



Determination

Case reference: ADA3538

Objector: A parent

Admission authority: The academy trust for Parmiter's School, Hertfordshire

Date of decision: 4 July 2019

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 2020 determined by the academy trust for Parmiter's School, Garston, Hertfordshire.

I have also considered the arrangements in accordance with section 88I(5) and find there are other 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 Parmiter's School (the school), a partially-selective academy school for pupils aged 11 – 18 for September 2020. The objection is to the test used by the school to select pupils by aptitude for music.
2. The local authority (LA) for the area in which the school is located is Hertfordshire. The LA is a party to this objection. Other parties to the objection are the academy trust for 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 academy trust, which is the admission authority for the school, on that basis. The objector submitted her objection to these determined arrangements on 24 April 2019. 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) a copy of the minutes of the meeting of the academy trust at which the arrangements were determined;
- b) a copy of the determined arrangements, which include the Supplementary Information Form and details of the test for aptitude for music;
- c) the objector's form of objection dated 24 April 2019 and supporting documents;
- d) the school's response to the objection; and
- e) a High Court judgment with a bearing on the arrangements.

The Objection

6. The objector believes that the arrangements breach paragraph 1.32 (a) of the Code, which states that,

*“admission authorities **must** ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability.”*

7. She also believes that the test for aptitude in music is not “clear” and “objective”, as required by paragraph 1.31 of the Code, and that part of the testing process may breach the prohibition on interviewing children (paragraph 1.9 (m) of the Code).

Other Matters

8. Contrary to paragraph 2.4 of the Code, the Supplementary Information Form (SIF) appeared to me to request information, such as the child's current school, that does not have a direct bearing on decisions about oversubscription criteria. It also asks for information that the admission authority would be able to access by other means.

Background

9. The Published Admission Number (PAN) determined for admission at year 7 (Y7) for September 2020 is 208. The school reports that it is heavily oversubscribed each year, receiving "*between 1400 and 1500 applications.*"

10. The oversubscription criteria for admission to Y7 at the school in September 2020 can be summarised as follows:

1. Looked after and previously looked after children.
2. 10 per cent of places allocated on proximity to the school.
3. Siblings of children at the school
4. Children with a compelling medical reason for attending the school.
5. 25 per cent of places allocated "*by reference to academic ability.*"
6. Up to 10 per cent of places "*on the basis of proven aptitude in Music.*"
7. Children of staff.
8. Other children, ranked in order of proximity to the school.

95 per cent of the places available under criteria 4, 5 and 6 will be allocated to children living in an area defined by a list of postcodes that appears in the arrangements.

11. The school uses a method of selection by aptitude for music that has been adopted by several schools, collectively known as the South West Herts Schools' Consortium (the consortium). In October 2003, two of the schools in the consortium (Watford Grammar School for Girls and The Watford Grammar School for Boys) were the subject of a case that was heard in the High Court (R (Watford Grammar School for Girls) v Adjudicator for Schools [2003] EWHC 2480 (Admin), [2004] ELR 40). Selection by aptitude for music was one of several matters considered. In his judgment, Mr Justice Collins held that the method of selecting for aptitude used by the schools was: "*obviously one which is now in accordance with the Code*" (paragraph 86 of the judgment).

12. The school has told me that the test for aptitude in music administered by the consortium, of which it is a member, "*has not changed in its form or approach*" since 2003 when the High Court judgment was made. The test is in two parts:

- (i) a written test of musical aptitude, including questions about "*pitch, rhythm, texture and melody.*" It is said that candidates do not require any previous knowledge of music or music theory to succeed in this part of the test; and

- (ii) for candidates who achieve a qualifying mark in the first part of the test, “a practical music assessment to perform a single piece on their chosen instrument or vocally.”

The arrangements state that for the second part of the test,

“As there is a free choice of instrument and piece, candidates of all aptitudes and all cultures will have equal opportunity to succeed.”

Consideration of Case

The musical aptitude test

13. The objector argues that the second part of the test breaches paragraph 1.32 (a) of the Code as it is a test of musical skill or proficiency, which may have been acquired and developed through specific musical training. This, she argues, means that it is ability that is being tested, rather than aptitude. Aptitude, she says, is “*about a natural (untaught) talent or tendency.*” She provided a screenshot of the consortium’s website, which calls the second part of the test an “*audition.*” She says that a musical audition is an assessment of musical competence and that it “*cannot isolate and discount ability acquired through prior teaching and learning.*” It therefore “*very clearly*” assesses ability as well as aptitude and does not comply with the Code. She says that the extent to which candidates will demonstrate the criteria used to assess their performances, which the school has confirmed are “*accuracy, musicality, and communication,*” will be “*heavily influenced by a person’s ability and how much tuition they have been benefitted from.*” She makes reference to the recent determination of an adjudicator in respect of The Eastwood Academy (ADA3500). That school used what the objector considered to be very similar criteria to Parmiter’s School for the assessment of musical aptitude, “*based on aptitude on a musical instrument.*” The adjudicator was not satisfied that such an assessment of aptitude complied with paragraph 1.32 (a) of the Code.

14. The objector also says that the performance assessment is not “*clear*”, “*objective*” or “*a true test of aptitude*” (as required by paragraph 1.31 of the Code), as it is undertaken by a number of different assessors “*with different levels of experience, backgrounds and bias.*” She says that the way in which performances are assessed and moderated is not made clear in the information provided about the test.

15. Finally, the objector refers, from past experience, to the practice of assessors asking candidates questions, prior to their performance. These questions, she says, covered matters such as the length of time the child had been learning an instrument and any musical examinations they had taken. The objector says that acquiring this information “*will create conscious and unconscious bias.*” The conversation with the candidate could also be construed as an interview, which is prohibited by paragraph 1.9 (m) of the Code.

16. In response to the objection, the school emphasises that the documentation containing the performance assessment criteria makes,

“no reference to the instrument used, level of ability of the piece of music or song that is chosen by the candidate. They refer solely to elements of musical aptitude that are considered during the performance assessment.”

The school goes on to explain that each performance is assessed by a panel of two individuals, including former directors of music, and that the assessments made by panels, three of which operate simultaneously, are,

“subject to internal moderation by the Director of Music at Watford Grammar School for Boys who works alongside the panels to secure standardisation of assessment.”

17. I recognise some of the force of the objector’s arguments. The Code does not define “*aptitude*” or “*ability*” but expects admission authorities to distinguish between them. That task, as she explains, is particularly challenging when the assessment of aptitude includes an element of musical performance. Some candidates will have benefitted from musical tuition that has developed their ability to play a musical instrument. According to the objector, disentangling this prior learning and experience from their “*aptitude for music*” cannot be undertaken reliably.

18. Nonetheless, I do understand why an admission authority would wish to give candidates the opportunity to ‘make music’, in addition to the listening exercises that comprise the first part of the test. What the school terms a “*performance*” may reveal an aptitude that cannot be gauged in other ways. It believes the performance element it uses does provide an accurate means of identifying aptitude. The school has confirmed that the way it tests for aptitude in music is exactly the same as the one that was found to comply with the Code in the High Court judgment cited above. It has confirmed that no changes have subsequently been made to the method of selection. Therefore, in the light of the judgment of Mr Justice Collins I do not uphold the objection that the second part of the test does not comply with the Code.

19. Before proceeding, I will comment briefly on the reference made by the objector to the determination relating to The Eastwood Academy. I must emphasise that determinations of schools adjudicators do not create precedents; each case is considered on its merits according to the circumstances of the individual school. However, I note that the performance test at The Eastwood Academy required candidates to play a musical instrument; the option to sing was not provided. In addition, the admission authority was unable to provide an explanation of how scores were awarded for performances.

20. In its response to the objection, the school thanks the objector for identifying the use of the word “*audition*” on the consortium’s website, which it describes as “*misleading*” and an “*error*.” It has undertaken to ensure that the website is amended. It also agreed that it should publish more information about the assessment and moderation process for the second part of the test. I consider these proposed actions to be appropriate.

21. Finally, the school accepted that the questioning of candidates prior to the giving of their performance, “*has the potential to create the impression that such questions form part of the assessment*.” Although it says that the purpose of the questions was “*to help the*

candidates feel relaxed", it has decided to instruct assessors not to ask any questions of candidates, other than those necessary to ensure they have all that they need. I believe this to be a wise decision although, for the avoidance of doubt, I do not consider that a brief exchange between assessors and candidates breached the Code's prohibition on interviewing children. The school made clear that it formed no part of the decision making process on the allocation of places.

The SIF

22. I turn now to consider the SIF used by the school as part of its admission arrangements. Information provided for parents on the school's website states that,

"You should apply online to your Local Education Authority and complete and return a Supplementary Information Form (SIF) to Parmiter's School."

The SIF itself is headed "*School Application Form*" and asks, on the first page, for the child's name, address, date of birth, their current school and the full names of both parents or carers. Overleaf, the eight oversubscription criteria are listed and applicants are asked to indicate,

"under which criterion or criteria they are applying on behalf of their child for admission to the School."

Applicants are also asked to give the names of siblings at the school and the scores achieved by the child in the academic and musical aptitude tests, if they have taken them. Where the child's home address is relevant, documents providing proof of residence, as set out in the arrangements, must be provided.

23. The Code makes clear that a SIF is not an "*application form*" for parents seeking a place for their child at a particular school. All parents must complete a common application form (CAF), usually online, which is returned to the local authority in the area that they live. Hertfordshire local authority has confirmed that its CAF includes information about siblings and children of staff. This information is conveyed to the school as part of the co-ordinated admissions process. The purpose of a SIF is set out in paragraph 2.4 of the Code. Admission authorities,

"must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria."

24. The school's SIF asks for the name of the child's current school, which is not relevant to the oversubscription criteria, as it has no feeder schools. It also asks for the full names of two parents or carers; only one is necessary as a point of contact. Furthermore, the school will have access to the names of the child's siblings from the CAF and their test scores from its own records. It is not necessary to ask for these details on the SIF.

25. The school told me that it asks for the name of the child's current school in order to check potentially fraudulent addresses. The requests for details of siblings and test scores

act as a “*double check*”, which is helpful when processing a large number of applications. Asking about siblings also identifies parents who have, “*submitted a SIF but [have] not applied through the Local Authority,*” who can then receive appropriate advice.

26. I understand the school’s desire to gather comprehensive information about applicants through one form, so that details can be thoroughly checked. However, it is in breach of the Code in the way it does this. The SIF is not an “*application form*” and it is wrong to refer to it as such. It should be made crystal clear to parents that the application form for a place at the school is the CAF. The SIF needs only to be completed by applicants who wish to provide information intended to demonstrate that they have priority under one of the oversubscription criteria, where that information is not available to the school by other means. It appears to me that this will be the case only for applicants who believe their child has a compelling medical reason to attend the school (criterion 4). It is not necessary for applicants to indicate under which oversubscription criteria they are “*applying for a place.*” It is the task of the admission authority, once it has received all the information relating to applications for a place at the school, to apply its oversubscription criteria in order to identify under which of them each applicant has priority.

27. The school requires documentary proof of address in respect of those oversubscription criteria where residence is taken into account and paragraph 2.5 of the Code allows this to be done. It is important that the SIF makes clear, as it does, that parents must provide such documentation only if priority for a place for their child depends on where they live. Whilst it is right that cases of potential fraud are investigated, admission authorities are not entitled, as a matter of course, to ask for details of a child’s current school on the SIF, if there is no other valid reason for doing so.

28. In summary, I find that the admission authority is in breach of paragraph 2.4 of the Code, as it asks on its SIF for the name of the child’s current school, contact details for two parents or carers, information about siblings, children of staff and test scores. The Code requires that the arrangements in relation to the SIF be changed in order to meet these findings.

Summary of Findings

29. The method of selection by aptitude for music that the school uses was considered by the High Court in 2003. It was found to comply with the Code’s requirements. I do not uphold the objection. The school has agreed to improve aspects of the information provided about the test.

30. The SIF does not comply with the Code as it asks for information that does not have a direct bearing on decisions about oversubscription criteria or will be available to the school by other means.

Determination

31. 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 2020 determined by the academy trust for Parmiter's School, Garston, Hertfordshire.

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

33. 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 July 2019

Signed:

Schools Adjudicator: Peter Goringe