



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4122

Objector: An individual

Admission authority: Cathedral Schools Trust, for Trinity Academy Bristol

Date of decision: 24 May 2023

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 2024 determined by Cathedral Schools Trust for Trinity Academy, Bristol.

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 Trinity Academy (the school), a non-selective secondary free school (academy) for pupils aged 11 – 18 for September 2024. The objection is to a lack of clarity in relation to oversubscription criterion 6 and a failure to consult before introducing the oversubscription criterion in its current form; and a provision in the school's sixth form arrangements which states that a child with an Education, Health and Care Plan (EHCP) which names the school will only be admitted where the child meets the school's academic requirements for admission.

2. The local authority (LA) for the area in which the school is located is Bristol City Council. The LA is a party to this objection. Other parties to the objection are Cathedral Schools Trust (the trust), the school and the objector.

Jurisdiction

3. The terms of the academy agreement between the 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 trust, which is the admission authority for the school, on that basis. The objector submitted their objection to these determined arrangements on 5 April 2023.

4. I have also used my power under section 88I of the Act to consider the arrangements as a whole. I have not read or considered the sixth form admission arrangements other than the provision referred to by the objector relating to children with EHCPs.

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 meetings of the governing board and the trust at which the arrangements were determined and ratified;
- b. a copy of the determined arrangements, which include Supplementary Information Forms;
- c. the objector's form of objection dated 5 April 2023 and further correspondence;
- d. the trust's response to the objection;
- e. the LA's response to the objection and to my questions, which was circulated to the other parties. In light of trust's responses to my questions, I have not needed to include in this determination all of the information provided by the LA. I am grateful nevertheless to the LA for the time and trouble taken in responding;
- f. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it; and
- g. A publication entitled [School applications for foreign national children and children resident outside England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/school-applications-for-foreign-national-children-and-children-resident-outside-england). (The DfE Guidance). Link provided to the parties in the Jurisdiction and Further Information letter.

The Objection and Other Matters

The objection

Ground one

7. The objector considers that oversubscription criterion 6 is not compliant with paragraphs 14 and 1.8 of the Code because the words “up to 25%” are used, rendering the arrangements unclear as to how many applicants will be admitted under this criterion. The objector claims that that the criterion is neither fair nor objective, and that parents will not be able to understand easily how places will be allocated under it. The objector’s view is that the number of applicants admitted should be a fixed percentage, and that it is not for the school to make a decision as to how many applicants will be admitted under oversubscription criterion 6 after all the applications have been received. The objector claims that, unless a fixed percentage is specified, the arrangements are unclear, unfair and not objective.

8. Paragraph 14 of the Code requires that the criteria for allocating places must be “fair, clear and objective... Parents must be able to look at a set of arrangements and understand easily how places for that school will be allocated”, and paragraph 1.8 requires that oversubscription criteria must be “reasonable, clear, objective, procedurally fair”.

Ground two

9. The objector claims that oversubscription criterion 6 was newly introduced for September 2024 admissions, and that, although the admission authority consulted upon proposed revisions to be introduced for September 2024, the revision to oversubscription criterion 6 was not amongst the revisions that were consulted upon. Paragraphs 1.45 - 1.47 of the Code are relevant. I have set these out.

Paragraph 1.45

“When changes are proposed to admission arrangements, all admission authorities must consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year. Where the admission arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement that admission authorities must consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.”

Paragraph 1.46

“Consultation must last for a minimum of 6 weeks and must take place between 1 October and 31 January in the determination year.”

Paragraph 1.47

“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.”

Ground three

10. The objector claims that arrangements for admission to the sixth form purport to impose a condition which the admission authority is unable to impose, namely that children whose EHCP names the school will not be admitted unless they meet the academic entry requirements. The objector’s view is that, where a child’s EHCP names a particular school, the child must be admitted to that school, and that any statement which suggests otherwise is incorrect, unlawful and risks causing misunderstanding and unfair disadvantage to a vulnerable group. The objector cites paragraphs 1.6, 1.8, 1.9 a), 1.9 d) and 1.9 h) of the Code.

Paragraph 1.6

“All children whose Education, Health and Care Plan names the school must be admitted.”

Paragraph 1.8 (in full)

“Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements must include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

- 11. Paragraph 1.9 a), d) and h) provide that admission arrangements must not:
 - a. “place any conditions on the consideration on any application other than those in the over-subscription criteria...
 - d. introduce any new selection by ability...

- h. discriminate against or disadvantage disabled children those with special educational needs.”

Other matters

12. Having read the arrangements for admissions to Year 7 and In-Year as a whole, it appeared to me that there was one other matter which was in contravention of the DfE Guidance. I therefore decided to use my powers under section 88I of the Act to look into this matter. I did not read or consider the school’s sixth form arrangements other than the provision relating to applicants with an EHCP.

13. The arrangements include the following:

“Who can apply

Applications will be accepted for children who meet one or more of the following:

- they are resident in the UK
- they hold full British Citizen Passports
- they are from countries whose passports have been endorsed to show that they have the right to abode in this country.”

This provision appeared to be in contradiction of the DfE Guidance which says: “The admission authorities for state-funded schools (maintained schools and academy schools) must not check the immigration or nationality status of foreign national children as a pre-condition for admission.

Admission authorities for state-funded schools:

- must not refuse to admit a child on the basis of their nationality or immigration status nor remove them from the roll on this basis
- must not ask to see passports or other immigration information as a condition of admission (this would be a breach of paragraphs 1.9(a) and 2.8 of the School Admissions Code).”

Background

14. The school is a non-selective co-educational academy secondary school for pupils aged 11 – 18 with a specialism in music. It was opened as a new free school in 2019. It is part of Cathedral Schools Trust, a multi-academy trust comprising nine schools in Bristol. The school has not yet been rated by Ofsted. The website says that the school moved into a new £25 million building in 2021; quickly became oversubscribed; and is proud of its “diverse community, amazing facilities, outcomes, and cutting edge teaching and learning.” I watched the video presentation for music specialism and was impressed by the opportunities made available to pupils. The published admissions number (PAN) for Year 7 is 180. I have summarised the oversubscription criteria and set out relevant parts of the Year 7 admission arrangements below.

“Consideration of Applications

Priority will then be given to those children who meet the criteria set out below, in order; ...

1. Looked After Child or Previously Looked After Child

2. Music Specialism

Next, up to 18 places of the Year 7 intake will be allocated to children who have demonstrated an aptitude in our specialist subject area for music, using a music aptitude assessment test for pitch, melody, texture and rhythm... Children who do not achieve a place in this category because there are more qualifying applicants than places available will be placed on the music specialism waiting list in rank order. They will also be placed into the next category that applies and be considered for a place under that category too.

3. Feeder School

Next, priority will be given to children who are on the roll of Stoke Park Primary School, on the date of application, which is a designated feeder school for Trinity Academy.

4. Siblings

Next, children who, on the date of admission, will have a sibling on roll at Trinity Academy (age 11 - 16 provision only). i.e. a sibling must be attending (or is expected by the admission authority to be attending) the school at the time of admission or year of entry.

5. Children of staff

Next, priority will be given to children of staff who are employed by Cathedral Schools Trust (CST) where their main place of work is Trinity Academy. This will include all teaching and non-teaching staff who;

- a. have been employed at the School for at least two consecutive years at the time at which the application for admission is made; and/or
- b. were recruited to fill a vacant post at the School for which there is a demonstrable skill shortage.

6. Other children living in the inner and outer priority areas

Next, places will be allocated to children living in the inner and outer priority areas as follows:

- a. Up to 25% of the remaining places will first be randomly allocated to children living within the inner priority area. (Area outlined in red on the map; children living on the boundary line will be considered to be living within the inner priority area). The process will be overseen by an independent body. Children living in the inner priority area not allocated a place in 6a will also be ranked within the outer priority area under 6b.

b. Any remaining places will be randomly allocated to children living within the outer priority area. (Area outlined in purple on the map); children living on the boundary line will be considered to be living within the outer priority area. The process will be overseen by an independent body. The priority areas can be viewed on the Trinity Map of Priority Areas or viewed on the Bristol City Council website.

7. Other children not living in the inner or outer priority areas

Other children by distance from the school, with priority for admission given to children who live nearest to the school.

Who can apply

Applications will be accepted for children who meet one or more of the following:

- they are resident in the UK
- they hold full British Citizen Passports
- they are from countries whose passports have been endorsed to show that they have the right to abode in this country.”

15. The PAN for the sixth form is 75. The school’s sixth form admission arrangements say:

“Children with an Education, Health and Care Plan (EHCP).

The school will admit any students with an EHCP naming the school. The places are reserved and the PAN will be reduced accordingly. Their parents should apply for a place via the service dealing with Special Education Needs in their home local authority. If after the initial allocation of places an application is received from a student with an EHCP, we will go over PAN to accommodate the student.

To be eligible to enter the sixth form both internal and external students will be expected to have met the minimum academic entry requirements. In addition to the sixth form’s minimum academic entry requirements students will need to satisfy minimum entrance requirements to the courses for which they are applying. If either internal or external applicants fail to meet the minimum course requirements they will be given the option of pursuing any alternative courses for which they do meet the minimum academic requirements. Course requirements are published annually on the website at the beginning of the academic year prior to admission.”

Consideration of Case

16. In ground one of the objection, the objector asserts that the use of the words “up to” in oversubscription criterion 6 renders this criterion unclear, not objective and unfair contrary to paragraphs 14 and 1.8 of the Code. I note that the words “up to” are also used in oversubscription criterion 2. The trust explained that it is not possible for an admission

authority to know how many applicants it will receive overall or how many remaining places will be available after places have been allocated in accordance higher oversubscription criteria. The trust said:

“It is likely that the number of remaining places may not be an even number and therefore cannot be divided by 4 (i.e. 25%). Oversubscription criteria must work in practice. For example, if, after criterion 1- 5 have been allocated there is an odd number of remaining places left to allocate i.e. 83, 25% of 83 would equate to 20.75 applicants. It is not possible to have 0.75 of an applicant, and therefore it would be unclear whether there were 20 places or 21 places to allocate in this criterion.

The admission authority would not be able to say exactly how many places would be offered if a parent/carer queried how this criterion worked in practice. This would also be the case if the admission authority chose a different percentage as suggested by the objector. Including the words ‘up to’ means the nearest whole number of places up to 25%.”

17. The objector’s view is that the explanation given by the school does not correspond with what the arrangements actually say. Accordingly, it would be possible for a parent reading the arrangements to interpret the meaning of the words “up to 25%” either as being that which has been explained by the trust, or alternatively as meaning any percentage between 0 per cent and 25 per cent. Parents are not able to read this oversubscription criterion and know how many places will be allocated under it.

18. Essentially there are two points here. First, whether an oversubscription criterion which limits priority to a percentage of eligible applicants is contrary to the Code. Second, whether the methodology of attaining priority under such an oversubscription criterion is described clearly. The actual number of places which will be allocated under oversubscription criterion 6 cannot be apparent to applicants where this is determined on the basis of a percentage of the remainder of available places not allocated under oversubscription criteria 1 – 5. This is for all of the reasons referred to by the trust. My view is that there is nothing inherently unreasonable or unfair in limiting priority under an oversubscription criterion provided that the procedure and methodology for gaining priority, and the order of priority, are described clearly. The requirement for clarity under paragraph 14 of the Code is not a requirement that the number of places allocated under a specific oversubscription criterion must be stated.

19. I take the objector’s point that the words “up to 25%” cannot be construed as describing an exact percentage equating to a fixed number of places, and therefore it is not possible for parents to look at the arrangements and be certain that, for example, 20 places will be allocated under oversubscription criterion 6. I note, however, that even if the arrangements said that 25 per cent of places (as opposed to “up to 25 per cent”) will be allocated under oversubscription criterion 6, it would still not be possible to know how many places this would equate to. I agree with the trust that it could prove to be factually incorrect were the arrangements to say that 25 per cent of places (or any other specified percentage for that matter) will be allocated under oversubscription criterion 6. What is the trust to do? If

the arrangements were to say that 25 of places will be allocated under oversubscription criterion 6, this would be clear, but it may not be correct if more than 155 places are allocated under oversubscription criteria 1 – 5. It would also not be correct if fewer than 25 per cent of the remainder of applicants had sought priority on the basis of living in the inner area even if there were enough places to allocate to them.

20. I uphold this ground of objection to the extent that self-evidently the words “up to 25%” could mean any percentage between 0 - 24. The trust will have to amend the wording in order to make what it intends clear. It is not for me to specify how it should do this, but I will observe that perhaps oversubscription criterion 6 could have an explanatory note saying that “up to 25%” means the nearest whole number of applicants closest to 25 per cent of the places remaining after places have been allocated under oversubscription criteria 1 – 5. This would be an accurate description. I wonder, though, whether it would render the arrangements more complicated and therefore less clear to parents. I emphasise that I am not making a finding the trust’s approach of wishing to give priority for a certain proportion of those places remaining after higher categories on the basis of living in the inner area to be in breach of the Code. This is simply a matter of the arrangements describing the intention as clearly as possible.

21. Ground 2 of the objection is that the school failed to consult before introducing oversubscription criterion 6. I have looked at the school’s admission arrangements for September 2023. What is now oversubscription criterion 6 was oversubscription criterion 5. The only difference in wording as far as I can see is that the words “up to” have been introduced. The trust has explained that the words “up to” were included in oversubscription criterion 6 to improve clarity. This was considered by the trust to be necessary for the reasons I have quoted in paragraph 15. Oversubscription criterion 6 is intended to operate in exactly the same way as oversubscription criterion 5 of the 2023 admission arrangements, therefore the trust believed that it was unnecessary to consult on this change. The trust says there would have been no reason not to consult on the point if the trust had considered this to be necessary as the trust did consult on other changes introduced for admissions in September 2024. The trust has said that, if I am of the view that this change requires consultation, they are very happy to go out to consult on the change in the admission arrangements for 2025-26, or to change the wording if required.

22. Paragraph 1.45 of the Code requires that when “changes” are proposed to admission arrangements, all admission authorities must consult on their admission arrangements. There is no definition of the meaning of the word “changes” in the Code. It might be possible to construe any change to the wording of a set of admission arrangements to be a change requiring consultation, however it is also arguable that the requirement to consult relates to a substantive change. As the trust has said, there has been no substantive change to how places are allocated under oversubscription criterion 6.

23. Regulation 15 of The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) sets out the circumstances in which consultation on proposed admission arrangements is not required. Regulation 15(3)(b) provides that admission arrangements are treated as being

the same if the only change made is a change made to comply with a mandatory requirement in the Code or in the Regulations. Since there is a requirement in paragraph 14 of the Code that the criteria for allocating places must be clear and a further requirement under paragraph 1.8 that oversubscription criteria must be clear, if the addition of the words “up to” serve to make oversubscription 6 criterion clear, there would be no requirement to consult upon such a change.

24. My view on this point is that, from what the trust has said, it would be factually incorrect to say that 25 per cent of remaining places will be allocated under oversubscription criterion 6, therefore the addition of the words “up to” was necessary to render the arrangements compliant with the requirements of paragraphs 14 and 1.8. Had the words “up to” not been added, oversubscription criterion 6 would have contained an incorrect statement. As I have said above, there is an argument that, in adding the words “up to” the trust has rendered oversubscription criterion 6 accurate and clearer in one respect. For these reasons, I do not uphold this ground of objection. Furthermore, as I have explained to the parties in the Jurisdiction and Further Information letter dated 20 April 2023, even in a case where I conclude that there has been a failure to consult or a flawed process of consultation, I have no power to strike down an oversubscription criterion or require an admission authority to reinstate its previous admission arrangements. All I am able to do is comment to this effect. However, in the present case, my view is that the trust was not required to consult before adding the words “up to” to oversubscription criterion 6.

25. Ground 3 of the objection is that the school’s sixth form admission arrangements purport to insist that applicants with an EHCP must meet the academic requirements for entry notwithstanding the fact that the EHCP names the school. The responses of the trust and the local authority were helpful on this point. I have not referred to the information provided by the local authority in this determination as it related to the general availability of sixth form provision for students with EHCPs and was therefore not directly on point.

26. The trust explained that under the heading ‘Children with an Education, Health and Care Plan (EHCP)’, the full wording in the Post 16 admission arrangements states:

“The school will admit any students with an EHCP naming the school. The places are reserved and the PAN will be reduced accordingly. Their parents should apply for a place via the service dealing with Special Education Needs in their home local authority. If after the initial allocation of places an application is received from a student with an EHCP, we will go over PAN to accommodate the student”.

27. The trust says that the process of admitting children with an EHCP sits outside of the conventional admission process following the local authority SEN consultation process with the school.

“There is no intention in the arrangements to disadvantage any student in receipt of an EHCP. The next paragraph [in the arrangements] relates to all other 6th Form applicants. The admission authority can set academic entry criteria for sixth form, which is the same for both external and internal places. On reflection, the admission authority agrees that it would be clearer to include a further heading that states ‘All

other 6th form applicants' and contains information on how they apply via the on-line admission portal and the second paragraph explains the minimum academic entry requirements - see suggested text at Annex A below. Alternatively we would be happy to consider any other wording that makes this point clear".

28. My view is that the arrangements are unintentionally misleading on this point, and the fact that the objector has misunderstood the way the arrangements are intended to operate reinforces this view. The objection suggests that the trust is operating unlawfully by imposing academic entry requirements upon EHCP students. I do not find this to be the case. However, the process for the admission of children with an EHCP is separate to the allocation of places under the general sixth form admission arrangements, and the arrangements need to make this clear. It is important that applicants understand that students with EHCPs have priority and, if admitted, will reduce the number of available places. The arrangements explain this. If there is any risk of the arrangements being interpreted as saying that children with EHCPs must meet the academic entry requirements, the arrangements will need to be revised in order to make clear that this is not the case. The trust's suggestion of a separate heading is a reasonable and necessary one, and I am grateful for their cooperation.

29. Finally, I raised one other matter with the school, namely that the arrangements restrict those who can apply to the school to children resident in the UK, children with UK passports and children whose passports indicate that they have a right of abode.

30. The trust informed me that wording was included at the request of the Admissions Team at North Somerset Council in relation to another secondary school within the Cathedrals Schools Trust. The trust had therefore assumed that it was standard wording which needed to be included and considered that it would be helpful to use the same wording for Trinity Academy. The trust has assured me that it has no intention of restricting applications to the school on the basis of nationality. "We are aware that we cannot ask for any passports or immigration information and we must process in-year applications as we process all Year 7 applications - applying the determined admission arrangements, including the oversubscription criteria and tie breaker where applicable only. If there is alternative wording to include, or indeed if this section should be deleted, we are happy to do so. We would welcome further clarity and we will ensure that all our admission arrangements are aligned on this point". Again, I am grateful to the trust for their cooperation in this matter.

31. The local authority told me that, in September 2022, prior to the publication of the local authority's parent guide, the authority contacted the trust regarding the "*Who can apply*" section of the admissions policy, highlighting issues with the wording but focusing on a now removed section stating: "Applications for children who do not meet one of the above will not be accepted until the child is in this country". As applications from overseas are received but country of origin is not part of the application and nationality cannot therefore be determined, the local authority recommended that this sentence be removed from the policy which the trust promptly did.

The nature of a child's immigration status, even if short-term, has no bearing upon the child's entitlement (or otherwise) to a school place. In my Jurisdiction and Further Information letter, I referred the parties to the DfE Guidance which says:

"The admission authorities for state-funded schools (maintained schools and academy schools) must not check the immigration or nationality status of foreign national children as a pre-condition for admission.

Admission authorities for state-funded schools:

must not refuse to admit a child on the basis of their nationality or immigration status nor remove them from the roll on this basis,

must not ask to see passports or other immigration information as a condition of admission (this would be a breach of paragraphs 1.9(a) and 2.8 of the [school admissions code](#))".

32. Since the arrangements appear to restrict applications based upon residence (which could be interpreted to mean a right to reside in the UK), the holding of a British passport or right of abode), they are contrary to the Department for Education Guidance. This section of the arrangements will therefore need to be revised. Whilst I am not able to dictate the exact nature of any revisions, the trust's suggestion of removing this section would seem sensible.

Summary of Findings

33. I partially uphold this objection. I find oversubscription criterion 6 to be unclear; I find that the trust was not obliged to consult upon the addition of the words "up to" in oversubscription criterion 6; and I am satisfied that the trust is not imposing academic entry requirements upon students with an EHCP which names the school, though it does need to revise the arrangements in order to make this clear. There is a need for further clarity in the wording relating to sixth form students with an EHCP which names the school. Finally, the requirements relating to nationality and immigration status are in breach of the Department for Education Guidance.

34. The trust is able to make these revisions under paragraph 3.6 of the Code.

Determination

35. 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 2024 determined by Cathedral Schools Trust for Trinity Academy, Bristol.

36. 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.

37. 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: 24 May 2023

Signed:

Schools Adjudicator: Dr Marisa Vallely