



Office of
the Schools
Adjudicator

Determination

Case reference: VAR1897

Admission authority: The governing board for St Saviour's and St Olave's School, Southwark

Date of decision: 16 October 2020

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for St Saviour's and St Olave's School for September 2021.

I determine that the 18 places for girls of high ability will become additional open places.

The referral

1. The board of governors of St Saviour's and St Olave's School (the school) has referred a proposal for a variation to the admission arrangements for September 2021 for the school to the Office of the Schools Adjudicator (OSA). The school is a partially selective voluntary aided school for girls aged 11 to 18 in Southwark, London. The school has a Church of England character.
2. In the light of the Covid-19 pandemic, the Department for Education (DfE) has issued guidance to the admission authorities of selective schools, advising that:

“The impact of coronavirus protective measures mean that admission authorities are likely to need to change their selective processes this year. It is recommended that written tests continue to be run under exam conditions whenever possible, albeit whilst operating stringent health protection measures.”

More detailed sections of the guidance strongly recommend that tests are moved back into late October or November and cover matters such as public health measures including social distancing and how to make provision for testing for children from families that may

be shielding or particularly vulnerable. It is against that background that the school proposes to vary its arrangements.

3. Some places at the school are offered on the basis of faith, some are offered on the grounds of ability (assessed by a test) and the remainder on the basis of other factors, these are called “open” places. The proposed variation is that the school will not offer any places to girls based on their ability and will increase the number of open places offered. In the interests of dealing speedily with this and the many other requests for variations along the same or similar lines as a result of Covid-19 I have not considered other aspects of the admission arrangements. Therefore, nothing in this determination should be taken as indicating that other aspects of the arrangements do or do not conform with the requirements relating to admissions

Jurisdiction

4. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations.”

5. I am satisfied that the proposed variation is within my jurisdiction.

Procedure

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

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

- a. the referral from board of governors dated 22 September 2020 supporting documents, its response to my enquiries and subsequent correspondence with the Secretary to the OSA;
- b. the determined arrangements for 2021 and the proposed variation to those arrangements; and
- c. a copy of the notification to the appropriate bodies about the proposed variation;

Consideration of proposed variation

8. The published admission number for the school is 125. Seventy of these places are called “foundation places” which are offered on the basis of faith, 18 are called “ability places” and are offered to the girls who score highest in a general ability test, the remaining 37 places are called “open places”. Following looked after and previously looked after children, the oversubscription criteria for open places take into account siblings, named feeder schools and the proximity to the school of the girls’ home.

9. In the application for this variation, the governing board said:

“The school believes that to run its general ability test later this Autumn for the 2021/22 intake would not be possible in respect of three main principles of the DfE’s published guidance on selective schools’ testing arrangements”.

It listed 14 ways in which it would not be able to meet those principles which present a compelling argument for not being able to ensure the integrity and fairness of the test and equal conditions for those being tested without compromising the health of staff and students.

10. The proposed variation was to delete all references to ability places from the arrangements and to increase the number of open places by 18 from 37 to 55.

11. I began consideration of this case by looking for information about how the testing was originally planned to take place. Paragraph 1.17 of the Code says:

“All selective schools **must** publish the entry requirements for a selective place and the process for such selection.”

Furthermore paragraph 1.32c says admission authorities of selective schools **must**:

“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”.

12. The arrangements which I had been sent said:

“Girls whose parents wish for them to be considered for one of these [ability] places must take this general ability test, and complete the school’s SIF and return this to the School.”

On the supplementary information form (SIF) sent to me by the school, there is one box to tick to say the application is for an ability place. The date given for the return of the SIF is 23 October 2020. I could not find in the arrangements any other details about the process of selection such as dates, location or length of the test. In particular, I could not see any information as to how the parents of a girl were supposed to register her to take the test, that is to say, arrange for her to take the test, other than by completing the SIF. Nor could I

see how if the SIF is not returned until 23 October, it would be possible to arrange to test a girl and get the result to her parents before the end of the month. Nor I could not find anything on the school's website that would suggest that the requirements of these paragraphs of the Code are met.

13. I response to my enquiries about these issues, I was told that:

"Information about the entry requirements for a selective place are indeed available on the school's website under the Tab 'Admissions'. It is on the front page of this. (I additionally attach a copy of this for your reference)."

This was precisely where I had been looking on the website and the document provided was another copy of the admission arrangements which I had already seen and did not contain any information about the selection process beyond the requirement to complete the SIF.

14. When I asked how the requirements of paragraph 1.32c were met I was told:

"The school's procedure is to mark and rank the tests (held in a normal year in late September/early October) and inform parents of the outcomes, prior to them having to make their final choices of schools by the end of October."

I have noted above that the closing date for the return of the SIF is 23 October. If that is the deadline for informing the school that you are applying for an ability place this response is inconsistent with it.

15. If I approve this variation, then the arrangements will not be required to conform with those parts of the Code which concern admission to selective schools which they currently do not. If I were not to have approved this variation, whatever the process was intended to be would have needed to be changed and those changes will need to be made known to parents. I make no further comment on this matter because I have in fact approved the variation requested.

16. On the application form for this variation, the governing board was clearly aware of the implications which arise from section 100 of the Act. This is also referred to in paragraph 1.22 of the Code:

"Partially selective schools must not exceed the lowest proportion of selection that has been used since the 1997/98 school year."

I read these provisions to mean that if no places are allocated based on ability in 2021, then no places can be allocated on the basis of ability in any subsequent year. The governing board said on the application form:

"as the zero percent proportion we are proposing to use in 2021/22 was not brought about by voluntary decision but out of necessity by exceptional external circumstances, we do not believe these legal provisions are relevant to our situation."

The governing board went on to say that if this variation was approved, it

“would like to go out to public consultation during the statutory window this Autumn regarding its 2022/23 arrangements, in order to make clear that the partially selective arrangements and corresponding test will be implemented again in exactly the same manner and proportions as prior to 2021/22.”

17. Because I am of the view that the provisions of section 100 of the Act would prohibit the reintroduction of partial selection in any future year I asked the Secretary to the OSA to write to the governing board to make my understanding of these provisions clear. In response the governing board wrote:

“The FGB [Full Governing Board] fully understands that this variation, if granted, would be likely to become permanent under current legislation.”

18. It is beyond question that the Covid-19 pandemic represents a major change of circumstances which inhibits the ability to test applicants for the 18 ability places in the safe and fair way which the governing board would want. I am satisfied that the proposed variation is a pragmatic response. However, there are long term implications of my decision which is to approve the proposed variation.

19. For the avoidance of doubt, my approval of this variation results in the governing board being prohibited by section 100 of the Act from reintroducing partial selection in any future year.

Determination

20. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for St Saviour’s and St Olave’s for September 2021.

21. I determine that the 18 places for girls of high ability will become additional open places.

Dated: 16 October 2020

Signed:

Schools Adjudicator: Phil Whiffing