



## Determination

<b>Case reference:</b>	<b>ADA3660</b>
<b>Objector:</b>	<b>An individual</b>
<b>Admission authority:</b>	<b>The Academy Trust for Dr Challoner's High School, Buckinghamshire</b>
<b>Date of decision:</b>	<b>11 August 2020</b>

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by the Academy Trust for Dr Challoner's High School for Dr Challoner's High School, Buckinghamshire.**

## 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 Dr Challoner's High School (the school), a selective academy school for girls aged 11 – 18 for admissions in September 2021.
2. The objection is to the school's catchment area which is said to be in contravention of the 'Greenwich judgement', and therefore unlawful. The catchment area is also said to be unreasonable and to operate in a way that causes an unfairness to local applicants who do not live within the county of Buckinghamshire, specifically to applicants who reside in Chorleywood and Rickmansworth in the adjoining county of Hertfordshire.
3. The local authority (LA) for the area in which the school is located is Buckinghamshire County Council. The LA is a party to this objection. Other parties to the objection are the objector and the Academy Trust for Dr Challoner's High School (the trust), which is the admission authority for the school.
4. The objector has lodged objections to the arrangements of two other schools, namely Chesham Grammar School (ADA3658) and Dr Challoner's Grammar School (ADA3659). Although

the central points of the objections are the same or similar, I have dealt with them as three separate cases. This is because the objection relates primarily to the schools' catchment areas, each of which is unique to the school in question, and because each of the schools is its own admission authority and therefore individually responsible for its arrangements. Unlike in times past when the LA was the admission authority for the majority of secondary schools in the county of Buckinghamshire, there is no single body with legal accountability for any combined effect of the operation of the admission arrangements for all of the Buckinghamshire grammar schools. This is an important point to which I will return later in this determination.

## Jurisdiction

5. 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 trust, which is the admission authority for the school, on that basis. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

## Procedure

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

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

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 28 March 2020 and supporting documents;
- d. the joint response to the objection submitted by the school on behalf of the school and the LA;
- e. further separate representations made by the school and the LA;
- f. the LA's online composite prospectus for admissions to secondary schools;
- g. A map of the catchment area for the school;
- h. Determinations ADA3566 – 3569 ADA3602 and ADA3364 determined by me on 15 May 2018; and
- i. Judgments in the cases of *R v Greenwich London Borough Council, Ex parte Governors of the John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469 (1989) (the Greenwich judgment) and *R v Rotherham Metropolitan Council ex parte Clark and others* EWCA Civ 2768 (Court of Appeal Civil Division 04 November 1999) (the Rotherham judgment).

## The Objection

8. The objector makes five substantive points:

- The catchment area for the school does not comply with the requirements in section 86(8) of the Act and the Code. Its operation is intended to discriminate against applicants who live outside the County of Buckinghamshire, and to the clear detriment of these applicants. It is unlawful, unreasonable and unfair. The school and LA have displayed “*a systematic desire to prevent out of county pupils from obtaining places at Buckinghamshire Grammar Schools*”. The catchment area for the school was designed originally to help the LA meet its statutory duty to provide sufficient places for children in its area at the expense of local out-of-county-children and in contravention of the legal requirement to adhere to the Greenwich judgement and the Code.
- Extending the catchment area to include Chorleywood and Rickmansworth will enable the school to develop links with primary schools in these areas.
- The school is easily accessible to applicants living in Chorleywood and Rickmansworth. Indeed these areas are closer to the school, and more accessible, than some areas which are within the school’s catchment area. The journey times from Chorleywood and Rickmansworth stations to the school are also shorter in many cases than the journey time to most of the local partially selective schools in Hertfordshire.
- I am required to act consistently with my decision in ADA3364 in which I determined that there was no logical reason not to extend the catchment area for Chesham Grammar School to include the area suggested by the objector in that case, which in that case happened to be in Buckinghamshire.
- The school should play its part in ensuring that children living locally, whether in Buckinghamshire or out of county, who qualify for a grammar school place have a realistic chance of being offered one.

9. Relevant paragraphs of the Code are:

Paragraph 14, which says: “*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*”.

Paragraph 1.8 which says: “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated*”.

Paragraph 1.14 which says “*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*”.

The footnote to this paragraph says: “*R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469 held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. Section 86(8) of the SSFA 1998 places an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary*”.

## Background

10. Dr Challoner’s High School was established in 1962 as an all-girls’ school, when the previously mixed Dr Challoner’s Grammar School became an all-boys’ school due to increasing roll numbers. The school remains a single-sex girls grammar school, rated by Ofsted as outstanding in May 2012. It became an academy in August 2011. It is one of 13 selective grammar schools in Buckinghamshire. Each of these schools is an academy with its own admission authority.

11. The school’s admission arrangements are published on its website, and explain clearly how the LA wide testing arrangements for the Buckinghamshire grammar schools work. The Published Admission Number (PAN) for the school is 180. To be considered for a place at any of the grammar schools, applicants must achieve a standardised score of at least 121 in the selection tests which are common to all the schools, or be deemed qualified by a Selection Review Panel. If any of the 13 grammar schools are oversubscribed with applicants who have met the required standard, the oversubscription criteria specific to that school are applied in order to decide which children are offered places. These criteria are not based on ability, and can be summarised as:

1. *Looked after and previously looked after girls;*
2. *Girls living in the catchment area who are eligible for the Pupil Premium;*
3. *Daughters of staff members;*
4. *Girls living in the catchment area;*
5. *Siblings of students in Years 7 – 12 living outside the catchment area;*
6. *Girls with exceptional social or medical needs;*
7. *Girls in distance order from the school.*

12. All of the county of Buckinghamshire falls within the catchment area of one or more grammar schools. Living in some areas gives priority for only one grammar school, whereas living in other areas gives priority for two or more. In some cases this is in order to address the fact that a number of the grammar schools are single sex (as is the case with this school), and accordingly an address must fall within the catchment of two schools in order to offer grammar school access for both boys and girls. The catchment area for the school could be described as, to some extent, co-terminus with the county boundary because the county boundary forms the eastern boundary of the catchment area.

13. The tables below, compiled by the LA, shows the total number of parents who expressed a preference for the school in the last three years; the number of qualifying applicants; and the number of qualifying applicants living in the catchment area.

Year	Preferences expressed for a place at Dr Challoner's High School						Total
	1	2	3	4	5	6	
2018 entry	319	253	117	34	24	9	756
2019 entry	296	224	115	50	22	11	718
2020 entry	313	198	106	49	26	12	704

Year	Preferences where the child was entitled to a grammar place having scored 121 or more in the transfer test or had a successful selection review						Total
	1	2	3	4	5	6	
2018 entry	262	203	95	28	16	7	611
2019 entry	254	181	96	44	19	7	601
2020 entry	267	172	89	42	22	10	602

Year	Preferences where the child was entitled to a grammar place and the child was living in catchment						Total
	1	2	3	4	5	6	
2018 entry	162	69	13	2	1	0	247
2019 entry	184	69	9	0	2	0	264
2020 entry	185	60	13	1	0	0	259

14. The LA claims the figures indicate that, because the school is already oversubscribed from within catchment, expanding the catchment area to the east, (as the objector suggests), would disadvantage those living at the extreme ends of the school's catchment. The LA has also sent me a further table which I have set out below. This shows that applicants who do not live in Buckinghamshire are not precluded from applying for a place at the school, and that the school does offer places to those applicants; however, there can be no doubt that the number of places allocated to applicants living outside Buckinghamshire is low, and this is in spite of the fact that the school is situated reasonably close to the county boundary.

Year	Allocations Dr Challoners High			Total
	Catchment	Rest of Bucks	Other	
2018 entry	155	6	19	180
2019 entry	175		5	180
2020 entry	176	1	3	180

15. The LA was asked to provide the number of applications from the Chorleywood and Rickmansworth area who were successful in the selection tests but were not offered places in the last three years. Again, the information was provided in tabular form. It can be seen that the number of applications made to the school by residents in these areas was low.

Year	2018 entry	2019 entry	2020 entry
<b>Total applications made</b>	<b>12</b>	<b>9</b>	<b>8</b>
Successful - place allocated	9	4	1
Place not needed as allocated a place at higher preference grammar school	1	2	0
Allocated out of county school where highest preference was for an out of county school*	1	0	2
Not successful - allocated a place at a lower preference grammar school	0	0	1
Not successful - allocated a place at an out of county school	1	3	4

\* our data does not show if the allocation was at the preferred school or elsewhere

16. Although the school is its own admission authority, it has collaborated with the LA in compiling its response to this objection, and with the other two schools whose arrangements are the subject of objections made by the same individual. The responses are written in similar terms. Although the school's catchment area does not cover the whole of the County of Buckinghamshire, it does fall entirely within the county. All three schools and the LA have been candid about the fact that the catchment areas of all of the Buckinghamshire grammar schools were originally designed to ensure an overall effect that there were sufficient school places available for children living in Buckinghamshire, and to ensure that all qualifying applicants who live in Buckinghamshire would be offered the opportunity to access a grammar school.

17. The LA is no longer the admission authority for any of its grammar schools, and has no legal responsibility for the operation of any of their admission arrangements. The school is responsible for the effect and operation of its own admission arrangements. It has no responsibility for the effect or operation of the admission arrangements for any other school. In a situation where there are as many as 756 applications for 180 places, the school clearly has to adopt oversubscription criteria, not least so that parents can have some idea of whether there is any reasonable prospect of their child being admitted to the school or whether they would be better served exercising their preferences for a different school(s).

18. If parents 'waste' their limited number of preferences by choosing schools to which there is no prospect of their child being admitted, this may end up in a situation where the child is not offered a place at any of the schools his/her parents wish him or her to attend. In these cases, the LA must find a place for the child at a school with vacant places which may not be what the parents want. Parents need to exercise their preferences carefully, and it is important therefore that they should be able to look at a set of admission arrangements for a school and assess the prospects of their child being offered a place at that school. In a case where extending the catchment area of a school will create more uncertainty for parents, the effect of this would need to be considered carefully; however, as the objector rightly says, the effect of the school's oversubscription criteria must be reasonable and fair.

## Consideration of Case

19. I have not set out all of the detailed arguments put forward by the objector and the other parties in this determination, but I have considered all of these arguments very carefully indeed.

20. The school has submitted a response to the objection which is said to have been compiled in discussion with the LA. The objector has said *“I note that the School and the Local Authority (LA) have provided a joint response with the attempt of providing a unified front. I would be grateful if you would take into consideration the extent to which the School and the LA’s views should indeed be taken jointly. Having read through this joint response, it seems that most of the concerns raised relate solely to the LA’s statutory duty to secure the provision of school places for those resident in the LA area, and should not be a specific concern of the School. I understand that the School may wish to support the LA where possible, but suggest that the School should be treated as being neutral in areas that do not directly concern them”*. To a degree I understand what the objector means; however, the school has assured me that any views expressed are indeed the views of the school. As I have made clear above, the LA no longer has the legal responsibility for the admission arrangements for the school. The school is its own admission authority. It is not ‘neutral’.

21. The school does not have a legal responsibility to ensure there are sufficient school places for children who live in Buckinghamshire, but there is no reason why it should not adopt a catchment area which is supportive of the LA’s obligation to ensure this. Indeed, it must be hoped that all academy schools would work cooperatively with local authorities because otherwise it would be challenging to say the very least for local authorities to fulfil their obligation to ensure sufficient places for their residents.

Essentially, there are two central themes to this objection. Both relate to the school’s catchment area. First, the objector argues that the catchment area should not have been drawn as it is because it is unlawful, unreasonable and operates unfairly. Second, if the school’s catchment area were to include the areas of Chorleywood and Rickmansworth, it would become lawful and reasonable, and would operate fairly (or more fairly). The objector’s argument is that the catchment area includes only Buckinghamshire, and it needs to include areas outside the county. The logical areas to include, he says, are Chorleywood and Rickmansworth. I will deal with each theme in turn.

### **Whether the catchment area is unlawful, unreasonable and unfair**

22. The objector has explained his arguments clearly and cogently, and I am grateful for this. He has also had to wait rather longer for my decision than would ordinarily be the case due to the Covid 19 pandemic. In its simplest form, his argument is that he lives reasonably locally and within easy access of this school, but the chances of children living where he lives being offered a place are reduced substantially because they do not live within the County of Buckinghamshire. He says:

*“I understand that admission arrangements are intended to discriminate between children giving priority to some at the expense of others, but they must do so fairly and reasonably. The Courts have held that it is unlawful to discriminate against children for admission to schools solely on the basis of the local authority area in which they live (Regina v*

*Greenwich London Borough Council, Ex parte Governors of the John Ball Primary School), although where it is sensible to do so, local authority boundaries can be used to define part of a catchment (“the Rotherham Judgement”)....*

*Looking at the catchment area maps for grammar schools within Buckinghamshire, it looks as though the LA has done an admirable job in designing a strategy to ensure that pupils in Buckinghamshire can be educated in a school that is reasonably close to their home, which, in my view, argues in favour of retaining the existing catchment area as far as Buckinghamshire pupils are concerned for each of these three schools. Unfortunately, due to the high level of oversubscription from Buckinghamshire pupils within the catchment area, and this is a wonderful endorsement of each of these three schools, this strategy is also unfair, unreasonable, and works to the clear detriment of pupils residing out of county, who understandably also want to be educated in an excellent school that is reasonably close to their home”.*

23. Relevant paragraphs of the Code are set out above. Essentially, the school’s catchment area must be lawful and, more specifically, it must be:

- reasonable and clearly defined (paragraph 1.14); and
- reasonable, clear, objective, operate in a way that is procedurally fair, and it must not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs (paragraph 1.8).

Further, 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 (paragraph 14). Taking each requirement separately and in turn, these are lawfulness, clarity, reasonableness and fairness.

#### Lawfulness and the Greenwich judgment

24. The objector claims that the arrangements fail to comply with section 86(8) of the School Standards and Framework Act 1998. In the Greenwich judgment it was held that local authorities had to comply with a provision in the Education Act 1980, which has now been replaced by section 86(8). Section 86(8) is largely the same as the provision it replaces, and so the interpretation of the law in the Greenwich judgment remains relevant. However, it is also important to be aware that the educational landscape is very different now with the majority of secondary schools being their own distinct admission authorities, as opposed to having a local authority determine the admission arrangements for the area as a whole. I have set the relevant parts of section 86 out below highlighting the applicable provisions:

*86(1) A [local authority] shall make arrangements for enabling the parent of a child in the area of the authority—*

*(a) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions, and*

*(b) to give reasons for his preference.*



**(2) Subject to [subsection (3)] and section 87 (children excluded from two or more schools), [the admission authority for a maintained school] shall comply with any preference expressed in accordance with arrangements made under subsection (1).**

*(3) The duty imposed by subsection (2) does not apply—*

**(a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources; [or]**

*[...]*

**(c) if the arrangements for admission to the preferred school—**

**(i) are wholly based on selection by reference to ability or aptitude, and**

**(ii) are so based with a view to admitting only pupils with high ability or with aptitude, and compliance with the preference would be incompatible with selection under those arrangements.**

**(8) The duty imposed by subsection (2) in relation to a preference expressed in accordance with arrangements made under subsection (1) shall apply also in relation to—**

**(a) any application for the admission to a maintained school of a child who is not in the area of the authority maintaining the school....**

25. Section 86(8) applies in relation to admissions to maintained schools; however, this school is an academy. Although academies are generally required by their funding arrangements to comply with the law relating to admission to maintained schools, it is arguable that section 86(8) cannot apply to academies as there is no local authority maintaining the school. The school is within the area of Buckinghamshire County Council, a term used in a number of other provisions relating to academies and local authorities, but that is not the same as being maintained by it. Whilst however academies are to some extent intended to be free from local authority control, and the link to the local authority's area may therefore be regarded as more tenuous, they are still included (for example) in local authority schemes for the co-ordination of admission arrangements at local authority level, and in a local authority's assessment of whether there are sufficient places. On balance, I have taken the view that the admission arrangements for academies must also comply with section 86(8), and therefore with the principle established by the Greenwich judgment.

26. The Greenwich judgment established that a local authority had a discretion to create a schools admissions policy so long as that policy was consistent with its duty to comply with parental preference, and that this duty was owed to children and parents both within and without a local authority's area. It was not lawful for an admissions policy to discriminate between the two groups. Therefore the obligation in section 86(8) is to comply with a preference expressed by an applicant who is or is not resident in the area of the local authority in which the academy is situated unless:

(i) the school is wholly selective and compliance would be incompatible with the arrangements for selection; or

(ii) compliance would prejudice the provision of efficient education or the efficient use of resources.

27. Sub paragraph (ii) is the relevant paragraph. Schools which are oversubscribed, as is the case with this school, set criteria in order to determine which applicants have priority over other applicants in deciding the order in which the limited number of available places should be offered. Catchment areas are one such criterion, and are lawful provided they conform to the requirements of the legislation and the Code.

28. The objector cites paragraph 25 of a determination made by me which related to a previous objection to the school's catchment area (namely case reference ADA3364). That objection was based upon the fact that boys living in an area in Buckinghamshire which fell within the catchment area for Dr Challoner's Grammar School and who had achieved the qualifying score had not been offered a place at Dr Challoner's Grammar School because they lived too far away from that school. It was said in paragraph 25 of ADA3364 "*the school [Chesham Grammar School] has been discussing possible resolutions with the LA, and says that it is keen to do all it can to play its part in ensuring that children living in Buckinghamshire who qualify for a grammar school place have a realistic chance of being offered one*".

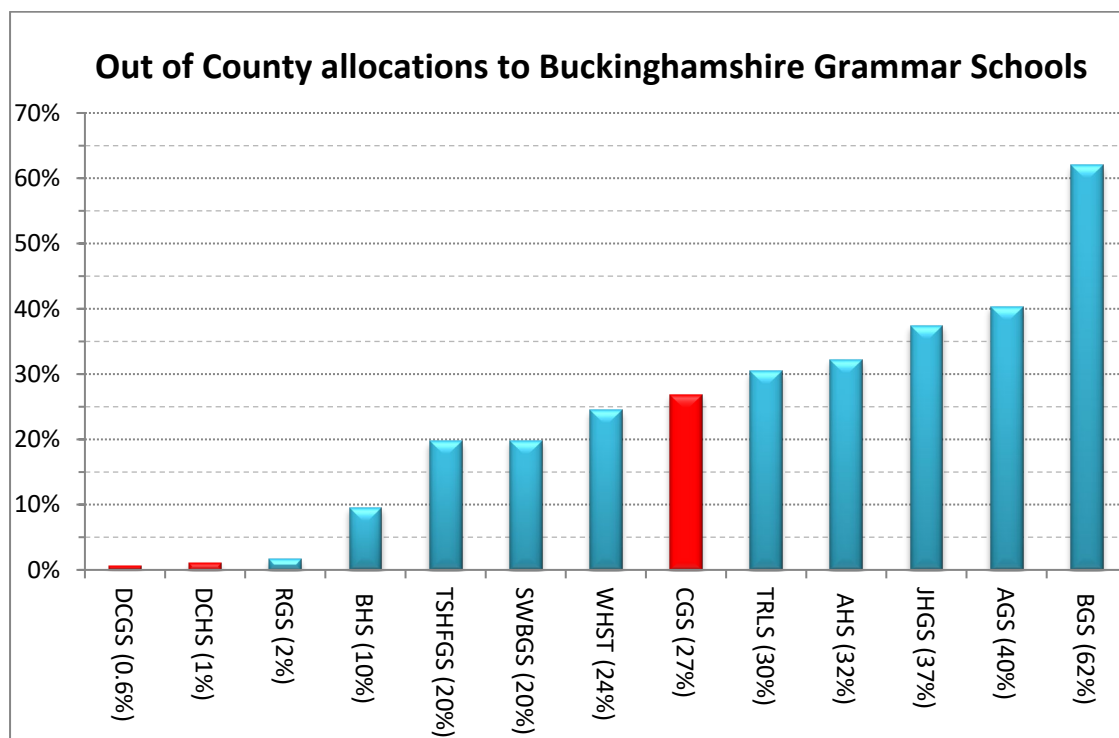
29. The objector also refers to the minutes of a meeting which say that "*The consensus of the heads [the head teachers of the Buckinghamshire grammar schools] based on the preliminary data shared was to try and increase the number of in county admissions.*" and that "*All heads agreed it was very important Bucks children continued to get places so therefore the standardisation must be amended to reflect this.*"

30. The objector considers that a policy drawn up for the purpose of endeavouring to ensure that a place is offered to all qualifying applicants living within the local authority area in which the school is situated is contrary to the requirement in section 86(8) and the Greenwich judgment. He says: "***I believe that the school should also play its part in ensuring that children living locally, whether in Buckinghamshire or out of county, who qualify for a grammar school place have a realistic chance of being offered one***". He also refers to a comment made by the Chesham Grammar School former head teacher and Chairman of the Buckinghamshire Grammar Schools that "*where Grammar Schools are near the county borders it is only right that they will serve children in their local community who do not live in Bucks*".

31. The objector recognises in his form of objection that the school does, in fact, offer places to applicants who do not reside within the area of Buckinghamshire. The operation of having a catchment area does not have the effect of excluding these applicants. The objector acknowledges: "*In the case of Chesham Grammar School, out of county allocations for September 2019 was close to the average out of county allocation across all Buckinghamshire Grammar Schools (23%), with the vast majority of out of county allocations unsurprisingly coming from Hertfordshire (44 pupils) with the remaining from the Greater London Authority (6 pupils). Extending the catchment area to include Chorleywood and Rickmansworth will enable all three schools to develop links with primary schools in this area, and in the case of Chesham Grammar School, to formalise the relationship with an area that it currently serves (when Chesham Grammar does not fill from within its catchment area, this is the area from which it fills a large number of its places)*".

32. The objector has produced a helpful table, which I have copied below. Although the effect of the operation of the school's catchment area is not to eliminate the prospect of qualifying

applicants living outside Buckinghamshire being offered a place, as I have noted previously the number of such applicants who are admitted to the school is very low indeed.



KEY: In this chart, DCGS is Dr Challoner’s Grammar School; DCHS is Dr Challoner’s High School; RGS is the Royal Grammar School; BHS is Beaconsfield High School; TSHFGS is Sir Floyd Grammar School; SWBGS is Sir William Borlase Grammar School; WHST is Wycombe High School; CGS is Chesham Grammar School; TRLS is the Royal Latin Grammar School; AHS is Aylesbury High School; JHGS is John Hampden Grammar School; AGS is Aylesbury Grammar School; and BGS is Burnham Grammar School. Dr Challoner’s Grammar School, Dr Challoner’s High School and Chesham Grammar School are highlighted in red because the objector has objected to the arrangements for these schools.

33. The objector observes that “*The out of county allocations for these two schools [sic Dr Challoner’s Grammar School and Dr Challoner’s High School] compare especially poorly relative to the boys Aylesbury Grammar School (AGS 40% from out of county) and co-educational Burnham Grammar School (62% from out of county), which are also located within Buckinghamshire and also located close to the county borders. The only other Grammar school located in Buckinghamshire which has a comparable extremely low out of county allocation (2%) is the Royal Grammar School for boys (RGS), but this school is located in the middle of Buckinghamshire and far from the county borders*”.

*Only 1% of admissions to Dr Challoner’s High School for the year in question [2019/20] were from applicants living outside Buckinghamshire*”.

34. The principle established in the Greenwich judgment does not necessarily mean that it is unlawful for the boundary of a catchment area to be coterminous to some extent with that of the local authority area. In the Rotherham judgment, Stuart-Smith LJ accepted the argument that, if the geographical location of the catchment area is lawful, then the catchment qualification is also lawful. The reason why the appellant child in that case did not have priority was not because they were outside the local authority boundary but because they were outside the catchment area of

the school. In that respect they were like every other person inside the borough but not within the catchment area. Unless there is any challenge to the geographical nature of the catchment area, it is not rendered unlawful simply because one of the boundaries of the catchment area lies along the borough boundary. In the learned judge's words:

*"It is always a great misfortune if children, for whatever reason, cannot go to the school of their parents' choice. Unfortunately, that is one of the inevitable consequences where a school is oversubscribed. It is often the case that the better the school, the more its reputation, the more oversubscribed it is. The education authority must have a sensible system for admissions in the case of oversubscription. Proximity and hence catchment areas may well be the primary consideration. The catchment area cannot itself be criticised. It does not contravene the Act just because it coincides to some extent with the local education boundary".*

35. Effectively, therefore, it is unlawful to use a local authority boundary as the boundary of a catchment area simply because it is the boundary of the local authority area. As I have said above, the school has not adopted a catchment area which comprises the whole of the local authority area. The catchment area is bordered on one side by the local authority boundary and falls wholly within the area of the local authority. It may be described as to some extent co-terminus with the local authority boundary. The Rotherham judgment makes clear that such a catchment area may be lawful.

36. The school offers very few places to applicants who do not live in the county of Buckinghamshire, however, it cannot be said that the catchment area was formed as it is deliberately to exclude out of area applicants. Its effect may be to advantage some local applicants who live within Buckinghamshire, but it does not advantage all Buckinghamshire applicants solely because they live in Buckinghamshire. Indeed, the school offers priority based upon both a local catchment and proximity to the school. A qualifying applicant who lives in Stoke Poges, for example, (which is within the county of Buckinghamshire but outside the school's catchment area) would have less chance of being offered a place at the school than an applicant living in Chorleywood (which is in Hertfordshire). This is because beyond the catchment boundaries, it is distance that counts and Stoke Poges in Buckinghamshire is further from the school than Chorleywood in Hertfordshire.

37. The school's view is that expanding its catchment area so that it includes more out of county areas would lead to the school being heavily oversubscribed from within catchment. I accept the force of this argument. I can see that there might be valid reasons why any school could draw its catchment area differently to cover other areas, but the effect of enlarging the catchment area of an oversubscribed school would inevitably be to create more uncertainty for parents living within the catchment and to eliminate any prospect of qualifying applicants living outside the catchment area of being offered a place. The school says this would create a detrimental impact on those in catchment children who live in rural areas a long distance from the school in particular.

38. To summarise then, the Code and case law do not require that the boundaries of catchment areas cannot, in part, follow the boundary of a local authority area. The law does not preclude admission authorities from having a catchment area falling wholly within the area of the local authority within which the school in question is situated. What the Greenwich judgment prohibits is

the giving of priority for admission to a school exclusively because a pupil lives in the local authority area. That is not what the school's arrangements do. Those who fall within the catchment area all live in an area in the county of Buckinghamshire; however, qualifying applicants who live in Buckinghamshire but outside the catchment area are in the same position as applicants living outside Buckinghamshire.

39. I am not required to consider the combined effect of the admission arrangements for all of the Buckinghamshire grammar schools, and indeed have no jurisdiction to do so, as there is no longer one person or body with responsibility for the effect of more than one set of arrangements. Each of the schools has its own set of admission arrangements and is responsible for the setting of those arrangements and their operation. Having considered the arrangements for Dr Challoner's High School, my conclusion is that the catchment area is not exactly co-terminus with the Buckinghamshire county boundary; it is not intended to exclude applicants who do not live within Buckinghamshire; the school admits very few applicants who live outside the county of Buckinghamshire however this is due to the fact that it is so heavily oversubscribed with applicants who live in the catchment. The arrangements afford higher priority to some applicants who live within a specified area in Buckinghamshire, but they do not contravene section 86(8) of the School Standards and Framework Act 1998 or the Greenwich judgement. For these reasons, I do not uphold this aspect of the objection.

#### Clarity

40. The arrangements must be clear. The objector does not claim that the school's catchment area is unclear, however in considering the requirements of paragraphs 1.14 and 14 of the Code I find that the arrangements as a whole are comprehensive and clear. In particular the catchment area is described clearly. There is a map published alongside the arrangements which shows which areas are within and which are outside the catchment area. The map is easily accessible on the school's website. A parent looking at the arrangements would be able to tell whether the family home is inside or outside the catchment area.

#### Whether the arrangements are reasonable

41. The arrangements must be reasonable. The Code does not define reasonable and the test I have adopted is that the arrangements cannot be such that no reasonable admission authority taking into account all relevant factors would have determined the arrangements which have been determined. To be unreasonable arrangements must be arbitrary or irrational. This is a high threshold. In considering the reasonableness of the school's catchment area I have looked at the reasons for it having been drawn as it is and its effect. The school and the LA have provided a helpful explanation of why the catchment area has been drawn as it is. This says:

*“The original catchment pattern is a long standing one, originally drawn up by the Local Authority, with a county wide pattern of generally overlaid and shared catchment areas. The catchment has never included out-county areas as to do so may affect children living in the further reaches of the school's current catchment. Catchment areas have been kept under regular review when the local authority was the admission authority and they were recently reviewed with grammar school heads in Bucks in 2018 based on following shared principles:*

1. *Catchments should support the LA's statutory duty to ensure sufficient school places.*

2. *All parents have the right to express preferences for schools for their children other than the defined catchment school(s) for where they live. Under the admissions code, admission authorities must not guarantee places to parents in a local catchment area, in case the pattern of preferences expressed does not allow this guarantee to be met. Redefining the geographical catchments of each school can have the effect of balancing the supply and demand for pupil places between catchments. Consideration in particular should be given to shared catchment areas that can mutually benefit all the schools concerned (i.e. changes are kept to a minimum so as not to negatively impact on the intake of neighbouring schools and are intended to encourage parents to express appropriate alternative choices should the existing local catchment school become oversubscribed). Catchment areas are a mechanism for prioritising admissions and promoting parental choice.*
3. *Proposals should support parental confidence in the admissions system and reduce the risk of catchment oversubscription. As far as possible, all children who make a timely application at the normal point of entry (i.e. Year 7) should be able to attend one of their catchment area schools.*
4. *Any Buckinghamshire area beyond 3 miles from a grammar school will be in catchment for at least two suitable grammar schools where there is a risk of children missing out on a grammar school place if the catchment school becomes oversubscribed;*
5. *Catchment areas must be designed so that they are clearly defined and reasonable – i.e. need to consider the number of children living within it, transport routes and the location of other schools.*
6. *Catchment areas should allocate school places fairly. That is, admission authorities should ensure that catchment areas reflect the diversity of the community served by the school, and must not exclude particular housing estates or addresses in a way that might discriminate/disadvantage particular social or racial groups. They should also ensure as far as possible that children living in the rural parts of the county are not disadvantaged by having to travel a disproportionate distance to their next nearest grammar school with a place.*
7. *Catchment areas should comply with the Greenwich judgement (although applied to a comprehensive secondary school close to its border) which ruled that applicants must be treated equally, whether they reside inside or outside the authority. The Rotherham Judgement (1997) which established that the principle of admission authorities operating catchment areas as part of their oversubscription criteria in allocating school places was lawful - provided that in so doing authorities were not in breach of the Greenwich judgement. Buckinghamshire is a fully selective authority and apart from one small rural part of the authority, no comprehensive secondary schools in neighbouring authorities have a catchment area which extends into Buckinghamshire. Residents in neighbouring authorities generally have good access to comprehensive secondary schools in their area.*
8. *Once children in the catchment area have been accommodated, there should, if possible, be a few additional places available, within the admission number to allow for volatility in parental preference, population migration and 11+ qualification rates.*

*Part of the reasonableness of catchment areas is that they should afford some assurance to those that reside within them that there is a strong chance that if they meet the entry requirements for the school that in any generally 'normal' year that their child can obtain a place. If this is not possible then it negates the point of having a catchment area. For grammar schools in Bucks (due to their location, capacity limits and the rural nature of the authority) this is largely achieved by creating shared catchment areas as*

*this allows for fluctuations in trends and guarantees as far as possible that all catchment preferences can be met (particularly from those residents that live in rural areas that would be most disadvantaged due to the distance they live from their nearest grammar schools). Where potential catchment oversubscription issues exist such as in the Dr Challoner's Grammar School catchment area (OSA case reference ADA3364), the Council has responded by providing parents with an alternative grammar school catchment option.*

9. *Catchment areas should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes.*
10. *There should be flexibility to allow for future demographic changes without the need to make further changes to all areas (e.g. consideration of local housing growth plans).*
11. *Catchment change proposals should be sustainable with regard to capital funding and take into consideration legislation which prohibits the establishment of new grammar schools and the ability of grammar schools to expand with many on restricted sites."*

42. The school later added:

*"Our catchment area has been relatively stable for at least 20 years...*

*We see ourselves as a community school and this is very important to our ethos and outlook. Because our catchment area has been relatively similar over a long period of time, those within catchment area have particularly become the community our school serves. Over the last ten years we have normally managed to accommodate qualifiers within the catchment area who put our school as first choice, and between 2015 – 2019, since moving to six forms of entry, some places have been available to those outside catchment area. Our catchment area is well-matched to the number of children within it.*

*The objector does not share the school's view that it negates the point of having a catchment area, even if there is not a "strong" chance that a child who meets the entry requirements for the school will obtain a place. This cannot be right. Previous adjudications have shown that those living within a catchment area must have a reasonable chance of gaining a place at the school. Extending the catchment area to include Chorleywood and Rickmansworth will mean that others living within the catchment area do not have a reasonable chance of gaining a place at the school. The estimated populations of Rickmansworth and Chorleywood in 2018 were 25,413 and 13,524 respectively ([https://www.citypopulation.de/en/uk/eastofengland/hertfordshire/E35001432\\_rickmansworth](https://www.citypopulation.de/en/uk/eastofengland/hertfordshire/E35001432_rickmansworth)).*

*The populations are sufficient to produce very large numbers of applications and potentially allocations, if the objection was upheld. If the objection was to be upheld, others would then argue that other neighbouring settlements, including other large urban areas such as Watford, Beaconsfield, High Wycombe and Hemel Hempstead should be included as well. The catchment area has to end somewhere and is currently well balanced for the existing catchment which the school has served for a long time and which therefore is the school's 'local community'.*

*The objector says that “School and LA could also look to prioritise children living in rural parts (sic) of the School’s catchment area to the extent that it believes priority should be given to these children.” We do not wish to prioritise any part of the catchment area over any other (although we accept that the final discriminator is distance which does put more distant parts of the catchment area at a slight disadvantage. However, in reality, since 2015 all first-choice applications within the catchment area have gained a place). Isn’t the point of having a catchment area to give all of those within it priority over all of those outside it?*

*The objector suggests that, “This issue can be easily addressed by amending the admission criteria rules so that, for example, children are selected based on academic ability up to the number of school places available, rather than having to achieve an arbitrary Secondary Transfer Test Score (STTS) of 121 or above.” This would be a completely different selection criterion to that currently used and would turn the school into a “super-selector”. This is not the sort of grammar school that we wish to become. We wish to select those who demonstrate a certain academic ability, but thereafter we wish to give priority to a broader group of students and those who are, for example, looked after or previously looked after, in receipt of Pupil Premium in the catchment area, living in our catchment area, children of staff, sisters of current students and those with an exceptional social or medical need. To select by rank order of score would change the nature of this school entirely...”*

43. I have quoted the school at length here, as opposed to summarising its arguments. I have done this because I considered it important for this determination to reflect the strength of feeling. The tone of the school’s response is one of serious concern.

44. The objector has suggested that, because the number of applications to the school from residents in the Chorleywood and Rickmansworth areas is low, extending the catchment will make little difference. I do not accept this argument. As the school says below, parents’ choice of preference will be influenced by the prospects of success. Parents of children living in these areas will know that there is a possibility of their child being offered a place at Chesham Grammar School, but there is virtually no prospect of an offer of a place at Dr Challoner’s High School. This is precisely why the objector wants the school’s catchment area to be enlarged to include these areas. In the words of the school’s head teacher:

*“The objector stated “If the catchment area map had been extended to include Chorleywood and Rickmansworth during the years 2018-2020, there would have only been a few applications (6 in 2018, 9 in 2019 and 5 in 2020) made from children in Chorleywood and Rickmansworth which were unsuccessful and resulted in an out of county allocation, despite meeting selection criteria tests, but would (by extending the catchment area) now have been allocated a place at one of the three Buckinghamshire Grammar Schools.” Objector concluded, “There would be no impact on the LA in terms of meeting its statutory duty to ensure sufficient school places to children within the LA, given that the same number of currently in catchment children would have been allocated a place” Objector also said, “There would be no impact on children living in rural parts of the catchment area in Buckinghamshire no longer having access to a grammar school.” The objector asserts that extending the catchment area to include Chorleywood and Rickmansworth would have no*



*impact on those in the more “rural” (which would include distant but not rural) parts of the catchment area gaining places.*

*There is no basis for this logic. People apply for schools based on their knowledge and understanding of the current prospects of gaining a place. Given the desire amongst the population for grammar school places, it is extremely likely that if Chorleywood and Rickmansworth were to be added to the catchment area, there would be a significant increase in applications to DCHS from these areas. This would undoubtedly have a negative impact on the prospects of those people at the edges of the current catchment area obtaining a place at the school. The objector’s analysis is misleading, as it does not take into account that applications from areas outside of Buckinghamshire grammar school catchment areas increase very significantly if communities in those areas believe they have an increased chance of securing a place, as has been shown over the last ten years at both CGS and DCHS. If the catchments were changed, as the objector suggests, the scale of applications and admissions from Chorleywood and Rickmansworth would almost certainly be on a far greater scale than he suggests”.*

45. On any basis, this is a catchment area that has been drawn as it is for logical reasons, having taken into account all relevant factors. It is neither irrational nor arbitrary. The objector refers on numerous occasions to my determination in ADA3364. In that case, due to a number of factors, the catchment area for Dr Challoner’s Grammar School operated in a way that was not intended because boys living in a particular area had no reasonable prospect of being offered a place at that school despite living within the catchment. This was identified as a potential problem by the adjudicator in ADA3296 which was an objection to the admission arrangements for Dr Challoner’s Grammar School; however, the adjudicator also identified that the problem could not be rectified by revising the arrangements for that school. In order to give boys living in this area any reasonable prospect of being offered a grammar school place, the area would have needed to be included within the catchment area for Chesham Grammar School.

46. The area in question was an identifiable strip of land around Chalfont St Peter. In 2018 some 24 qualifying boys living in this area were not offered a place at any Buckinghamshire grammar school in the first round of admissions. Because the catchment areas for the Buckinghamshire grammar schools were originally drawn to achieve an overall objective that all Buckinghamshire children qualifying for a grammar school place should be offered a place at a local grammar school, qualifying boys and their parents living in the relevant area would have had the expectation of a grammar school place. At the time of my consideration, the LA had worked with the grammar schools to attempt to ensure offers were made to these boys. Indeed, Dr Challoner’s Grammar School agreed to increase its PAN. Nevertheless there remained four boys who had not secured a grammar school place at the time of my determination, and there were unresolved issues about the travel difficulties of the journey between Chalfont St Peter and Burnham Grammar School as to whether that school was a viable alternative. This was a situation which the LA and Buckinghamshire grammar schools did not wish to be repeated.

47. The LA stated in that case: *“There are generally sufficient grammar school places to accommodate county residents, but each year there are many factors that may influence the detailed patterns of school place offers (e.g. changes in parental preference (with a mix of single-sex and co-educational schools), population migration, 11+ qualification rates/review qualifiers,*

*independent sector take up etc.). BCC [Buckinghamshire County Council] acknowledges that Grammar schools operate with extensive shared catchment areas as unlike upper schools they tend to be located in the larger towns (e.g. Buckingham, Aylesbury, High Wycombe and Chesham/Amersham) grammar qualified children living in the rural parts of the county may be disadvantaged based on the distance to school oversubscription criteria (although this is considered within the admissions code as a reasonable means for prioritising preferences)”.*

48. My conclusions in ADA3364 were that the catchment area for Chesham Grammar School no longer operated fairly to an identifiable group, namely boys in the Chalfont St Peter area who had qualified for a grammar school place. These boys were being deprived of an opportunity which was offered to every other qualifying child living in Buckinghamshire, and had an expectation of a grammar school place. Following my decision in ADA3364, the catchment areas for the grammar schools were reviewed; Chesham Grammar School consulted upon planned changes; and revised its catchment area to include the rural area in Chalfont St Peter.

49. The objector argues that the situation of applicants (both boys and girls) living in Chorleywood and Rickmansworth is analogous to the situation of those boys living in Chalfont St. Peter. An applicant living in Chorleywood or Rickmansworth who qualifies for a grammar school place should have a realistic prospect of being offered one. What prevents this, he asserts, is that applicants from Chorleywood and Rickmansworth live in the area of a different local authority. It is not reasonable, he says, to deprive applicants of a realistic prospect of attending a Buckinghamshire grammar school because they live in Hertfordshire. His view is that, if Chorleywood and Rickmansworth were in Buckinghamshire, these areas would have been included in the catchment area for a Buckinghamshire grammar school.

50. The objector may or may not be right about this, and it is not for me to speculate, but I do not agree that **not** including Chorleywood and Rickmansworth necessarily renders the operation of the school's catchment unreasonable. Neither do I agree that qualifying applicants are being denied a place at the school because they live in Hertfordshire. These applicants do not fall into a lower priority because they live in Hertfordshire. In common with many qualifying applicants living in Buckinghamshire, they fall into a lower category of priority because they do not live within the school's catchment area.

51. The school is heavily oversubscribed. It has adopted a catchment area local to the school which comprises part of Buckinghamshire County, though not all of it. It is entitled to adopt a catchment area, and appears to have taken into account all relevant factors in so doing. Enlarging the catchment area of this particular school risks leading to increased oversubscription; reduction in the prospects of success for all in-catchment applicants; and more uncertainty for parents and children involved in the process. There are likely to be unplanned effects for other schools both inside and outside Buckinghamshire. As the LA has remarked, Hertfordshire County Council and Hertfordshire schools on the border of Buckinghamshire are likely to be averse to the catchment area for the school being enlarged to include Chorleywood and Rickmansworth.

52. In ADA3364, I was looking at what was originally a reasonable catchment for Chesham Grammar School which had evolved to create an unfairness and therefore needed to be revised. The objector argues that the current catchment area for Dr Challoner's High School is unreasonable because it has been drawn as it is deliberately to serve an unlawful objective,

namely the prioritisation of Buckinghamshire applicants over applicants from areas outside the county. But, as explained above, the catchment does not have this effect. Even if the overall effect of the arrangements of all Buckinghamshire grammar schools operated to create a combined effect of excluding applicants from outside the county, (which is not their effect) this would still not render the admission arrangements for the school unlawful because those arrangements do not have that effect.

53. The objector has not put forward any sustainable arguments why the school's present catchment area operates unreasonably. What he says is that the arrangements do not prioritise applicants living in the area where he lives, but why should they? The arrangements are capable of being, and are, perfectly reasonable without doing this. The situation of failing to prioritise boys living in Chalfont St Peter is in no way analogous to a failure to prioritise applicants living in Chorleywood and Rickmansworth as the latter areas are not located in the area of a wholly selective authority which has committed publicly to working with the schools in its area to make available a grammar school place for all qualifying children.

54. The objector runs the circular argument that the arrangements are unreasonable because they are unlawful, and they are unlawful because they discriminate unfairly against applicants because they live outside Buckinghamshire. However, it is not unlawful for a catchment to comprise an area which falls wholly within the local authority area in which the school is located. So much is clear from the Rotherham judgement. If the argument that arrangements are unreasonable because they are unlawful is not sustained, manifestly the reverse is true.

55. It is a fact that some areas have grammar schools and some do not. Many parents will make decisions about where to live based upon the local schools in the area. Choosing to live outside the catchment area for a particular school does not render that school's catchment unreasonable because your address does not fall within it. Setting out reasons why an area might be included in the catchment area for a school is entirely different to setting out reasons why a school's catchment area as it stands is unreasonable. It is difficult to see why the fact that the catchment does not include an area in Hertfordshire would render the school's catchment unreasonable because that area is reasonably accessible to the school by public transport. The same could be said of any number of areas. A catchment area is not unreasonable because residents who live outside it do not have priority. Again, that could be said of any number of areas, but they cannot all be included. The entire purpose of a catchment area is to limit priority.

56. The objector's arguments about reasonableness focus mainly upon why it is unreasonable **not** to include additional other areas within the school's catchment area, which in a sense is the 'wrong' argument. My consideration of this objection is not about whether a different set of arrangements may be reasonable (or more reasonable), it is about whether the arrangements for this school are reasonable as they are. For most if not all schools, there will be more than one possible set of Code compliant arrangements; it is for the admission authority to decide which Code compliant arrangements to adopt.

57. My conclusion on this aspect of the objection is that the catchment area for this school is not such that no reasonable admission authority would have drawn having taken into account all relevant factors. As I have said, there is a high threshold to meet in establishing unreasonableness, and it is not met here. Therefore I do not uphold this aspect of the objection.

## Whether the arrangements are fair

58. The requirements in the Code are that the practices and criteria used to allocate places must operate fairly, and that the arrangements must not disadvantage unfairly any identifiable group. The essential difference between reasonableness and fairness is that reasonableness is judged from an objective basis, whereas a determination of what is fair will involve a subjective value judgement. It is possible that an objectively reasonable set of arrangements may operate unfairly to an identifiable group. There will often be a group of applicants who could be said to be disadvantaged by the operation of oversubscription criteria because they are afforded a lower priority than other applicants, but in order not to comply with the Code any disadvantage must also be unfair.

59. In considering fairness, the focus of the consideration will be exclusively upon the effect or the practical application on any relevant group. It is necessary to weigh the advantage said to accrue to children who would be offered places at the school in consequence of the arrangements against any disadvantage caused to any other relevant group of children who would not be offered places. A key question for an adjudicator to ask is, to whom might this be unfair and why? The objector identifies two potential groups of applicants: First, 'local' applicants who would be eligible for a grammar school place who live outside the county of Buckinghamshire; and second applicants who would be so eligible and who live in the areas of Chorleywood and Rickmansworth, as these areas should 'logically' be included in the school's catchment area.

60. I understand fully why the objector would think that the catchment area of this school operates unfairly to qualifying applicants who do not reside in the county of Buckinghamshire. Quite simply there are no such applicants living in Hertfordshire who fall within the catchment area. I can also understand why any parent living in Chorleywood or Rickmansworth might consider it unfair that their children would have a lower prospect of being offered a place at the school than some children living further away simply on the basis that they live in a different county. I accept the evidence submitted by the objector that the school is easily accessible to children living in Chorleywood and Rickmansworth and indeed that it is more easily accessible to those children than it is to children living in the more rural areas of Buckinghamshire who are given higher priority because they live within the catchment. The crux of the objector's argument is that giving priority based upon the county of residence is unfair. Such priority should be afforded equally to all those who are what the objector describes as "local residents".

61. In answer to the first question of whether the arrangements may disadvantage some local residents who live outside Buckinghamshire because they do not fall within the catchment, I have seen no evidence to suggest any unfair disadvantage. The drawing of the catchment area is based primarily upon the premise of providing access to a reasonably local school, and upon providing residents in rural areas of Buckinghamshire with the opportunity to attend a selective school which they are able to travel to without too extensive a journey.

62. The objector accepts that the effect of having a catchment area is that it will advantage some but disadvantage others. Its purpose is specifically to offer priority to some at the expense of others. It has this in common with all oversubscription criteria whatever they may be. The operation of a school's catchment area means inevitably that any applicant who does not live within it will have lower priority than an applicant who does. But the objector has not advanced any

convincing argument as to why applicants living in Chorleywood and Rickmansworth are in a different position to any other applicants living outside the catchment. They are disadvantaged because they do not live within the catchment, but why is this more unfair to them than to anyone else who does not live within the catchment but who would like to go to the school?

63. It is stated in the representations made by the school and the LA that the view of the grammar schools and the LA is that, as Buckinghamshire is a fully selective authority, all qualified pupils residing within the county should have priority access to a grammar school. This is stated publicly and will have created an expectation on the part of qualifying applicants and their parents. The implication is that parents who want a Buckinghamshire grammar school place for their child could either choose to live in Buckinghamshire, which would achieve the objective provided that the child was successful in the selection tests, or endeavour to persuade their own local authority to offer selective places (or an increased number of selective places), subject naturally to the legislative limits in place in relation to this. Residents in neighbouring authorities generally have good access to comprehensive schools in their area. The LA has produced a map which includes the locations of Hertfordshire secondary schools close to the Buckinghamshire/Hertfordshire border which are reasonably close to Chorleywood and Rickmansworth.

64. The objector disagrees with the premise of this argument. He says:

*"I believe that the Office of the Schools Adjudicator should look at the extent to which the out of county neighbouring areas of Chorleywood and Rickmansworth have access to a fully selective school..."*

*Hertfordshire does not have any fully selective grammar schools and therefore there is no direct comparison of the School to any school in Hertfordshire. The most comparable schools in Hertfordshire close to Chorleywood and Rickmansworth are the partially selective Watford Grammar School for Boys (WGBS) and Watford Grammar School for Girls (WGGS) that I have noted in my initial objection letter. This is due to the relatively high percentage (for Hertfordshire schools at least) of 25% of their intake at 11+ being on academic ability and the academic results achieved by these schools.*

*It should be noted that in the case of WGBS and WGGS, a child living in the WD3 1xx, 4xx to 9xx postcode area is placed in the "Rest of the Admissions Area" and is much less likely to secure a place than a child living in the "Watford" area.*

*I note that I have provided a comparison in the original objection letter of the ease of access by public transport to the School in comparison to WGBS and WGGS and the distance as the crow flies from Chorleywood and Rickmansworth. Travelling from Chorleywood by public transport to the School would take 28 minutes for example, when compared to 55 minutes to reach WGGS.*

*I do not see that whether or not neighbouring authorities have good access to comprehensive secondary schools in their area is at all relevant, given that Hertfordshire schools are not fully selective.*

*I do not see any reason why the LA should be treated as a "special case" relative to any other Local Authority e.g. Hertfordshire who has the same statutory duty to secure the provision of school places for those resident in their Local Authority area, and yet*

*successfully manages to fulfil its statutory duty whilst having schools in their area which include catchment areas that extend to out of county”.*

65. I disagree with the objector in relation to what he suggests I should be considering. All children in the UK have a right to education not least because the UK is a signatory to the UN Convention on Human Rights which gives children this right, but the case law is clear that the right to education does not extend to a right to attend a particular school or a particular type of school. If it is unfair that not every child has a reasonable prospect of being offered a grammar school place, then the entire education system in England is unfair. This is blatantly not the case. There are only 163 grammar schools in England out of some 3,000 state funded secondary schools. I do not accept that not being within the catchment area of a grammar school, of itself, creates an unfairness.

66. The LA and the school have both suggested that no comprehensive secondary schools in neighbouring authorities have a catchment area which extends into Buckinghamshire. The objector disputes this saying that for St Clement Danes School priority is given on the basis of proximity to the school, and in addition up to 10% of places are allocated on the basis of academic ability *“irrespective of the county in which a child lives and in priority to the distance criteria. Places on ability are allocated in descending order of each applicant’s standardised test score, priority being given to applicants obtaining the highest standardised score, and irrespective of postcode or county of residence”*. The objector also says that the catchment area for St Clement Danes prioritises children living within the WD3 postcode, and this postcode spans parts of the counties of Hertfordshire, Buckinghamshire and Greater London rather than Hertfordshire alone. Therefore some children resident in Buckinghamshire do have access to Hertfordshire schools, he argues, whereas children resident in Hertfordshire do not have priority for Buckinghamshire grammar schools. Rickmansworth School is also he says partially selective, with a priority area defined by postcodes which include children living both in county and out-county. The objector has supplied details of the admission arrangements for these Hertfordshire secondary schools. What he has said is correct.

67. However, it is not directly relevant to my consideration whether Buckinghamshire residents have access to Hertfordshire schools or not. What concerns me is whether residents in Chorleywood and Rickmansworth are disadvantaged unfairly by the operation of the school’s arrangements. In order to persuade me of this, I would need to have evidence either that these residents had been led to believe that, if their child achieved the pass mark in the selection tests, she would be offered a place but that the operation of the catchment had changed so that this was no longer the case, or that there were no other reasonably accessible secondary schools available to the children in question. The secondary school options for children in the Chorleywood and Rickmansworth area appear to be St Clement Danes, Rickmansworth School, The Reach Free School, The Harefield Academy, St. Joan of Arc Catholic School, Watford Grammar School for Boys, Watford Grammar School for Girls and Parmiter’s School (easily accessible by car, but would involve a lengthy journey by public transport).

68. In response to enquiries from my office, the LA approached Hertfordshire County Council (the council) which has confirmed that children in Chorleywood and Rickmansworth have access to The Reach Free School in addition to St Clement Danes and Rickmansworth School, both of which are partially selective. The council expects that there will be sufficient school places to

enable secondary school aged children in Chorleywood and Rickmansworth to be offered a place. Based upon existing patterns of preference and allocation, the vast majority of applicants from these areas are said to have secured a place at one of their preferred schools in recent years.

69. According to the council, there are also relatively few applicants from these areas who secure places at Watford Boys Grammar School or Watford Girls Grammar School, although both of these schools do offer specialist places based upon aptitude for music and academic ability to applicants living outside the Watford area. The council says that the most common allocations in recent years are St Clement Danes and The Reach Free School, followed by Rickmansworth and then St Joan of Arc. The council has produced a table showing parental satisfaction rates for Chorleywood and Rickmansworth for 2020, 2019 and 2018, which are exceptionally high.

Parish	Year	Non Ranked Allocation	Preference 1	Preference 2	Preference 3	Preference 4	Preference 5	Grand Total	% with a ranked preference
Chorleywood	2020	0	142	8	3	1	0	<b>154</b>	100%
	2019	2	136	10	1	1	0	<b>150</b>	99%
	2018	3	152	8	2	2	0	<b>167</b>	98%
Rickmansworth (part) / Maple Cross	2020	0	144	28	15	6	1	<b>194</b>	100%
	2019	6	146	20	13	9	0	<b>194</b>	97%
	2018	8	129	31	15	10	0	<b>193</b>	96%
<b>Grand Total</b>								<b>1052</b>	<b>98%</b>

70. The objector considers that this high level of satisfaction supports his own view that the LA and the three Buckinghamshire grammar schools would have nothing to fear in terms of an increase in “11+ tourism” as a result of extending the catchment areas of the three Buckinghamshire grammar schools to include Chorleywood and Rickmansworth. His view is that it can be seen that the vast majority of children living in Chorleywood and Rickmansworth were allocated their first preference school, and this was not either of the three grammar schools.

71. There are two downsides to this argument. The first is that, if the evidence shows 100 per cent satisfaction on the part of other parents in Chorleywood and Rickmansworth in terms of their secondary school options, it appears I am being asked to require the arrangements to be revised, even though this is clearly contrary to the wishes of the admission authority, because the objector (in contrast to other parents in Chorleywood and Rickmansworth) considers that the available secondary school options are not good enough.

72. The second is that the school is heavily oversubscribed with applicants who have qualified and live in the catchment, and giving preference to some will clearly be at the expense of others. The objector’s argument is that it will not make any difference to the level of oversubscription if Chorleywood and Rickmansworth are included in the school’s catchment area. The school does not agree with this prediction, and neither do I. As I have said, the parents of children living in

Chorleywood and Rickmansworth are unlikely to apply to the school currently because they will know that the prospects of their child being offered a place are low. If Chorleywood and Rickmansworth were to be included in the school's catchment, the prospects of children in these areas being offered a place will increase significantly. This is in part because, as the objector has pointed out, they are closer to the school than many other areas in its catchment.

73. The school shares a catchment with Chesham Grammar School which admits qualifying applicants from further afield. The area of intake for this school is small. Where a school's intake can only just incorporate the whole of its catchment, I struggle to see any reasonable argument why the catchment should be enlarged. This will inevitably reduce predictability and create uncertainty for local parents.

74. The effect of extending the catchment as suggested by the objector has not been modelled, therefore suggestions as to the practical outcome of doing so must be speculative to a degree. But there is a risk of displacing qualifying children who have been given an expectation of a place at the school and who may have fewer secondary school options by children in Chorleywood and Rickmansworth who have secondary school options which parents there are already perfectly happy with. Whilst I can understand why the objector would want to have higher priority for access to a grammar school, this does not mean that the school's arrangements operate unfairly because they do not provide this. I do not consider the school's catchment operates to disadvantage residents in Chorleywood or Rickmansworth unfairly. They have reasonable access to local secondary schools which cater for able pupils. I do not uphold this aspect of the objection.

### **The catchment area should include Chorleywood and Rickmansworth**

75. The case manager explained to the objector on my behalf in a letter dated 4 June 2020 that, even if I upheld this objection and determined that the catchment area for the school was unlawful and needed to be revised, it would then be for the admission authority to decide what revisions would need to be made in order to ensure the arrangements are lawful. I wanted the objector to be clear that, if his objection were upheld, this may not have achieved his desired outcome of Chorleywood and Rickmansworth being incorporated into the school's catchment area. I wanted to explain this specifically because in ADA3364, which the objector has cited, the school had informed me that it intended to apply for a variation to its arrangements in order to extend its catchment area to incorporate exactly the area referred to in the objection. I upheld the objection partly because this would enable the school to make the revision it wished to make without having to make an application for a variation, as variations for academies in order to comply with a determination of the adjudicator do not require an application to and approval by the Secretary of State.

76. I asked the case manager to write to the objector explaining this because this objection focuses to a large extent upon the argument that it is logical and reasonable to extend the school's catchment area to include Chorleywood and Rickmansworth, whereas I am not able to require the school to extend its catchment in this way. The school has said it is not agreeable to doing this. It is not for me, or for anybody else for that matter, to dictate what the catchment area for this school must be. Even if I upheld the objection it would be for the school to decide precisely how to change its arrangements. In any case, I have found that the school's arrangements are not unlawful, unreasonable or unfair, and so the school is not required to revise them. In these



circumstances, I do not need to express a view as to why it would be reasonable or fair to include Chorleywood and Rickmansworth in the school's catchment area. For these reasons, I do not uphold this aspect of the objection.

## Summary of Findings

77. I find that the admission arrangements for the school are not unlawful or unreasonable. Neither do they operate unfairly to applicants in Chorleywood or Rickmansworth. The school's catchment area is not wholly co-terminus with the Buckinghamshire county boundary and excludes areas both within the county and outside the county. It has been adopted for rational reasons and is defined clearly, and the school's arrangements do not prevent parents who live outside the catchment area from expressing a preference for the school. Proximity to the school is an oversubscription criterion and the school is situated close to the border with Hertfordshire. The fact that the school offers the majority of places to eligible applicants who live within its catchment area and close to the school does not render the catchment unreasonable.

78. I do not find that the arrangements need to be revised, and I have no power to require them to be revised so that the catchment area for the school includes Chorleywood and Rickmansworth.

## Determination

79. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by Dr Challoner's High School Trust for Dr Challoner's High School Buckinghamshire.

Dated: 11 August 2020

Signed:

Schools Adjudicator: Marisa Vallely