to respond to the first letter refusing registration in order to secure the ability to take the tests if a family moves before 28 August. This effectively means that this option is open only to some children – those whose families pursue the matter - and this is not fair. I uphold this aspect of the objection as the arrangements do not specify a date by which a child must be living in the LPA in order to take the tests. The Code requires that the admission authority amend its arrangements within two months of the date of this determination.

22. The objector argued that by restricting the right to take the school's tests to those who lived in one of the Local Priority Areas to a date some 15 months before children would start secondary school, the school was unlawfully restricting the rights of parents to freedom of movement under the Human Rights Act. The Human Rights Act confers a right of access to education. The appendix to the Code explains that this right does not extend to securing a place at a particular school. Dame Alice Owen's is a heavily oversubscribed school. Whatever admission arrangements it might adopt there will be children who would like to go there who will not be able to. The school's arrangements do not prevent any parent from applying for a place there for their child although they do, as noted above, prevent some children from gaining admission on the basis of performance in the tests. I do not consider that the school's arrangements breach the Human Rights Act.

Conclusion

23. I have determined that the requirement to live in one of the school's LPAs or to have been educated in Islington in order to be eligible for one of its selective places does not contravene the Code. I have

determined that the arrangements are not clear as they do not state the date by which a child must live in one of the LPAs in order to be eligible for one of the selective places and they are not clear and not fair as they also do not make clear that a child will be allowed to take the tests if the family moves by 28 August of the year in which the tests are to be taken. I have also concluded that there is no breach of the Human Rights Act.

Determination

24. 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 academy trust for Dame Alice Owen's School in Hertfordshire for admissions in September 2016.

25. 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 this determination.

Dated: 4 September 2015

Signed:

Schools Adjudicator: Shan Scott