



Office of
the Schools
Adjudicator

Determination

Case reference:	ADA3921
Objector:	A member of the public
Admission authority:	Star Academies, a multi-academy trust, for Eden Boys Leadership Academy Birmingham
Date of decision:	21 September 2022

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 2023 determined by Star Academies for the Eden Boys Leadership Academy Birmingham East.

I determine that the consultation carried out before the arrangements were determined did not comply with the relevant requirements. However, I do not determine that the arrangements themselves fail to comply with the requirements relating to admissions. The admission authority does not need to make changes to its arrangements.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a person, (the objector), about the admission arrangements (the arrangements) for September 2023 for Eden Boys Leadership Academy, Birmingham East (the school), a non-selective free school (a type of academy school) for boys aged 11 to 18 with a Muslim religious character. The objection is to changes made to the admission arrangements and to the consultation, or lack of consultation on those changes. Specifically, the objector is concerned about the priority afforded to named feeder schools and to the consequent lack of priority afforded to residents of Alum Rock ward and to siblings of existing pupils, in the oversubscription criteria.

2. The local authority (LA) for the area in which the school is located is Birmingham City Council. The LA is a party to this objection. Other parties to the objection are the Objector, Star Academies (the Trust), and the association of Muslim Schools (the faith body).

Jurisdiction

3. The terms of the Academy agreement between the multi-academy trust and the Secretary of State for Education require that the Trust will act in accordance with the School Admissions Code published by the DfE (the Code) and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted their objection to these determined arrangements on 27 April 2022. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

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

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

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 27 April 2022 and supporting documents;
- d. the school's response to the objection and supporting documents;
- e. the LA's response to the objection and supporting documents;
- f. the Association of Muslim School's response to the objection;
- g. maps of the area identifying relevant schools; and
- h. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation.

Consideration of Case

6. The school was established as a Free School in 2018 and its first intake was in September of that year. The school only admits boys. It is designated as a school with a religious character, the religion being Islam.

7. The oversubscription criteria for 2023 are set out below. I have added after each in bold the abbreviation I will use for that criterion in the table set out below.

1) Looked after children or a child who was previously looked after, but immediately after being looked after became subject to an adoption, child arrangement order, or special guardianship order or those children who appear to the school to have been in state care outside of England and ceased to be in state care as a result of being adopted (**LAC/PLAC**).

2) Children of staff employed at Eden Boys' Leadership Academy for 2 or more years at the time at which the application for admission is made, and / or the member of staff has been recruited to fill a post where there is a demonstrable skill shortage (**Staff**).

3) Children with proven, exceptionally strong special, medical or social circumstances, which are directly relevant to attendance at Eden Boys' Leadership Academy. Parents are responsible for providing the professional supporting evidence to the school by the closing date from a consultant, doctor, psychologist, social worker or from another relevant independent professional (**Med/Soc**).

4) Children attending The Olive School, Birmingham and The Olive School, Small Heath at the time of application and offer of a place (**Olive**).

5) Children with older siblings attending Eden Boys' Leadership Academy in Years 7 to 11 at the time of application and offer of a place (**Siblings**).

6) All other children who live nearest from home to school (**Other**).

8. The oversubscription criteria have changed over time as shown in the Table 1 below. This table shows the order of the oversubscription criteria for each year from 2018 to 2023. In order to fit into the space in the table the criteria are abbreviated as set out above. In boundary changes implemented in May 2018 Washwood Heath ward became Alum Rock ward and Aston ward changed to cover two wards Aston and Newton. I have used the name of the ward in each case as an abbreviation for the admission criterion.

Table 1

	2018	2019	2020	2021	2022	2023
1	Lac/Plac	Lac/Plac	Lac/Plac	Lac/Plac	Lac/Plac (including from abroad)	Lac/Plac (including from abroad)
2	Sibling	Staff	Plac from abroad	Plac from abroad	Staff	Staff
3	Staff	Siblings	Staff	Staff	Olive schools	Med/Soc

	2018	2019	2020	2021	2022	2023
4	Med/Soc	Med/Soc	Olive schools	Olive schools	Siblings	Olive schools
5	Washwood Heath (max 90)	Alum Rock (max 90)	Sibling	Siblings	Med/Soc	Siblings
6	Aston (max 30)	Aston and Newton (max 30)	Med/Soc	Med/Soc	Alum Rock	Other
7	Other	Other	Alum Rock	Alum Rock	Other	
			Other	Other		

9. The objector has alleged that the consultation process which was conducted before the arrangements were determined was flawed. It is open to an adjudicator to determine that there has been a failure to consult in accordance with the relevant legal requirements, and therefore a failure to comply with both the 2012 School Admissions Regulations and the School Admissions Code. However, an adjudicator cannot impose a requirement upon an admission authority to re-consult after it has determined the arrangements even if the consultation has not been conducted in accordance with the requirements of the Regulations and the Code. Nor can the adjudicator require the admission authority to re-instate the previous year's arrangements.

10. **Consultation.** Paragraph 1.47 of the Code reads as follows:

"Admission authorities must consult with:

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

11. The following query was sent to the admission authority by the Office of the Schools Adjudicator:

“You have provided copies of the proposed Admission Arrangements for consultation for the years 2019/20, 2020/21 and 2021/22, which include the dates of the consultation. For each of those years and for the changes introduced for the 2023/24 arrangements please confirm how the various parties set out in paragraph 1.47 of the Code were made aware of the consultation”.

12. In response I received the following statement:

“In regard to the query around how parties were made aware of the consultation, we can advise that this was via email. Copies of the consultation were published on the school’s website for the full consultation period and the emails referred people to the consultation on the website. The Trust contact for comment, queries or feedback was within the consultation”.

13. I note firstly that this does not answer fully the question put to the admission authority. Secondly, I cannot see how those persons set out at a) and b) in paragraph 1.47 can have been consulted by email as it seems very unlikely that the admission authority would have a list of every such person’s email address. Consequently, I find on the evidence presented by the admission authority, that the persons set out at a) and b) in paragraph 1.47 were not consulted in accordance with the requirements of the Regulations and the Code. I uphold this part of the objection.

14. However, as stated above I cannot impose a requirement upon an admission authority to re-consult after it has determined the arrangements even if the consultation has not been conducted in accordance with the requirements of the Regulations and the Code. Nor can I require the admission authority to re-instate the previous year’s arrangements. Consequently, despite my finding the admission arrangements determined for 2023 remain the school’s determined admission arrangements.

15. **Oversubscription criteria.** The significant changes are to the priority given to children resident in certain wards and the introduction of priority for children who were attending the Olive schools at the time of their applications to the school. Additionally, the level of priority given to pupils with a medical and/or social need to attend the school changed, as did the wording of that criterion. The Trust’s explanation of those changes is set out below:

“Changes to the wards

When the School opened it was located in a temporary building in the Aston ward of Birmingham. To ensure that parents who were living within a close proximity of the temporary building were not disadvantaged, 30 places were allocated to children residing within the Aston ward. In addition to this, to ensure that the children residing within the locality of the School’s permanent building would [not] be [disadvantaged],

the Washwood Heath ward of Birmingham was included within the admission arrangements with 90 places allocated.

Birmingham Council was subject to a ward boundary review. As part of the review, the Washwood Heath ward became the Alum Rock ward and the Aston ward became a combination of the Aston and Newtown wards. The School's admissions arrangements were changed to reflect this.

Removal of the Aston and Newtown ward for 2020

The School relocated to its permanent building in the 2020-21 academic year. As there was no longer a requirement for places within the locality of the temporary site to be considered, the 30 places allocated to residents in the Aston and Newtown wards were removed.

Removal of the Alum Rock ward for 2023

As the School was established on its permanent site and that site is located within the Alum Rock ward, the Trust removed the ward from its policy as the requirement to reserve places became redundant as these are the children who reside closest from home to school.

Inclusion of feeder schools

The Trust did not include the feeder schools in the initial policy when the School opened as The Olive School, Small Heath (formally Al-Hijrah) did not open until 2019 and The Olive School, Birmingham did not have a year 6 cohort and therefore the Trust only included them within the policy at a point when it became applicable and consultation on the changes could take place to incorporate the change. The purpose of this change was to enable continuity of educational provision within Star Academies.

Social – medical definition

Revised wording was implemented for the social and medical criterion. The revised wording was brought in to make it clearer to parents the type of information they need to provide in support of the application under this criterion. The Trust also decided to raise the position of the social – medical criterion higher in the oversubscription criterion from 2023, as it was felt that a child with a defined social or medical need specifically relating to attendance at a particular school should be higher within the oversubscription criterion.”

The changes to the looked after and previously looked after child criteria came about as a result of changes to guidance and to the Code regarding the priority to be afforded to such children. These are not in issue here.

16. I am unclear why, when the school was temporarily situated in Aston Ward, priority was given to residents of that ward rather than relying on the final, distance criterion to

prioritise local children as this is given as the rationale for dropping the priority for Alum Rock residents once the school moved to that ward. Since the 2020/21 academic year the school has been located towards the eastern side of the Alum Rock ward. There will be children resident in other, neighbouring wards who live closer to the school than some children in Alum Rock ward. I accept that distance may be a better criterion to prioritise local children than a catchment area based on a particular ward. Whether it is or is not better in any case will depend on the particular circumstances of that case.

17. I am also unclear why the priority given to Alum Rock ward residents was not dropped until the oversubscription criteria for 2023 were determined when the school had moved to its current location in the 2020/21 academic year.

18. However, I accept that changes to admission arrangements may lag behind events and that the Code and admissions law do not require all these points to align perfectly. The general principle is set out in paragraph 1.10 of the Code “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”. I find that the reasons given by the school for the changes are rational ones. My approach will be to consider whether the 2023 oversubscription criteria are compliant with the other relevant provisions of the Code.

19. Paragraph 14 of the Code requires that:

“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

20. Paragraph 1.8 states (in part)

“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation”.

21. Paragraph 1.15 states:

“The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds”.

22. The primary concern of the objector is the priority given to children who have attended the two feeder schools and the consequent reduction in the number of places available to children living near the school but who do not attend either of those schools. A secondary concern is the effect on siblings. The oversubscription criteria for 2023 do not give any priority to children resident in a particular area, whether a ward or otherwise. The first priority is given to looked after and previously looked after children, as is required by the Code. The next priority goes to children of staff who meet the relevant condition, and the priority after that goes to children with an exceptional social or medical need for a place at the school. This last criterion has been given a higher priority than in former years. For

entry in 2022 five children were admitted under those criteria combined. The social/medical criterion had a lower priority in 2022 but as children were admitted under lower criteria, I assume that all those who met this criterion were admitted. These criteria are not controversial. In addition, two children were admitted with Education, Health and Care Plans naming the school as must always be the case.

23. The next priority is for children attending the two Olive Schools, followed by siblings, then finally other children. That final criterion is prioritised by distance from home address to the school and so will favour those living closest to the school. It is the level of priority given to children attending the Olive schools which the objector considers unfair and/or unreasonable.

24. I do not consider the dropping of priority for children living in the Alum Rock ward to be unfair in itself. Priority is afforded to local children in criterion 6 and it is as logical to base this on distance as on a ward boundary. The potential unfairness lies in the priority given to children at the two feeder schools, the Olive schools. Dealing firstly with paragraph 1.15 of the Code. I find that the selection of those two feeder schools is transparent. The schools are named and are part of the same Trust.

25. Trust have set out their grounds for giving priority to pupils at the two Olive schools as follows:

“The grounds for the Olive Schools criterion.

In accordance with Section 1.15 of the Code, the Trust included The Olive Schools as feeder schools as there are active and specific links between The Olive Schools and Eden Boys’ Leadership Academy.

The Olive Schools were chosen as feeder schools:

- To enable students to have continuity in studying within the Star family, including continued provision of the Star vision and values and specialisms from the primary to secondary phase
- To enable students to have continuity in studying within a free Islamic faith ethos provision from the primary to secondary phase

When considering the addition of the feeder schools, the Trust noted that there were no other free schools of designated religious character of the Islamic faith that the students at The Olive Schools could continue their education within.

In addition, The Olive Schools and Eden Boys’ Leadership Academy have leadership specialisms. Other local schools do not have a leadership specialism within a faith ethos environment as The Olive Schools and the School do.

The Trust believed it was fair and reasonable after 7 years of primary education in the environment outlined above for the students at The Olive Schools to have the opportunity to continue with these provisions should they choose to and as there are

these direct links between all the schools, the Olive Schools were included as named feeder schools within the admission arrangements from 2020 onwards”.

26. The faith body for the school, the Association of Muslim Schools, strongly supports the Trust’s position on giving priority to pupils attending the Olive schools, setting out its reasons as follows:

“We are supportive of the inclusion of the Olive Primary Schools as feeder schools within the admission policy for Eden Boys’ Leadership Academy. All the schools are part of Star Academies. We are aware that there are no other schools of designated character of the Muslim faith in the areas around the Olive schools or Eden. We firmly believe that those children studying within an Islamic faith ethos should have the opportunity to carry on their educational journey within the same faith-based environment. We feel that if the Olive schools were not to be included, those children would be disadvantaged as they have been studying within the nurturing, faith ethos of the Olive Schools throughout their primary school journey.

In addition to the faith ethos, the Olive schools and Eden all have leadership specialisms and share the same values that are intrinsic to the core values of our faith. The transition to secondary school is challenging for all children. We share the view that the challenge facing the Olive children at transition would be further exacerbated if they were denied admission into Eden. We believe it is common practice for faith based secondary schools across the country to include primary schools of the same faith as feeder schools within their admission arrangements for these reasons.

We are satisfied that the inclusion of the Olive primary schools seamlessly meets the religious needs of the Olive children whilst equally ensuring local children are not disadvantaged, as the majority of places are allocated to local children and there is enough provision for the local children to access secondary provision close to their home”.

27. The distance from the Olive School Birmingham to the school is 2.6 miles in a straight line and 4.2 miles by road. The distance from the Olive School Small Heath to the school is 1.7 miles in a straight line and 2.2 miles by road. These are not excessive distances for children to travel to secondary school and in a large city such as Birmingham there will be reasonable transport links. There are, of course, a number of other primary schools nearer to the school but these do not share the links to the school which are outlined above.

28. The school is heavily oversubscribed. In 2021 (under different oversubscription criteria) 110 children for whom it was the first preference did not gain a place. The last child admitted lived 944 meters (measured in a straight line) from the school. In 2022 that number rose to 269 children with the last to be admitted on distance living 395 meters from the school. The overall number of preferences expressed for the school rose from 269 in 2019 to 612 in 2021 and to 858 in 2022. In 2022 51 pupils were admitted under the Olive Schools priority (a significant increase from 15 in 2021). Some of these may have qualified under the sibling criterion anyway and some may live close to the school. Nevertheless, a

significant number of children living close to the school will be displaced every year by children from the Olive Schools.

29. For 2022 no siblings were displaced but in future years this is a possibility. The school is for secondary aged pupils. Such pupils can usually make their own way to school on foot or by using public transport. There is no great inconvenience or difficulty in siblings of this age attending different schools and, indeed, this is inevitable for some time when one child has moved on to secondary school but younger siblings remain at primary school. In most families for some time children will attend different schools. Furthermore, in this case, the school is for boys only and so any sisters of pupils will always have to go to a different secondary school. I do not find that the potential displacement of siblings in the future makes the priority given to pupils from the Olive schools unfair.

30. Academy schools must provide education for pupils who are wholly or mainly drawn from the area in which the school is situated. The “area” is not defined but does not necessarily mean the immediate area around the school. What is the area will depend on the context. In this case it is the area around a secondary school in a built up urban area. I find that “area” in this context is sufficiently wide to include both the Olive schools. A scatter map provided by the LA shows the spread of admissions to the school by marking each admitted child’s home address. This shows a wide spread of points around the school with some more distant points to the south west (the Olive schools lie to the south of the school). I find that the school draws its pupils from “the area in which the school is situated”.

31. All oversubscription criteria discriminate by giving places to some children and denying places to others. There is no principle that that priority must go to those closest to the school. It is for the admission authority to decide which oversubscription criteria to use, provided they are compliant with the Code and admissions law. The Code expressly allows the use of feeder schools, provided they are named, transparent and selected on reasonable grounds. I find that the selection is transparent and, for the reasons set out by the school, made on reasonable grounds.

32. Paragraphs 14 and 1.8 also require oversubscription criteria to be fair. I find that it is fair to give priority to pupils from the Olive schools above children who may live closer to the school and, should it arise, above siblings of pupils already at the school. I do not uphold the objection on this point.

Determination

33. 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 2023 determined by Star Academies for the Eden Boys Leadership Academy Birmingham East.

34. I determine that the consultation carried out before the arrangements were determined did not comply with the relevant requirements. However, I do not determine that the arrangements themselves fail to comply with the requirements relating to admissions. The admission authority does not need to make changes to its arrangements.

Dated: 21 September 2022

Signed:

Schools Adjudicator: Tom Brooke