



Determination

Case reference: REF4227

Referrer: A Member of Parliament

Admission authority: Inspiration Trust for Hethersett Academy, Norfolk

Date of decision: 16 October 2023

Determination

I have considered the admission arrangements for September 2024 for Hethersett Academy in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to matter raised by the referrer (namely the effect of the adoption of Eaton Primary School as a feeder school), the arrangements conform with the relevant legal requirements. However, I find that the oversubscription criterion allowing for partial selection on the basis of music aptitude/ability does not conform with the relevant legal requirements and will need to be revised.

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 unless I specify a different date. In this case, I specify that the arrangements must be revised before 28 February 2024.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection in the form of a letter (the referral), was referred to the Office of Schools Adjudicator (OSA) by a Member of Parliament, (the referrer), about the admission arrangements (the arrangements) for Hethersett Academy (the school), for September 2024. Although the letter was dated 24 May 2023, it was not received until 30 August 2023.
2. The referral alleges an unfair effect arising from the adoption of Eaton Primary School as a feeder school, and questions the legality of having an oversubscription criterion which gives priority based upon musical ability.

3. When the arrangements were brought to my attention, I considered that the following additional matters did not, or might not, conform with the requirements for admission arrangements. These were:

- a) The arrangements do not limit the number of places which are allocated on the basis of musical “aptitude/ability”, and do not describe the basis upon which applicants are selected.
- b) The arrangements do not describe the methodology for determining the home address of children whose parents live separately.

Jurisdiction

4. The terms of the academy agreement between the Inspiration Trust multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined under section 88C of the Act by Inspiration Trust, which is the admission authority for the school on that basis.

5. The School Admissions Code (the Code) requires objections to admission arrangements for 2024 to be made to the OSA by 15 May 2023. The referrer submitted an objection to the determined arrangements dated 24 May 2023, which was after the deadline had passed, and in any event was not received until 30 August 2023. As the relevant deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements and I am treating the objection as a referral.

6. The parties have been informed that I do not have jurisdiction to consider the consultation process which preceded the adoption of the school’s admission arrangements for September 2022, which was when feeder school priority was first introduced.

7. The parties to the case are Inspiration Trust (the trust), the school’s governing board, Norfolk County Council, (the local authority) and the referrer.

Procedure

8. In considering this matter I have had regard to all relevant legislation and the Code.

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

- a) the referrer’s letter of objection dated 24 May 2023 plus attachments;
- b) copies of the minutes of the meeting of the trust at which the arrangements were determined;

- c) a copy of the determined arrangements;
- d) comments from trust on the matters raised, supporting documents and subsequent correspondence;
- e) comments from the local authority on the matters raised, supporting documents and subsequent correspondence;
- f) maps of the area identifying relevant schools;
- g) determination ADA3922 relating to the Harris Academy Wimbledon;
- h) information about the most recent consultation on the arrangements; and
- i) information available on publicly accessible websites, such as the local authority's website, the school's website, the Department for Education's (DfE) Get Information About Schools (GIAS) website and Google Maps.

The Referral

10. First, the referrer claims that the adoption of Eaton Primary School as a feeder school has the effect of displacing children attending Mulbarton Primary School who would otherwise be offered places, and that this causes an unfair disadvantage to those children (paragraph 1.8 of the Code refers). Second, it is claimed that the oversubscription criterion which gives priority to applicants on the basis of musical ability is not permitted because there is a restriction upon schools selecting by ability (paragraphs 1.18 – 1.24 of the Code and sections 99 and 100 of the Act refer).

Other Matters

11. As will be explained in more detail below, the arrangements do not limit the number of places which are allocated on the basis of musical "aptitude/ability", and do not describe the basis upon which applicants are selected (paragraph 1.8 of the Code refers). They also contravene paragraph 1.9 of the Code in a number of respects.

12. The arrangements did not describe the methodology for determining the home address of children whose parents live separately with sufficient clarity (paragraph 1.13 of the Code refers).

Background

13. The school is an academy secondary school for boys and girls aged 11 to 16 in Norwich. It was rated as Outstanding by Ofsted in September 2022, and has a published admission number (PAN) of 230. I am informed that it is heavily oversubscribed. I have set out below excerpts from the admission arrangements which are relevant to the referral and the additional matters I have raised.

14. Prior to September 2022, the school had the following oversubscription criteria:

“1. Looked after children (previously known as children in the care of the Local Authority) and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangement order or special guardianship order).

2. Children who have a sibling on roll at the academy at the time of the proposed admission. Siblings are “brothers or sisters living at the same 2 address including adopted children, stepbrothers, step-sisters and children in foster care within a family unit.

3. Children of staff at the academy

a) where the member of staff has been employed at the academy for two or more years at the time at which the application for admission to the academy is made; and/or

b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.

4. Children who live in the area served by the academy (catchment area).

5. Children living nearest the academy, by straight line distance (“as the crow flies”).

Area served by the academy: Bracon Ash (including the district of Hethel), Colney, Cringleford, East Carleton, Great Melton, Hethersett (including the district of Thickthorn), Keswick (including the district of Intwood), Ketteringham, Little Melton, Mulbarton and Swardeston (including the district of Managreen”).

15. With effect from September 2022, the oversubscription criteria have been as follows:

“1 Highest priority will be given to looked after children and all previously looked after children who apply for a place at Hethersett Academy.

2. Priority will next be given to children with siblings at Hethersett Academy. Siblings include step siblings, foster siblings, adopted siblings and other children living permanently at the same address. Priority will not be given to children with siblings who are former pupils of Hethersett Academy.

3. Priority will next be given to children of staff at Hethersett Academy, in either of the following circumstances:

- The member of staff has been employed at Hethersett Academy for two or more years at the time at which the application for admission to the school is made, or

- The member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.

4. Priority will next be given to children who have been offered a place under the musical potential, aptitude and ability criteria.

5. Priority will next be given to children who attend named feeder schools. Our named feeder schools are Cringleford Primary School, Eaton Primary School, Little Melton Primary School, Hethersett Woodside Primary, Hethersett Primary and Mulbarton Primary”.

16. In relation to the definition of a child’s home address, the arrangements say: “A child’s home address will be considered to be where they are resident for the majority of nights in a normal school week”.

17. The school’s admission arrangements are generally clear and comprehensive. However, the only information about oversubscription criterion 4 is as stated above. On the school’s website under the ‘Admissions’ tab, there is a section entitled ‘Music Scholarships’. There is no link to the relevant section in the arrangements. The ‘Music Scholarship’ section explains that the school offers 23 music scholarships. It says:

“Music scholarships are a way for you to secure your place in our school, and receive many extra benefits, by demonstrating that you have some musical skill and lots of musical potential.

Music scholarships include a Music Aptitude Priority Place to attend our school, which effectively secures your place if you might otherwise live too far away. Please see our [admissions criteria](#) for details”.

18. There is an online application form to complete, following which applicants will be contacted by email to be called for an “audition”. The form asks for details of the child’s main instrument and approximate standard of playing (if known); details of the child’s second instrument (if applicable) and approximate standard of playing (if known); the name of the child’s current school; a report from the child’s current music or vocal teacher; details of involvement in music outside school (such as ensembles or performances); a brief statement by the child in support of the application; and a statement from the child about why they would like to apply for a music scholarship.

19. There is also a ‘pdf’ music scholarship booklet which provides more detail for potential applicants. This says:

“What happens during my audition.

You’ll be asked to play a piece of your choice and to respond to a few quizzes and musical questions. These will include aural tests, sight reading, simple improvisation and musical knowledge...

What standard of musician are you expecting?

Pupils who want to audition do not need to have passed any music exams. We are looking for signs of musical aptitude (interest, enthusiasm and potential), as well as attainment (evidence you can play or sing). However, it is likely that successful candidates will be able to play or sing at a standard comparable with at least Grade 1 of Grade 2 of the graded music examination system – they are unlikely to be complete beginners. Applications from more advanced musicians approaching Year 7 are welcomed and encouraged...”

20. Also relevant by way of background is that the local authority wrote to the trust on 8 December 2021 expressing concerns about the change. These concerns were twofold. First, the authority claimed it was not consulted on the proposed change in accordance with relevant legal requirements. Second, had the authority been consulted, concerns would have been expressed about the adoption of Eaton Primary School as a feeder school. It was the view of the local authority that there were no reasonable grounds to include Eaton as the school is located in the Norwich South catchment area. The concern was that this was likely, in time, to displace other children from the prescribed catchment area and traditional feeder schools who live in outlying areas and who have limited access to alternative secondary schools. The letter said: “I am particularly concerned about those families in the Mulbarton area who, in the main, apply to Hethersett Academy. You will know that in recent years not all children attending Mulbarton Primary School who applied for a place at Hethersett Academy were initially accommodated at the point of transfer to Year 7”. The letter urged the trust to review its admissions policy for future years and consult on the removal of Eaton Primary School.

21. The school was asked in a Freedom of Information Act Request what response it had made to the local authority’s letter. The response was that the school had taken no action because, as an own admission authority, the trust had already determined and approved the admission arrangements, and deemed no further consideration was required at that time.

Consideration of Case

The Adoption of Eaton Primary School as a Feeder School

22. The referrer explained that he had met with the head teacher of Mulbarton Primary School (Mulbarton) who had told him that, as a result of the adoption of Eaton Primary School (Eaton) as a feeder school, almost 40 children attending Mulbarton had not received offers of places at any of their first three preference schools for admission in September 2023. The concern is that the situation will worsen as new builds increase the population in the surrounding villages. Although both Mulbarton and Eaton are both now feeder schools, Eaton is nearer to the school, therefore children attending Eaton will be afforded higher priority. This is because, within each of the oversubscription criteria, priority is determined by proximity to the applicant’s home address to the school. It was also claimed that Mulbarton had not been consulted on any proposed change to the school’s admission arrangements for September 2022.

23. I have explained to the parties that I do not have jurisdiction to consider objections to the consultation process under my jurisdiction pursuant to section 88I of the Act. The trust says that the consultation on the proposed revisions to the September 2022 admission arrangements ran for eight weeks from 4 December 2020 to 29 January 2021, and that no comments were received during the eight week consultation period. As no comments were received, the arrangements for September 2022 were determined by the trust board on Friday 12 February 2021 to incorporate the proposed revisions. Because I am not in a position to require the trust to consult on its admissions arrangements at this point in time, I have not asked the trust for proof of which bodies were consulted. Suffice to say that, if the claims that neither the local authority nor Mulbarton were consulted are true, any consultation process conducted prior to the changes to the school's admission policy for September 2022 would have been flawed.

Information provided by the local authority.

24. The local authority has provided helpful information, and I am grateful to them for their cooperation and speed of response. The local authority explained:

“Eaton Primary School was adopted as a named feeder school for Hethersett Academy by Inspiration Academy Trust for the admissions round 2022. Concerns were raised by the Local Authority in September 2021, and I have attached a copy of the letter sent to the Chief Executive of the Trust at that time¹.

This letter highlighted the concerns and the potential impact on those children living further from the Academy, especially those attending Mulbarton Primary.

Annually, for a small number of families who moved to Cringleford and make in year admission applications for Cringleford Primary an alternative school offered is Eaton Primary as the next nearest school with a place. Cringleford Primary school has been a named feeder school for Hethersett Academy for a number of years.

For the transfer to secondary school process for September 2023, 35 children attending Mulbarton Primary School, and given priority based on the feeder school priority were initially refused admission. The majority of these were offered places by the Local Authority at the Hewett Academy, this being the next nearest school with a place available. It should be noted that an additional class of entry was formed at the point of admission to Reception for this year group at Mulbarton Primary to meet the local need (3 classes rather than 2).

The outcomes for parents on National Offer caused much upset with the local community and through further negotiation the Trust then agreed to offer a further 30 places at Hethersett Academy at the beginning of May 2023. These places were

¹ The letter attached was the local authority's letter to the trust dated 8 December 2021 referred to above.

allocated according to the published over-subscription criteria, and this enabled all children attending Mulbarton Primary to be offered a place. At this time, 11 families decided to remain with the offer the Local Authority had made, declining the offer at Hethersett Academy. Norfolk County Council is providing bespoke transport for these children recognising the distance and difficulties the families had experienced through the transfer round process.

I ... detail below the shortest walking distances and transport provision, where applicable:

Hethersett Academy – 5.4 miles. The Local Authority provides home to school transport from Mulbarton as catchment school.

Long Stratton High – 6.9 miles. The Academy Trust for this school provides a bus where families apply and are offered a place from Mulbarton.

The Hewett Academy Norwich – 5.1 miles. A public bus service operates to Norwich city centre. The Local Authority has supported parents with a minibus service for children not offered places at Hethersett Academy and this school was determined as the nearest school with places to offer.

City of Norwich School – 4.9 miles. A public bus service operates to Norwich city centre.

University Technical College Norfolk - 4.0 miles. A public bus service operates to Norwich city centre².

Framingham Earl High School - 6.1 miles. No direct public transport service

Wymondham High Academy -7.9 miles. No direct public transport service

Wymondham College – 10.7 miles. No direct public transport service

Mulbarton Primary School is only a named feeder school for Hethersett Academy and therefore have a lower priority for other schools based on Feeder or catchment”.

25. I asked the local authority whether the situation would continue to be problematic for admissions in September 2024. The response was that it is difficult to predict parental preference at this stage for the 2024 transfer round, with this closing on 31 October 2023. However, the authority says it will continue to monitor applications and work with the trust regarding admissions. It is suggested that the situation should not be as problematic this coming admission round, depending on parental preference.

² Admits applicants from Year 10 – 13.

26. The local authority has also informed me that Eaton Primary School is a named feeder for the following secondary schools in the Norwich City South area. Distances from Eaton Primary School to the various local secondary schools are:

City of Norwich School 2.2 miles

City Academy Norwich 2.1 miles

The Hewett Academy 2.8 miles

Hethersett Academy 3.9 miles.

27. The local authority says with regard to the September 2023 admission round: "It was only those families from the Mulbarton locality, who had expected to be offered a place at "their local school, Hethersett Academy" that were initially refused. These children are said to live in the "traditional catchment area of the Academy". Also, children who live relatively close to the school not attending a named feeder school were refused admission, however these children were offered local alternatives which are accessible due to their proximity.

28. I looked at the admission arrangements for Hewett Academy and the City of Norwich Academy because both of these schools are closer to Mulbarton than they are to Hethersett Academy. Neither appeared to name Eaton Primary School as a feeder school. However, because Eaton Primary School is closer to both of these schools than Mulbarton, it can reasonably be assumed that children attending Eaton Primary School and living locally will be afforded a higher priority for admission to both of these secondary schools by virtue of living closer to them. Both secondary schools prioritise applicants on the basis of proximity of home address (after looked after/previously looked after children, siblings, children of staff and musical aptitude). I was sent a map which shows the locations of the six feeder schools.

29. It is clear from the map that, because Mulbarton is further away from the school than any of the other feeder schools, and the other feeder schools are closer to the city of Norwich, children living locally to these other schools will have higher priority than children living in Mulbarton for secondary schools in the south and south east of the city which prioritise, to any extent, on the basis of proximity of home address.

30. In response to my additional questions, the local authority informed me that the school's former catchment area did not include the parish of Eaton in which Eaton Primary is situated. The authority says that the numbers of applicants applying for places at the school from Eaton Primary has increased in recent years, suggesting a change in the pattern of parental preference in favour of Hethersett Academy. Applicants from Eaton Primary had been successful in gaining places at the school prior to its adoption as a feeder school. However, the majority of children are said to have transferred traditionally from Eaton Primary to City Academy Norwich.

31. I asked whether it would be correct to say that, under the school's former arrangements, children attending Mulbarton would have been assured of a place at

Hethersett Academy, but this can no longer be guaranteed. The local authority explained that this would not be correct as, up to and including the admissions for September 2020, there were no feeder schools and priority was based upon proximity of home address. For the transfer round in 2019, a small number of children attending Mulbarton Primary were refused a place at Hethersett Academy on the National Offer Day due to the level of over-subscription. At that time, the PAN was lower, set at 200, though the trust offered 225 places.

32. I asked whether it would be correct to say that children attending Eaton Primary School can be assured of getting places at three other secondary schools in addition to Hethersett, but children attending Mulbarton Primary will only get places at these schools if the parents of children attending Eaton Primary School choose not to apply for these schools. The local authority replied: "The nearest secondary school for children living in Eaton is City of Norwich School and distance is such that these children are normally offered places there if a preference is received. The school is over-subscribed annually. There is generally capacity at one of the other City South schools for children living in South Norwich and out of that area".

33. I asked whether there is a risk that children attending Mulbarton will need to travel further to school as a result of children at Eaton Primary having higher priority for places at Hethersett, or whether they will be able to secure places at a Good secondary school which is a similar distance from home, albeit perhaps not the parents' first choice. The local authority confirmed that, as was the case for the 2023 admissions round, Mulbarton families were offered places at the Hewett Academy which is at a similar distance to Hethersett Academy. As mentioned above, Hewett Academy has been rated Good by Ofsted. It is part of the same academy trust as Hethersett.

The response by the trust

34. I asked the trust why it had adopted the six feeder schools and removed priority for children living in its former catchment area. I also asked whether any potential adverse effect upon children in Mulbarton had been taken into account when making the decision to take this course of action. The trust explained that the decision to name six feeder primary schools had been "transparent and made on reasonable grounds to ensure the transition to secondary school was much easier for those children and to create a more inclusive environment". The trust says it did not want to unfairly disadvantage social groups and to ensure that children could move from primary school to secondary school with their friendship groups, if they wish.

35. The trust says: "Consideration was given to all schools in the area. Prior to the six named feeder schools being named under the oversubscription criteria the LA had allocated Eaton Primary School children places at Hethersett Academy. Long Stratton High School had facilitated Mulbarton Primary School as well as Hethersett Academy. Local circumstances were considered and, as historically Hethersett Academy had facilitated all the named feeder schools and good relations had been formed, the Inspiration Trust wished to continue those relations going forward." I note that Mulbarton is not in the area

served by Long Stratton High School as set out in the admission arrangements. However, the admission arrangements for Long Stratton say that the school serves areas further afield. As mentioned above, there is a minibus service provided by the High School for children living in Mulbarton. It is 6.9 miles away (Hethersett being 5.4 miles away). Long Stratton has named feeder schools, and Mulbarton Primary School is not one of them.

36. The trust has informed me that the school is oversubscribed and had been oversubscribed for some years prior to the admission arrangements being revised. Table 1 shows the number of applicants to the school attending Eaton Primary School and the outcome of those applications.

Table 1

Year and number of applicants	Number of Successful Applicants	Number of Applicants Offered Places at Higher Preference Schools	Number of Applicants not made an offer at the school or any higher preference school
September 2022 49	30 (1 x EHCP; 6 siblings; 1 music aptitude; 22 feeder school priority)	19	0
September 2023 43	14 (11 siblings; 1 music aptitude; 2 feeder school priority)	20	9

37. Table 2 shows the number of applicants to the school attending Mulbarton Primary School and the outcome of those applications.

Table 2

Year and number of applicants	Number of Successful Applicants	Number of Applicants Offered Places at Higher Preference Schools	Number of Applicants not made an offer at the school or any higher preference school
September 2022 53	37 (14 sibling; 23 feeder school priority)	16	0
September 2023 71	48 (1 x EHCP; 14 siblings; 3 music aptitude; 30 feeder school priority).	14	9

38. The trust says that there was an increase in applications from parents of children attending Eaton Primary prior to Eaton Primary School being named as a feeder school, and not as a result of it. The change to the admission arrangements in part was to take this into account. Data below shows the number of pupils allocated a place at Hethersett Academy, who were attending Eaton Primary School at the time:

- 2018: 14 children
- 2019: 11 children
- 2020: 16 children
- 2021: 18 children
- 2022: 30 children
- 2023: 14 children

I note that there was a noticeable increase in the offers of places made to applicants attending Eaton Primary in 2022. However, there were no applicants attending Mulbarton who were not offered a place at the school, or at a school of higher preference.

39. The trust says that for the September 2023 entry, it worked closely with the local authority and agreed to increase the PAN to offer an additional 35 places, which meant there were 265 offers made for Year 7 in September 2023 entry.

“The LA coordinates admissions on behalf of the Inspiration Trust. They verbally confirmed that as of close of day on Monday 22nd May all Mulbarton families who had applied for Hethersett Academy as their ‘first choice’ had been allocated a place at Hethersett Academy for September 2023 entry. As you can see, we have worked

increasingly hard to offer more places at Hethersett Academy. This increase will put the academy under increased pressure, placing additional demands on teachers and academy resources. Over the next two years, Hethersett Academy will further increase its capacity to 260. This increase will be predicated on the building of a new block to accommodate additional children. This is currently at the planning stage, with the intention to start building in 2023.

The Inspiration Trust appreciates it comes as a disappointment that families may not be allocated their first preference of secondary school. However, the intake at Hethersett Academy is driven by accommodation capacity and there is simply not enough room at the academy to take any more children. With The Hewett Academy (Inspiration Trust) being an assigned academy, the children will receive the same outstanding secondary education as they would at Hethersett Academy. Both academies share the same curriculum and pedagogical approaches, the educational experience is comparable. The Hewett Academy is also on the School Rebuild Programme (SRP), so pupils entering the academy can expect a brand-new state-of-the-art building by 2026. I trust you will find the above information provides the necessary assurances... “

40. On the basis of the information provided, I make the following findings. The school's admission arrangements name Mulbarton Primary School as a feeder school. Under the school's previous arrangements which comprised a catchment area, children attending Mulbarton Primary School may have had a higher prospect of being offered a place at Hethersett if their parents listed the school as a first preference than they have under the existing arrangements. I say this based upon looking at the map. However, the data provided by the trust indicates that the number applicants from Mulbarton who were not offered places at Hethersett were all offered places at a higher preference school.

41. There were particular difficulties for September 2023 admissions, and number of families in Mulbarton were disappointed initially. The head teacher complained to the local MP who has brought this issue to the attention of the adjudicator. For this particular year group, there was an additional class in Year 6 at Mulbarton (3 forms of entry, as opposed to 2), therefore the number of children transferring to secondary school was higher than usual. This caused significant upset to parents, and the school responded by admitting additional children, which is commendable.

42. As the trust says, Hethersett is an academy school, and is its own admission authority. Paragraph 1.9 of the Code makes clear that it is for admission authorities to formulate their admission arrangements. It is not the role of the adjudicator to dictate to an admission authority what its arrangements must be. However, admission arrangements must comply with the Code and, since the school's arrangements have been brought to my attention it falls to me to determine whether they are compliant with the relevant requirements. Paragraph 1.8 of the Code requires that oversubscription criteria must be reasonable and fair; and paragraph 1.15 requires that the selection of a feeder school or

schools as an oversubscription criterion must be transparent and made on reasonable grounds.

43. Dealing first with the requirements of clarity and transparency, it is clear which schools are feeder schools because they are named in the arrangements. Whether the feeder schools were adopted transparently is less clear because there is evidence from the local authority and the referrer suggesting that key parties directly affected were not consulted when the feeder schools were adopted. The reasons given for the particular selection of feeder schools are established connections, certainty and the ability of friendship groups to transfer together. I am unclear why a clearly defined catchment area would create less certainty than having named feeder schools. However, the trust's decision to adopt the feeder schools cannot be described as irrational in the sense of it being a decision that no reasonable admission authority could have made having taken into account all relevant circumstances, therefore I accept that the choice of feeder schools was reasonable, though maybe not as transparent as it should have been.

44. What troubles me is the question of whether the choice of feeder schools is fair in including Eaton Primary School because of the effect this has upon children living in Mulbarton. There was an adverse effect in September 2023. However, the question I am concerned with is whether, and to what extent, there will be an adverse effect in September 2024, and whether any such adverse effect is unfair. All oversubscription criteria will advantage some children over others. That is their purpose. In determining whether any advantage or disadvantage is unfair, a balancing exercise often needs to be undertaken, weighing the advantage said to accrue to children who would be offered places (or afforded a high priority for places) at the school in consequence of the arrangements, against any disadvantage caused to any other relevant group of children who would not be offered places (or would not be afforded a high priority for places). Unfairness can be found when the disadvantage is considered to outweigh the advantage.

45. In very simple terms, the effect of adopting Eaton Primary School as a feeder school has been to confer an additional advantage upon children attending the school who already had a reasonable selection of secondary schools available to them because of where they live. This disadvantage to children in Mulbarton and surrounding outlying areas is that their likelihood of securing a place at Hethersett is reduced, and parents will have lower prospects of success in terms of alternative schools because those prospects will be dependent upon other parents choosing not to apply to these alternative schools. In summary, the parents of children attending Eaton Primary have more choice.

46. The question then is whether this will operate unfairly. The local authority (who are also concerned about this issue), are not able, at this stage, to estimate how many parents in Mulbarton are likely to be disappointed because applications have not yet been made for September 2024 admissions. There was a particular problem with fewer applicants from Mulbarton not being able to secure places at the school in September 2023 admissions, which no longer applies. If the school expands and increases its PAN for future years, children in Mulbarton may be more assured of securing a place. The trust points out that

Hewett Academy is a reasonable alternative and, if more children attending Eaton Primary are admitted to Hethersett who would otherwise have gone to Hewett Academy, where is the disadvantage? One school is Ofsted rated Good (Hewett) and the other rated Outstanding (Hethersett), but the schools are run by the same trust. There are also two other secondary schools also rated Good which are accessible to children living in Mulbarton. For parents, the difference in ratings may be important. However, there is no entitlement to a place at an Outstanding school, and the difference between the ratings is not a factor which is relevant to my consideration of fairness.

47. It is difficult to predict whether there will be further disappointment to families in Mulbarton for September 2024, or what the extent of that might be. In 2019, a small number of children attending Mulbarton were refused a place. However, the trust offered 225 places to accommodate (the PAN had been set at 200). In September 2022, despite Eaton Primary being adopted as a feeder school, all Mulbarton applicants were offered a place at the school or at a higher preference school. The school increased the PAN to accommodate Mulbarton families who would have been disappointed this year, and is intending to expand, (though this will not help for September 2024 applicants). The local authority suggests that “the situation should not be as problematic this coming admission round, depending on parental preference”.

48. The evidence I have is insufficient for me to reach a conclusion that the 2024 arrangements are unfair to children attending Mulbarton. The more parents attending Eaton Primary choose to apply to the school, the less likely it will be that children in Mulbarton will be offered a place. The reverse would have been true prior to the adoption of Eaton Primary as a feeder school. Hewett Academy is a reasonable alternative run by the same trust, and there are two other Ofsted Good alternative schools. There is nothing inherently unfair about making a change that will alter the pattern of local admissions provided there is a reasonable choice of schools, sufficient places and children are not facing lengthy and difficult journeys to school. For these reasons, I do not uphold this aspect of the referral.

Partial Selection by Musical Ability or Aptitude

49. The referrer queries whether the school is able to select by musical ability as he is aware there are legal restrictions on schools being permitted to select by ability. I had separate additional concerns about this oversubscription criterion. These were twofold. First, the criterion, as drafted and published in the arrangements, does not limit the number of places which are allocated on the basis of music aptitude/ability. Second, it does not describe the basis upon which applicants are selected. I managed to locate more detailed information published elsewhere on the school’s website, but its location was not immediately obvious from either the admission arrangements or the website.

50. The trust also provided further detail about the selection process at my request, which was helpful in informing my understanding of the process:

“The music scholarships are advertised on the academy website, in transition materials sent to primary schools, at open evenings and through visits to local

primary schools by the Inspiration Trust's Director of Music. Applications must be received by the published deadline, which for September 2024 entry is Monday 2nd October 2023. Applicants are invited for an informal audition in November with the Inspiration Trust's Director of Music and the Hethersett Academy Head of Music.

The informal audition is designed to assess musical aptitude through:

- a short performance by the pupil
- simple musical tests at the appropriate level for the pupil
 - o aural tests
 - o sight-reading
 - o musical knowledge
 - o improvisation
- an informal discussion with the pupil about their:
 - o musical preferences
 - o musical aspirations
 - o engagement in musical activity at school

The successful candidates are selected by the Inspiration Trust's Director of Music and the Hethersett Academy Head of Music. The names of the successful candidates are confirmed with the LA, and at this point the families are also informed. The LA offers a place on National Offer Day. Unsuccessful candidates are contacted by the Hethersett Academy Head of Music and they are provided with feedback at the same time".

51. Admission authorities are not required to set out the details of how an oversubscription criterion operates in the body of the arrangements themselves. It is acceptable to set out supplementary guidance and additional detail in a separate document published alongside the arrangements or accessible easily by a link, but it must be obvious in the body of the arrangements where any such additional information or guidance can be located. The arrangements are insufficiently clear in this regard, and therefore contrary to paragraph 14 of the Code which requires that parents should be able to look at a set of arrangements and understand how places will be allocated. They will therefore need to be revised. However, this is not my major concern.

52. Paragraph 1.24 of the Code provides that schools which have introduced 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.

53. Music aptitude is a permissible basis for partial selection under paragraph 1.24 provided the number of places is restricted to ten per cent. The trust has informed me that up to 23 applicants may be selected under the criterion (ten per cent of a PAN of 230). Whilst the number of applicants selected under the criterion is acceptable, this number is not apparent from looking at the arrangements, therefore the arrangements are insufficiently clear in this regard and again will need to be revised.

54. 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. It is for the admission authority in question to determine whether the school has the relevant specialism. The trust tells me that it has, and I am prepared to accept this assertion on the basis of what the trust has told me.

55. The fundamental problem, however, is that section 99 of the Act prohibits the introduction of any new selection by ability, (other than pupil banding), which is the point alluded to by the referrer. My concern is that the oversubscription criterion in place does not select wholly by aptitude. It appears to select partly by aptitude and partly by ability, which is not permitted under the Act. Paragraph 1.32 of the Code also states that admission authorities must ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability. It follows from this that a set of arrangements which select partly by ability would be contrary to section 99 and not permissible under the Code.

56. In a previous case in which a local authority had objected to a school's arrangements for selecting on the basis of musical ability (ADA3922 in respect of the Harris Academy Wimbledon), the school told me that, prior to introducing such specialism it had asked the DfE for guidance about what constituted a test for aptitude, as opposed to ability. Neither the Act nor the current Code define what 'aptitude' means, however the school 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".

57. The DfE had also 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.

58. This example of a compliant test does not comprise an audition at which the applicant is asked to sing or play a musical instrument. I am concerned that, although the school does employ aptitude tests as part of the selection process, selection is also partly determined by performance at such an audition. Furthermore, the school's guidance states that it is likely that successful candidates will be able to play or sing at a standard comparable with at least Grade 1 or Grade 2 of the graded music examination system and are unlikely to be complete beginners. Applications from more advanced musicians approaching Year 7 are said to be welcomed and encouraged. Although the guidance states that the school is testing aptitude, as opposed to ability, it also discourages applicants who have never had music lessons from applying. It cannot be the case that a child who has never been given the opportunity to learn to play a musical instrument (including voice) does not have an aptitude for music.

59. Using the everyday meaning for the terms 'aptitude' and 'ability', the difference is that aptitude refers to a potential, whereas ability refers to an individual's current level of skill or competence. Ability in a particular area can be developed further through practice and experience, whereas aptitude refers to natural talent which has not yet been fully developed. The arrangements imply that a particular level of competence is required (at least Grade 1 or 2). It appears from the wording of the guidance that it would be difficult for an applicant who has had no music lessons to succeed in being offered a place when

competing in an audition process against an applicant who has been learning a musical instrument for a period of time, no matter how much innate potential that person has. Grades in music are achieved through learning (most often as a result of being taught) and practice. Sight reading, in particular, is a skill that a person who had never been taught to read music would struggle to achieve well at.

60. Applicants for priority under this criterion are required to provide details of the child's main instrument and approximate standard of playing (if known); details of the child's second instrument (if applicable) and approximate standard of playing (if known); the name of the child's current school; a report from the child's current music or vocal teacher; details of involvement in music outside school (such as ensembles or performances); a brief statement by the child in support of the application; and a statement from the child about why they would like to apply for a music scholarship.

61. These requirements contravene several of the prohibitions in paragraph 1.9 of the Code. Admission authorities must not take into account any previous schools attended ((1.9b) Why ask for the name of the child's school if it has no bearing on the application?); introduce any new selection by ability (1.9d)); take account of reports from previous schools about children's attitude or achievement; interview children (1.9m)). I therefore uphold this aspect of the referral.

62. Applicants under this criterion have higher priority than applicants attending feeder schools. Therefore, 23 applicants attending a feeder school could be 'displaced'. This would not necessarily be unfair if the criterion was lawful and Code-compliant, and I recognise that the 'music scholarships' (as they are referred to) present a wonderful opportunity for children. However, the trust will need to reconsider carefully its methodology for selection and revise the arrangements to ensure that selection is wholly by aptitude; the criteria for selection are sufficiently detailed and clear; and that there are no contraventions of paragraph 1.9 of the Code. I appreciate that this might come as somewhat of a surprise to the trust as music selection was raised peripherally by the referrer (though more extensively by me in the Jurisdiction and Information paper), and the trust will not have had the benefit of the DfE guidance when adopting partial selection.

63. Given that the closing date for applications under the music aptitude/ability criterion was 2 October 2023; the admission arrangements for September 2024 are already underway; and parents will have based their plans on the arrangements as they are currently, my view is that it is too late to revise the arrangements for the 2024 admissions round. I therefore require the trust to make the revisions to the arrangements which are necessary to ensure they are lawful and clear before 28 February 2024, which is the date by which it must determine the arrangements for September 2025.

Other Matters

64. There was one further matter to which I drew to the trust's attention because it did not appear to me that the arrangements were sufficiently clear as to how the home address would be determined in the case of a child living with at more than one address because

his/her parents are separated. The trust acknowledged my concerns and has added further detail to the arrangements. I am grateful to the trust for their cooperation in this matter.

Summary of Findings

65. I do not have sufficient evidence upon which to make a finding that the arrangements are unfair to children in Mulbarton, or children attending Mulbarton Primary School. I find that the arrangements select partly by aptitude and partly by ability, which is not permissible; that the process of selection comprises elements which also are not permissible under paragraph 1.9 of the Code; and that the methodology for selection and the number of places available are not set out with sufficient clarity in the arrangements.

Determination

66. I have considered the admission arrangements for September 2024 for Hethersett Academy in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to matter raised by the referrer (namely the effect of the adoption of Eaton Park Primary School as a feeder school), the arrangements conform with the relevant legal requirements. However, I find that the oversubscription criterion allowing for partial selection on the basis of music aptitude/ability does not conform with the relevant legal requirements and will need to be revised.

67. 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 unless I specify a different date. In this case, I specify that the arrangements must be revised before 28 February 2024.

Dated: 16 October 2023

Signed:

Dr Marisa Vallely, Schools Adjudicator