



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3547 Camp Hill School for Boys, Birmingham  
ADA3548 Camp Hill School for Girls, Birmingham;  
ADA3549 Aston School, Birmingham;  
ADA3550 Five Ways School, Birmingham;  
ADA3551 Handsworth Grammar School for Boys, Birmingham;  
ADA3552 Handsworth School for Girls, Birmingham;  
and  
ADA3541 Camp Hill School for Boys, Birmingham**

**Objectors: Two members of the public**

**Admission authority: King Edward VI Academy Trust Birmingham**

**Date of decision: 18 October 2019**

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold in each case the objections to the admission arrangements for September 2020 determined by the King Edward VI Academy Trust Birmingham (the admission authority) for each of the six schools set out above.**

**I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 15 November 2019.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the adjudicator about the admission arrangements for the six King Edward VI schools (the KEVI schools), each of which is a selective secondary academy for children aged 11 to 18. Of these Camp Hill School for Boys (Camp Hill Boys), Handsworth Grammar School for Boys (Handsworth Boys) and Aston School (Aston) admit only boys. Camp Hill School for Girls (Camp Hill Girls) and Handsworth School for Girls

(Handsworth Girls) admit only girls and Five Ways School (Five Ways) admits both boys and girls. The objectors are both members of the public. One objector has objected to the arrangements of all six of the schools and one to the arrangements of Camp Hill Boys only.

2. The local authority for the area in which the schools are located is Birmingham City Council (the Council) which is a party to the objections. The other parties to the objections are the objector or objectors in each case and the admission authority which is the King Edward VI Academy Trust (the Trust) along with the Headteachers and Chairs of Local Governing Boards for Camp Hill Boys, Camp Hill Girls, Aston, Five Ways, Handsworth Boys and Handsworth Girls.

3. Since these objections raise similar issues, primarily in respect of the changes to the admission arrangements for 2020 from those for previous years, with the introduction of catchment areas, I have decided to deal with the objections to the admission arrangements for six schools from one objector (ADA3547 to ADA3552) and the objection to those for one school from another objector (ADA3541) together.

## **Jurisdiction**

4. The terms of the Academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the admission authority on that basis. I am satisfied that the admission arrangements were determined at the latest on 18 March 2019 when the decision of the Directors of the admission authority by electronic vote was recorded in the minutes of a Directors' meeting. Although the deadline for determining admission arrangements was 28 February 2019, I do not find that any prejudice arose as a result of a late determination. The objectors submitted the objections to these determined arrangements by the deadline of 15 May 2019. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and are within my jurisdiction.

## **Procedure**

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

6. The documents I have considered in reaching my decision include:

- a. the objectors' forms of objection dated 16 April 2019 and 30 April 2019 and supporting documents;
- b. the comments of the admission authority on the objection and supporting documents;
- c. maps of the area;
- d. details of the consultation on the arrangements; and
- e. a copy of the determined arrangements for each school.

## **The Objection**

7. In relation to the admission arrangements for 2020 the following matters are raised in

the objections and are within my jurisdiction:

- a. Whether the consultation was compliant with the provisions of the Code and/or the relevant statute and common law.
- b. Whether the catchment areas are compliant with the provisions of the Code and the law relating to admissions, including issues of unfair disadvantage and compliance with equalities law.
- c. Whether the catchment areas are fair and/or reasonable in that some children are in the catchment area for a school which is not their nearest King Edward VI grammar school.
- d. The disparity in the provision of places for boys and for girls.

8. One objector also raised a concern about whether the admission authority had properly carried out an equality impact assessment in the context of the changes it subsequently made to the arrangements. While statutory duties arise in this respect the consideration of whether these were fulfilled and the consequences of any non-compliance are, in my view, outside my jurisdiction. Nevertheless, I have considered the points raised below. Equality issues in relation to the admission arrangements themselves are within jurisdiction and are considered below.

## Other Matters

9. Having considered the arrangements as a whole I find that the matters set out below also do not, or may not, conform with requirements. I have accordingly decided to exercise my powers under section 88I of the Act to consider the arrangements as a whole and identified the following matters.

- a. The admission 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.
- b. The definition of "sibling" refers to siblings "related by a parent's marriage" which may not conform with the provisions of Paragraph 1.9 f) of the Code.

## Background

10. Each KEVI school is designated as a grammar school by order made by the Secretary of State under Section 104 of the Act. The published admission number (PAN) for entry to each school in September 2020 for Year 7 and the number deemed to constitute 25 per cent of the PAN (for the purposes of criterion 3 of the oversubscription criteria, relating to pupil premium) is as follows:

School	PAN	25%
Camp Hill Boys	120	30
Camp Hill Girls	150	38
Aston	140	35
Five Ways	180	45
Handsworth Boys	150	38
Handsworth Girls	160	40

11. Entrance to each of the schools is determined by a child's performance in an

entrance test. The schools are all part of a consortium of schools, along with five other grammar schools in Warwickshire and two other grammar schools in Birmingham, which use a common entrance test (the Entrance Test).

12. The Entrance Test consists of standardised tests of verbal, numerical and non-verbal reasoning ability. Each child taking the Entrance Test will be awarded a combined score, standardised according to the age of the pupil. For admission to any of the schools all children must attain at least the "qualifying score". Admission under criterion 4 depends on a child attaining the higher "priority score". The "qualifying score" and the "priority score" are to be published prior to the date of the entrance test.

13. The oversubscription criteria are the same for each school save that the catchment areas differ and that the definition of siblings in the case of Camp Hill Boys and Camp Hill Girls and in the case of Handsworth Boys and Handsworth Girls includes older siblings (of the opposite sex) attending the twin school. In category 3 the number of places which constitute 25 per cent of PAN will, of course, vary according to the PAN for each school as set out in the table above. The oversubscription criteria in so far as they are common to all the KEVI schools are as follows:

*"Applicants are required to sit an entrance test and must achieve the qualifying score in order to be eligible for admission to the school. Where the number of eligible applications for admission exceeds the number of places available at the school, places are offered as follows:*

*1. Looked After Children / Previously Looked After Children who achieve the qualifying score. Applicants in this category will be ranked by test score and then by distance from the school.*

*2. Children attracting the Pupil Premium who achieve the qualifying score and live within the school catchment area. Applicants in this category will be ranked by distance from the school.*

*3. If fewer than [xx] places (25% of the PAN) are filled by applicants in category 2, offers will be made to children attracting the Pupil Premium who achieve the qualifying score and live outside the catchment area, until a total of [xx] children attracting the Pupil Premium have been offered. If [xx] or more places are filled by applicants in category 2, there will be no offers made from this category. Applicants in this category will be ranked by test score. Where scores are equal, priority will be given to those with a sibling at the school; then by distance from the school.*

*4. Applicants who achieve the priority score and live within the school catchment area. Applicants in this category will be given priority if they have an older sibling at the school; then ranked by distance from the school.*

*5. Applicants achieving the qualifying score. Applicants in this category will be ranked by test score. Where scores are equal, priority will be given to those with a sibling at the school; then ranked by distance from the school."*

14. All of the KEVI schools are heavily oversubscribed, with many more applicants who meet the qualifying score than there are places available.

## **Consideration of Case**

**Whether the consultation was compliant with the provisions of the Code and/or relevant statute and common law.**

15. The admission arrangements for 2020 have changed significantly from those in preceding years. The number of children given priority because they are entitled to pupil premium has increased from 20 per cent to 25 per cent (2020 criteria 3 and 4). The schools

have introduced catchment areas (2020 criteria 2 and 4). The "cut off" scores (the "qualifying score" and the "priority score" for 2020) have been standardised across all six schools, having previously differed from school to school.

16. Paragraphs 1.42 and 1.43 of the Code and paragraphs 12 to 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) set out the requirement for consultation, who is to be consulted and the manner of consultation. This is set out in paragraph 1.42 of the Code as follows "*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year*". There are some changes for which consultation is not required but these do not concern me here as it is not in dispute that the introduction of the changes outlined above required consultation.

17. The Code sets out the requirements for consultation in paragraph 1.43-1.44 as follows:

*"1.43 For admission arrangements determined in 2015 for entry in September 2016, consultation **must** be for a minimum of 8 weeks and **must** be completed by **1 March 2015**. For all subsequent years, consultation **must** last for a minimum of 6 weeks and **must** take place between **1 October** and **31 January** in the determination year.*

*1.44 admission authorities **must** consult with:*

- a) parents of children between the ages of two and eighteen;*
- b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;*
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);*
- d) whichever of the governing body and the local authority who are not the admission authority;*
- e) any adjoining neighbouring local authorities where the admission authority is the local authority; and*
- f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.*

*1.45 For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought. Admission authorities **must** also send upon request a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals."*

18. The consultation was conducted by the Council on behalf of the admission authority. This is common practice. The responsibility for ensuring that the consultation is compliant with the requirements of the Code and the law relating to admissions and consultations, remains that of the admission authority.

19. It is submitted that insufficient modelling data was provided in the consultation to support the choice of catchment areas. The consultation set out clearly the proposed catchment areas and explained that they had been "*designed to ensure that there is a strong chance that children living within them would be offered a place at the catchment area school, provided that they meet the qualifying (Pupil Premium) or priority (non Pupil Premium) score. This is based on application patterns over recent years*". I consider the disparity of places for boys and girls below. No data has been provided to me to

demonstrate that the selection of these areas otherwise discriminates against anyone with a protected characteristic under the Equality Act 2010. I do not find that the Trust were obliged to provide statistical modelling as part of the consultation process. I find that sufficient information was provided as part of the consultation to allow informed comments to be made in response.

20. I find that in all respects the consultation complied sufficiently with the requirements of the Code.

### **Changes to the proposals following the consultation.**

21. Any consultation would be meaningless if changes could not be made to proposals consulted on following the consultation. There is a specific requirement in relation to admission arrangements that it is the proposed arrangements which are to be consulted on rather than, say, a range of options. This requirement is set out in the Code, most clearly at paragraph 1.42. However, there is no reason why an admission authority should not revise those proposed arrangements in response to consultation and then determine arrangements which differ to some degree from those consulted on. As I understand the situation, the catchment areas set out in the proposals consulted on collectively covered all the wards within the area of Birmingham City Council. Some of these wards are more deprived than others. Formerly, when the oversubscription criteria did not include catchment areas, pupils were drawn from a wider area than Birmingham. Following consultation, the admission authority, having received some 71 responses seeking the inclusion of deprived wards outside the Birmingham area, added a number of wards to the catchment areas in order to include some deprived wards outside Birmingham. These additional wards together comprise two blocks of wards adjoining the Birmingham area, seven are in Sandwell to the west and four in Solihull to the east. These changes represent alterations to the catchment areas in response to the consultation. They are not fundamental changes such that further consultation would be required. As the Code states "It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances". Provided the choice of catchment areas does not give rise to a breach of the provisions of the Code (or of the law relating to admissions) it is for the admission authority to decide on the boundaries of a school's catchment area. I do not uphold the objection on this point.

### **The rationale**

22. It is submitted that the stated rationale of a reduction in travel distances is not achieved by the introduction of catchment areas. I am told by one objector that the changes mean that a child living in some locations will not live within the catchment area for his or her nearest KEVI school but within the catchment area for another, more distant school. The objector states that this undermines one of the stated aims, being easy access to a local grammar school. The admission authority accept that this may be so for a limited number of specific addresses. It is possible to construct a system of interlocking school catchment areas in which each address falls into the catchment area of the school to which it is the nearest. However, this is very often not sensible as it can take no account of whether the catchment areas thus created have many more or many fewer children (who have qualified for a place at the school in the case of selective schools) in them than they have space for. In reality, catchment areas vary in their shape and size and some addresses will fall into the catchment of a school other than the nearest. This does not of itself create a breach of the Code as the Code does not require catchment areas to be designed on the basis of capturing each address for which the school concerned is the nearest. Paragraph 1.14 provides that catchment areas **must** be "*reasonable and clearly defined*". In this case, the Trust has defined the catchments clearly and has given a reason

for their design which I have set out above. There is also no requirement that children should have priority for the school (irrespective of its type) which is the nearest to their home. Under the proposed arrangements, all children living in Birmingham and some areas outside the city will have priority for a place at one of the grammar schools. Moreover, it is, in my view, common sense that where a school is highly oversubscribed, as all of these schools are, that if priority is given to applicants living in catchment areas which surround the schools then many of those admitted will live closer to the school. The schools' new arrangements do give priority to those who live in catchment areas and I find that this is in general likely to reduce travel distances. I find that this aspect of the rationale is met by the 2020 arrangements and that the catchment areas do not breach the provisions of the Code or the law relating to admissions.

### **Equality duties.**

23. The Code refers to the duty in section 149 of the Equality Act 2010 in the Appendix as follows:

*"7. Admission authorities are also subject to the Public Sector Equality Duty and therefore **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.*

*8. The protected characteristics for these purposes are: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.*

*9. Further guidance on the Public Sector Equality Duty is available on the website of the Government Equalities Office and from the Equality and Human Rights Commission."*

24. The Code does not specify any actions that an admission authority are required to undertake in order to fulfil this duty. There is no specified requirement to carry out an Equality Impact Assessment before changing admission arrangements. I consider whether the admission arrangements themselves are compliant with the provisions of the Code and the Equality Act 2010 below.

25. The focus of the changes was on the aim of improving access for disadvantaged students. This involved an increase in the percentage of pupils eligible for pupil premium from 20 per cent to 25 per cent and the additional inclusion of some deprived wards outside Birmingham in the catchment areas. It is clear from the documentation provided by the admission authority that careful modelling was undertaken to consider the impact of including these additional wards on admissions to the schools. Save for the imbalance of places for boys and girls, which I consider below, I have not been provided with evidence which suggests that group of people with a protected characteristic have been unfairly disadvantaged by the introduction of catchment areas or the increase in the proportion of children eligible for pupil premium given priority. One objector refers to discrimination on grounds of race. I have no been provided with any evidence of this. I do not find that there is any discrimination on grounds of race. I do not find that the admission authority is in breach of its duty under section 149 of the Equality Act 2010.

26. Were I to find that there was some failure on the part of the admission authority with regard to its duty under section 149 of the Equality Act 2010 and were I to uphold the objection on that point, that decision would be binding on the admission authority and "*the admission authority **must**, where necessary, revise their admission arrangements to give effect to the Adjudicator's decision*" (paragraph 3.1 of the Code). I have no power to set

aside the determination decision and, even if I could do so the effect would be that there would be no admission arrangements for 2020. Previous admission arrangements are only for the year in question. The admission arrangements for 2019 do not continue until changed, they are made for 2019 only. New arrangements must be determined for each year. Upholding the objection on this point would not mean that the admission authority would be bound to revise their admission arrangements in their entirety, still less that they would be bound to revert to the admission arrangements for 2019.

**Whether the catchment areas are compliant with the provisions of the Code and the law relating to admissions, including issues of unfair disadvantage and compliance with equalities law.**

27. Section 104 of the Act provides for the designation of schools as grammar schools where *"all (or substantially all) of its pupils [are] to be selected by reference to general ability, with a view to admitting only pupils of high ability"*. Section 104(2) states that in *"deciding whether a school's admission arrangements fall within [the criteria set out above] any such additional criteria as are mentioned in section 86(9) shall be disregarded"*. The additional criteria mentioned in S86(9) are *"additional criteria where the number of children in a relevant age group who are assessed to be of requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group"*. The application of additional criteria, such as catchment areas, to determine admissions where too many applicants have the necessary ability does not preclude designation as a grammar school. To put it another way selection by reference to general ability does not necessarily mean selecting the most able. It is perfectly lawful for a grammar school to set an ability threshold and then decide who among those who have met that threshold are to be admitted on the basis of criteria which are not related to ability. Many grammar schools take this approach. Consequently I do not uphold the objection on this point.

28. The Trust have set out their intention in introducing the catchment areas. They wish *"to enhance our historic mission of providing high-quality education for the children of Birmingham, regardless of background"*. In pursuit of this aim they wish to improve accessibility for local pupils eligible for pupil premium. The 2020 admission arrangements achieve this by giving a high priority to this group of pupils. The effect of this is likely to be that every child eligible for pupil premium who achieves the qualifying score and lives within the catchment of one of the schools will be able to attend his or her catchment grammar school. I also note that by equalising the required scores between schools, pupils will be more likely to attend a school nearer their home, so reducing transport costs, which is particularly beneficial for less well off families. I find that these goals are both rational and lawful.

29. One of the objectors has set out in some detail the ratio of places for boys and places for girls per ward within each school's catchment area. The objector submits that this demonstrates discrimination as it creates an unfair disadvantage for girls seeking a grammar school place. I accept that the number of places for boys per ward and the number of places for girls per ward differs. On average across the six schools there are 6.55 places per ward for boys and 5.9 places for girls. I do not consider that places per ward is the relevant issue. I consider that two aspects are relevant. Firstly, the overall number of places at grammar schools available to boys and to girls. Secondly, the number of places available for boys and for girls from within specific catchment areas.

30. Five out of the six of the KEVI schools are single sex, three are boys only and two are girls only. Overall there are 500 places for boys and 400 for girls. This historic imbalance cannot be addressed in full by the admission arrangements, only by fundamental changes such as the expansion of one or more schools and it is not for me to suggest that



either of those actions would be appropriate. The 2020 arrangements have kept the same PAN for five out of the six schools. For one school, Aston, which admits only boys, the PAN has increased from 120 in 2019 to 140 in 2020. This has increased the discrepancy between the places available for boys and the places available for girls. However, I note that the admission authority have sought to expand the intake at Handsworth Girls by way of a bid for the Department for Education's Selective Schools Expansion Fund. If successful this would go some way to redressing the balance.

31. I made the following point in a letter to the admission authority dated 20 August 2019 (and copied to all the parties). Overall there are (assuming Five Ways School admits roughly equal numbers of boys and girls) 500 places for boys and 400 places for girls at the six schools. The catchment area for Handsworth School for Girls (Published Admission Number (PAN) 160) covers the same area as the combined catchment area for Handsworth Grammar School for Boys and Aston School (boys only), which together have a PAN of 290. This appears to offer a lower proportion of places to girls resident in the Handsworth School for Girls catchment area (160/450 or 35 per cent of the total) than is reflected in the overall provision for girls (400/900 or 44 per cent of the total).

32. This disparity will also be addressed in part if the PAN for Handsworth Girls is increased. The admission authority point out that the catchment area for Handsworth Girls includes Sutton Coldfield. Sutton Coldfield Grammar School for Girls also provides grammar school places for girls in this area. The admission authority say, and I accept, that historically the majority of applicants for Handsworth Girls living in that area are offered places at Sutton Coldfield Grammar School for Girls, for which a higher preference has been expressed.

33. Changes in PAN are dependant on the physical capacity of each school. The PAN cannot be increased if a school does not have the physical capacity to accommodate the additional pupils.

34. I do not find that the introduction of catchment areas has, overall, increased the disparity between grammar school places available in the area for boys and for girls. As I say above this cannot be fully addressed save by changes which go beyond the admission arrangements and so lie outside my jurisdiction.

35. I find that the catchment areas in the 2020 admission criteria do not give rise to unlawful discrimination and comply in all other respects with the provisions of the Code and the law relating to school admissions.

36. One objector also submits that the introduction of catchment areas may disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group. I have dealt with race discrimination above. I have not been provided with any evidence that there is any unfair disadvantage to a child from a particular social group and I find that no such unfair disadvantage arises.

## Other Matters

**The admission 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.**

37. Paragraph 2.17 of the Code states "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group". The Trust point out that when potential applicants register for the Entrance Test they are advised to contact the Admissions Office if they are seeking admission outside the

normal age group. The Trust have offered to make this clear by amending the admission arrangements. I find that this is not clear in the admission arrangements as they stand and that what is required is some amendment to make clear the whole process, including how the provisions of paragraphs 2.17 to 2.17B will operate.

**The definition of "sibling" refers to siblings "related by a parent's marriage" which may not conform with the provisions of Paragraph 1.9 f) of the Code.**

38. The Trust have offered to amend the admission arrangements to adopt the Local Authority's definition of "sibling", to include the additional wording "Unrelated children living at the same address, whose parents are living as partners, are also considered to be siblings. Children not adopted or fostered or related by a parents' marriage or with one natural parent in common, who are brought together as a family by a same sex civil partnership and who are living at the same address, are also considered to be siblings."

39. I am satisfied that the amended wording is compliant with the provisions of the Code and do not need to make any finding in relation to this point.

## Determination

40. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2020 determined by the King Edward VI Academy Trust Birmingham (the admission authority) for each of the six Birmingham Grammar schools, being:

Camp Hill School for Boys, Birmingham;  
Camp Hill School for Girls, Birmingham;  
Aston School, Birmingham;  
Five Ways School, Birmingham;  
Handsworth Grammar School for Boys, Birmingham; and  
Handsworth School for Girls, Birmingham.

41. I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

42. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 15 November 2019.

Dated: 18 October 2019

Signed:

Schools Adjudicator: Tom Brooke