



DETERMINATION

Case reference:	ADA3127
Objector:	An individual
Admission Authority:	The Lawrence Sheriff School Academy Trust
Date of decision:	25 August 2016

Determination

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

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 an individual (the objector), about the admission arrangements for September 2017 (the arrangements) for Lawrence Sheriff School (the school), a selective academy school for boys aged 11 to 18. The objection concerns how late applicants are placed on the waiting list and the requirement for admission authorities to set out in the arrangements how parents may apply for places outside of the normal age group.
2. The local authority (the LA) for the area in which the school is located is Warwickshire; the LA is a party to this objection.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined on 24 February 2016 by the governing body on behalf of Lawrence Sheriff School Academy Trust (the trust), which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 21 April 2016. The objector has asked to have his identity kept from

the other parties and has met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

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 21 April 2016 and subsequent emails;
 - b. the admission authority's response to the objection and supporting documents;
 - c. comments from the LA on the objection;
 - d. confirmation of when consultation on the arrangements last took place;
 - e. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - f. a copy of the determined arrangements.

The Objection

6. The objector described a situation where a child aged 12 applied to the school during the autumn term in 2017. The objector said that this child's ability would be assessed by the school on a different basis to that which had been used to establish the waiting list. The objector argued that it would therefore not be possible to meet the requirements of paragraph 2.14 of the Code which says "*Each admission authority **must** maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.*"
7. The objector also said that the school had not made the process of requesting admission outside of the normal age group clear in the arrangements as required by paragraph 2.17 of the Code.

Background

8. This selective grammar school, situated in Rugby, became an academy on 1 September 2014. The school has engaged the LA to operate the eleven plus aspects of the admissions process on its behalf. It is part of a consortium with five other grammar schools in Warwickshire and

eight in Birmingham which use the same admissions test.

9. The test for admission in September 2017 will be taken on 10 September 2016. These tests are provided by the Centre for Evaluation and Monitoring at Durham University (CEM) and they assess verbal, numerical and non-verbal ability. Parents will be notified of the results by 14 October 2016 in time for them to submit an application through their local authority's common application form. Boys who exceed the "*automatic qualifying score*" are deemed to meet the required standard for admission to the school. A "*minimum score for the waiting list*" is also set.
10. The school has 120 places available and is oversubscribed. The oversubscription criteria are applied to those boys who reach the "*automatic qualifying score*". These can be summarised as:
 - I. Looked after and previously looked after children.
 - II. Up to 10 places for children in receipt of one of the pupil premiums who live in two defined areas and scored just below the "*automatic qualifying score*".
 - III. Up to 55 places for children living in one of two defined areas.
 - IV. Up to 55 places for children living in the other defined area.
 - V. Children living inside or outside the two defined areas.
 - VI. Other children who score above the "*minimum score for the waiting list*"
11. Within the third and fourth criteria, priority is given to children in receipt of the pupil premium or the service children premium. Within each category priority is given in order of test score with home to school distance and then random allocation being used if further differentiation is needed.

Consideration of Case

12. The first part of the objection was that the arrangements may not comply with paragraph 2.14 of the Code which requires that until the end of December if any child is added to the waiting list it "*will require the list to be ranked again in line with the published oversubscription criteria*". The arrangements say that additional tests "*will be held in late November / early December 2016 and late January / early February 2017, primarily to accommodate families moving into the area. Sessions will also be arranged for parents registering for the test after offer day.*" The arrangements continue to say that "*The waiting list order will follow the same criteria as outlined in Categories 1-6 above, but will also include any applicant who registered late for the 11+ test, or who submitted a late secondary school application. Each added child will require the waiting list to be ranked again in line with the published oversubscription criteria.*" The arrangements continue to say

“Once a child reaches the age of 12, the CEM Centre 11+ test can no longer be administered due to the calculations used during standardisation. Where an applicant shows interest in a place once the child has turned 12, the School will instead arrange for them to sit tests in English and Maths to judge academic suitability against the rest of the cohort.”

13. The objector raised concerns about the comparability of the assessment of children aged 12 with those who took the eleven plus test. He gave the following example to illustrate his point. *“Child A is top of the waiting list with score 205, Child B is second on 204 (and is weak in NVR and very strong in English and Maths). Child C is 12 years old so takes a [sic] English/Maths test on 10th Sep 2017 (1 year later than child A and B). How is his score compared to child A and B and every other child who sat the 11+? How is the waiting list maintained? The policy does not consider this. If the answer is the school would invite child A to take the same English/Maths test, why not child B? Why not any other child? It cannot be fair to test the initial cohort on 3 subjects [sic] areas and have a new test with two subject areas and also ignore a whole year of education. Children with low 11+ scores could have progressed in a year and be at a much higher level. This clearly falls foul of clause 2.14.”*
14. In its response to the objection, the school said *“the school needed to establish a way of testing pupils aged 12 who are not eligible to sit the standard admission test and to benchmark it against the ability range of the cohort and waiting list as they will be taught the same curriculum and be expected to perform at the same standard as that cohort. The alternative would be to refuse to test the student and deny them the right of appeal until after the waiting list had closed, which would not be fair to that student.”*
15. The school then quoted paragraph 1.31 of the Code which says *“Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child’s ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.”* Before continuing to argue *“By using such a true test of ability and assessing a pupil’s ability level against the cohort and the corresponding waiting list he is applying to join, such pupils can be allocated an 11+ score and given an initial position on the waiting list.”*
16. In the arrangements the school clearly gives opportunities to children aged 11 who move into the area after the date of the test, and after places have been allocated, to take the eleven plus test and to be put in the correct position on the waiting list which it is required to keep until 31 December each year. The school is of the view that the standardisation of the eleven plus test makes it an inappropriate assessment of children aged 12 and has developed an alternative assessment which it believes can provide a comparable score to that in the eleven plus, so the child can be placed on the waiting list in the appropriate place.

17. The objector sees great unfairness in the possibility of a child being put on a waiting list having been tested on a different basis to others. It seems to me that a number of events must happen before the situation which requires a 12 year-old child to be tested for a place on the waiting list arises. A child with grammar school aspirations moves into the area during the time the waiting list is held, it is not possible to arrange for them to sit the eleven plus before their twelfth birthday and a place becomes available at the school. The school reports that it has been monitoring applicants since 2012 and no 12 year-old has applied during the period of the waiting list.
18. However unlikely the situation, the Code requires that the arrangements make provision for it. As the objector pointed out in an email, other admission authorities which use similar tests standardise the scores of all 12 year-olds as if they were born on 1 September and were the oldest possible child in the year group. This school has chosen to use its own assessment tests to benchmark any 12 year-olds who may apply against the cohort. From these tests it determines the eleven-plus score they might have achieved, I have no reason to doubt that the school has sufficient professional experience to do this as accurately as possible. Both of these methods seem to me to be a pragmatic way of addressing the problem posed to grammar schools by the Code of how they add 12 year-old children to the waiting list if any were to apply during the statutory waiting list period.
19. The objector says that a single mark can make the difference between a child being offered a grammar school place and not. Therefore, he argues, anything that leads to one child being assessed on a different basis to another is not fair. I think the objector's suggestion that all children on the waiting list are retested whenever there is a new child to add is unrealistic. I am satisfied that the school has a pragmatic and reasonable mechanism which, in the unlikely event it would be needed, would produce a fair estimate of a child's likely eleven-plus score which allows them to be put on the waiting list in the correct position. I do not uphold this part of the objection.
20. The second part of the objection was that the school had not made the process of requesting admission outside of the normal age group clear in the arrangements as required by paragraph 2.17 of the Code which says "*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*"
21. Under the heading "*Eligibility*" the arrangements say "*If your child was born between 01 September 2005 and 31 August 2006 you may apply for them to sit the test for entry in September 2017. Children not born between these dates will only be able to sit the test if they are being educated out of year group (they are being taught in Year 6 for the 2016/17 academic year). Decisions as to whether or not the test results for such students can be used for admission purposes to this school will be taken by the Academy Trust as the Admission Authority.*"

22. The objector said *“Children have a right to be educated out of year. There are no clear rules on what happens if the child is educated out of year and whether he can sit the 11+ test and results can be used or not. The statement: “Decisions as to whether or not the test results for such students can be used for admission purposes to this school will be taken by the Academy Trust as the Admission Authority” is not acceptable as it means they can make up rules as they want. There must be clarity and full rules that will be followed published. What if the child is older and already 12 at the time of the the [sic] test? How can the score be stadardadised [sic] if Durham cannot standardize?”*
23. In the school’s response it said *“Paragraph 2.17 of the Code requires the school to make reference to the out of year group issue within its admission arrangements”* and referred me to the page in the arrangements containing the *“Eligibility”* paragraph quoted above. This the school said, together with the ability of parents to register their child for a test, met the requirements.
24. Both the objector and the school appear to have misunderstood paragraph 2.17. The Code does not afford a right to be educated out of year. Paragraph 2.17 actually provides that *“parents may seek a place for their child outside of their normal age range”*; that is parents are entitled to request for their child to be educated out of year. The school is not just required to make *“reference to the out of year group issue”*, it is required to *“make clear in their admission arrangements the process for requesting admission out of the normal age group.”* The school is however correct in asserting that how it considers such a request is not a matter for the adjudicator to consider.
25. Considering the paragraph in the arrangements which in the school’s words *“make reference to”* this matter I note that it restricts applications for education out of the normal age group to children who are already being educated out of the normal age group. Whatever factors the school considers in deciding to allow an application from out of the normal age group, in the Code all parents are permitted to seek such admission. While the arrangements do say applications for admission out of the normal year group are possible, it does not say what parents have to do to make such an application. I therefore uphold this part of the objection. In doing so, I note, however, that the remedying this breach of the requirements will not mean that the school will be giving a right for children to be educated out of their year group – which was the claim asserted by the objector.

Summary of Findings

26. It is possible that an application could be made for a child to attend the school after all places have been allocated and while the statutory waiting list is in operation until 31 December 2017. If this happens paragraph 2.14 of the Code requires that new child is placed on the waiting list according to the oversubscription criteria. The oversubscription criteria use, among other factors, children’s scores in the eleven-plus test to determine priority for places and therefore a

position on the waiting list. The school must therefore have a mechanism to assess the eleven plus score of late applicants. I am satisfied that the school has a pragmatic means of obtaining an eleven plus score for late applicants that would allow them to be correctly placed on the waiting list. I do not uphold the first part of the objection.

27. In my view the arrangements do not make clear the process for requesting admission out of the normal age group as required by paragraph 2.17 of the Code. I uphold this part of the objection, but note that the Code does not give a right to be educated out of the normal year group.

Determination

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

29. 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: 25 August 2016

Signed:

Schools Adjudicator: Phil Whiffing