Office of the Schools Adjudicator

Determination

Case reference:	**ADA3773**
Objector:	**An individual**
Admission authority:	**The Governing Board of Kendrick School**
Date of decision:	**11 October 2021**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I partially uphold the objection to the admission arrangements for September 2022 determined by the governing board of Kendrick School for Kendrick School, Reading.

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 an alternative timescale is specified by the adjudicators. In this case we determine that the arrangements must be revised by 31 October 2021.

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 Kendrick School (the school), a selective academy school for girls aged 11 – 18. The objection is to the following aspects of the arrangements for admission to Year 7:

a) candidates who are Looked After, Formerly Looked After and those eligible for Pupil Premium or Service Premium are admitted on a lower qualifying score and are able to access a familiarisation programme for the selection tests which is not made available to other candidates;

b) the methodology for setting the qualifying score is unclear and the qualifying score does not reflect grammar school ability;

c) the home address requirements;

d) the catchment areas;

e) refusal to allow candidates to sit the selection tests on a later date where they are unable to sit the tests on the initial designated date because they are sitting selection tests for another selective school;

f) re-use of the same selection tests for late sitters and late applicants;

g) the use of age standardisation in the selection tests; and

h) the Centre for Evaluation and Monitoring (CEM) is said to be a disreputable and untrustworthy organisation which cannot be trusted to devise tests that produce an accurate reflection of a candidate's ability, therefore it is questionable as to whether the selection tests properly serve this purpose.

2. The local authority (LA) for the area in which the school is located is Reading Borough Council. The LA is a party to this objection but has made no representations other than to provide information we have requested. The governing board of the school is a party to the objection, as is the objector.

3. This is one of a number of objections to the admission arrangements for September 2022 for different schools referred to the Office of the Schools Adjudicator by the same objector. Mrs Ann Talboys and I have been appointed as joint adjudicators for a number of these objections as permitted by the Education (References to Adjudicator) Regulations 1999. I have acted as the lead adjudicator for this case and have drafted this determination.

4. Some of the objections contain aspects which are common to several other objections made this year. We are aware that the objector has also made objections to other schools in previous years about these same aspects. Those objections have been determined by us and by other adjudicators. We have read the relevant previous determinations made by others and taken them into account. Those determinations do not form binding precedents upon us, and we have considered each of these aspects afresh. The approach we have taken is to discuss each of the common aspects in the objections which have been made this year and agree the wording of our determinations in relation to those aspects. Some identical wording will appear in each of the determinations in relation to these common aspects. Where we have reached conclusions on these aspects last year, we have reviewed and discussed those conclusions. However, where the objections submitted this year are largely identical to those submitted last year and we have received no additional information which has caused us to form different conclusions we have tended for the most part to adopt the same or similar wording to that used previously.

5. Where an objection contains aspects which are unique to that objection, the lead adjudicator has made a determination on each of those aspects which has then been read and agreed by the other adjudicator prior to completion of the determination.

Jurisdiction

6. The terms of the Academy Agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 8 April 2021. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and it is within our jurisdiction.

7. At the time of the determination of the school's admissions arrangements and at the time the objection was made, the Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect. Since the objection and the response to it were framed in terms of the 2014 Code, we shall use the references to it which have been made by the parties to the case but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

8. When the arrangements for the school were determined, the 2014 Code, which was then in force, provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code which came into force on 1 September 2021 extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.

9. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the Secretary of State and no reason for the school to send us its varied arrangements. We have made our determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements set out above.

10. We have also used our power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

12. The documents we have considered in reaching this 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 8 April 2021 and supporting documents;

d. the school's response to the objection;

e. court judgments in the cases of Warwickshire County Council v Matalia [2015] EWHC B4(Ch) and Matalia v Warwickshire County Council [2017] EWCA Civ 991;

f. the decision of the Employment Tribunal in the case of S Stothard v Durham University 2500306-19;

g. information provided by the LA about the number of preferences expressed for the school and a map of the catchment the school's area;

h. relevant previous determinations including ADA3685-3690, ADA3662, ADA3675 referred to us specifically by the school; and

i. research papers referred to in the text which were identified by us and shared with the parties for comment.

Objection

13. There are eight aspects to this objection. We have identified the relevant paragraphs of the Code here, but not set them out. The relevant paragraphs are set out in full when we come to our detailed consideration.

14. First, the objector considers that affording priority in the oversubscription to applicants who are eligible for the Pupil Premium and Service Premium creates an unfairness to applicants who are not so eligible, and that it was never the intention of the Government to have a two-tiered system which permits pupil premium applicants to be deemed selective on a qualifying score which is lower than the qualifying score for other applicants. He also claims that these applicants are effectively being tutored by the school which gives them an unfair advantage and is unlawful. Relevant paragraphs of the Code are paragraphs 1.39A. and 14.

15. Second, the methodology for setting the qualifying score is unclear. The setting of qualifying scores other than raw scores does not give a true reflection of ability. Relevant paragraphs of the Code are 1.31. and 14.

16. Third, the objector considers that the address requirements are unclear and unreasonable. He objects to the use of the words "and beyond" in the context that the home address is the address where the child is living on 1 August 2021 "and beyond". He claims it is unclear how long the child must remain at the home address given on the application

form, and that it is unreasonable to insist that the child/family must remain at the same address beyond 1 August 2021. He also considers that it is unreasonable to provide that, where the family is living in rented accommodation on a tenancy of less than 12 months, their previous address is treated as being the home address for the purposes of the application. The relevant paragraph of the Code is paragraph 14.

17. Fourth, it is the objector's view that there is no point in having catchment areas because families can move once the child has been attending the school for more than a term without any adverse consequence. Imposing requirements upon families to live in particular areas for specified periods interferes with family life, and there is no logical explanation for having Priority Areas 1 and 2. Both the setting of catchment areas as an oversubscription criterion and the catchment areas themselves are unreasonable. The relevant paragraphs of the Code paragraphs 1.14 and 14.

18. Fifth, the objector does not consider that candidates who are sitting selection tests for places at other selective schools on the designated test date should be precluded from sitting the Kendrick School selection tests at a later date. In his view this is unreasonable. The relevant paragraph of the Code is paragraph 14.

19. Sixth, the objector considers that re-using the same selection tests for late sitters and late applicants renders the testing process subject to abuse, as those who sit the tests in the main round may pass on the questions to those sitting the tests at a later date. The objector argues that this abuse of process, which he suggests is widespread, renders the tests unfit for purpose. Relevant paragraphs of the Code are 1.31. and 14.

20. Seventh, the objector considers that the use of age standardisation in the selection tests is unnecessary, rendered obsolete by the widespread practice of tutoring and gives an unfair advantage to younger children, particularly those who have been tutored. Relevant paragraphs of the Code are 1.31. and 14.

21. Eighth, the objector considers that CEM is an untrustworthy and dishonest organisation and, as a result, the 11 plus tests set by CEM cannot be a reliable indicator of grammar school ability. Relevant paragraphs of the Code 1.31 and 14.

Other matters

22. We had some concerns in relation to the 'non-routine' admission arrangements which state that the school does not normally offer places after the start of Year 10 or in Year 11. The school has told us that, although applications for admission after the start of Year 10 and 11 are very rare, it does admit in-year applicants who have achieved the standard of entry in admission tests where admission would not be prejudicial.

23. The school has informed us that it is content to delete the sentence stating that it does not normally offer places after the start of Year 10 or in Year 11. It will also amend the sentence about the applicant's details remaining on the prospective list until she reaches Year 10 to read instead 'until she reaches the end of Year 11'.

24. Finally, the school is content to remove the reference to the standard numbers for each year group at the end of the document. We are grateful to the school for its cooperation in this matter. In view of the school's agreement to revise the arrangements, we have not considered these aspects further.

Background

25. Kendrick School is a single sex girls' grammar school located in Reading, Berkshire. The school was founded in 1887, and converted to academy status in 2011. It has consistently been rated by Ofsted as an Outstanding school. The Published Admission Number (PAN) is 128 for admissions to Year 7. The school is oversubscribed. In 2021 there were 760 preferences expressed; in 2020, the figure was 396 and in 2019 the figure was 335.

26. As we have said, the objection relates to the admission arrangements for Year 7. The arrangements provide that all candidates are required to sit an entrance test organised by the school. Parents are told their child's score prior to the closing date for submission of the Common Application Form. The section in the arrangements entitled

'**Oversubscription Criteria'** states:

> All applicants will be ranked according to their performance in the tests. Oversubscription criteria will be applied if there are more applicants than the 128 places available. A qualifying score will be determined (to two decimal places) for candidates in categories 3-6 of the oversubscription criteria below. A qualifying score of 5 points lower than this score will be applied for candidates in categories 1 and 2 of the oversubscription criteria below (Pupil Premium/Service Premium/Child in Care).
>
> Offers will be made from the ranked list in the following order and within each category:
>
> 1. The applicant is a looked after child or previously looked after child:
>
> 2. The permanent home address of the applicant is within Priority Areas 1 and 2 of the designated area of the school at 31st August 2021 and beyond and the applicant is in receipt of Pupil Premium or Service Premium. Documentary evidence, or confirmation from the applicant's current primary school that the child is in receipt of Pupil Premium or Service Premium will be required.
>
> Offers will then be made from the ranked list, according to the ranked order until up to 75% (96) of places have been offered:
>
> 3. The permanent home address of the applicant is within Priority Areas 1 and 2 of the designated area of the school and this has been the permanent home address of the parent(s)/carer(s) and the applicant at 31st August 2021 and beyond.

The remaining 25% (32) places will be offered in the following order, according to the ranked order until all places in total have been offered:

4. The permanent home address of the applicant is within Priority Area 1 of the designated area and this home address has been the permanent home address of the parent(s)/carer(s) and the applicant at 31st August 2021 and beyond.

5. The permanent home address of the applicant is within the Priority Area 2 of the designated area and this home address has been the address of the parent(s)/carer(s) and the applicant at 31st August 2021 and beyond.

6. Applicants whose permanent home address is NOT in the designated area of the school.

Note: in 1) above, any such an applicant, provided she has achieved the lower qualifying score, will be offered a place even if she is not ranked in the top 128 places. In 2) any such applicant, provided she has achieved the lower qualifying score and her permanent home address is within Priority Areas 1 and 2 of the designated area of the school, will be offered a place even if she is not ranked in the top 128 places. The total number of places offered will remain, however, at 128.

The catchment areas are described by way of a list of postcodes.

27. Other aspects of the arrangements which are relevant to this objection are as follows:

Designated Area

The designated area is made up of Priority Area 1 and Priority Area 2 and each area is determined by the postcode of the applicant's permanent home address. Places will be offered to applicants who are ranked high enough according to the Admission Test scores and who reside within the designated area. This must be the applicant's permanent home address with their parent/carer at 31st August 2021 and beyond. The school may ask for documentary evidence to support the application. Only if there are further places available will applicants who live outside the designated area be considered. The address which will be used for consideration to be living within the designated area would be expected to be the applicant's permanent home address at the time of application, but not later than 31st August 2021, and beyond. This also applies to applicants who are applying late due to exceptional circumstances. Address changes will be investigated and documentary evidence must be provided.

Definition of Permanent Home Address

An applicant's permanent home address is their normal place of residence, excluding any business address or a relative or childminder's address, and

must be the permanent place of residence of the parent/carer with whom the applicant spends the majority of their time, Monday to Friday. Where there is a formal residence order or child arrangements order which states that care of the child is equally shared between parents/carers, then it is up to them to agree which address to use for the purpose of making a school place application. If care of the applicant is not equally shared, the address of the parent with whom the applicant spends the majority of their time must be used. Where there is no formal agreement in place, the address where any child benefit payments are made will be used.

The exception to this is if the family are Crown Servants or members of the Armed Forces. Documentary evidence will be required.

If the main address has changed temporarily, for example where a family is renting a property on a Short Term Tenancy Agreement (12 months or under), then the parental address remains that at which the parent was resident before the period of temporary residence began unless it can be shown that all ties to the previous address have been relinquished, or that the move is not easily reversible. The Governors may refuse to base an allocation on an address which might be considered only a temporary address or an address of convenience. An address of convenience is considered to be an address used for the purposes of gaining a school place which is not a child's normal, permanent residence.

If the permanent home address of an applicant is incorrectly stated or a parent/carer submits false or misleading information or deliberately withholds any relevant information, the application will be invalid and will result in the withdrawal of an offer of a place or a place already accepted at the School. If the applicant's permanent home address changes after 31st August 2021 and the change of Priority Area would result in a higher ranking, the new address will only be taken into account after the deadline from the LA for accepting or declining a place and re-ranked, if applicable, on the waiting list on 1st September 2022. Applicants will need to provide evidence that the previous home is no longer used by the family, for example proof that the property has been sold or that it is no longer available for the family to live in or that a rental agreement has ended.

If the applicant's permanent home address changes after 31st August 2021 and would result in a lower ranking, the new address will be taken into account immediately and the applicant re-ranked accordingly.

Once offers have been made, Kendrick School will require documentary evidence of the applicant's permanent home address. This will include consideration as to whether or not the address used to make an application was temporary. A temporary address cannot be used to obtain a school place and will only be considered when evidence is provided showing a genuine

reason for the move, such as homeliness [we think this should say 'homelessness'], flooding or subsidence. Kendrick School reserves the right to carry out random checks at any time and this may include a home visit and/or consulting with the Local Authority and primary school. Parents will be required to declare that the address used will be their place of residence beyond the date of the student starting school. Kendrick School reserves its right to carry out further investigation of any change of address once the student has started school.

Applicants who wish to attend an entrance test for another school being held on the same day as the Kendrick School Admission Test will not be permitted to sit the Kendrick School Admission Test on an alternative day. This will not be deemed as an exceptional circumstance…

Applications received after the deadline

Late applications for the Kendrick School Admission Test will only be accepted in exceptional circumstances. Applicants should write to the Admissions Officer outlining their reasons. Documentary evidence will be requested. The final decision on whether there are exceptional circumstances will be made by the Headteacher…

Fraudulent Applications

Any information that is subsequently proven to be inaccurate will potentially invalidate that application. Those who submit fraudulent or deliberately misleading applications may also be subject to legal proceedings…

There are no practice papers, but Familiarisation Booklets will be published on the school website as soon as they are made available but no later than when registration opens on 1st May 2021…

The raw scores will be age standardised and the ranking is determined by the aggregate of the age standardised scores of both tests…

28. Also relevant to this objection is a section on the school's website entitled 'Widening Horizons'. This says:

"As part of the Widening Horizons Project, Kendrick School offers the following support for pupil premium students for entry into Year 7 at Kendrick School:

A score of 5 points lower than the qualifying score will be applied for pupil premium or service premium students and Looked After Children and Children in Care, whose permanent home address is within Priority Area 1 and Priority Area 2 of the designated area.

> Our Admission policy prioritises pupil premium students which means that all pupil premium students which achieve this lower qualifying score and live within our Priority Area (1 and 2) and put Kendrick School as first choice on their Local Authority secondary school application form will be offered a place at Kendrick School
>
> All pupil premium students which apply to sit the admission test for 2020 entry are offered free familiarisation program for the Admission test in the summer and start of the autumn term 2019 which will also help their current school work. This will include free after school sessions at Kendrick School and free access to an online package".

29. Also published on the school's website is a document entitled 'Guide to the Admissions Procedure for Entry to Year 7 in September 2022' (the Guide), which contains additional information for parents. This says that test results and standardisation papers are marked centrally by CEM who then carry out a standardisation process. "Standardisation is a statistical procedure whereby raw scores (number of questions answered correctly) are converted to standardised scores to make it fair for candidates of all ages. The procedure takes into account the scores and ages of all the candidates that take the test on the same day and for the same school… The applicant will receive results of the entrance tests before the deadline for submission of the Common Application Form. You will receive an email before 31st October enabling you to view your daughter's test result online. This will be their standardised score only. A link to the test results will be emailed to applicants in time to complete the Common Application Form (CAF). Candidates will be notified of their standardised score and be informed if they have met the standard for Kendrick School or not".

Consideration of Case

30. We have divided our consideration of the case into seven headings, each of which comprises one or more aspect of the objection. As we have said, the objector has made objections on some of the same points for other schools. He has helpfully provided us with generic representations on certain aspects of his objections which apply to more than one school. Because the representations are generic, our consideration of the points is also generic, and so the text will be largely the same in our determinations. It may not be identical as all of the schools have different arrangements. In reaching our conclusions, we have identified and read various research papers and Department for Education publications which are relevant to the objection. We have shared this information with the parties and invited comments.

31. The school has provided us with information about the number of applicants admitted under each oversubscription criteria.

		Oversubscription criteria						Total
	EHCP	**1**	**2**	**3**	**4**	**5**	**6**	
2021 entry	1		15	80	32			128
2020 entry			9	87	32			128
2019 entry			5	91				96

Candidates who are Looked After, Formerly Looked After and those eligible for Pupil Premium or Service Premium are admitted on a lower qualifying score and are able to access a familiarisation programme for the selection tests which is not made available to other candidates

32. The objector's view is that it is inequitable and unfair that a select group of students obtain what is effectively free tuition and then can also score 5 points less than other children. He considers this to be highly discriminatory. The objector questions how it can be said a child with 5 points lower than the qualifying score is of grammar school ability and has been identified as such. He claims the school is acting unlawfully because state schools are not permitted to tutor for the 11 plus tests. He questions the need to provide "preparation" for this select group when CEM states that its tests are resistant to preparation and considers that the school should disclose which online package is used and what it would cost for other potential applicants to access it.

33. The school has explained that it has to fulfil the objectives of the Selective Schools Expansion Fund (SSEF). As we explain further below, the Department for Education (DfE) wants to see a greater proportion of disadvantaged children applying for and attending selective schools. This includes children eligible for pupil premium funding. According to the school, the DfE has in fact suggested specifically that selective schools lower the pass mark for children eligible for the pupil premium, and provide at least three hours of free familiarisation on the school's selection test to local children eligible for the pupil premium. The school does not believe that the process operates unfairly to other candidates, and reminds us of our findings on this issue in ADA3675, namely that according priority to pupil premium pupils is expressly permitted by the Code and therefore not something we can

interfere with. We also said that, in our opinion, giving priority to pupil premium pupils is entirely reasonable and does not cause unfairness.

34. The objector has not submitted any further information or arguments which have caused us to change our views on this issue, therefore we have largely re-iterated what we said last year. “Many children and young people living in our most deprived communities do significantly worse at all levels of the education system than those from our least deprived communities. This is often referred to as the 'attainment gap'.” This is a quotation from a DfE paper which led to the introduction of the concept of pupil premium funding. The funding was introduced in 2014. The DfE’s paper introducing pupil premium funding states that evidence shows that children from disadvantaged backgrounds generally face extra challenges in reaching their potential at school, and often do not perform as well as their peers. The pupil premium grant is designed to allow schools to help disadvantaged pupils by improving their progress and the exam results they achieve.

35. The pupil premium is additional funding given to state funded schools in England to raise the attainment of disadvantaged pupils and close the gap between them and their peers. Pupil premium funding is available to both mainstream and non-mainstream schools, such as special schools and pupil referral units. It is paid to schools according to the number of pupils who have:

- been registered for free school meals (FSM) at any point in the last 6 years;
- been looked after by the local authority (in care or accommodated) for one day or more; or
- ceased to be looked after through adoption, or via a Special Guardianship, Residence or Child Arrangements Order.

36. When pupil premium funding was introduced, schools were given the opportunity to give priority in their admission arrangements to children who are eligible. Schools are able to:

- choose from which group or groups (Early Years Pupil Premium (EYPP), Pupil Premium (PP) or Service Premium (SP) recipients) to give priority;
- specify a number or percentage of their published admission number of PP pupils who will be given priority. For example, this can be representative of the number of disadvantaged children resident in the school’s local area; or they can prioritise a certain percentage of local eligible children;
- limit priority to specific eligible sub-groups. For example, restrict the admissions priority to children currently in receipt of Free School Meals or children eligible for PP in the school’s catchment area;
- decide the ranking given to the priority (after looked after and previously looked after children); or

- choose to give higher priority to EYPP/PP/SP eligible children of the relevant faith than those not of that faith, if they have a faith designation.

37. In May 2018, the DfE published a Memorandum of Understanding (MoU) between the DfE and the Grammar School Heads Association (GSHA). This was updated in March 2020. In this MoU both parties have a shared ambition to see more pupils from lower income backgrounds applying to, passing the test for, and being admitted to selective schools. It was agreed specifically that admission authorities can consider lowering the selection test pass mark for children eligible for the pupil premium. The MoU stated that "this is a decision for the individual school's admission authority. A number of grammar schools already set a lower pass mark for disadvantaged children. Any authorities who take this approach should ensure this still provides sufficient rigour to ensure those children can thrive within the highly academic environment of a grammar school."

38. The DfE and GSHA agreed to report on progress in admitting more disadvantaged children to grammar schools against the following success measures:

- increased number of selective schools effectively prioritising disadvantaged children in their admissions arrangements, with a view to all GSHA member schools doing so by the scheduled end of the Parliament;
- an upwards trend of numbers of disadvantaged children applying to selective schools;
- an upwards trend of numbers of disadvantaged children being admitted to selective schools.

39. In May 2018, the DfE launched the SSEF. As the school has said, the stated purposes of this scheme are to support the expansion of selective schools where there is a need for additional places, both in terms of a shortfall of secondary places in the local area and a demand from parents for more selective places; and for selective schools to have ambitious but deliverable plans for increasing access for disadvantaged pupils (which includes pupils eligible for the PP). In this scheme, selective schools are encouraged to take steps which lead to an increase in the proportion of disadvantaged children being admitted to the school. We have seen many examples of schools who have received SSEF funding using the oversubscription criteria within their admission arrangements to support this aim. Some schools have set new, greater proportions or numbers of PP children to be admitted and many have lowered the standard mark or pass mark for PP pupils so that more may be offered places.

40. There is a significant body of research which demonstrates the existence and extent of the attainment gap between disadvantaged pupils and others up to and including the age of sixteen. A great deal of work on the factors which affect the gap and how it can be reduced has been undertaken, much of this research is from the Education Policy Institute.

41. It is clear that Government policy is to encourage improved access to grammar schools for disadvantaged pupils, and that schools are encouraged to give priority to disadvantaged pupils in their admission arrangements' oversubscription criteria. Any priority given to PP pupils in oversubscription criteria means that others, lower down the

criteria, have a lower priority. The purpose of introducing oversubscription criteria is to ensure that some groups of children are given higher priority than others where a school has more applications than there are places available. The Code makes clear in paragraph 1.8 that schools are able to adopt reasonable oversubscription criteria, and that this of itself is not unreasonable. Neither does it constitute unfairness.

42. In the case of PP pupils' inclusion in the oversubscription criteria we are of the view that prioritising PP pupils who achieve the pass mark over those who are not PP pupils is reasonable. Indeed, it is a practice which is encouraged by Government policy and Guidance and is compliant with the Code. The school is in receipt of DfE funding under the SSEF, and the DfE has actively encouraged selective schools to give priority to PP applicants on lower pass marks and to provide free assistance to these applicants to help familiarise them with the test papers and procedures. Because the parents of PP applicants are unlikely to be able to afford private coaching, these measures may go some way towards encouraging more PP pupils to apply and placing them on a more equal footing with other applicants who have been coached. Paragraph 1.39A of the Code expressly permits schools to give priority to PP pupils. It states "Admission authorities may give priority in their oversubscription criteria to children eligible for the…. pupil premium…..". Arguably, if giving priority to pupil premium applicants is unfair or unreasonable, then the Code must be unfair and unreasonable.

43. The adjudicator cannot prevent a school from doing something which is expressly permitted by the Code. Neither would we wish to prevent, or discourage, a school in receipt of funding under the SSEF from setting a lower pass mark for PP applicants and providing assistance with familiarisation where both are expressly encouraged by the DfE. We do not uphold this aspect of the objection.

The methodology for setting the qualifying standard is unclear and does not operate to establish a reasonable qualifying standard

44. The objector's view is that the pass mark for entry to all selective schools should be set before a test is taken and should represent a known academic standard and not a standard just to accept pupil premium children, irrespective of ability, or lack off. He considers that the method of standardisation must be declared before the test is sat with mean and standard deviation pre-defined, to avoid manipulation. The relevant requirements in the Code are in paragraphs 14 and 1.17.

45. We have referred several times to paragraph 14 which requires admission authorities to ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Paragraph 1.17 states that: "All selective schools **must** publish the entry requirements for a selective place and the process for such selection." For the avoidance of doubt, we have not considered paragraph 1.31 in this section because, as we have explained, our view is that paragraph 1.31 relates to whether the type of testing in operation (in this case Verbal and Non-Verbal Reasoning, Maths and Comprehension tests designed by CEM), provides an accurate reflection of a child's ability.

46. We asked the school to explain how the qualifying standard is set. We were informed that it is set so that "all students are of an appropriate standard to access the pace and rigour of the curriculum offered along with their peers. On receipt of the standardised scores from CEM, a group of senior staff, including the headteacher, review the scores and recommend a suitable qualifying score (QS). This is then reviewed, agreed and confirmed by the Governor responsible for Admissions in conjunction with the Chair of Governors. The QS is the minimum score which must be attained in order to be considered for entry to the School. The QS differs from year to year because the test is different each year and the cohort size and ability of candidates differs year on year".

47. The school reminded us that we considered this point in ADA3675 (13 October 2020) where we said that there is no requirement to set out this detailed information in order to conform with the requirements of the Code which simply require at paragraph 1.17 that the entry requirements for a selective place and the process for such selection are published and not the detailed rationale for and derivation of those requirements.

48. The first question for us to consider is how much information the school's admission arrangements must contain in order to be sufficiently clear. Parents need to know which steps they must take and by when, and what their child needs to do in order to be eligible for a place at the school. This information needs to be set out so that parents can look at the arrangements and understand easily how places will be allocated. Our view is that the information can either be in the arrangements themselves or signposted clearly in the arrangements with further detail accessible via a one-click link.

49. Our view is that in order for the arrangements to be sufficiently clear, where there is a pre-established pass mark, the arrangements must state what that pass mark is. Where the pass mark is not a pre-established one, the arrangements must say this. They must also say when the pass mark will be set, and when parents will be told whether their child has reached the pass mark. There is no requirement that the pass mark must be set using a particular methodology or that it be set by a specified body. However, the arrangements must be reasonable and operate fairly; therefore we consider that the pass mark must be set by a competent person or body. There is no requirement that admission arrangements must set out how the pass mark is set, but if they do this the methodology must be described clearly.

50. The arrangements say that the raw scores will be age standardised and the ranking is determined by the aggregate of the age standardised scores of both tests. The results of the tests made available to parents/carers in advance of the Common Application deadline of 31 October 2021, unless there are exceptional circumstances (such as the COVID pandemic). Parents/carers are advised to use this information as guidance to the suitability of their daughter for a grammar school place.

51. All applicants will be ranked according to their performance in the tests. Oversubscription criteria will be applied if there are more applicants than the 128 places available. A QS will be determined (to two decimal places) for candidates in categories 3-6 of the oversubscription criteria below. A QS of 5 points lower than this score will be applied

for candidates in categories 1 and 2 of the oversubscription criteria below (Pupil Premium/Service Premium/Child in Care). Our conclusion on the question of clarity is that, since the entry requirements are set out clearly in the arrangements, this is sufficient to conform to the requirements in paragraphs 1.17 and 14 of the Code.

52. We turn now to the question of whether setting the QS after the test results are known is unreasonable. The objector's view is that setting the qualifying standard after the tests have been taken does not establish grammar school ability. It is merely a method of ensuring that the school fills to PAN. The objector considers that an appropriate grammar school standard should be set, and those applicants who do not meet the standard should not be admitted. A pre-set pass mark may not have the effect of establishing year-on-year consistency of ability where it operates alongside oversubscription criteria because the offer of a place will not be wholly dependent upon the test score. A pass mark which is set annually after the results of the tests are known will inevitably be set only with reference to the candidates who have taken the tests. In our view both are reasonable, and neither result in an unfair outcome. The objective of the arrangements for this school is not to admit applicants of the highest level of ability, it is to admit looked after children, applicants who are eligible for the pupil premium and other local children who meet, or exceed, a minimum required standard of academic ability. This is a permissible and lawful objective.

53. The purpose of setting a qualifying score is to establish a minimum standard, which is the appropriate standard for this school. Each year the number of applicants sitting the tests and the ability of those applicants will be slightly different, not least as the number of children in the relevant age group in any part of the country will be different from year to year. It is also possible that, notwithstanding the extensive work undertaken to benchmark the tests against those used in previous years, the level of difficulty of the tests will be slightly different. All these factors will affect the level at which the qualifying standard is set, but none of them renders the test less fair. We do not uphold this aspect of the objection.

Catchment areas and the requirements relating to an applicant's home address

54. We have addressed these two aspects of the objection together as they are linked. The objector considers that there is no reason for a school to have a catchment area. His view is that the rationale generally advanced for adopting a catchment area is that it affords priority to children living close to a school, reduces travel and enables pupils to engage in after school activities. He claims that this rationale is no longer sustainable now that people are more mobile and move home on a regular basis. Also, for example, a family may live some distance from the school but there is an easy home to school journey by public transport, or the parent works close to the school and can take the child with them in the car on their way to work. He suggests that "many end up co-parenting".

55. The objector further maintains that the adoption of catchment areas does not prevent parents from what we will call "gaming the system". The objector observes correctly that a parent who wants their child to have priority for a particular school can buy or rent a property situated within the catchment. The parent would generally only need to do this for

one term because, once the child has been admitted to the school, the place cannot be withdrawn after the end of the first term.

56. The objector considers it is an interference with the privacy rights of families to dictate where they must live, and for how long. He also claims that catchment areas advantage wealthy applicants because houses close to schools which are much sought after can command high purchase prices. Also, renters are more easily mobile than house owners. The objector's view is that "highest marks [alone] should gain places". He considers that the specific catchment area for this school (priority Areas 1 and 2) is illogical; that the use of the words "and beyond" renders the home address requirements unclear; and that it is unreasonable to require families to remain in a particular home address for a sustained period.

57. Paragraphs 1.14 and 14 of the Code apply. Paragraph 1.14 states: "Catchment areas must be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school." Paragraph 14 states: "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."

58. The school has responded to the objection in clear and succinct terms, and we are grateful for this. The school rightly says that admission authorities are free to determine the oversubscription criteria that best suits the school and local community within the confines of the Code and other legislation. Catchment areas (the school says) are an accepted and legitimate oversubscription criterion so long as they meet the requirements of paragraph 1.14. The school's view is that the Priority Areas meet these requirements and are both clear and fair. It was explained to us that, following a comprehensive consultation, a designated area was introduced as part of the oversubscription criteria in 2013 to define the "community" which the school serves. The original area is said to have been determined based upon postcode areas to aid clarity of eligibility. The intention was to cover an area of about a 15-mile radius centred upon the school. For September 2020 entry, following further consultation, this designated area was split into two priority areas – Priority Area 1 and Priority Area 2 as a result of the school's successful SSEF bid.

59. Priority Area 1 is an area of approximately three miles around the school and includes local postcode areas with lower Income Deprivation Affecting Children Index (IDACI) bands. The school has explained that the purpose of designating this area as Priority Area 1 is to support the purpose of the SSEF which is, as we have said, to encourage schools to have ambitious and realistic plans for increasing access for disadvantaged pupils (including pupils eligible for the PP).

60. We find that the school has put forward a logical explanation for the adoption of the overall catchment area and for having two priority areas. In light of the school's explanation, our view is that the rationale for adopting its overall catchment appears reasonable, as does

the decision to split the catchment area so that some disadvantaged children are afforded higher priority under oversubscription criterion 4.

61. Our view is that there remain many sensible reasons for schools to adopt catchment areas. The use of postcodes as a method of defining catchment areas is effective in making the boundaries of the catchment clear. Parents will be in no doubt as to whether they live in Priority Area 1 or 2 as long as they know their own postcode. It is difficult to see how the area could be described more clearly. Further, as the school says, parents are not precluded from making an application to the school if they do not live within the catchment.

62. We disagree with the objector's argument that catchment areas are no longer relevant. Children do need to get to school every day. Many secondary school pupils (and indeed some primary school pupils) are not driven to school by their parents, and it is in their interests not to have difficult journeys which mean that they spend hours travelling to and from school. That is not to say that parents may not choose to send their children to schools which are some distance from the family home where they perceive these schools to be better than the schools closer to home. But this is far from ideal. Secondary school pupils, particularly in selective schools, will have substantial amounts of homework, many will want to participate in extra-curricular activities, and most will want to develop friendships in the area in which they live. Our view is that the rationale for adopting catchment areas remains as relevant today as it ever was.

63. Indeed, academy schools are required by their funding agreements and by section 1A of the Academies Act 2010 to provide education for pupils who are "wholly or mainly drawn from the area in which they are situated". Admission authorities of schools which are oversubscribed are able to give higher priority to some applicants provided this is in accordance with the Code, and the adoption of catchment areas as a means of doing this is perfectly lawful provided the catchment area itself is not manifestly irrational or adopted for spurious or arbitrary reasons. The objector questions the underlying rationale for having a catchment area *per se* and alleges that the catchment area for this school is unreasonable. We find no evidence to support either of these arguments. Accordingly, we do not uphold this aspect of the objection particularly since catchment areas which are clear and reasonable are permitted expressly by paragraph 1.14 of the Code.

64. The objector considers it unreasonable that a family renting a property with a tenancy of 12 months or under will not be treated as living at that address unless it can be shown that all ties to the previous address have been relinquished, or that the move is not easily reversible given that "most rentals are either for a 6-month period or continuous 1 month rolling thereafter". He asks what if the previous address was 200 miles away and rented out for investment purposes for a 6 month period initially? Is this move easily reversible? What does "easily reversible mean"? He suggests that the term is unclear and therefore this provision is unreasonable. He asks what would happen if a tenancy began on 31 August 2021 and ended on 6 September 2022? Would the place be withdrawn if the family moved to an address outside the catchment area from 7 September 2020? What would happen if the landlord refused to extend the tenancy?

65. As we have said, our view is that the existence of catchment areas can be beneficial for both pupils and the local community surrounding a school. However, as the objector rightly says, the adoption of catchment areas has led to an unfortunate side effect, which is that some parents can effectively purchase a place at the school of their choice because they can afford to buy or rent a property in the school's catchment area for as long as needed in order to secure priority for a school place. We think that this practice is unusual. It certainly cannot be said to be active in every school which has a catchment area, but we are aware that it exists. Where this is the case, admission authorities have been known to adopt residence requirements in order to attempt to prevent parents buying or renting a property exclusively for the purpose of better ensuring that their child will be offered a place at a particular school and then disposing of it a term after their child has started school and returning to the 'real' family home.

66. The purpose of adopting residence requirements is to preserve a 'genuine' catchment area to ensure that the children of families who have a settled intention to remain in the local area and be part of the community are given priority. The school has adopted such an approach. Broadly, the arrangements require that an address will only be treated as the applicant's home address if it is a permanent address and if the family are living there on 31 August 2021 (at the latest) "and beyond". The school has explained that the words "and beyond" are intended to mean that the family should still be living at the same address at the time of the child's admission to the school. Effectively though the family will need to remain at the address until the end of the first term to be sure that the place is not withdrawn (16 months).

67. We start by saying that parents are perfectly entitled to move to a particular area because it has good schools, and many do so. But there is a distinction between a 'genuine' move where there is a settled intention to remain at the new address and what the arrangements refer to as 'adopting an address of convenience' which is temporary. We understand the reasons why schools feel the need to make these sorts of provisions, however we do consider that the arrangements need to state the requirements clearly. The school has confirmed that it is content to clarify the requirement if we consider this to be necessary. Our view is that the phrase "and beyond" is unclear and needs to be clarified, and we are grateful to the school for agreeing to clarify this provision. We uphold this objection to the extent that the arrangements do not comply with the requirement for clarity in paragraph 14.

68. The rationale for using 31 August in the application year as the relevant date appears to be in order to deter parents from moving closer to the school once their child's test result is known. In a way, there would be no point in a temporary house move before the parents are notified of their child's test score. If the child does not achieve the QS, she will not be offered a place at the school. It is logical therefore for the school to use the address which was the family home prior to the test result notification date as the relevant address. If the family move house after the results are known, this may raise questions about whether the move is a genuine one or not, particularly if there is some evidence suggesting that the move may not be a permanent one. In principle therefore we accept

that there are rational reasons for choosing 31 August as the relevant date along with the continuous residence requirement set out in the arrangements.

69. However, whilst we accept that it is entirely legitimate for admission authorities to take steps to deter applicants from attempting to gain an advantage by moving to a temporary address with no intention of remaining at that address once the child in question has started school, the question is whether it is reasonable to impose a requirement which in practice means that a family would probably need to remain at the same address for a period of 16 months in order to ensure that a place is properly secured. This is a lengthy period. However, the requirement would have no adverse effect upon a family which had a genuine settled intention to live locally to the school, and these are the families which the school wishes to attract. It would adversely affect applicants who had moved house temporarily for the purpose of gaining a place at the school because they would have to pay for, and move to, the temporary address whilst also maintaining the costs of the 'real' family home for a prolonged period. But this, of course, is the intention. The provision is intended to be a deterrent.

70. Where a family move permanently to an address after 31 August in the application year which is intended to be the long-term family home this would not be treated as the family home with effect from the moving date, which may be disadvantageous to the success prospects of the application. However, the address will be changed after the first round of offers is made and the applicant re-ranked, therefore it is possible that the child will be offered a place provided evidence of the move can be provided. For these reasons, we do not consider that a provision treating the address which is the child's home address on the 31 August in the application year to be an unreasonable provision.

71. However, the objector has also objected to the requirement that where an applicant's home is a rental property, the lease must be for 12 months or more. We have considered relevant Government guidance, namely "Tenancy Agreements: a guide for landlords (England and Wales)". This states: "The most common form of tenancy is an Assured Shorthold Tenancy (AST). Most new tenancies are automatically this type". Tenancies will be for a range of terms but often this will initially be for six months and thereafter on a monthly periodic basis, as this gives the greatest flexibility to the landlord. Families with low income and/or in receipt of benefits are most likely to have short tenancies as they are more likely to be in a poor bargaining position.

72. ASTs are made under the provisions of the Housing Act 1988. The tenancy will have an initial term, the minimum being six months, and, when that term expires, the tenancy will automatically continue on a periodic basis (determined by the intervals for paying rent, so usually one week or one month) unless the landlord and tenant enter into a further agreement for some other term. Most residential tenancies are automatically ASTs unless specifically stated to be otherwise. The website for Shelter England states: "An assured shorthold tenancy is the most common type of tenancy if you rent from a private landlord or letting agent. The main feature that makes an AST different from other types of tenancy is that your landlord can evict you without a reason". Shelter goes on to state that such

tenancies are for a fixed term “often 6 or 12 months” or periodic “rolling weekly or monthly”.

73. It is acknowledged that some families will sometimes take short tenancies near to a school in order to seek to secure a place for a child with no genuine intention to make that property their main residence. It is understandable that admission authorities wish to prevent such families gaining an unfair advantage. It is also acknowledged that a provision requiring tenancies to be for a longer term will help to prevent this. Admission authorities take different approaches to this problem. Some specify circumstances in which they will make further enquiries in order to establish whether the address given is a genuine home address, a short term tenancy being a common example. Others, as here, make a longer-term tenancy an absolute requirement. In the latter case some families, particularly those that have limited resources, will be excluded despite the home address being genuine. Such families may have had no choice but to accept a short lease. For that reason we find that it is not fair to make a lease of longer than 6 months an absolute requirement. We find the absolute requirement for a lease to be for a term of 12 months does not comply with the provisions of paragraph 14 of the Code. An applicant must live at the same address for a period of 16 months in order for that address to be treated as the home address and to ensure that the place is not withdrawn. This should be sufficient in terms of a requirement. The term of the lease makes no difference.

Refusal to allow candidates the opportunity to sit the selection tests on a later date where they are unable to sit the tests on the initial designated date (the normal test date) because they are sitting selection tests for another selective school

74. The objector considers that it is unreasonable for late testing not to be permitted for applicants who choose to sit tests for a different selective school on the normal test date allocated for Kendrick School. As we have mentioned above, there is a requirement in paragraph 14 of the Code for the practices used to decide the allocation of school places to be objective. Since the testing process is a practice used to allocate places at the school, we have considered whether it is reasonable to exclude applicants who are sitting selection tests elsewhere from the testing process in operation for the school and what the effect of this would be.

75. The objector considers that this practice is “contrary to the Greenwich judgment” which, he says, imposes an obligation upon admission authorities to test any applicant who wishes to be tested. We disagree. The principle established in this judgment is that [what is now] section 86 of the Act imposes the same obligation upon local authorities to make arrangements for enabling the parent of a child to express a preference as to the school at which he/she wishes education to be provided for the child and to comply with such preference regardless of whether that parent lives in the area of the authority or not. As regards applications to the school, the parent of any girl in the relevant age group may apply for their daughter to be tested. Applicants are not precluded from sitting the school’s selection tests or applying for a place at the school solely by virtue of the fact that they do not live in Reading, therefore the judgment has no relevance to the point being made by the objector.

76. We have therefore considered the more relevant argument as to whether the fact of taking a test elsewhere is a valid reason for the school to refuse to arrange a late test. The question for us is whether any reasonable admission authority would adopt a practice of not late testing in these circumstances. We asked the school to explain its reasons.

77. The school's explanation is that most schools sitting selection tests on the same date as Kendrick School, especially the more local ones, are part of the same consortium of grammar schools and are therefore sitting the same test. The Slough Consortium Schools are Herschel, Langley, Upton Court and St Bernard's Catholic Grammar Schools (the Consortium Schools). The school says: "As stated in the admission arrangements, applicants can only sit the test once, but can share the test result with different grammar schools in the consortium which allows applicants to apply to several different schools with the same test result. Furthermore, using the same test for different schools avoids additional time and cost of commissioning separate tests for each occasion.

78. The school does not consider this to be an unfair process because the same constraints apply to all applicants. The school acknowledges that previous determinations are not binding upon us, but has quoted the following text from ADA3685-3690 16 October 2020: "where schools are their own admission authorities they are permitted by the Code to decide if they wish to set their own tests…The Code permits them to decide on how selection for places at their schools is undertaken… It is not an unfair process because the same constraints apply to all families…It is not unfair that parents have to choose which additional test they wish their child to undertake." With respect to the school, we are bound to say that this determination is not exactly on point as it concerned additional tests which are conducted by some Kent grammar schools. All potential applicants for these schools were able to sit the Kent selection tests, the results of which are recognised by the Kent grammar schools which also conduct their own tests. Applicants who were unable to sit any additional school-specific test were still eligible for a place at the school in question even though they were unable to sit the selection tests for that school. This is due to the fact that an applicant's score in the Kent tests is recognised by all Kent grammar schools.

79. The arrangements for Kendrick School contain no information about late testing or the circumstances in which this will be permitted. We are aware from the school's response to our questions that it does organise late tests. The arrangements suggest that candidates will only be permitted to sit a late test in exceptional circumstances, but there is no information about what these circumstances might be, who decides, or the dates of any late tests. The arrangements need to be clearer on this point, and we do therefore uphold this aspect of the objection to the extent that the late testing arrangements need to be described in order for the arrangements to be sufficiently clear to comply with paragraph 14 of the Code.

80. However, our view is that there is a distinction to be made between what we are guessing the school means by 'exceptional circumstances' (such as a candidate being too unwell to sit the test, suffering a bereavement, or observing a genuine religious practice on the normal test date) and parents choosing for their child to sit selection tests elsewhere for

a different selective school on the normal test date. We do not consider that the latter constitutes an exceptional circumstance.

81. We note that the school uses the same tests as the other Consortium Schools and that results are shared. The Consortium Schools appear to us to be the only grammar schools which are reasonably accessible to any girl with a reasonable prospect of being admitted to Kendrick School. Since these schools use the same tests and share test results, we could not see any disadvantage for a girl who would be unable to sit a test at (for example) both Kendrick School and Herschell School. Indeed the Consortium Schools have entered into an agreement specifically to prevent candidates having to sit the tests more than once.

82. The Buckinghamshire grammar schools, such as Chesham and Dr Challoner's High School are nearly a two hour journey from Reading station; have catchment areas which are in Buckinghamshire; and, in any event, hold their selection tests on different dates. A candidate sitting the selection tests for Kendrick School would not be precluded from sitting tests for Chesham or Dr Challoner's High School but would have no reasonable prospect of being admitted to either school unless the family re-located (in which case there would be no reasonable prospect of a place at Kendrick School). It does appear therefore that the only benefit of a child sitting the selection tests for this school and for other grammar schools would be to gain exam practice. We make no comment upon whether sitting tests at selective schools and treating them as mock exams would improve a child's test scores for the school at which the parents wish to make a genuine application, but we consider that admission authorities would discourage applicants other than those who are genuinely considering making an application to their school from sitting the tests for that school. As the school has said, it uses the same tests as the other Consortium Schools and shares results specifically in order to save costs. The school does not provide a mock exam service. There is no reason why it should.

83. In the event that there were to be a clash of dates with another selective school, we have considered the argument that by refusing to offer a late test for applicants who choose to sit a test for another selective school, the school could be said to be depriving parents of any prospect of their child being offered a place at that other school. Our view is that, in the context of this school, parents are not being deprived of a prospect which has any reasonable chance of being met. What is actually being precluded is the admission authority for the school, or the other selective school, funding a child to take a test at a school for which the parent has no intention of making an application. However, even if it were the case that parents were being asked to choose one selective school over another because their child can only be tested for one of them, we do not consider this to be unreasonable. We do not uphold this objection on the grounds asserted by the objector, namely that it is unreasonable and unfair to refuse late testing to applicants who are unable to sit the selection tests on the normal test date due to them choosing to sit the tests for a different selective school on that date.

Re-use of the same selection tests for late sitters and late applicants

84. As mentioned above, the arrangements do not say that the school arranges late testing or in what circumstances. Neither do they specify whether the same tests are used for late sitters. However, the school has explained that it does use the same tests for late sitters and late applicants. This is said to be in order that comparison of results can be made. The school's view is that a similar test of the same type is not the same test and therefore a direct comparison would not be possible. The school has confirmed that it has no information of any instances of children passing on test content to late sitters and notes that the objector has produced no evidence of this in relation to Kendrick School. The school quotes from ADA3662, which is one of our own determinations, in which we concluded that it is reasonable to re-use the same tests for late sitters and late applicants because it achieves parity of results and saves costs. We did say that it is arguable that this practice could operate unfairly if late applicants were to cheat, but as the objector had not produced any evidence that there was an established process of cheating in operation at that particular school, we had no basis upon which to reach a conclusion that the re-use of the same tests created an unfairness.

85. In a number of the objections he has made this year, the objector has claimed that late sitters are advantaged unfairly. We considered objections on the same point last year in relation to twelve other schools, and the point has also been considered by other adjudicators in previous years. The objector has again suggested that the adjudicator determining these objections is obliged to answer a set of questions. We are not required to answer questions posed by the objector or anyone else. We are charged with considering and determining his objections and, in that context, whether or not the school's arrangements conform to the requirements relating to admissions. That said, the joint adjudicators have once again considered these questions carefully; we have considered the additional submissions made and information provided by the objector in relation to the objections he has made this year; we have read previous determinations on this issue (including our own); and we have looked at relevant court and tribunal decisions.

86. The objector has re-submitted much the same evidence in relation to this objection as he produced last year, and raises similar arguments. His view is that it is not sufficient for admission authorities to confirm to us that they have seen no evidence that exam candidates pass on information about the content of the tests they have just taken. How would they know whether this is happening or not? The objector suggests various alternatives to using the same tests for late applicants and late sitters and claims that it must be possible to compare the results of two different tests of the same type, albeit that the selection test providers, CEM, claim that it is not possible to compare the results of different tests. CEM (he alleges) is a disreputable organisation and cannot be trusted. The objector's argument centres on the fact that a judge granted an injunction against him to prevent him from publishing information about test content on his website; evidence relating to an information exchange about the content of selection tests for the Birmingham grammar schools; and evidence which he claims discredits CEM. The objector did not make any objections to the arrangements of any selective school about late testing procedures prior to being prevented by injunction from publishing information on his website relating to

CEM selection tests. We understand that this information had, in part at least, been gleaned from his nephew shortly after the boy had sat the selection tests.

87. Why (the objector asks) would a court grant an injunction to prevent him publishing information unless that information was capable of providing an advantage? If he is capable of gathering and publishing information which compromises the integrity of the test results, why (he asks) would we not believe that others do the same? If we, as adjudicators, accept that the tests are capable of being compromised (which he says we must accept as a fact), how can we uphold that the test procedures in place operate fairly and produce a true assessment of ability? Even if the first test can produce such an assessment, the procedures used for late sitters render the overall outcome across the whole of the cohort an assessment which cannot be relied upon to be a true assessment. If it cannot be guaranteed that it is possible to keep thousands of children quiet, the integrity of the tests must always be in question. According to the objector, the problem can be fixed easily by using different tests, not allowing late testing or scoring late sitters as zero. The objector asks why do admission authorities not use identical tests year-on-year if there is no risk of the results being compromised in the way he suggests is widespread practice?

88. All of the schools objected to on the same point this year use verbal and non-verbal reasoning 11 plus tests (VR and NVR tests) designed by CEM. Some use exactly the same set of tests for the first round of testing as they do for all subsequent testing rounds for entry to Year 7, and some use a different set of tests of the same type for the purposes of late testing. By this we mean a different set of 11 plus VR and NVR tests designed by CEM. Schools using the former practice, as this school does, might argue that it is unfair to use a different test, albeit a test of the same type, because it is necessary to compare like with like in order to ensure parity of results and therefore fairness. CEM does not publish its test papers, and those administering the tests are required to hold them confidentially and only to disclose the papers to candidates at the time the tests are taken.

89. The objector's view is that re-use of the same tests for applicants seeking admission to selective schools is not compliant with the Code because children recall the content of the tests and may pass it on to late sitters. When we considered this question last year, we adopted the findings upheld by the Court of Appeal in injunction proceedings involving the objector. We re-iterate these findings below and re-adopt them.

- "It is doubtless the case that some children who have sat a selection test will tell their parents, and possibly some others, something about it, but there is no good reason to think that any, let alone, much information has become generally known or available…;

- Any reasonable person knows that unauthorised disclosure of the content of an examination or test yet to be taken in a way that may come to the attention of candidates about to sit that examination risks undermining the purpose and integrity of the examination or test, and that such information is therefore confidential…;

- There is a difference between a child telling a parent and a parent telling another parent about test content, and the posting of such material on a public website;

- If all, or part of test content is disclosed, there is at least a risk that the integrity of the tests and public confidence in them would be compromised…;

- Candidates sitting the tests and their parents are under a duty of confidentiality, so that if the parent of a child who had recently taken the selection tests was to publish the questions on a website knowing that other children are about to take the same test, the parent could be injuncted to take down the content of the website…"

90. Based upon evidence given in the course of the court proceedings (which included reference to information in emails from CEM) we accept that any information passed on to candidates sitting late tests is unlikely to make a difference; however, a difference of one raw score mark can equate to up to six standardised marks, which could alter a candidate's ranking significantly. We also accept that there is evidence that information has been passed on by some candidates, for example in the form of a screenshot relating to dialogue about the CEM 11 plus tests for the King Edward Consortium Schools taken during the period 2011 to 2016. We have been provided with no more recent evidence, but we accept, as the courts also recognised, that children will tell their parents and possibly others something of the content of the tests they have taken.

91. The Administrative Court and Court of Appeal did not dispute the evidence given by Warwickshire County Council in the injunction proceedings against the objector that it was legitimate for schools to use the same tests for late applicants in order to ensure consistency of standards and to avoid the additional cost of commissioning separate tests for each occasion. If the courts had not accepted this argument, there would have been no reason to grant or uphold an injunction, the courts could have simply concluded that an injunction was unnecessary because different tests could be used. CEM has said that it would only be able to compare candidates' performance to provide an ordered age standardised score if the same test is taken. We have no reason to doubt this statement. Additionally, our view is that, if different tests were used for late sitters, this would leave admission authorities vulnerable to arguments of unfairness which simply cannot arise where identical tests are used for late sitters. However, in making these observations, we are not suggesting that use of different tests of the same type for late sitters would necessarily be unfair or unreasonable. There are advantages and disadvantages to each approach, and it is for admission authorities to determine which works best for their schools. The objector made serious allegations last year about candidates being paid by tutors to pass on questions and answers and wearing hidden cameras. These allegations were unsubstantiated and therefore we could not accept them.

92. The objector has submitted additional evidence in one of his objections, which we have taken to be relevant to all of them. This is an extract from a publication by the London Borough of Redbridge which states:

- “We are aware each year that concerns are raised about candidates telling their tutors the questions in order for them to give those sitting the late tests an advantage.

- Before the tests begin, we ensure that all candidates are reminded not to discuss the tests with other so that they do not reveal the questions. They are reminded that this may give an advantage to other children, reduce their own chances of being admitted to a grammar school and could result in them being disqualified from the test.

- We do not assume that children cannot recall some details of the selection tests, hence our clear statement to parents in writing and to candidates verbally before the test start.

- We make these statements to inform both the candidates and their parents directly in advance of the possible consequences, both legal and personal, of disclosing any information. Parents have been advised of the following: the 11 plus test is subject to copyright; its content must not be disclosed to any third-party including tutors/coaches. The test is for each candidate who must concentrate on their own test performance. Breaches of copyright, (such as answers being given to one or more children or to a third party) will be pursued vigorously by the examination board’s legal department and the child will be disqualified”. …

93. Redbridge has two grammar schools. The late testing arrangements for one of these schools, Ilford County High School, were objected to on 28 March 2019 and 14 April 2020 by this objector. He refers to this publication as evidence that “even the London Borough of Redbridge acknowledges that children recall content”. We see it rather as evidence of the serious steps taken to help protect the integrity of the tests. The publication refers to the fact that all candidates are reminded not to discuss the tests. Our understanding is that all examination boards give clear instructions to invigilators. It is in the interests of both CEM and admission authorities to protect the content of the 11 plus tests which are in use. We would be surprised if similar warnings and admonitions are not given as standard practice. Certainly the familiarisation papers we have seen contain a sternly worded copyright notice. The admission authority for Mayfield Grammar School has confirmed that it has seen no evidence of the tests for the school being compromised in the manner suggested by the objector. The school has also said that the points made by the objector have not caused them to think that the tests are not a true test of ability, or that the procedure for late testing could result in an outcome which is unfair or not objective.

94. Relevant paragraphs of the Code are 1.31 and 14. Turning first to paragraph 1.31, this says that: “Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.”

95. Our view is that what paragraph 1.31 requires is that **the test itself** must be clear, objective and give an accurate reflection of the child's ability (in the case of selective schools). So, in order to comply with paragraph 1.31, the particular test used by the school must fulfil these requirements. There is no reference here to **the procedures for taking the tests** (requirements in relation to procedures fall under paragraph 14, as we will explain later). Paragraph 1.31 is a requirement that the selection test must be fit for purpose. The objector suggests several reasons why CEM 11 plus tests are not fit for purpose which we have considered as separate aspects to the objection.

96. Looking at the second sentence of paragraph 1.31., references to 'the test' are, in our view, suggestive that what is envisaged is one set of tests to be used for all applicants in a particular year group. Although this wording is not conclusive, it is more difficult to argue that the form of selection used produces an objective reflection of ability where different tests are taken by different applicants for places at the same school. CEM's evidence supports this. The objector claims that only a corrupt or incompetent adjudicator would accept such evidence from CEM, as he considers CEM to be dishonest. We deal with the objector's claims against CEM elsewhere. We are aware that CEM refuses to disclose information about its selection tests in order to protect its commercial interests, but it cannot follow automatically that CEM do this because they are dishonest. The objector makes unsubstantiated claims of dishonesty and incompetence about a number of individuals and organisations and expects simply to be believed. What the objector is referring to (namely a child who has taken the tests passing on test questions which are made available to others taking the same test at a later date) is what we would call cheating. In any examination or test where a child passes on a test question, and another child uses that knowledge to his/her advantage, that would be cheating. This is very different to preparation or coaching. Coaching, in the context of VR and NVR tests, is providing help with the skills and techniques needed to do well in those particular types of tests. Giving people the questions before they take the test in the context of these particular tests is neither preparation nor coaching.

97. The objector argues that the results of the tests taken by late sitters are not an accurate reflection of their ability because late sitters can cheat, and therefore the test is not fit for purpose. We remain of the view that there is the possibility of cheating in any examination – GCSEs, A Levels etc. (pupils smuggling in notes etc.). The possibility of cheating does not apply exclusively to late testing of 11 plus candidates. Forms of cheating other than candidates passing on questions to other candidates who take the test at a later date are possible. For example, a rogue employee at CEM or an A Level examining board could give away the questions before the test or examination is taken. The person at the school/local authority who is responsible for keeping the CEM 11 plus tests confidential could give the questions to candidates in the first round of testing before they sit the tests. The fact that candidates may cheat does not render the test itself unclear, not objective, or not a true reflection of ability. Cheating is always a possibility.

98. We emphasise that what we are considering here is whether the selection test being used for **this school** in 2021 for admission in 2022 gives an accurate reflection of a candidate's ability. In order that we can ensure that we have explained our role with

absolute clarity, we considered the hypothetical possibility that we had evidence which we considered to be proof that there is a systemic practice of cheating in place which is subverting the test scores for late applications to this school. Our view is that, even if we had such proof, which we do not, this would not mean that **the test itself** does not conform to paragraph 1.31.

99. What the objector is referring to is that the **practice** of using exactly the same set of tests more than once may lend itself to an abuse. Put simply, if the school used a different test of the same type for late sitters, people could not abuse the process in the way he suggests is a possibility (although the practice could lead to arguments or complaints about lack of parity and objectivity). Certainly, if a different 11 plus test were used for late sitters, what we have described as cheating would not be possible in the way the objector describes. However, we need to make clear here that it is not our function to suggest that one method or process might be 'better' than another, and we cannot require an admission authority to adopt a particular form of test or procedure for conducting a test. Our role is confined to determining whether the admission arrangements comply with the Code.

100. As the objector has rightly said, paragraph 14 of the Code is relevant. What this says is that admission authorities must ensure that the practices used to decide the allocation of school places are fair and objective. Our view is that there is a strong argument that in order for the testing **practice** to be considered objective, all applicants must take the same set of tests where this is reasonably practicable. It is not for us to say whether a practice that is different to the one used by the school would be more or less objective. We are not able to comment upon whether or not it can be guaranteed that an applicant who scores 121 in one set of CEM VR and NVR 11 plus tests is of exactly the same ability as an applicant who scores 121 in a different set of CEM VR and NVR 11 plus tests. Our view is that a practice of having all applicants take the same test, albeit up to a few weeks apart, is an objective practice for deciding the allocation of places.

101. Finally, we come to the crux of the objection, which is the assertion that the practice of using the same set of tests more than once creates an unfairness. The unfairness is said to arise because this practice allows for the possibility of cheating. As we have said, cheating is always a possibility in any set of tests or examinations. Our view is that the risk of cheating in the way the objector has described producing an advantage to the late sitter is lower in VR and NVR tests than in other examinations. An applicant taking A Level History may typically be given four questions and must answer three of them. The applicant is likely to remember all of the questions after having taken the examination because there are only four of them. A late sitter with advance notice of the questions could be helped considerably by knowing the questions before taking the examination.

102. Applicants taking CEM VR and NVR tests answer some 250 questions in total. If a person passed on one correct question and answer, this could mean that a late sitter might achieve the pass mark when he/she would not otherwise have achieved it, or that the late sitter might achieve a standardised mark which is up to six marks higher than the mark which he/she would have achieved. But even if this were the case, (and our view remains that the chances of both of these circumstances occurring are remote), this would still not

guarantee the offer of a place because the oversubscription criteria would then need to be applied. In order to pass on any advantage to the late sitter, a child of 10 would need to remember questions exactly and know which one of four multiple choice options is the correct answer. The child would also need to be willing to do something which he/she would surely know is wrong; and to pass on an advantage to another child possibly to his/her own detriment since the tests are a competition and the tests for late sitters are taken before any child knows whether he or she has obtained a place at the school. The person receiving the answer would also need to remember the answer and to use that information knowing this to be cheating. That child would also only benefit if he or she would not have been able to work out the answer him or herself.

103. The evidence produced by the objector indicates that there is an online Forum which passed on information provided by candidates who had taken the Birmingham Consortium 11 plus tests. There is evidence that some test questions were passed on, but no evidence that these were the correct questions. No answers to questions were conveyed to the parents of any candidates who sat the same tests at a later date. The postings took place after the relevant tests had ceased to be used; and the latest post was in 2016. We have not seen any evidence that the Forum is continuing to pass on information obtained from candidates who have sat the Birmingham Consortium Schools tests, or evidence that any similar exchanges of information are in operation for this school. We have not been provided with any evidence that candidates sit the tests for this school wearing hidden cameras or are likely to do so for the school's 2021 admissions tests. The objector suggests that a clearly intelligent child would not care about passing on test content to a friend because the child would be confident of getting a place in any case.

104. We do not see how any candidate can be confident of getting a place until a place is offered, and our view is that the sort of child envisaged here by the objector (i.e., a child who consistently achieves very high scores in practice tests) would be intelligent enough to know the difference between right and wrong. As the objector knows from his own experience, a person who encourages a child to sit selection tests for schools for which he has no intention of applying in order to pass on information about test content to that person, risks becoming the subject of successful injunction proceedings if he/she makes the information known to others. The evidence which the objector has supplied us about the Warwickshire injunction proceedings and the statement published by the London Borough of Redbridge indicate that admission authorities go to great lengths to protect the integrity of the tests, and makes us confident of their ability and willingness to do so.

105. We do not consider that general allegations of cheating and evidence of exchanges of information about the content of tests after they have ceased to be used provide any basis upon which we can conclude that the practice of re-using the same tests for late sitters for admission to this school in September 2022 is compromised. In the absence of any such evidence, our conclusion is that re-use of the same tests for late sitters does not operate to confer an unfair advantage upon them. Our view is that it is reasonable to operate this practice in order to save cost and create parity of results, as recognised by the courts' willingness to grant an injunction to enable the practice to be continued without risk of compromise. For these reasons we do not uphold this aspect of the objection.

106. Late in our consideration of these cases, the objector submitted additional evidence in the form of CEM's standard terms and conditions. There are clauses in the contract which say that CEM accepts no liability where children discuss the content of tests, and that CEM has a bank of questions which it re-uses. We were aware that CEM re-uses bank questions, and we would have expected that CEM would insert a limitation clause along these lines in contracts. We have not circulated this information to the parties because it was submitted after the deadline given for responses and we consider it places an unfair burden on schools to keep circulating information to them in addition to the copious amounts of information we have already sent to them. We are not permitted to take into account information which we have not made all parties aware of. We did read the contract and it makes no difference to our conclusions on this point.

Age standardisation

107. The objector claims that the use of age standardisation in 11 plus tests is based upon the claim that different aged children in the same school year (who are taught the same) score different marks as they are younger. He claims that this conclusion is based upon children who have had no preparation for 11 plus tests. He also claims that age standardisation is a manipulation using an algorithm which is kept secret by CEM and therefore not open to public scrutiny. CEM (he says) simply cannot be trusted. He re-iterates that Standard Attainment Tests (SATs), GCSEs and A levels are not age standardised. He claims that most children who sit 11 plus tests prepare. Many are tutored. Some are prepared in outreach programmes free of charge. Preparation (he says) makes the age standardisation null and void and there is no need for it, and it provides an unfair advantage to younger children. According to the objector, age standardisation is not accurate but merely guesswork. In a nutshell, the argument is that only the child's raw scores in the tests can provide an accurate reflection of ability. He says:

> "CEM claim that a child should be able to answer questions from what is learnt in year 5. But all year 5 children learn the same irrespective of age. Children are not streamed by age, but by raw ability in a class. This demonstrates within a year group age is irrelevant to performance. There is no evidence younger year 5 children score lower marks than older year 5 children, if taught the same content. If you teach 10-year-old percentages and the same to a 9-year-old or 11-year-old, they will understand the concept and can answer questions using a method. All 9,10, or 11-year-old children can learn the method, so age is not an advantage. It does not follow an 11 year old will score higher than a 10-year old. Teaching a 10 year old and 16-year-old multiplication tables will not result in a 16-year-old scoring higher marks in a test of tables. Again, age is irrelevant. Since schools do not teach NVR, all children start at the same point. Practice makes perfect, so again age standardisation is wholly unnecessary. An older child has no advantage".

108. The objector submitted two papers in later correspondence in this case. First, a paper produced by the National Foundation for Educational Research (NFER) and written by Schagen in 1990. This paper considers different statistical methods of age standardisation. The paper concludes that some methods are more secure than others but,

in our opinion, (and contrary to the view expressed by the objector) it does not discredit the use of the age standardisation process.

109. Second, the objector submitted a Freedom of Information (FOI) request to the school. In response, the school provided a table of pupils' months of birth by year group. The objector attaches a paper showing some statistical analysis of these data and also the same data shown on a bar chart. He then compares these data with figures for months of birth in the 27 states of the European Union from 2000 to 2009. The charts show that the relatively small sample from the school does not match the huge data set from the European Union in terms of the distribution of births across months of the year. We do not believe that these papers have any relevance to the issue of the use of age standardisation. Age standardisation is not a method which sets out to ensure that an equal number of children by month of birth are admitted to a particular school or that the number admitted reflects the proportion of children born in that month. How many children in a year group were born in a particular month is not relevant to the age standardisation process. The process makes allowance for those pupils who are born later in the school year and the number or proportion of these children will differ from year to year and school to school. The allowance is applied through the age standardisation process to individual children not to the cohort as a whole.

110. In response to this aspect of the objection, the school has said that it has used CEM since the admissions round for 2015 when it joined the Consortium Schools. A review of the then available 11 plus test providers concluded that the CEM tests were the most appropriate. CEM is one of the major providers of the 11 plus tests and also a leading provider of other assessment tools and tests. All the schools in the consortium use the same test which allows for the sharing of data. Therefore, the applicant only has to sit one test for the local area and can apply to several grammar schools with this result.

111. The school is satisfied that the cohorts admitted year on year, since the school has used CEM, are of suitable academic ability for the standards demanded at the school. The school confirms that it is happy that the content of the CEM 11 plus tests are a suitably rigorous examination of children seeking to be admitted to a grammar school. Furthermore, the school is satisfied with the service from CEM as well as the standard of the test. The school says it holds no information to indicate the test is not an accurate reflection of ability and is satisfied with the content of the test. This latter point is significant because paragraph 1.31 of the Code provides that is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability. The school has decided that it is appropriate to commission CEM to provide and mark its 11 plus tests because CEM provides an assessment process which is a true test of ability. Nothing said by the objector has convinced the school that it should not use CEM tests or that it should not use the same test papers for late tests and those used in the main testing round.

112. In considering whether the use of age standardisation is objective, what we have been told is that the very rationale for using age standardisation is objectivity. When considering age standardisation last year, our view was that CEM (as opposed to the admission authority) was the appropriate body to answer detailed questions about the 11

plus tests which they sell to grammar schools. We asked CEM a series of questions. The ones specifically relevant to this aspect of the objection were:

- Could CEM provide us with the methodology it uses for age standardisation of test results? What is the evidence base which underpins the need for this age standardisation?

- Could CEM advise us on the process it uses to ensure that the selection assessments are a true test of ability?

113. CEM's response was as follows:

> "The reason that CEM uses age standardisation, is that in assessments of ability it is expected that the older learners achieve higher scores than the younger learners. In a typical classroom, some learners will be up to 12 months older than their youngest peers. When CEM interpret assessment results our interest is in comparing learner's ability against the ability of a wider group and it is important that any differences seen are down to ability and not purely down to the age of the learners. Age standardised scores correct for the effect age has on assessment scores. Age standardised scores allow meaningful comparisons to be made between learners in a class, school or larger group.
>
> The age standardised scores are calculated from the raw scores to allow candidates to be compared when their age profiles are quite different. The age standardisation is based on the age of learners on the day they take the assessment.
>
> CEM cannot provide full details of how the calculations are done. Under Section 43(2) of the Freedom of Information Act, information that would prejudice a commercial interest can be withheld. CEM believe that disclosing this information would be likely to prejudice our commercial interest as it would enable competitors to understand our standardisation process. This could enable our competitors to understand our general approach to the test.
>
> In terms of assessment development – all questions are selected from a bank of items that have been specifically written and designed to be appropriate for assessing pupils at the beginning of the Autumn term in Year 6 of the English school system.
>
> Our tests correlate highly with KS2 SATs results: separate studies have shown correlations of around 0.75 on samples of 4000-5000 pupils".

114. The objector points out that other major assessment events such as SATs or GCSEs are not age standardised and suggests that, because these other assessments are not age standardised, the selection tests for grammar schools should not be age standardised. This issue could of course be argued both ways; if age standardisation is deemed appropriate for grammar schools' tests, then why is it not introduced into the SATs and GCSE processes? A look at the online conversations about this topic shows clearly that there are

strong views on both sides of this argument, both from parents and assessment providers. This determination, however, concerns the objectivity and reasonableness of the admission arrangements for a specific school and deals only with the selective school tests for that school. We will therefore limit our conclusions in this matter to the school in question, its admission arrangements and the selective assessment tests which are part of them. In doing so, we emphasise that we are not passing any judgement on the arguments for or against age standardisation of other tests, but we note that those other tests serve different purposes.

115. The difference between VR and NVR tests and many other types of tests is that success cannot be achieved simply by repeating specific learned information. For example, to do well in the comprehension questions, it will be necessary to have a wide vocabulary and the ability correctly to deduce answers from what is said in a piece of text. Candidates are required to have absorbed information from many sources and to apply it correctly. Whilst the ability to memorise may not be improved by maturity, the ability to reason is something entirely different.

116. If maturity is developed over time, it would seem to us that children may not all be able to approach these tests from the same level, as the objector suggests. Nobody would suggest that a three-year-old would be capable of approaching these tests in the same way as a ten-year-old, for example. There is an age gap of nearly a year between the oldest child taking the 11 plus test and the youngest. The questions for us are whether age makes a difference; if so, what that difference is; whether standardising the tests by age compensates for the difference; and whether it compensates effectively. The tests are a competition, and in order for any competition to operate fairly, the objective must be that all competitors come to the starting gate at the same time and that there is a level playing field insofar as the tests themselves are capable of achieving this. Familiarisation with the types of questions asked and practice may improve scores, but admission authorities and test providers have no control over whether children prepare or are coached.

117. There is significant and compelling research evidence that children who are ‘summer born’ perform less well in tests than children born at other times of the year. This gap is clear in primary aged children and remains an issue even into the later stages of secondary school. A study by the Institute of Fiscal Studies entitled ‘When You Are Born Matters; The Impact of Date of Birth on Child Cognitive Outcomes in England” collates many previous pieces of research and looks at the reasons why summer born children perform less well. The study also puts forward some suggestions about mitigating this effect. The objector questions its relevance to CEM 11 plus tests. However, we note that there is research referred to about the British Ability Scales (BAS) tests, which were conducted during survey interviews when the child was aged around 5 and 7. At age 5, the BAS tests covered vocabulary, picture similarity and pattern construction. At age 7, they covered reading, pattern construction and maths, and are a similar type of tests to VR and NVR tests (tests of cognitive ability as opposed to attainment). The following conclusions were reached:

> "**National achievement test scores should be age-adjusted to account for the fact that children born at different times of the year have to sit the tests when they are different ages.**
>
> These age-adjusted scores should be used to calculate school league table positions, to determine entry to schools that select on the basis of ability, and potentially to assign pupils to ability groups within schools. Some studies have overcome this difficulty by focusing on outcomes measured at around the same age for individuals beyond the end of compulsory schooling, which breaks the perfect correlation between age at test and age at school entry. For example, Black, Devereux and Salvanes (2008) identify the impact of school starting age on IQ scores taken as part of men's enrolment to military service at around age 18 (as well as the likelihood of teenage pregnancy and earnings) using Norwegian administrative data. **They find that starting school younger has a small positive effect on IQ scores, as well as on the probability of teenage pregnancy. By contrast, they find a large and significant positive effect on IQ scores arising from sitting the test at an older age"** (emphasis added).

118. It is important to be clear about the purposes and rationale of age standardisation and why it might be (or not be) necessary. Age standardisation assumes that the period of birth does not affect the innate intellectual ability of the pupil at the time of taking the test but that the test performance may be affected by age. A younger child might well not perform as well in the test simply because of age and experience rather than because of lower ability. At the time pupils take the 11 plus, one child taking the test might be born on the first day of the school year (September 1) while another might be born on the last day (August 31). With what amounts to a whole year's difference in their ages, the older child is clearly at an advantage; for example, they will have been exposed to more language and, on average, a greater range of vocabulary. As children are exposed to new vocabulary at the rate of more than 1000 words per year, the difference can be very significant for the 11 plus tests. Age standardisation removes this potential unfairness, and the marks are adjusted to make them 'standard' for all children regardless of their age.

119. We are of the view that age standardisation removes some of the potential unfairness for summer born children in the 11 plus tests and therefore its inclusion in the admission arrangements for these schools is fair. We also consider that the purpose of using age standardisation is to attain an objective assessment of the ability of a cohort of children which is not skewed by age and its associated advantages. As CEM says, this is in order to enable meaningful comparisons of ability within the cohort of children sitting the tests, therefore, age standardisation provides a more extensive assurance of objectivity.

120. The objector makes the point that age standardisation is made 'null and void' by the extensive preparation which children receive before the 11 plus tests. He maintains that "Most children who sit tests prepare. Many are tutored. Some are prepared in outreach programmes free of charge." We accept that preparation and tutoring may improve the test scores for an individual child, but the objector has not produced any evidence to substantiate the statement that it renders the need for age standardisation redundant.

Logically, if all pupils are tutored and improve their scores because of preparation or coaching, then the attainment gap between summer born children and others would remain the same - albeit at slightly higher score levels.

121. We are aware that test familiarisation materials are made available to pupils who will be sitting the tests and these documents appear on the admission sections of the websites of some of the schools. These materials are familiarisation information to show how the tests are carried out, completed and marked and they provide examples of the type of question which will be asked in the tests. They are designed to prevent undue anxiety for those pupils who are sitting the tests.

122. We are also aware that many pupils receive additional preparation through tutoring for the 11 plus tests. A literature review commissioned by the Office of the School Adjudicator (OSA) from the Department for Education which looked at disadvantaged pupil performance in the 11 plus test studied this element of the process and confirmed that "Pupils that have been tutored are more likely to access a grammar school, and children in households with larger incomes are more likely to have access to tutoring. Tutoring is found to be effective at supporting pupils to pass the 11-plus." (The objector considers the review to be poorly written even though it supports his view about tutoring).

123. However, there is nothing in the law or the Code which forbids the use of paid tutoring or additional coaching. Indeed, the law relating to admissions and the Code apply to admission authorities, local authorities, governing boards and adjudicators. But they do not and could not interfere with what parents choose to do in supporting their children's learning whether through commercial tutoring or other means. We are unaware of the scale of additional tutoring/mentoring/support for pupils in the primary schools local to the school. But, even if as the objector suggests it is widespread, it does not follow that this renders the use of age standardisation 'null and void'. Coaching and tutoring are used to gain an advantage. Age standardisation does not confer an advantage to younger children, it places them on an equal footing with older children in order to determine an objective assessment of ability.

124. In summary, we are of the view that there is substantial and compelling research which shows that 'summer born' children are at a disadvantage when being tested for ability towards the end of their primary education and that the application of an age standardised weighting to the test scores reduces this disadvantage and puts the comparison between the test scores on a fairer and more objective footing. Whilst tutoring/coaching/mentoring appears to improve the test results of many pupils, there is no evidence in the research materials we have looked at and the objector has not produced any evidence to suggest that it diminishes the achievement gap due to age. We therefore do not accept that additional preparation for the 11 plus tests negates the need for the age standardisation weighting, and we do not uphold this aspect of the objection.

125. The objector refers to the fact that the Key Stage 2 SATs are taken a few months prior to the 11 plus tests and are not age standardised. This is correct, but it is also true that summer born children as a group do less well in these tests than autumn and spring born

children. Of course, Key Stage 2 tests serve a different purpose and the fact that there is no need for them to be age-standardised has little bearing on what is appropriate for 11 plus tests. GCSEs – also mentioned by the objector – are taken by pupils each year at age 16, but they can be and are taken by younger and older children and by adults of all ages.

126. We are therefore of the view that age standardisation is appropriately used in 11 plus tests, and we do not uphold this aspect of the objection.

CEM is said to be a disreputable and untrustworthy organisation which cannot be trusted to devise tests that produce an accurate reflection of a candidate's ability, therefore it is questionable as to whether the selection tests properly serve this purpose

127. The objector has submitted a substantial amount of evidence which he suggests indicates that CEM is not a reputable organisation. It follows from this that, in the objector's view, the tests designed by CEM are not fit for purpose. The objector argues that whatever is said by CEM about the re-use of the same tests for late applicants and late sitters and age standardisation is not to be trusted. He also claims that CEM hides behind the protection of its commercial interests in order not to disclose information about the nature of its 11 plus tests and the testing process which might enable them both to be properly scrutinised. It is important to the objector that an injunction was secured against him to prevent publication of information about the CEM 11 plus tests which we believe was provided to him by a person (or persons) who had taken the tests, whereas he considers that other individuals and organisations have not been prevented from publishing similar information.

128. We have previously seen and considered the relevance of the decision in the employment tribunal case concerning Susan Stothard and the judgments in the various court cases which the objector has been involved in. We have also previously considered contributions to an 11 plus exams online forum and correspondence relating to online postings from 2011 to 2016 by various contributors. The objector has sent us a report from the Times Education Supplement website which refers to a Guardian article in which CEM withdraws a previous claim that its 11 plus tests assess "natural ability" and various correspondence with Warwickshire County Council. We have, of course, re-read all of this information very carefully because we understand its importance and significance to the objector. However, where nothing has been submitted which has altered our view on a particular issue, as above we have tended largely to repeat what we said last year in respect of the issue in question.

129. The school says that it has used CEM since the admissions round for 2015 when it joined the Consortium Schools. We are told that a review of the then available 11 plus test providers concluded that CEM's test was the most appropriate. The school says that CEM is one of the major providers of the 11 plus tests and also a leading provider of other assessment tools and tests. All the Consortium Schools use the same test which allows for sharing of data. Therefore, the applicant only has to sit one test for the local area and can apply to several grammar schools with this result. The school is satisfied that the cohorts

that are admitted year on year since the school has used CEM are of suitable academic ability for the standards demanded at the school, and is happy that the content of the CEM 11 plus tests are a “suitably rigorous examination of children seeking to be admitted to a grammar school”. The school is satisfied with the service from CEM as well as the standard and content of the tests. It holds no information indicating that the tests are not a true reflection of ability.

130. The Code is clear that it is for admission authorities to formulate their admission arrangements and the choice of 11 plus test is part of that. Looking at grammar schools across the country they fall into three categories in terms of who produces and marks the tests. Some grammar schools produce their own test, or do so in conjunction with other schools, some grammar schools use the tests produced by GL Assessment and others use CEM. GL Assessment and CEM are the main providers of tests for assessment which lead to grammar school place allocation across grammar schools in England.

131. CEM was originally part of Newcastle and then Durham universities and in June 2019 CEM was acquired by Cambridge Assessment and Cambridge University Press. CEM produces a range of assessment tools for schools and pupils of all ages and conducts research in collaboration with the universities concerning the assessment of pupils. Its materials are widely used across schools and colleges in England.

132. It is clear that the school is satisfied that the tests provided by CEM appropriately identify those pupils who are capable of succeeding in a grammar school environment. It is also satisfied that the marking, validation, standardisation and reporting of the results of these tests is commensurate with the needs of the school. As CEM is a commercial company the school pays fees to CEM to provide these tests. If the school was not satisfied with the tests or their marking, then they could decide to use another company or produce their own tests. This they have not done because they are content to pay the fees to CEM and are confident that the process allows them to identify their pupils accurately. It is certainly the case that the pupils selected for entry to the school achieve high results in public examinations, which suggests the intake is a good fit for the grammar school environment.

133. Paragraph 1.31 of the Code says that ‘Tests for all forms of selection must be clear, objective and give an accurate reflection of the child’s ability or aptitude, irrespective of sex, race or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability’. It is entirely up to schools and other admission authorities to decide who writes and marks their 11 plus tests and this school has decided that CEM is an appropriate company to use. It is not within our jurisdiction to agree or disagree that CEM is a reputable organisation - our jurisdiction relates to whether the testing arrangements for this school comply with paragraph 1.31 of the Code. It is clear that this school, and many other similar schools are content that the service provided by CEM fulfils the requirements of paragraph 1.31 and that the outcomes are those which the school requires. We have seen no evidence which persuades us that the tests do not conform to the Code at paragraph 1.31, and we do not therefore uphold this aspect of the objection.

We think it is important that we emphasise that we have seen nothing to make us doubt the suitability of the tests provided by CEM.

Summary of Findings

134. For the reasons set out above, our findings are that it is neither unfair nor unreasonable to set the qualifying score for entry to the school after the test results are known. We do not find that it is unfair or unreasonable to allow a lower qualifying score for entry for specified applicants or for the school to provide a free programme for these applicants to assist them with familiarisation of the format of the 11 plus tests and the testing process. The applicants in question being looked after and previously looked after children and those children eligible for the Pupil Premium or Service Premium. We find that the requirements relating to eligibility for admission on the basis of a qualifying score are set out with sufficient clarity, and that it is reasonable to set the qualifying standard after the test results are known. We find that the school's catchment areas are reasonable and described with sufficient clarity to comply with the requirements of Paragraph 14 of the Code. We find that it is neither unreasonable nor unfair to refuse to offer a late test to a candidate who is unable to sit the entrance tests on the normal test date because she is sitting selection tests elsewhere for a different selective school.

135. We find that it is reasonable to provide that an applicant's home address is the address where she has been living continuously since 31 August in the application year until the first term in the admission year. We find that the arrangements are sufficiently clear that the tests results are standardised by age. We are of the view that age standardisation does not create an unfairness to older applicants and that its use remains necessary albeit that some applicants are coached. The research produced by the objector does not counter the substantial and compelling research which shows that 'summer born' children are at a disadvantage when being tested for ability towards the end of their primary education and that the application of an age standardised weighting to the test scores reduces this disadvantage and makes the tests fairer. Whilst tutoring/coaching/mentoring appears to improve the test results of many pupils, there is no evidence in the research materials we have looked at and the objector has not produced any evidence to support his claim that it diminishes the achievement gap due to age.

136. We note that the school is satisfied that the 11 plus tests used provide a true assessment of ability. The objector's allegations of dishonesty against CEM have not persuaded us that the testing arrangements fail to comply with the requirements in paragraph 14 of the Code that they must be objective and fair.

137. However, we do find that there are some aspects of the arrangements which do not comply with the requirements of the Code and will need to be revised. The use of the term "and beyond" renders the definition of home address unclear, and the circumstances in which a late test will be offered are not set out with sufficient clarity. There is also one aspect of the arrangements which operates unfairly in our view. This is the provision which states that the address at which the applicant is living will not be treated as the applicant's home address where the property is rented on a lease of less than 12 months. These

aspects of the arrangements do not comply with the requirements of paragraph 14 of the Code.

138. There was one other matter which we drew to the school's attention and which the school has agreed to revise. This is the provision stating that the school does not normally offer places after the start of Year 10. We are grateful to the school for its cooperation in this matter and for its diligence and patience throughout this process. This was a long and detailed objection.

Determination

139. In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I partially uphold the objection to the admission arrangements determined by the governing board of Kendrick School for Kendrick School, Reading.

140. 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 an alternative timescale is specified by the adjudicators. In this case we determine that the arrangements must be revised by 31 October 2021.

Dated: 11 October 2021

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys