



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3369

Objector: Parent

Admission Authority: Governing Board of King Edward VI Five Ways School, Birmingham on behalf of the King Edward VI Academy Trust.

Date of decision: 4 June 2018

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 September 2019 determined by the Governing Board of King Edward VI Five Ways School, Birmingham on behalf of the King Edward VI Academy Trust.

I have also considered the arrangements in accordance with section 88I(5) and find there are 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 revise its admission arrangements within two months of the date of the 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 King Edward VI Five Ways School (the school), a mixed, selective academy school in Birmingham for 11 to 18 year olds. The objection relates to arrangements for admission in September 2019. The objection is to the requirement for parents to apply for registration online without the alternative of a paper application.
2. The local authority for the area in which the school is located is Birmingham City Council. The local authority is a party to this

objection. Other parties to the objection are the school and the objector.

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 by the governing board on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted her objection to these determined arrangements on 19 March 2018. The objector has asked to have her 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 her 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. I have also used my power under section 88I 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).
5. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 19 March 2018;
 - b. the admission authority's response to the objection and supporting documents;
 - c. the comments of the local authority on the objection and supporting documents;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting at which the governing board of King Edward VI Five Ways school, on behalf of the academy trust, determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

6. The objection focuses on the requirement that a parent who is applying for a place at the school for his or her child completes an on-line application in order to take the selection test for the school. No paper application forms are available and no paper applications are accepted. The objector suggests that this does not comply with paragraph 1.51 of the Code which states that *“hard copies are available for those who do not have access to the internet”*.
7. The objector also suggests that the admissions arrangements contravene *“article 14 of the human rights act and constitute indirect discrimination of the act by excluding the groups who are most likely to have no internet access”*.
8. She goes on to say that parents should have a choice whether or not to input their child’s details online as such online systems are more likely to become compromised.

Other Matters

9. In the section on *“Procedural Arrangements for Admission”* in the admission arrangements, reference is made to *“local candidates”* and *“children who move into the area”*. The arrangements do not have definitions of these terms and there are no priority catchment areas or geographical restrictions within the oversubscription criteria. I have therefore considered these statements under 88I of the Act. I have considered whether or not these statements comply with paragraph 14 of the Code which states that *“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*.

Background

10. The school is an academy for pupils ages 11 to 18 and is designated as a selective grammar school under section 104 of the Act. The published admission number (PAN) is 180. Only children of the *“required standard”* are eligible to be considered for admission. Potential pupils take tests in verbal, numerical and non-verbal reasoning. Tests scores are combined and standardised according to the age of the pupil. For admission to the school in September 2019, the required standard is a mark of 200 in these tests.
11. The admission arrangements for September 2019 were discussed and agreed by the governing board on 14 June 2017. The school arranged for the local authority to undertake a consultation on its behalf and this took place between 20 November 2017 and 8 January 2018. No comments were received during the consultation and therefore the arrangements agreed at the June meeting were determined and

confirmed with the local authority.

12. Admission criteria are applied to those pupils who have achieved the required standard in the following priority order;
 - looked after and previously looked after children;
 - children attracting the pupil premium (limited to 36);
 - other children who achieve the required standard by rank order.
13. For admission in 2018, the school was heavily oversubscribed with 433 first preferences for 180 places. Allocation of these places has been as follows;
 - Looked after and previously looked after children - 3
 - Children attracting the pupil premium – 36
 - Other children who achieve the qualifying score by rank order of standardised score – 141

Consideration of Case

14. The objector cites paragraph 1.51 of the Code and quotes *“with hard copies available for those who do not have access to the internet”*. This paragraph in the Code relates to the composite prospectus published by the local authority outlining the admission arrangements for all schools in its area and does not cover the requirements of the application process. I have therefore considered the objection under paragraph 14 of the Code which states that *“In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*. I have therefore considered if the published procedures for admission are fair.
15. The objector states that only on-line applications are accepted and that paper versions of the application form are not available. Applications themselves for places at the school, which are submitted to and administered by the local authority, are normally submitted online but the local authority does have the facility for parents to apply on a paper form by post. I therefore assume that the objection relates to the registration for the school’s tests and not the common application form (CAF) which is used by the local authority. In this determination therefore when I refer to the application and application form I mean the form for registration of the tests and not the CAF.
16. In its response to the objection, the school stated that *“For entry to any of the eight grammar schools in Birmingham (including King Edward VI Five Ways School) applicants are required to sit an entrance test. This*

test is administered by 'The Grammar Schools in Birmingham' admissions team. This means that applicants only need to sit one entrance test to be eligible for a place at any of the grammar schools in Birmingham. Given the increasing volume of entrance test applicants each year (5866 for 2018 entry) and the requirement for applicants to provide a photograph of the child for identification at the test, The Grammar Schools in Birmingham require applications for the test to be submitted online via its secure website. The entrance test held in September 2015 was the first year that all test registrations were submitted online. All applications are instantly acknowledged and are processed without the need for manually entering data or handling and storing hard copies of applications and photographs. For those applicants without access to the internet or for those who do not feel confident in completing an online form, each of the grammar schools welcome applicants to visit the school(s) at a suitable time and members of staff assist applicants submit their application using a school computer. These arrangements have been in operation since 2015. Additionally, many of the schools hold such sessions following open days in May and June. The individual is welcome to contact the admissions office on the number below and a suitable time can be arranged for them to visit their local or preferred grammar school during the registration period between 1 May – 29 June 2018 to complete their application online should they require assistance."

17. The published admission arrangements set out the procedures for application and explain that from May 2018, leaflets are sent out to primary schools in the local authority and information is published in the local press which informs parents of the dates of the open evenings at the various schools and encourages parents to attend one of the sessions. It makes it clear that test registration forms must be completed online by 29 June 2018. I asked the school to explain how the parent would know that the facility to help them complete the online form was available as indicated in its initial response. The school responded and referred to the publicity circulated to schools, libraries and the press by the team which administers the registration and test process for all the grammar schools – this is the Grammar Schools in Birmingham admissions team. In its published brochure it states that '*If you have any difficulties in registering online please contact: 0121 415 6004*'. The school suggests that if paper copies of the registration form were available then the parent would have to contact the team on this number to obtain the copy. The process is the same for the online process and parents can contact the team. Arrangements are then made for the parent to be supported through the online process if necessary.
18. Parents are encouraged to attend open sessions at the schools if they are interested in applying for a place and at that time can discuss and seek support for the online application. In addition, parents who have any difficulty with the online registration process are encouraged to telephone the admission team to seek assistance. I am of the view that this provides sufficient support for any parent who does not have access to a computer or has difficulty in completing the online

registration. I believe that the principle that all these registrations must be online is fair and therefore complies with paragraph 14 of the Code. I consider it useful that provision is in place for those parents who require support with this process but, in line with many other public processes, it is reasonable for the admission team to require only online registrations.

19. The objector suggests that *“The policy also contravenes article 14 of the human rights act excluding those people/groups of a certain background/social origin (social class)/property/birth, (those who are most likely to have no internet access) by only having an online application process”*. I have taken this to mean Article 14 of the European Convention on Human Rights (ECHR) which is appended to the Human Rights Act 1998.
20. Article 14 is not a free-standing right not to be discriminated against. It must be linked to one of the other substantive rights under the ECHR and, as the objector says, it applies in cases of both direct and indirect discrimination. I am assuming that the substantive right here would be the right to education in Article 2 Protocol 1 of the ECHR, and that the suggestion is that persons who have no internet access are discriminated against indirectly because, although the application process is the same for all applicants, there are some applicants who are disadvantaged.
21. The right to education is not a right to education at a particular school, and there is no right to an education of a particular type, for example grammar school education. There is no breach of Article 2 Protocol 1 of the ECHR here. Indeed this is not something the objector has alleged. It is still possible, however, that there could be a breach of Article 14 of the ECHR if this case falls within the sphere of Article 2 Protocol 1, and there has been discrimination against a person on the grounds listed in Article 14.
22. Whilst there is an argument that this is a situation which does fall within the sphere of Article 2 Protocol 1, the objector has provided no evidence of discrimination to any individual. It is possible that an applicant may not be able to apply for a place at the school using the online process because they have no access to the internet, but the link to *“background/social origin (social class)/property/birth”* is merely an assumption. There is no evidence provided by the objector that persons of a particular background/social origin are less able to access the internet, or that any particular individual has actually been disadvantaged. In any event, the school offers an alternative process for those who cannot apply online by allowing parents in this position to come into the school to be helped with the application process. For these reasons, I have concluded that there is no breach of Article 14 of the ECHR
23. The objector further suggests that there is an issue with online security and that parents should have a choice of online or paper systems. She

suggests that online systems are more likely to be compromised. Local authorities and schools share and store the details of their pupils on computer systems. If paper applications are used then the details from these are transferred to computer systems. I am of the view that the personal information required for school applications may be retained by the schools and the local authority in electronic format whether or not the original application has been submitted on paper or online. I do not therefore consider the process used by this school to be unfair or non-compliant with the Code.

24. I have used my power under section 88I of the Act to consider the arrangements as a whole and I have concluded that the use of the terms "*local candidates*" and "*children who move into the area*" in the procedural arrangements for admission are unclear and therefore do not comply with paragraph 14 of the Code. The arrangements do not define the term local and there is no defined local area. This section of the arrangements therefore requires amendment.

Summary of Findings

25. I do not uphold the objection to these arrangements. There is no requirement in the Act or in the Code which requires applications for selection tests to be made in written format. I consider the arrangements put in place for those families who require support in the registration process to be sufficient. I therefore consider the arrangements for online registration to be compliant with the Code. I do not believe that the arrangements as published constitute indirect discrimination under Article 14 of the European Convention on Human Rights (ECHR) which is appended to the Human Rights Act 1998, as provision is made for those families who require support for the registration process. I am of the view that schools and local authorities will utilise electronic and online systems for the storage, retrieval and sharing of information even when paper applications are submitted. The schools and local authorities are required to have systems in place which ensure the security of these data.

Determination

26. 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 September 2019 determined by the Governing Board of King Edward VI Five Ways School, Birmingham on behalf of the King Edward VI Academy Trust.

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

28. 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 the determination.

Dated: 4 June 2018

Signed:

Schools Adjudicator: Ann Talboys