



Determination

Case reference:	ADA3535
Objector:	A parent
Admission authority:	The trust for The Henrietta Barnett School, Barnet
Date of decision:	13 November 2019

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 The Henrietta Barnett School, in the London Borough of Barnet.

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 28 February 2020.

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 The Henrietta Barnett School (the school), an academy grammar school for girls aged 11-18 for September 2020. The objection is to the clarity of the arrangements and in particular to the division into three bands of candidates wishing to be admitted to the school based on whether they meet "*the standard required to be eligible for consideration*". The objector complains that this process is not explained in the arrangements and that this means that parents cannot get a clear understanding of how to use their preferences when applying for a school place for their daughter.

2. The local authority (LA) for the area in which the school is located is the London Borough of Barnet. The LA is a party to this objection. The other parties to the objection are the trust for the school, which is its admission authority, 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 trust for the school, which is its admission authority, on that basis. The governing board determined the arrangements on 4 April 2019, which is after the deadline of 28 February 2019 for them to do so, but before the objector submitted his objection to them on 16 April 2019. Although the arrangements were determined late by the school, I have nevertheless decided to consider the objection to them, since the objector would not have known that this was the case when he saw them, and since his objection was within the deadline of 15 May 2019 for objections to be made to determined admission arrangements. The objector asked to have his identity kept from the other parties and 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. However, he decided subsequently to forego this anonymity from the other parties in order to attend a meeting which I convened. 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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 16 April 2019 and subsequent correspondence, and
- d. the school's response to the objection, and subsequent correspondence;
- e. the local authority's composite prospectus for admissions to secondary schools for 2020;
- f. a map of the area identifying relevant schools;
- g. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it.

I have also taken account of the contents of a meeting with the parties which I held at the school on 31 October 2019.

The Objection

6. The objector's form of objection referred to the school's admission arrangements for September 2019 and to those for September 2020, complaining that both were in breach of the Code for the same reason. The deadline for submitting objections to a school's admission arrangements for September 2019 was 15 May 2018, and the objector was therefore informed that the adjudicator would consider his objection in relation to the admission arrangements for September 2020.

7. The objector cited paragraph 14 of the Code, which says 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."*

He said that the arrangements failed to be clear, or easy to understand.

8. The objector explained why he believed this, in the following terms:

"In the 'Entrance test: Outcomes' section, the policy refers to 'standard required to be eligible for consideration', but fails to provide any explanation of how the school determines the 'required standard'.

In the same section, the policy gives the impression that candidates who 'meet the standard required' will be allocated two bands (band A & B) but fails to provide any explanation on the difference between the bands and how they will impact the admission prospects of the candidates.

Further, in the same section, the policy contradicts the above 'standard required to be eligible' by saying that even if the candidates meet the 'standard', it is not a guarantee that a place will be offered."

He continued:

"Considering that a clear understanding of how the school determines the 'standard required' and how it divides candidates into three bands (A, B & C) is pivotal in parents decision-making process while filling CAF [Common Application Form], the missing explanation stops parents from getting a clear understanding of the same and has the potential to inhibit their decision making process."

9. In subsequent correspondence, following the school's response to the objection, (which I shall come to below), the objector outlined a hypothetical scenario in which the scores of a number of candidates were given along with the cut-off marks for gaining admission to the school in previous years. The objector invited the school and the

adjudicator to populate tables showing the allocation of the candidates to bands A, B and C, based on the scores and cut-off marks I have described above. The implication was that it would not be possible to do so using the school's determined arrangements.

Background

10. The school converted to academy status in 2012. Entry to Year 7 (Y7) is based on academic selection. The school is very heavily oversubscribed. For admission in September 2018, there were 2944 applications to take the school's selection test. The school has a published admission number (PAN) of 100.

11. The school's arrangements for selection for Y7 for 2020 involve testing carried out in two stages. The first tests were taken in September 2019 and the girls with the top 300 scores identified. All those with scores below the top 300 were informed of this before the deadline for the submission of the CAF and could at that point request their daughter's standardised score and the cut off score for the top 300 candidates. The school has told me that if the parents of these children subsequently nevertheless choose to apply for a place at the school, that application would have to be considered, as would an application for a girl who has not taken the selection tests at all.

12. Those with scores within the top 300 were invited back to take the second tests in October. The arrangements make this process clear and include the following:

"The first round of tests is used to determine which candidates are, and which are not, of the necessary academic standard to be considered for a place."

13. The arrangements explain that the results of the two rounds of testing are combined to determine a final rank order of the remaining candidates (who may be fewer than 300, since not all may take the second test) which is submitted to the local authority *"who will offer the highest ranked applicants (sic) in accordance with parental preference."*

14. There then follows a section in the arrangements under the heading *"Entrance tests: Outcomes"* which explains that the school will write in October to parents of the children who have taken the second round of tests *"stating one of the following"*:

- (i) *The candidate has achieved a score which meets the standard required to be eligible for consideration for admission to the School so it is possible that they may be offered a place (Band A and Band B candidates),*
- (ii) *The candidate has achieved a score which makes it unlikely that they will be offered a place at the School (Band C candidates)."*

The section is completed by two paragraphs, which read:

"We must emphasise that meeting the standard required is not a guarantee that a place at the School will be offered. The Published Admission Number for Year 7 is 100, but it is likely that more than this number will meet the standard required to be eligible to be considered should they choose to apply."

After places have been allocated in accordance with the oversubscription criteria below, the remaining places will be allocated by the Local Authority on National Offer Day on the basis of the ranking provided and in accordance with parental preference as indicated on the Common Application Form (CAF).“

15. The arrangements state that children whose Education, Health and Care Plan names the school will be admitted, and then sets out the following oversubscription criteria:

- (i) Looked after and previously looked after children (as defined) who *“sit the second round of tests and are ranked in the top 300 applicants in the tests.”*
- (ii) Girls who are eligible for the pupil premium *“providing that the candidate is capable of following The Henrietta Barnett School education”* defined as being those who *“sit the second round test and are ranked in the top 300 applicants in the tests.”*
- (iii) Candidates who live within 3 miles of the school. The same condition is applied as for oversubscription criteria (i) and (ii). The arrangements at this point describe how the distance between the child’s home and the school is measured but give no other indication of how priority among this group might be afforded if there are more girls than remaining available places.
- (iv) All remaining candidates in rank score order, with distance being used as a tie-breaker.

16. These arrangements differ from those used for September 2019 because of the inclusion of oversubscription criterion (iii), which is entirely new, and because the arrangements no longer limit the number of places for which priority is afforded to girls eligible for the pupil premium. In 2019, this had been in respect of 30 places, and the third and final oversubscription criterion had been *“All remaining candidates in rank score order “*.

Consideration of Case

17. The school provided me with details of the consultation which it had carried out prior to determining its admission arrangements for September 2020. It consulted on proposals to change two features of the arrangements which were used for admissions in September 2019. These were to introduce a priority for girls living within a three mile radius of the school, and to cease to limit to 30 the number of girls eligible for the pupil premium who were given priority over all others except those who were looked after or previously looked after.

18. The school also responded at length to the objection. I think it is helpful to say at this point that the arrangements are clear that those who do not achieve a test result in the top 300 candidates in the first round of tests would not be admitted should they subsequently apply for a place at the school. I should also say that this is in conformity with the requirements relating to admissions. Grammar schools can set a threshold of ability below which a child will not be considered and I see no reason why this cannot be defined in

terms of the ability of a defined number of candidates when their scores are ranked, rather than as a specific score. This is what the school does, and it is evident that the cut-off score will therefore vary somewhat from year to year.

19. The issue mainly concerns the clarity of the arrangements as they relate to the treatment of the scores of those who go forward to the second round of tests. In the light of this I asked the school to explain how the designation of the approximately 300 pupils who have taken the second round of tests into Bands A, B and C takes place, and the relevance of these designations to the allocation of places under the school's oversubscription criteria. I was concerned that it did not seem apparent from the arrangements themselves what was meant when the school referred to "oversubscription". That is, I could not be sure which girls were included in the group that would give rise to the oversubscription if their parents applied for a place, because I could not be sure which groups would continue to have their application considered. Clearly, this would have to be those from Bands A,B and C whose parents had decided to apply for a place at the school, but whether this would be all these girls or not was not evident, particularly in view of the use of the phrase "the standard required" elsewhere in the arrangements.

20. For example, the arrangements state that:

"The first round of Tests is used to determine which candidates are, and which are not, of the necessary academic standard to be considered for a place."

This clearly implied to me (and therefore I assumed to others such as parents reading the arrangements) that those continuing beyond the first round are all considered to be of the necessary academic standard for entry.

21. At the same time, the arrangements give no indication as to the distinction between Bands A and B, since they only say that both have met "*the standard required*" and that both "*may*" be offered a place. The descriptor for Band C, by contrast, does not refer to meeting the "*standard required*" but does say that it is "unlikely" that those in Band C will be offered a place. The two sentences which follow the description of the three Bands are concerned with the likelihood of a girl gaining a place, and both use the term "*the standard required*", which, as noted above, appears only in the description of Bands A and B.

22. Taking all this together, I think that it would be unclear to a parent whether or not a child in Band C had or had not in fact reached the required standard and therefore whether an application for a place would continue to be considered under the oversubscription criteria. This is part of the objector's complaint, which I therefore uphold. There is a further direct consequence of this lack of clarity for the interplay between the banding allocations and some of the oversubscription criteria which are present in the 2020 arrangements, and I shall come to this later.

23. The school began its explanation of how the designation of the approximately 300 girls who have taken the second round of tests into the three Bands affects the likelihood of them gaining a place by stating that :

“The school offers places based on the candidate’s rank in the entrance exams. There is no pass mark as there is in some grammar schools.”

This is a helpful statement for anyone wishing to understand the arrangements, since it is the underlying principle used by the school. However, it appears nowhere in the arrangements.

24. The school went on to tell me that the purpose of the allocation of candidates to the three Bands is to *“give parents of candidates some idea of how likely they are to be awarded a place so they can decide whether to apply on their local authority CAF form.”* Paragraph 1.32 c) of the Code says that:

*“Admission authorities **must**:*

c) take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October so as to allow parents time to make an informed choice of school – while making clear that this does not equate to the guarantee of a selective place.”

That is, this part of the admission arrangements explains what the school does to comply with this requirement in the Code. But since the arrangements do not say, explicitly, that this is the reason for the allocation of children into Bands and since as I have explained above, the impression is given by the arrangements that the Bands do have a bearing on the admissions process, a parent reading them is likely in my view to conclude that they cannot understand fully how places at the school are allocated. Readers of the arrangements are not told in any clear way that this is a distinct process of giving information to parents, and not something used by the school when applying its oversubscription criteria. Neither do the arrangements say how the Bands are created.

25. Based on the school’s explanations of what it does, and a careful reading of the arrangements in full, including the section which refers to Bands A, B and C, my understanding is that:

- (i) All those wishing to be considered take the first round of tests, and the 300 highest-scoring girls are identified. All other girls are effectively eliminated, since they are not invited to take the second round tests. In practice, not all of the 300 take the second round of tests.
- (ii) The second round tests are combined with the first round test scores, and the rank order of scores is used to give parents feedback on the likelihood of their daughter being successful, should they decide to apply for a place at the school. It is also this rank order among those of the remaining approximately 300 who do apply that is used in the relevant oversubscription criterion to determine which girls are admitted.
- (iii) After the admission of all children with an EHC Plan which names the school, oversubscription criteria state that priority is given to looked after

and previously looked after children and girls eligible for the pupil premium provided, for both groups, that they were in the original 300 and have taken the second round of tests. Places are then allocated to girls living within 3 miles of the school in rank order of their combined scores and any remaining places go to other girls, also in rank order of their combined scores.

26. There are a number of things to say at this point. First, although the arrangements do not define in advance a score in the first round of tests which will determine eligibility, they do in practice use a qualifying score, since the score of the girl ranked 300th in any given year acts as the cut-off mark. At the same time, while the arrangements use ranked scores within the oversubscription criteria, these are not used in isolation, since priority is also given to those living within three miles of the school. Paragraph 1.20 of the Code says, in relation to Grammar schools that:

*“Where admission arrangements are not based solely on highest scores in a selection test, the admission authority **must** give priority in its oversubscription criteria to all looked after children and previously looked after children who meet the pre-set standards of the ability test.”*

The school’s arrangements do not do this since they require this group of girls both to have been ranked in the top 300 taking the first test (and so to meet the pre-set standard), but also to have taken the second round of tests. I therefore asked the school for its comments on my concern that this may breach what the Code requires. It replied that it has always admitted all looked after girls who have been in the top 300 and that it will amend its arrangements to make this clear, while inviting them to sit the second round of tests in order to have further information which will help support their education. The school has agreed to ensure that the arrangements make clear that the admission of this group is contingent only on a top 300 ranking. However, as determined, the arrangements are in breach of what paragraph 1.20 of the Code requires.

27. Second, it is evident that more than one girl may achieve the same score as the 300th ranked candidate in the first round of tests, and that therefore it may be necessary to identify a greater number than 300 who are invited to take part in the second round of testing. The school may alternatively need to identify slightly fewer than 300 candidates in such a situation. The arrangements are however silent on this point and I therefore asked the school to comment on my concern that this may make them unclear and so in breach of paragraph 14 of the Code. The school replied that it lists the scores of those sitting the first round of tests to two decimal places, and that it has never occurred that two girls had the same score. If this ever happened in the future, all girls with the same score would be invited to take the second round of tests. The school has said that it will make this clear when amending its arrangements. However, as determined, the arrangements are insufficiently clear and so fail to comply what paragraph 14 of the Code requires.

28. Third, the arrangements give priority to girls living within three miles of the school in rank order of their combined scores in the two rounds of tests. There is no limit on the

number of places allocated under this oversubscription criterion, and so it is clearly possible for at least some girls who have been placed in Band C by the school to be admitted, depending on the number in total living within this area who were in the original 300 and the number of them whose parents decided to apply for a place at the school. The arrangements are therefore unclear because, as I have said, they are unclear as to whether girls in Band C are considered under the oversubscription criteria.

29. When the school explained exactly how the three Bands are created, and it said that:

“The way the School has split the candidates into the three groups in previous years is as follows: candidates in Band A were those with a score that would have given them a place in at least one of the previous three years. Band B were candidates with a score that may have gained them a place in at least one of the three previous years. Band C candidates would not have been offered a place in the last three years” (school’s own emphasis).

30. This explanation is not given in the arrangements and its omission is part of the objector’s complaint about their clarity. When it responded to the objection, the school told me that it considered its approach to be clear and that parents would be able to understand the arrangements and how places are allocated on the basis of the “*simpler*” explanation which is contained within them in terms of the likelihood of admission from the different Bands. I have already considered the slightly different point that what the arrangements do say is insufficiently clear. The point at issue here is whether, in order to be clear, the arrangements need to explain how girls are actually allocated to the different Bands. The school was able to explain to me simply and concisely the process which is used for the allocation into Bands, and my view is that if the arrangements had contained this explanation they would have been transparently clear as to the meaning and effect of the allocation into the three Bands. I uphold the part of the objection that the failure to explain how the Bands are created renders the arrangements unclear and in breach of paragraph 14 of the Code.

31. While the way in which girls are allocated to the three Bands is not explained in the arrangements, the fact that the school will have used this methodology in relation to the admission process for September 2020 is of potential concern. Any reference to scores which would or would not have gained a candidate a place in previous years has been rendered obsolete by the introduction of the new priority given to girls who live close to the school for admissions in 2020. The scores which will in practice achieve a place may be entirely different in 2020 compared with previous years. I was therefore relieved to be told by the school that it had recognised that the designation of the three Bands for 2020 by reference to what has happened in recent years under different admission arrangements could give misleading feedback to parents. It has provided me with a copy of the wording used in the letters sent to parents of the girls who have taken the second round of testing in October 2019, and this does at least add to the information about previous years by saying that if candidates live within three miles of the school they will be given priority in 2020 and will be admitted if there are sufficient places. This includes those parents whose daughters are categorised as Band C. However although as I have said the designation of the three

Bands does not directly influence decisions as to which girls are admitted to the school, it is material in respect of parents' decisions about making an application for a place and forms part of the admission arrangements. The school will need to consider carefully how information about test performance is conveyed to parents in future admission rounds.

32. Since the arrangements refer to the achievement (or non-achievement) of a standard of eligibility in connection with the designation of the Bands, it is understandable that a person, such as the objector, when reading the arrangements might easily think, as I have said, that the Bands have a direct relevance to whether children are admitted to the school. The objector was therefore further confused because the arrangements say, in terms, that *"meeting the standard required is not a guarantee that a place at the school will be offered"*, and so he regarded this as a contradiction.

33. The fact is that the designation of the Bands in itself has no bearing whatsoever in the allocation of places, other than to the extent that it is a reflection of the score which the child has achieved during testing, which is relevant to whether a child is admitted under the relevant oversubscription criterion. It is therefore not a contradiction that girls can achieve *"the standard required"* and yet not achieve a place at the school and so I do not uphold the objector's complaint on this point.

34. The school could of course choose to say that the highest ranked 300 girls (or a slightly different number) after the first round of testing are those which are deemed to have met the standard required for a grammar school education, but nowhere does it do so clearly. Rather, sometimes it appears to attach this designation to the approximately 300 girls (as I note at paragraph 12 above) and at others only to some of them, as we have seen when describing the three bands. The objector complained that this lack of a definition *"the standard required"* was a further reason for the arrangements failing to comply with the requirement as to their clarity in paragraph 14 of the Code. I uphold this aspect of the objection.

Summary of Findings

35. In summary, my view is that the arrangements fail to comply with the requirement in paragraph 14 of the Code that they be clear and that they allow parents to understand easily how places are allocated, because:

- (i) they do not clearly explain the status of all the 300 girls invited to take the second round of testing because it is unclear whether those who are told that they are in Band C are given further consideration;
- (ii) they do not clearly explain the purpose of the designation of three bands of candidates who take the second round of tests, or how these bands are created, and
- (iii) they use the phrase *"the standard required"* without definition and in statements that will as a result be unclear to parents reading the arrangements.

I have therefore upheld those parts of the objection which complain about these matters.

36. I am also of the view that the arrangements fail to meet the requirements of the Code:

- (i) in paragraph 1.20 concerning the admission of looked after and previously looked after girls, and
- (ii) in paragraph 14 because they are not clear concerning the identification of the highest performing 300 girls in the first round of selection testing.

37. I have not upheld that part of the objection which concerned the fact that under the arrangements girls can be said to have achieved the standard required for entry yet not be offered a place.

38. The process of admissions for September 2020 is already well advanced and I am aware of a further objection to the school's admission arrangements which may or may not result in a requirement that the school respond to matters other than those which I have dealt with here by making revisions to its arrangements. I therefore consider it appropriate for the school to await the outcome of that objection before revising its arrangements in line with this determination. That revision would, however, be no later than 28 February 2020.

Determination

39. 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 The Henrietta Barnett School, in the London Borough of Barnet.

40. 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 28 February 2020.

Dated: 13 November 2019

Signed:

Schools Adjudicator: Dr Bryan Slater