



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3759**

**Objector: An individual**

**Admission authority: Parmiter's School, (a single academy trust),  
Hertfordshire**

**Date of decision: 23 August 2021**

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Parmiter's School (a single academy trust) for Parmiter's School, 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 an individual, (the objector), about the admission arrangements (the arrangements) for Parmiter's School (the school), an academy secondary school for pupils aged 11 to 18 for September 2022.**
- 2. The local authority (LA) for the area in which the school is located is Hertfordshire County Council. The LA is a party to this objection. Other parties to the objection are the objector and the school.**

## 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 the objection to these determined arrangements on 9 March 2021. The objector has asked to have his/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 his/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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

4. Some of the matters raised in the objection are outside my jurisdiction and so will not be considered further. These matters are set out below:

4.1. The objector complained that selection had been introduced for the sixth form and that this was contrary to the Act. Section 99 of the Act states, so far as is relevant here:

“99 General restriction on selection by ability or aptitude

(1) ...

(2) The following are...permitted forms of selection by ability—

(a) any selection by ability authorised by section 100 (pre-existing arrangements)

(b) any selection by ability authorised by section 101 (pupil banding); and

(c) any selection by ability conducted in connection with the admission of pupils to the school for secondary education suitable to the requirements of pupils who are over compulsory school age”

Paragraph (2) (c) of section 99 allows selection by ability for 6<sup>th</sup> Forms without a requirement that it was pre-existing prior to any given date. It follows that paragraph 1.9 d) of the Code does not apply to 6<sup>th</sup> Forms and so the objection relating to when such selection was introduced is outside my jurisdiction.

4.2. Insofar as there is any difference between “academic entry criteria” and “academic selection criteria” it is clear from the provisions set out above that selection by ability for 6<sup>th</sup> Forms is permitted and consequently that point is also outside my jurisdiction.

- 4.3. For the same reasons the objection relating to the proportion of pupils selected by ability for the 6<sup>th</sup> Form is also outside 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. 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 for Year 7 and for the 6<sup>th</sup> Form;
  - c. the objector's form of objection dated 9 March 2021 and subsequent email with further points dated 19 March 2021;
  - d. the school's response;
  - e. the LA's response.
7. It should be noted that the OSA is currently dealing with another, separate, objection relating to the school's admission arrangements, Case Number ADA3794. The issues raised in that objection are different from those raised in this case and will be dealt with in a separate determination. The issues raised in ADA3794 have not been addressed in this determination.

## Background

8. The school normally admits pupils in Year 7 and to the 6th Form in Year 12. It was founded in the 17<sup>th</sup> Century in Bethnal Green, London and is now located in its current form as an academy school in Garston, Hertfordshire but maintains close links with Bethnal Green. For Year 7 the school admits some children of all abilities, a number by academic ability and a number by aptitude for music. In abridged form the oversubscription criteria for Year 7 are as follows:
  1. Children Looked After, Children Previously Looked After or Children in Public Care.
  2. 10% of places will be allocated based on the straight line distance measurement.
  3. Children with a sibling attending the school.
  4. Children with a parent who is a current employee at Parmiter's School.
  5. Children for whom it can be demonstrated that there is a compelling medical reason for attending the school.
  6. 25% of places shall be available in merit order by reference to academic ability.
  7. Up to 10% of places to be allocated on the basis of proven aptitude in Music.

9. The 6<sup>th</sup> Form consists of existing pupils transferring from Year 11 and external students new to the school. The admission arrangements for external applicants are fairly concise and, as they form the subject matter of the objection, I will set them out in full save that the footnotes have been deleted, as follows:

“All students applying to enter the Sixth Form need to achieve a minimum of 33 points in their six best full-course GCSE results. We would normally expect students to achieve a grade 4 in Mathematics and English Language. Students also need to achieve the minimum entry requirement for each A level subject they wish to take. These are detailed on the school website. Where a student has taken qualifications that are not graded on a scale of grade 1 to grade 9, the Department for Education equivalent point scores will be used to ascertain if they meet the criteria.

The annual Sixth Form admissions number for external students is 50.

### **Oversubscription Criteria**

Where the number of academically qualified external applications exceeds the number of places available, the following criteria will be applied in the order set out below to decide which students to admit:

1. “Children Looked After”, “Children Previously Looked After” or “Children in Public Care”. A “looked after child” or a child who was previously looked after but immediately after being looked after became subject to an adoption, child arrangements, or special guardianship order.
2. A statement of the applicant’s predicted grades will be requested from the Headteacher of their school. Applicants are placed in rank order on the basis of their top six full-course GCSE grades. Conditional offers are then made to the students ranked highest and on the basis of space in each A level subject.

Places will be offered using the oversubscription criteria until planned capacity in a given subject or course is reached and the school reserves the right to refuse access to subjects when planned classes are full.

After GCSE results day in August 2022, subjects for which there are still vacancies will be advertised on the school website. The Head of Sixth Form will receive any further applications from new candidates or from those who have applied and not received an offer at that point.”

### **Consideration of Case**

10. The issues raised by the objector, which I have jurisdiction to consider, are whether the oversubscription criteria comply with the provisions of the Code and relevant legislation. The specific complaints and relevant provisions are set out below together with my consideration and conclusions on each:

- 10.1. **External applicants for the 6<sup>th</sup> Form are ranked according to predicted GCSE grades. Whether it is clear how candidates with the same grades**

**are ranked (paragraphs 14 and 1.8 of the Code).** I consider the question of how internal and external applicants are treated below. Regarding external applicants with the same GCSE score, in its response the school states: “Students with the same rank are always treated the same – i.e. we don’t have tie breaker processes”. However, the school states that “Rank order is theoretically used in the event of oversubscription on a set combination of A levels” and “Students with the same GCSE score are ranked exactly the same and treated exactly the same. Conditional offers are made to the students ranked highest and on the basis of space in each A level subject”. At least hypothetically, when students are ranked, two or more students with identical scores may have an equal call on the last available place for a given combination of subjects. That could be the last combination of subjects for which those applicants are eligible. Were that the case, the choice of which one was offered the last place would make the difference between an applicant being or not being admitted to the school. In those circumstances paragraph 1.8 of the Code “Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated” would apply.

- 10.2. Consequently, I find that the admission arrangements do not meet that requirement of the Code in this respect.
- 10.3. **Whether the academic entry criteria for the 6<sup>th</sup> Form are the same for both internal and external candidates given that all candidates need to achieve a minimum of 33 points in their six best full-course GCSE results, but external candidates are ranked according to grades. Where the number of external candidates reaching the threshold of 33 points exceeds the number of places the effect would appear to be that external candidates need to reach a higher point score than internal candidates. Whether this complies with the provisions of paragraph 2.6 of the Code.**
- 10.4. Paragraph 2.6 of the Code states “Admission authorities can, however, set academic entry criteria for their sixth forms, which **must** be the same for both external and internal places”. The question here is whether the “academic entry criteria are the same for both internal and external candidates”.
- 10.5. The 6<sup>th</sup> Form admission arrangements state “All students applying to enter the Sixth Form need to achieve a minimum of 33 points in their six best full-course GCSE result. Students also need to achieve the minimum entry requirement for each A level subject they wish to take”. This applies equally to internal and external students.
- 10.6. Paragraph 2 of the oversubscription criteria which apply to external applicants for the 6<sup>th</sup> Form reads:

“2. A statement of the applicant’s predicted grades will be requested from the Headteacher of their school. Applicants are placed in rank order on the

basis of their top six full-course GCSE grades. Conditional offers are then made to the students ranked highest and on the basis of space in each A level subject.”

The 6<sup>th</sup> Form has a PAN of 50 for external applicants. The school find that about 30% of conditional offers result in applicants actually starting at the school. The school’s website states: “We make around 160 offers each year with the aim to recruit about 50 [external] students into our Sixth Form”. For 2021 starters 171 conditional offers were made to external students.

- 10.7. The oversubscription criteria apply when “the number of academically qualified external applications exceeds the number of places available”. External applicants are ranked according to their predicted grades and conditional offers are made to the applicants ranked highest. This means that external applicants are in competition with each other and some may be predicted to achieve the minimum academic requirements but not receive a conditional offer because the number who meet the minimum academic requirements exceeds the number of places available. Put another way, the group who receive conditional offers, being the highest ranked, will tend to have higher predicted scores than would be the case if some other, non-selective, criterion, for example home to school distance or random selection, were applied.
- 10.8. My understanding is that in the event of a particular subject or combination of subjects being oversubscribed both internal and external students are ranked with the highest ranking being given preference. This aspect applies equally to internal and external students, although, as I state below, it is unclear how the PAN of 50 for external places is applied.
- 10.9. It appears that once GCSE results are known, all internal applicants and all external applicants who have received a conditional offer are considered according to available space in the subjects they wish to study and where there are more applicants for a particular subject or combination of subjects than can be accommodated then ranking will be applied. This means that there are two groups in this pool of applicants. Firstly, all internal applicants who have achieved the minimum academic requirements and, secondly, all external applicants who received a conditional offer.
- 10.10. In order to achieve a conditional offer, and thus be eligible to be considered in the pool described above, an external applicant may have to achieve predicted grades higher than the minimum academic requirement, a requirement which is not applied to internal applicants. If that is the case then external applicants will have to meet a higher academic standard in order to be considered for a place. To put it another way there may be external candidates whose predicted grades meet the minimum academic requirements but who do not receive a conditional offer. An internal applicant

whose predicted grades would be exactly the same would be considered for a place at the post GCSE result stage. In this hypothetical scenario both applicants are predicted to achieve the same academic standard but only the internal applicant will progress to the next stage. It follows that the academic entry requirements are not the same for both internal and external applicants.

10.11. I acknowledge that those external students who meet the minimum academic requirements but who do not receive conditional offers may apply later in the process when courses with vacancies are posted on the school's website. However, this is less advantageous than receiving a conditional offer as they can only apply for places remaining after consideration of internal applicants and external applicants with a conditional offer have been placed. I also acknowledge that it may be that external applicants who meet the minimum academic requirements and want a place at the school may, in practice, get one as sufficient places are available for those who want them. However, it is the wording of the admission arrangements and their potential effect which I have to consider.

10.12. I find that the ranking of external applicants prior to making conditional offers will potentially lead to external students needing to meet a higher academic standard than internal students. I find that this is not compliant with Paragraph 2.6 of the Code as the academic entry requirements are not "the same for both external and internal places". Consequently, I uphold the objection on this point.

10.13. **Whether there is a clear Published Admission Number (PAN) for entry to the 6<sup>th</sup> Form. I note that the admission arrangements for the 6<sup>th</sup> Form for 2022 state "The annual Sixth Form admissions number for external students is 50". This appears to be a clear statement that the PAN for external applicants to the 6<sup>th</sup> Form is 50.** I find that the PAN for external applicants to the 6<sup>th</sup> Form is clear. Consequently, I do not uphold the objection on this point.

10.14. **Whether basing the selection of external, candidates on predictive grades complies with the provision in paragraph 1.9 g) which states that admission arrangements must not "take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement, or that of any other children in the family".** The school has explained that conditional offers are based on predictive grades. Once actual grades are known these are taken into account to establish whether an applicant has met the minimum academic requirements. Arguably a predictive grade is not a record of what has been achieved but rather what it is anticipated will be achieved in future, even if based on the child's past achievement. I find that a set of predictive grades is not a report about a child's achievement. I do not consider that the provision in paragraph 1.9g was intended to prohibit the use of predictive grades in 6<sup>th</sup> Form admissions,

which are used by many schools as part of the 6<sup>th</sup> Form admissions process. Consequently, I do not uphold the objection on this point.

**10.15. Whether the admission arrangements for external pupils to the school's 6<sup>th</sup> Form are clear (paragraphs 14 and 1.8 of the Code).**

10.16. I find that the oversubscription criteria for external applicants do not give sufficient detail to be compliant with Paragraph 14 of the Code, which reads:

“14. 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.”

10.17. It would be straightforward to rank students according to their point score in their top six GCSE grades. However, the admission arrangements for external applicants leave a number of points which are unclear:

10.17.1 How “the basis of space in each A level subject” is applied at the conditional offer stage. The chance of being offered a place appears to be dependent on the choices made by others, including internal applicants, which are inherently unpredictable.

10.17.2 How the PAN of 50 for external applicants is applied.

10.17.3 How the arrangements for internal and external candidates relate to each other in terms of the allocation of a limited number of places on a given course.

10.18. I accept that this is a complex process as applicants will wish to study various combinations of A levels with various minimum entry requirements for each A level. However insufficient information is provided to make the arrangements clear and applicants could not “understand easily how places for that school will be allocated”.

10.19. Consequently, I find that the admission arrangements for external applicants do not comply with the requirements of paragraph 14 of the Code.

**10.20. Whether the provisions for waiting lists for the 6<sup>th</sup> Form comply with paragraph 2.14 of the Code.** Paragraph 2.14 reads:

“2.14 Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after

children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.”

- 10.21. The published admission arrangements do not state the provisions for a waiting list. The school explained the position as follows: “Once total numbers for each A Level are known, the school publishes the A Level courses with availability on the school website. Any student not holding a conditional offer from us is able to apply for the A Levels with availability and again, the entry requirements are the same as those for students with conditional offers, both internal and external, who are already on the course. These applications are dealt with on a first come, first served basis. We are often still registering applications and making offers into late September”.
- 10.22. Admission to a 6<sup>th</sup> Form is not a straightforward matter of admit or not admit as it would normally be for admission to Year 7. There are many possible combinations of A levels and such vacancies as arise will inevitably be for some options but not for others. The school, it appears, operates a kind of clearing system, whereby vacancies are published and those interested can apply. Those external students who did not receive conditional offers can apply for these vacancies.
- 10.23. Provided any applicant (whether in receipt of a conditional offer or not) can register a general application then the register of those applicants held at the school would constitute a waiting list and the process operated by the school would constitute a reasonable approach given the many possible courses and combinations of subjects. The admission authority need to specify the process as part of the admission arrangements. They have not done so in the arrangements provided to me, so consequently I uphold the objection on that point.
- 10.24. In relation to the oversubscription criteria for Year 7 entry:

**10.24.1 Whether the “priority area” constitutes a catchment area (paragraph 1.14 and the definition of “catchment area” in the Code). How the “priority area” is applied and whether this is clear in the oversubscription criteria (paragraphs 1.14, 14 and 1.8 of the Code).** The Code, in the glossary, defines “catchment area” as “A geographical area, from which children may be afforded priority for admission to a particular school”. The school has what it calls a “priority area”, consisting of a list of postcodes. I find that this falls within the definition of “catchment area” within the Code. It follows that Paragraph 1.14 of the Code applies, as follows:

“Catchment areas **must** be designed so that they are reasonable and clearly defined”

10.24.2 I find that the list of post codes used by the school is reasonable and clearly defined. Consequently, I do not uphold the objection on this point.

10.24.3 I note that the school says it does not have a catchment area, but rather a priority area. This, I gather from the LA, stems from the terminology traditionally used in Hertfordshire schools, and adopted by many schools, including this school, when they became academies. As the school's priority area is a catchment area as defined in the Code it might be helpful for the school to clarify this point in its admission arrangements.

11. Having considered the arrangements as a whole it would appear that the following matters also do not, or may not, conform with requirements:

11.1. **Whether the provision in 6<sup>th</sup> Form admission arrangements “We would normally expect students to achieve a grade 4 in Mathematics and English Language” is clear (paragraphs 14 and 1.8 of the Code).** This point was not addressed by the school in the response to me. I find that it is not clear whether this is a requirement or not and consequently I find that it does not comply with the requirements of paragraphs 14 and 1.8 of the Code.

In relation to the oversubscription criteria for Year 7 entry:

11.2. **Whether the phrase “*Places will not be offered, under this criterion, to applicants who qualify under other criteria*” is clear given, for example, that all applicants will qualify under at least criterion 8 (paragraphs 14 and 1.8 of the Code).** The issue is solely with the wording “other criteria”. If, for example, it stated “under criteria 3 to 7” instead it would be clear. However, as it stands it is not clear and does not comply with the requirements of paragraphs 14 and 1.8 of the Code.

11.3. **Whether it is clear how the oversubscription criteria would be applied if the total number admitted under criteria 1 to 4 exceeded 65 percent of PAN?** This position could potentially arise, for example if there were an exceptionally high number of siblings. Some provision needs to be added to the oversubscription criteria to explain what will happen if, for example, 25 percent of places did not remain when criterion 6 (academic ability) is reached. As such this aspect of the admission arrangements does not comply with paragraphs 14 and 1.8 of the Code.

## Determination

12. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Parmiter's School (a single academy trust) for Parmiter's School, Hertfordshire.

13. 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.

14. 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: 23 August 2021

Signed: 

Schools Adjudicator: Tom Brooke