



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3922

Objector: London Borough of Merton

Admission authority: Harris Federation, for Harris Academy Wimbledon

Date of decision: 08 September 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 for the Harris Academy Wimbledon, Merton, determined by the Admissions Committee of the Governing Board of the Harris Academy Wimbledon on behalf of the Harris Federation.

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 the London Borough of Merton (the local authority), about the admission arrangements for entry in September 2023 (the arrangements) for the Harris Academy Wimbledon (the school), a coeducational 'free school' academy for children aged between 11 and 19.
2. The local authority raised an objection to the introduction of a new oversubscription criterion, prioritising up to ten per cent of places at the school to those who "demonstrate an aptitude for music". The local authority has queried whether the admission authority is entitled to introduce this type of selection, whether the introduction of selection by musical aptitude is at odds with various aspects of the School Admissions Code 2021 (the Code) and whether, when introducing this new category of priority, the admission authority met its duties under the Public Sector Equality Duty.

3. The local authority for the area in which the school is located is the London Borough of Merton. The local authority is a party to this objection both as the local authority for the area in which the school is located and as the objector. The other parties are the admission authority and the school.

Jurisdiction

4. The admission authority is a multi-academy trust. The terms of the academy agreement between the admission authority 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 on behalf of the admission authority on that basis. The local authority submitted its objection to these determined arrangements on 28 April 2022.

Procedure

5. In considering this matter I have had regard to all relevant legislation and 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, including a document entitled 'Musical Aptitude Places' and a 'Musical Aptitude Application' form;
- c. the local authority's form of objection dated 28 April 2022, supporting documents and further correspondence;
- d. a research report provided by the local authority – 'An Unequal Playing Field: Extra-Curricular Activities, Soft Skills and Social Mobility' by the Social Mobility Commission and the University of Bath published in 2019 (the University of Bath research)¹ [An Unequal Playing Field report.pdf](#);
- e. a research article referred to by the local authority published in the journal Plos One on 26 February 2014 titled 'The Musicality of Non-Musicians: An Index for Assessing Musical Sophistication in the General Population'² (the Goldsmiths' research);
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0089642>

¹ Commissioned and published by the Social Mobility Commission and written by Michael Donnelly, Predag Lazetic, Andres Sandoval-Hernandez, Kalyan Kumar and Sam Whewall of the University of Bath.

² Authors Daniel Müllensiefen, Bruno Gingras, Jason Musil, and Lauren Stewart. Sponsored by Goldsmiths.

- f. an article in the Guardian dated 5 March 2014 referred to by the local authority
<https://www.theguardian.com/news/datablog/2014/mar/05/wealthier-people-more-musical-report>;
- g. a report by the Musicians' Union dated 6 November 2018 titled "Access to Music Lessons Dying Out for Poorer Families [Access to Music Lessons Dying out for Poorer Families | The MU \(musiciansunion.org.uk\)](#)"; and
- h. the admission authority's response to the objection, supporting documents and further correspondence.

The objector also provided a link to the website of an organisation offering sample test papers and mock tests for a fee [Helping students, parents & carers with the secondary school transfers \(musicaptitudetests.co.uk\)](#)

The Objection

7. The objector is concerned that the introduction of selection of ten per cent of places at the school on the basis of musical aptitude is unlawful for a number of reasons.

- First, the objector queries whether the school has the requisite specialism in music to entitle it to select pupils by reference to musical aptitude.
- Second, the objector has provided evidence of research indicating a correlation between financial wealth and the taking part in musical activities. On that basis, the objector is concerned that the use of selection by musical aptitude might breach paragraph 1.9(f) of the Code, which prohibits giving priority to children according to the financial status of their parents, and paragraph 1.8 of the Code, which provides that arrangements must not unfairly disadvantage a child from a particular social group.
- Third, the objector has raised a concern that the musical aptitude test to be employed by the admission authority may test for musical ability rather than musical aptitude (contrary to the requirements of paragraph 1.32(a) of the Code) and/or for mathematical aptitude rather than musical aptitude (contrary to the requirements of paragraph 1.24 of the Code).
- Fourth, the objector has questioned whether the admission authority, when introducing selection by reference to musical aptitude, met its duties under the Public Sector Equality Duty to consider the potential impact on children with protected characteristics.

Background

8. The school is a coeducational 'free school' academy for children aged 11 to 19. It is located in Wimbledon, in the local authority area of the London Borough of Merton.

9. The published admission number (PAN) for Year 7 entry in September 2023 is 180 pupils.

10. The oversubscription criteria are, in summary, as follows:

- (1) Looked after and previously looked after children;
- (2) Children who qualify for a musical aptitude place (up to 18 places);
- (3) Children with a sibling at the school;
- (4) Children of staff; and
- (5) Distance (by reference to proximity to one of three nodal points).

11. Section 6 of the arrangements provides that "Children who wish to be considered for an aptitude place will sit a musical aptitude test. This test is designed not to determine the child's current musical ability, but their aptitude for learning music in the future, with a threshold having been set to determine qualification for consideration for a place".

12. An additional document entitled "Musical Aptitude Places" explains that the test will be a written test, taken with other children, and is approximately 40 minutes in duration. The test is based on "aural responses" to questions across the four areas of pitch, texture, melody and rhythm. An explanation is given of the types of questions that will be asked in each area of the test. The document stresses that "The test does not require any previous knowledge of music theory".

13. A "Musical Aptitude Application" form is included in the arrangements. It requires basic information about the applicant for the purpose of registering them for the musical aptitude test. There is no request for information about the prior experience or attainment of the child in relation to music. There is a space on the form for an applicant to request reasonable adjustments in relation to the sitting of the test.

Consideration of Case

14. Section 102 of the Act expressly permits selection by aptitude in the performing arts (including music) and this is acknowledged at paragraph 1.24 of the Code. My starting point therefore has to be that it is for an admission authority to formulate the admission arrangements for its school(s), and that it is open to the trust, as admission authority, to adopt partial selection provided the requirements of section 102 are complied with. However, there is an additional dimension insofar as it must also be the case that any such

partial selection is reasonable in the context in which it will operate and that its adoption is not likely to disadvantage unfairly any applicants from an identifiable social group. The relevant social group identified by the objector is children who are disadvantaged, the argument being that disadvantaged applicants will be less likely to secure places based upon music aptitude and will be 'displaced' by applicants with parents who are more wealthy.

15. The trust has explained that, before consulting upon the adoption of partial selection based upon music aptitude, it had asked the Department for Education (DfE) to confirm that this was permissible. The trust was unclear as to whether the adoption of partial selection was restricted to those schools historically designated as specialist schools. The DfE confirmed that any school which considers itself to have a specialisation in one of the relevant subjects (including performing arts, which includes music) can propose to select up to ten per cent of its pupils on this basis.

16. Neither the Act nor the current Code define what 'aptitude' means, however the trust has provided a previous iteration of the Code which contains the following explanation, which I found helpful:

"The legislation does not provide a definition of the term 'aptitude'. But, essentially, a pupil with aptitude is one who is identified as being able to benefit from teaching in a specific subject, or who demonstrates a particular capacity to succeed in that subject. When considering whether a pupil has an aptitude for a subject, the essential factor that the admission authority must determine is whether a child demonstrates a particular capacity to learn or to develop skills in that subject, and that he or she can benefit from the particular expertise and facilities at that school."

17. The DfE in its communication with the trust emphasised that the test/assessment criteria must be a true test for aptitude (ie potential) not ability (ie learned skills). Crucially, the DfE provided an example of a compliant test for musical aptitude as follows:

Pitch, candidates listen to two sounds and have to indicate whether the second sound is the same as the first, or whether it is higher or lower.

Melody: candidates listen to two tunes consisting of several notes. Candidates have to decide whether the second tune is the same as the first or if one of the notes has been altered.

Texture: for these questions, candidates listen to a number of notes ('a chord') played together at the same time. Candidates need to decide whether or not each chord has two, three or four notes.

Rhythm: candidates listen to two patterns of notes and have to decide whether the second pattern is the same as, or different from, the first, and where any difference occurs.

18. Following the communication with the DfE, the trust decided that it was able to select up to ten per cent of its intake based upon aptitude for music; adopted a test based upon the DfE approved model; and proceeded to consult upon a proposed change to its admission arrangements. The outcome of the consultation was considered by a committee of the school's governing board on 22 February 2022. The minutes of the meeting indicate that there were 30 responses to the consultation. 18 responses were described as supportive of the proposed changes to the admissions policy. It is was said that:

- 8 responses referenced the excellent music provision at the academy.
- 1 response was from Merton Music Foundation giving its support to work in partnership and outlining the benefits of music to all students.
- Other responses gave their support for either the 6th form or the selection by aptitude and some referenced both.
- 2 responses raised questions about the 6th form.
- 10 responses opposed selection by aptitude and covered three broad areas of concern:
 - a. The selection by aptitude test is a test for ability in music and not aptitude.
 - b. The test will favour more affluent families as they will be able to either afford instrumental lessons or have tutoring for the test.
 - c. It will introduce selection into the borough of Merton and may have an impact on other schools doing the same thing and affect collaboration between schools.

19. The minutes indicate discussion about the concerns which had been raised. It was suggested that selecting ten per cent of applicants by reference to aptitude in music would attract parents and children who have a passion and aptitude for music. It would allow ten per cent of children who demonstrate an aptitude in music to have a place at the school and access the music facilities the school can offer. It was felt, "more importantly", that the school's adoption of partial selection by music aptitude and music specialism will support all students as ensembles and extracurricular activities will remain inclusive. The minutes say: "Merton Music Foundation's letter of support for the 10% selection outlines the benefit Music and aptitude in Music brings to all children. We contacted the DfE before we embarked on this process who confirmed that we could consult on selecting 10% selection by aptitude in Music and gave us an example of an aptitude test as opposed to an ability test. We have followed this advice to create a test which is for aptitude. We also plan to provide some Music programmes for disadvantaged children in the summer holidays to support them in understanding what the school has to offer and to actively encourage disadvantaged students to apply".

20. The committee explored the concerns raised in the consultation. The Principal was asked to confirm that the test was for aptitude rather than ability, and explained that the school was following the guidance issued by the DfE. She explained that applicants do not have to play a musical instrument to access the test or have any musical notation knowledge. The Principal also explained that the Subject Leader for Music has created the test and there will not be any practice tests. The Principal confirmed that the test is accessible to all students, and that siblings will still be able to get places at the school: “given that there have never been more than 50 sibling places allocated out of a PAN of 180 and, given that only 18 places are ring-fenced for aptitude, this means that no child with a sibling will be displaced. In fact, no child of a staff member will be displaced either. Places will still be exhausted in the last category allocated by distance to nodal points”.

21. One governor asked about the relationship with other local schools and the local authority. The Principal explained that she was committed to continue to work in partnership with all headteachers and the local authority. The governors were informed that there are “a range of admissions criteria in the borough due to single sex and faith schools and this proposal will give parents more choice”. It was said that there are three trust schools in the borough and that strong working relationships have been developed with other local schools over the last 10 years. “Headteachers disagree on some things, but this does not affect collaboration”.

22. A specific concern was expressed by the committee about whether the result of the aptitude test might be that fewer disadvantaged children would come to the school. The Principal explained that she is committed to supporting disadvantaged children in music, which is why she had introduced free instrumental lessons. She emphasised that the test is for aptitude, not ability, so children from deprived backgrounds who have not had any tutoring in music (for example singing or learning instruments) should be able to meet the threshold, and those who have should not have any advantage. The Principal suggested that the governors review the data of the applicants meeting the aptitude threshold each year (all of them, not just those who achieve the 18 places) to monitor whether the group represents the same percentage of disadvantaged intake into the academy as a whole.

23. The Chair pointed out that, despite the school’s excellence in music, some of the responses suggested that the academy didn’t have an excellence in music. The Principal explained that these responses came from people who had never attended the academy. The Principal said that in view of the comments, the school’s web pages clearly needed to be reviewed and amended to reflect the school’s excellence in music. The Chair asked the Principal to update the website. The Principal agreed to do this by 15 March. The minutes reflect that the committee discussed the concerns in detail and concluded that the test was a true test of aptitude rather than ability. However, the matter would be kept under review. The committee then determined the admissions arrangements to include partial selection based upon music aptitude. I find that the concerns now raised in this objection about the introduction of partial selection by music aptitude which have been raised in this objection were considered and discussed by the governing board prior to determining the admission arrangements for September 2023.

24. In terms of evidence of the musical opportunities and extra-curricular activities available at the school, the trust has provided a copy of a newsletter which shows some examples. Year 7 pupils are offered 'taster sessions' in singing, drums, piano, cello, violin, brass, and guitar; there are choirs, a rock band, brass band, orchestra, ukulele circle, percussion ensemble, and song writers' circle; there was a production of Hairspray the Musical and participation in music competitions.

25. The trust also provided a Music Insight Review. Of most significance to me was the section which recorded the views of pupils:

"A student panel was conducted with a range of students from Y7-10. All stated that they enjoy their Music lessons and were able to talk about their own musical experiences with a high degree of articulation as well as enthusiasm. Music teachers are approachable and kind, students feel safe in their learning environments. Students really value the range of activities in music lessons and particularly enjoy the practical aspects of music making. With that said, they did want to explore a wider variety of musical genres and have opportunity to play different instruments and use technology more in lessons. All students were able to talk about the lessons that they had been in, both recent and in the previous term, and talk about the curriculum with a good level of detail. They understood that there was a range of ability within their classes, from people who had less musical experience to those who had more and felt that the classes were pitched so that everyone could take part. Students really appreciated the co-curricular programme and this is discussed in the section below. They enjoy the variety in this programme and simply wish other activities could also be possible, including peer-led musical groups as well as ones that are led by teachers. Making use of music technology for production, mixing etc. was a strong theme from the pupils and that included potential access to courses beyond KS3. Finally, we observed a high level of musicianship in lessons and good learning behaviours. This is supported by the strong uptake at Key Stage 4 and in the co-curricular program".

26. The trust has provided a letter from The Merton Music Foundation dated 16 June 2022 which indicates that the school provides:

- Free Instrumental lessons for all Pupil Premium students who would like to learn a new instrument.
- Instrumental lessons in 15 different instruments and part funding for all GCSE students to have instrumental lessons.
- Opportunities for all students to work with professional musicians.
- An outstanding range of extra-curricular music ensembles such as choir, jazz band and all the other ensembles published on the website. Most recently was the workshop with the Lincoln Center Jazz musicians from New York – an extraordinary musical opportunity.

- Trips and visits to concerts and musicals to support students to appreciate a variety of styles of music.
- Excellent facilities which support and nurture an atmosphere of valuing music-making.
- A highly qualified and experienced team of tutors who feel part of the ethos of the academy and enhance the music offer.
- Positive relationships with the local DfE funded music hub to maximise opportunities for young people at the academy and support staff CPD
- The ‘normalizing’ of music and the commitment to being something that everyone does, not what a few do.
- Creating a culture where a young person can find their voice and feel celebrated and supported.

27. Having set out the nature of available provision, I now consider each of the aspects raised by the objector separately, and have set out my findings under each section below. They are serious concerns said to be based upon research evidence.

Entitlement to select up to ten per cent of places by reference to specialism

28. Section 102 of the Act provides that a school may select up to ten per cent of its pupil intake by reference to aptitude for a prescribed subject where the admission authority is satisfied that the school has a specialism in that subject. I have not been referred to any published guidance on what counts as a “specialism” in this context.

29. The local authority has queried whether the school has the requisite specialism in music. Although the local authority acknowledged that it was “not in a position to comment in depth on the strengths of the school from this perspective”, it did draw my attention to the following:

- a. There had been no indication by those setting up the school, which opened in 2018, of an intention for the school to have a specialism in music; and
- b. There had been no indication by the school that it had developed, or intended to develop, a specialism in music until very recently – this includes during a meeting between the Chief Executive of the admission authority and the Headteacher of the school on 16 January 2019 to discuss the early successes of the school.

The admission authority considers that it has the requisite specialism in music. In the communication with the DfE referred to above, I note that the DfE told the school that it would need to be able to show “it has excellence / specialisation in music if someone objected to the adjudicator about the adoption of such aptitude selection because section 102 does require such schools to consider they have a relevant subject specialism”.

30. The admission authority made the following statements:
- a. It is “entirely satisfied that [the school] can demonstrate both excellence and specialisation in music”;
 - b. It has made substantial investment in the resources and provision for music across the school, in a way which goes “significantly beyond the National Curriculum [...] Music is quite simply a fundamental part of the fabric of the school”;
 - c. In Key Stage 3 (years 7, 8 and 9), pupils are offered optional additional music classes, as well as a wide and varied extra-curricular programme, including ten musical clubs / ensembles;
 - d. Extra-curricular musical tuition is available in 15 different musical instruments;
 - e. Funding is provided for any child eligible for the Pupil Premium who wishes to learn a musical instrument – currently 50 pupils are taking up this offer (16.9 per cent of all pupils at the school);
 - f. Pupils are given the opportunity to work with professional musical artists, for example, the school recently provided an African Drumming workshop for Year 8 pupils;
 - g. The school enters 13 per cent of its relevant cohort of pupils for the GCSE examination in music, “significantly above the national average, which is just below 7%”;
 - h. The document entitled ‘Music Department Insight Review’ referred to above, indicates that a review by music consultants completed on 10 and 11 January 2022 made positive findings about the music provision on offer at the school;
 - i. The letter from the Chief Executive of Merton Music Foundation dated 16 June 2022 states that “I believe that Harris Academy Wimbledon already has a specialism in Music”, referencing a variety of aspects of the music provision on offer at the school including some of those referenced above; and
 - j. The school website states in clear terms that “We have a specialism in Music which means we invest significantly in resources and provide opportunities for students to develop their talents and abilities [...]”.

31. I acknowledge that there was no evidence to indicate that the school had a music specialism or an intention to develop a music specialism upon its inception in 2018. However, there is nothing in the relevant legislation that requires that the subject specialism needs to have been in place since a school has opened, or for a long period of time, before it can be counted as a subject specialism for the purpose of selection by reference to aptitude. What is required is that the admission authority is satisfied on reasonable grounds that the school has a specialism in the relevant subject.

32. I note that the admission authority has stated that it is satisfied that the school has a specialism in music, and it has provided a range of evidence to support that position. That view appears to be reasonably held in that the evidence upon which it is based is relevant and supportive. Furthermore, there is nothing obviously missing from the evidence relied upon that one would always expect to see of a school with a music specialism. For these reasons, I find that the school has the relevant subject specialism to entitle it under section 102 of the Act to select up to ten per cent of its pupil intake by reference to aptitude for music. I therefore do not uphold this part of the objection.

Correlation between financial wealth and taking part in musical activities

33. Paragraph 1.9(f) of the Code prohibits giving priority to children according to the financial status of their parents. In order to be satisfied that priority is being afforded on the basis of parents' financial status, I would need to be satisfied that a child's aptitude for music is intrinsically linked to the wealth of his/her parents. In order for the objector's argument to succeed, I would need to be satisfied that music aptitude can only be developed or would be enhanced significantly by music tuition (which children of parents with higher financial status are more likely to access), or only capable of being acquired in a wealthy household. The objector refers to the Goldsmiths' research, claiming that it provides evidence which shows that musical "sophistication" and therefore learnt ability, is "associated with socio-demographic and socio-economic markers..." The research article says: "we identify occupation, occupational status, age, gender, and wealth as the main socio-demographic factors associated with musical sophistication". The objector states that it is of important relevance that the Goldsmiths' research tests were based on listening, as is the case with the aptitude test which the school is proposing to use. The objector claims that musical sophistication (which is said to be effectively what is being tested by the school), is associated with occupation, occupational status, age, gender and wealth. I have read the Goldsmiths' research. It is a lengthy paper, and I have not attempted a full summary. I have, however, highlighted in bold extracts which I found significant.

34. The Goldsmiths' research explains that the researchers' conceptualisation of musical sophistication is "a psychometric construct that can refer to musical skills, expertise, achievements, and related behaviours across a range of facets that are measured on different subscales". The researchers assume that multiple facets of musical sophistication can develop through active engagement with music in its many different forms and that individuals vary in their level of sophistication on these different facets. They posit that high levels of musical sophistication are generally characterised by a) higher frequencies of exerting musical skills or behaviours, b) greater ease, accuracy or effect of musical behaviours when executed, and c) a greater and more varied repertoire of musical behaviour patterns. This is said to mean that highly musically sophisticated individuals are able to respond to a greater range of musical situations, are more flexible in their responses, and possess more effective means of achieving their goals when engaging with music. **The researchers say that many musical skills are not explicitly trained, but are developed through focussed and repeated engagement.**

35. Data was taken from 147,683 individuals who took part in a self-reporting inventory and a battery of listening tests. 45.2% of the participants from the training sample were female and 54.7% were male. Mean age was 35.2 years ($SD=15$). Participants were mainly UK residents (66.9%). There was a survey entitled *How Musical Are You?* Run by the BBC. The report says that because this was an open online application, the sample also included participants from other, albeit mainly Western and English-speaking, countries (most frequently named: USA: 14.2%, Canada: 2.3%, Australia: 1.1%). The ethnic background of the participants was mostly white (84.1%) but also included a wide range of participants from non-white backgrounds (most frequent: Asian/Indian/Pakistani/Bangladeshi: 3.4%; Mixed Race: 2.3%, East/South-East Asian: 1.8%). The sample contained a large spread in terms of education (undergraduate degree/professional qualification: 34.1%, still in education: 23.4%, postgraduate degree: 19%, second school degree around 18 years (e.g. British A-levels): 11.8%, first school degree around 16 years (e.g. British GCSE/O-levels): 7.5%, etc.) as well as in terms of the current profession of the participants (Other: 19.4%, Education/Training: 12.4%, Unemployed: 10.7%, Information technology: 7.1%, etc.). Only 1.8% stated 'Music' as their occupation. There was no incentive for the participants other than the individual feedback that was based on the data norms derived from the pilot.

36. Participants were required to log into the test battery. They completed the self-report inventory along with a short demographic questionnaire and four tests of musical ability. Participants were then given online feedback on their 'relationship with music'. The study looked at four factors: active engagement, perceptual abilities, music training and singing ability.

37. A smaller sample of participants was used to study the socio-demographics of music sophistication. This consisted of only those 90,474 participants from the large Internet sample who had indicated that they were currently residing in the UK, and had spent the formative years of their childhood and youth in the UK. **The mean age of the selected participants was 37.2 years ($SD=15.2$) and 43.6% were female.** For 70,097 of the British participants the researchers had a valid postcode (with the last two digits truncated to preserve anonymity), and this allowed them to average participants' test scores at the level of 379 local authorities in England, Scotland and Wales. **The socio-economic variables most predictive of self-reported Musical Sophistication are said to be Occupation, Age, Occupational Status, and Level of Education Obtained.**

38. The analysis also identified Musical Training, Age, Occupation, Occupational Status, and the Highest Educational Degree obtained as the five most important variables for predicting performance on the melodic memory task. Results from the permutation tests showed that older participants and participants who self-reported more musical training performed significantly better on this task. Several significant main effects for categories of occupational status, occupation, and education level obtained seemed to be related to this age effect, e.g. participants still at school or university or having only obtained school qualifications (GCSE, or A-level) scored significantly worse than expected. **On the other hand participants with university degrees, those being in full-time employment or working as self-employed, and those working in education/training, media or music professions achieved significantly higher scores.**

39. According to the analysis, the five most important variables for predicting performance on the beat perception task were self-reported musical training, age, occupational status, occupation, and the levels of education obtained and aspired to. **The permutation tests indicated that musical training had a positive main effect on test scores but age was negatively related to performance on this task. Participants at university, in full-time employment, or those that were self-employed, especially those working in IT, media, or music professions scored better on this task while homemakers, retired participants, and those still at school or having obtained only a GCSE qualification scored significantly worse. Additionally, women achieved significantly lower beat perception scores than men.**

40. The researchers also found musical sophistication to be related to certain personality traits (foremost, openness to experience and extraversion) and also to be associated with socio-demographic and socio-economic markers. “These markers point to a stage in late adolescence and early adulthood where sophisticated engagement with music peaks for large parts of the population”.

41. Personally, none of the findings of the survey surprises me, given that they are based upon self-reporting and a dataset with a mean age of 37.2 years. I pause here to note that this was not a survey conducted on 10 year olds, which would be the age of the children sitting the music aptitude test for the school. Whilst it may be true, for example, that adults with University degrees and those working in education/training, media or music professions achieved higher scores in some music aptitude tests, this is not the same as saying that their 10 year old children are also likely to achieve similar high scores. In order for this to be the case, a 10 year old would need to have acquired a level of music sophistication which is equivalent to that of his/her parents who had acquired this level through many more years of individual life experience. There is no evidence in the study indicating that this would be the case.

42. I found the University of Bath research to be more relevant in some respects, because it does relate to school age children. However the subject of the research is participation in extra-curricular activities. There is no evidence relating to the likelihood (or not) of disadvantaged children securing places at schools offering partial selection based on music specialism. The University of Bath research found that the school you go to, the area where you grow up, and your socio-economic background largely determine what types of activities are available outside the classroom. There was a direct link between household income and participation for almost all extra-curricular activities which were included in the survey. Children from the poorest households were much less likely to take part in any extra-curricular activity, but particularly music and sport. Again, I have highlighted in bold the findings which are most significant.

“In some places it is a straightforward lack of opportunities. Some activities, common in some areas, are simply not available in others. There are financial barriers too - children from the poorest backgrounds are also often priced out of participation. Sometimes young people do not participate because they just do not know that they can. And perhaps most revealing of all, some young people do not

take part in activities because of their perceived exclusivity. They do not think they would fit in...

Importantly, our findings also reveal the unequal opportunities young people have to take part in extra-curricular activities. **It is not so much a question of choosing not to participate, but rather a question of an unequal playing field in the opportunities and chance of participating. The overlapping effects of social class, school attended, gender, ethnicity and geography are key drivers shaping these unequal opportunities. A key finding from this research is that opportunities to participate in extra-curricular activities is profoundly structured by socio-economic status, with participation gaps between rich and poor households evident through the national-level analysis as well as the case study research in the four localities.**

Analysis of Understanding Society data showed that across every type of extra curricular activity, as household income declined, so too did participation in each activity. **Children from poorer households were especially excluded from music classes and sports, where the participation gap is much more pronounced.** A crucial factor driving this socio-economic gap in opportunities to participate is the cost of extra-curricular activities, especially activities that incur the highest 'upfront costs'. For many families, even those with average incomes, these costs are too much to bear, especially if they are multiplied from having more than one child.

Our research suggests that a range of extra-curricular activities carry a heavy cost burden for families (not only activities that are commonly regarded as expensive), notably sports, dancing, and private tuition. This point about the financial cost of activities is underlined by the fact that the activity with more equal participation between household income groups (voluntary and community work) is that which is likely to be one of the cheapest activities. Overlapping with socio-economic status, the school attended has been shown here to make a significant difference in the scale and range of extra-curricular activities opportunities open to young people. Independent schools are likely to provide an unparalleled level of extra-curricular activities...".

43. Page 31 of the report is cited by the objector. This is said to provide further information on the link between music and socio-economic status: "*Music, for example, is clearly the preserve of more affluent family households, with 11% of the lowest income households taking part compared to 32% taking part from the highest income households.*". The objector considers that any move towards a specialism in an area shown to favour the more affluent runs the risk of excluding a particular group or, at the very least, making admission to the school more difficult.

44. The objector has also referred to the report by the Musicians' Union which found that families with a total household income of less than £28,000 music is half as likely to have a child learning a musical instrument as more affluent peers with a family income of more

than £48,000. Cost is said to be the greatest barrier. The report concludes that this exposes a clear need for music provision in schools.

45. Ironically, the three pieces of research provided by the objector made me consider that, given the links between disadvantage and lack of access to musical opportunities, it is increasingly important for schools such as this one to develop a music specialism and to offer opportunities to applicants with aptitude in the subject to develop their talents. The University of Bath research identifies the multiple benefits of extra-curricular activities, such as music and sport, in developing children's life skills and confidence, as does the report by the Musicians' Union. The objector not only objects to the introduction of partial selection, there is also an objection to the fact that music specialism generally will provide "a unique selling point", thus attracting wealthy families. Both the University of Bath and the Musicians' Union reports stress the need to make music more accessible. If the school ceased to have a music specialism, and ceased to offer the musical opportunities currently available to all of its pupils, local children who are disadvantaged would have fewer opportunities to learn and perform music with all the benefits this brings. They would be more disadvantaged.

46. There is no tangible evidence that disadvantaged applicants will not secure specialist places, and the research reports to not themselves demonstrate that this outcome will be more likely than not. I am not persuaded by the research reports that children from more wealthy families would achieve higher scores in a music aptitude test because they are from a more advantaged socio economic group. It follows that I am also not persuaded that, by introducing partial selection based upon music aptitude, the school is giving priority to children according to the financial status of their parents.

47. Paragraph 1.8 of the Code provides that arrangements must not unfairly disadvantage a child from a particular social group. The objector's argument is that the children of more affluent parents are more likely to secure a selective place, and that this disadvantages unfairly applicants from disadvantaged socio economic groups. The objector considers that familiarity, training and preparation in any subject will likely give that individual an advantage over someone of similar or even greater aptitude but who is unprepared. The objector says that gaining experience of aptitude testing, and the testing environment in general, can be obtained at a cost. Companies exist that specialise in providing support in passing musical aptitude tests. Those most able to afford to pay for the expertise will be at an advantage. A company that provides support for passing an aptitude test is said to be: <https://www.se22piano.co.uk/the-music-aptitude-test-how-to-help-your-child-succeed-2/#:~:text=If%20you%20fail%20a%20musical%20aptitude%20test%20it,so%20long%20as%20you%20know%20what%20to%20practice>. The website states that, '*With many students over a decade successfully gaining full scholarships, I am convinced that forward planning and preparation is the key to success with the Music Aptitude Test process.*'

48. The objector says that this statement is counter to the view that the test is purely a test of aptitude with no other factors being involved. If the integrity of the testing process cannot be assured, it is almost certain that the outcomes will be skewed in favour of those

most prepared in advance to take it. I note that the statement referred to is a statement made by someone who charges £80 per hour for private tuition alongside a claim that planning and preparation will make a difference. There is no evidence to substantiate its veracity. The trust has said that the test it intends using will be kept confidentially, therefore the actual test papers cannot be used as practice tests; however, I acknowledge that organisations which charge parents for test preparation may use tests of a similar design. It is claimed that gaining experience of aptitude testing, and the testing environment in general. Coaching and tuition for selection tests generally is known to be prevalent, and I am prepared to accept that parents from more advantaged social groups are more likely to coach their children or to pay for private tuition.

49. I completed a music aptitude online via YouTube [UK 11+ Music Aptitude Test \(MAT\) - Free Test 3 - YouTube](#). I wanted to obtain a clear picture of what the tests involve. I noticed that there were also a number of helpful videos on YouTube explaining the different sections of the tests which parents could assist their children to access free of charge. I am not able to assess with any accuracy the level of difference that private tuition would make to the result. I do, however, accept that practice and increased familiarity with the format and layout of the tests is likely to benefit applicants, if only to the extent of improving their speed and confidence.

50. If there is a concern that children from disadvantaged social backgrounds may be less likely to access specialist music places, surely the solution is not to prevent a school from offering such a valuable opportunity altogether, but to take steps to support and encourage disadvantaged families to access this valuable opportunity. I note that the school was planning to provide some music programmes for disadvantaged children in the summer holidays to support them in understanding what the school has to offer and to actively encourage disadvantaged students to apply. (Although not exactly on point, an example of this is the collaborative schemes run by some wholly selective schools and local authorities to provide free assistance to children eligible for the Pupil Premium in order to enable them to familiarise themselves with the format of 11 plus tests. The school is committed to keeping the intake of the specialist music places under review, and might explore a similar option if it transpires that none, or very few, of these places are being allocated to applicants from disadvantaged groups).

51. I have not seen any evidence which persuades me that children from disadvantaged groups would be unable to do well in musical aptitude tests. Indeed, the school did a mock aptitude test on 1 February 2022 which (although a limited study), provides some evidence that this is not the case where none of the applicants sitting the test have had any additional coaching or practice for the test itself.

The Test Objectives were:

1. Is the test accessible to students using students with a range of reading abilities?
2. Are pupil premium students disadvantaged?

3. Would students who had received private instrumental lessons score the highest marks?

The sample: Mixed ability (from reading ages) 50% Pupil Premium Students. Four students who had received private music lessons. The test was out of 28 and 23 marks or above would meet the threshold for selection by aptitude. Y = yes. N = no.

	Pupil Premium	NGRT reading age	Prior music lessons	Test score
1.	y	12.11	n	26
2.	n	14.10	y	26
3.	n	09.10	n	26
4.	y	14.10	n	25
5.	y	10.11	n	24
6.	n	11.07	n	24
7.	n	16.01	n	24
8.	n	17.00+	n	23
9.	y	10	y	23
10.	y	12.04	n	23
11.	y	12.07	y	22
12.	n	10.03	n	21
13.	n	11.10	n	21
14.	n	12.07	n	21
15.	y	12.07	n	19
16.	n	11.02	n	19
17.	y	10.11	y	19
18.	y	17.00+	n	18
19.	y	11.07	n	17
20.	n	13.02	n	06

52. Ten children met the threshold for admission on the basis of music aptitude; half of those children were eligible for the Pupil Premium; and only two had been taking music lessons. The tests which the school is intending to use are those recommended by the DfE as being designed to demonstrate a particular capacity to learn or to develop skills in music. Children from disadvantaged social groups may well listen to music regularly when growing up, and be able to distinguish pitch, note patterns and rhythm. I accept that this is not a significant sample size to be basing decisions on, unlike the wider research conducted by Goldsmiths and the University of Bath; however, it is of direct relevance whereas the wider research reports are of limited relevance.

53. Listening to music is not the exclusive purview of more advantaged socio economic groups. I accept that distinguishing texture might be more difficult for a child who had never learnt an instrument. Families with access to YouTube are able to access help with the practising similar tests free of charge. My concern is not that there is no available help for disadvantaged children, it is that socially disadvantaged families will be less likely to apply for a partially selective place, or to seek out free practice tests. It is important, therefore, that the selective intake is kept under review, which the school has said it will do.

54. I have read correspondence from both parties which relates to other schools said to have ceased to select by music aptitude because the tests can be prepared for. I do not consider the issues raised therein to have any bearing upon my decision in this case. I note that the test papers will not be made available in the public domain, but I am prepared to accept that familiarity and practice (though not necessarily instrument tuition), may improve test scores. I find that parents of disadvantaged children may be less likely to access practice tests (although I have not been provided with any direct evidence of this as the objector's concerns are framed in terms of the cost of tuition). I do not accept that that this renders the adoption of partial selection by music aptitude to be unreasonable in the context of the school. Neither do I find that the oversubscription criterion has been demonstrated to cause an unfair disadvantage.

55. The Code does not prohibit coaching or tutoring; however it does expressly permit partial selection on the basis of music aptitude. If the objector's argument were correct, no school would ever be able to adopt partial selection based upon music aptitude, which cannot be the case. The evidence I have been provided with indicates that there is a need to make music more accessible in schools. I do not consider that the school's specialism and introduction of partial selection is likely to disadvantage unfairly applicants from disadvantaged socio economic groups. In fact, the evidence submitted by the objector tends to indicate the opposite. I do not uphold this aspect of the objection.

Legitimacy of musical aptitude test employed in the arrangements

56. The objector's view is that the test is one of ability, rather than aptitude, and that it is a test of mathematical ability, as opposed to music ability.

Paragraph 1.31 of the Code provides that: Tests for all forms of selection must be clear, objective, and give an accurate reflection of the child's ability or aptitude,

irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.

Paragraph 1.32 says: Admission authorities must:

- a) ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability;
- b) ensure that tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation; and
- 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 a guarantee of a selective place.

Paragraph 1.24 provides that: Schools that have arrangements to select by aptitude must not allow for more than 10 per cent of the total admissions intake to be allocated on the basis of such aptitude (even if the school has more than one specialism). The only specialist subjects on which a school may select by aptitude are:

- a) physical education or sport, or one or more sports;
- b) the performing arts, or any one or more of those arts;
- c) the visual arts, or any one or more of those arts;
- d) modern foreign languages, or any such language; and e) design and technology and information technology.

Only schools which selected on either of these specialist subjects in the school year 2007/08 and every subsequent year may continue to do so.

57. In summary, it is for the admission authority to decide upon the content of the test. My view is that the test being used by the school is clear, objective, and designed to give an accurate reflection of the child's aptitude. I have seen nothing to suggest that the test is likely to favour (or not), applicants of a particular gender, race, or disability. The test is in a format recommended by the DfE, therefore it could be reasonably be assumed that there the Department would have checked that there are no biases in favour of any particular group before recommending it. My view is that the test used by the school is a test of music aptitude. It is not a test of music ability. I accept the school's assertion that applicants are not required to have any prior formal knowledge of music or music tuition. Neither are they tested upon their ability to sing or play a musical instrument. There is no evidence to suggest that the form of tests used by the school are not legitimate, or not a true test of aptitude.

58. The mock test conducted by the school referred to above indicated no link between prior music tuition and the ability to reach the test threshold. There is also no correlation between success in reaching the threshold and reading ability or affluence. Neither is there any evidence to support the assertion that the music aptitude test is really a maths test. What is tested is the ability to say whether one note is higher than another; whether a note has been altered within a sequence of notes; how many notes are being played together; and whether the second pattern of notes is the same as the first. This is not a maths test.

Public Sector Equality Duty

59. The objector also raised a concern that the admission authority may have failed to consider the potential impact of the new oversubscription criterion on children from particular backgrounds. Paragraph 1.8 of the Code requires oversubscription criteria to comply with equalities legislation and so the adjudicator previously appointed to this case interpreted this part of the objection to be reference to the admission authority's duty under the Public Sector Equality Duty at section 149(1) of the Equality Act 2010 (EA). Put simply, the public sector equality duty is a duty on public authorities (including maintained schools and academies through their funding agreements) to consider or think about how their policies and decisions affect people who are protected under the EA. If a public authority has not properly considered its public sector equality duty, this can be challenged in the courts. The characteristics that are protected in relation to the public sector equality duty are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. (Marriage and civil partnership status are also protected characteristics under the EA but are not covered by the public sector equality duty).

60. When public authorities carry out their functions, the EA says they must have due regard or think about the need to:

- eliminate unlawful discrimination;
- advance equality of opportunity between people who share a protected characteristic and those who don't;
- foster or encourage good relations between people who share a protected characteristic and those who don't.

Having due regard means public authorities must consciously consider or think about the need to do the three things set out in the public sector equality duty. There is no requirement to conduct or write a comprehensive equality impact analysis. If there is any obvious or immediate risk that any proposed oversubscription criterion would be discriminatory, there would be a need for more detailed analysis. The question, therefore, is whether the governing board when determining to adopt partial selection based upon music aptitude consciously considered whether it would have any adverse impact upon applicants with any of the protected characteristics based upon the information available at the time. Being disadvantaged is not itself a protected characteristic.

61. The trust says that no formal equality impact analysis was prepared. Having an aptitude for music is not dependent upon matters such as race, sex, sexuality or any of the other protected characteristics, and is not dependent upon the socio-economic status of the family (which is not a protected characteristic). The school offers assistance in accessing the test to applicants with disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation, therefore consideration has been given to the advancement of equality of opportunity in this regard. I cannot see any evidence which would suggest a need for more detailed equality impact analysis on the basis that the test might disadvantage boys, or girls, or applicants from different races or religion. The school says:

“... our decision to offer musical aptitude places is for us about unlocking the musical potential of all applicants by offering them exceptional and specialist music provision. We are a fully inclusive school that welcomes applicants of all abilities and from all walks of life”.

I do not uphold this aspect of the objection.

Summary of Findings

62. I make the following findings:

- a) The school has established a relevant subject specialism to entitle it under section 102 of the Act to select up to ten per cent of its pupil intake by reference to aptitude for music.
- b) By introducing partial selection based upon music aptitude, the school is not giving priority to children according to the financial status of their parents.
- c) The school's establishment of a music specialism and introduction of partial selection by music aptitude is unlikely to disadvantage unfairly applicants from disadvantaged socio economic groups.
- d) The test which the school intends to use is a music aptitude test.
- e) The school has consciously considered the need to do comply with the obligations set out in section 149(1) EA, and taken steps to ensure that tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation.

Determination

63. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 for the Harris Academy Wimbledon, Merton, determined by the Admissions Committee of the Governing Board of the Harris Academy Wimbledon on behalf of the Harris Federation.

Dated: 08 September 2022

Signed:

Schools Adjudicator: Dr Marisa Vallely