

Determination

Case reference: ADA 2608

Objector: A parent

Admission Authority: The governing body of Lawrence Sheriff School, Rugby

Date of Decision: 15 September 2014

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 2015 determined by the governing body of Lawrence Sheriff School.

The Referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection was made to the Office of the Schools Adjudicator (OSA) on 30 April 2014 by a parent (the objector) to Lawrence Sheriff School's (the school) admission arrangements (the arrangements) for admission in September 2015. The objection is to the inclusion in the school's arrangements of oversubscription criteria giving priority to boys eligible for the pupil premium. The objector states that it is necessary to request financial information from parents to achieve this priority which is contrary to paragraph 1.9(f) of the School Admissions Code (the Code).
2. The objector also says that it is unfair and unreasonable to "*have a dual score system based on income.*" He relates this specifically to the use of the pupil premium as a means of differentiating between applications for places as follows, "*Pupil premium is valid for 6 years, a time when circumstances can change dramatically due to inheritance, marriage, education, work or lottery wins. It is not a fair indication of poverty or need.*"
3. In the communications he has provided, the objector also states, "*It is recognised that the majority of pupil premium children are not Asian. This policy discriminates against Asian children, reducing the few Asians that attend the school and violates equalities legislation. This is indirect racial discrimination.*"
4. The objector is of the view that those eligible for the pupil premium constitute a social group and that affording priority to them breaches paragraph 1.8 of the Code.

5. In addition the objector challenges the use of catchment areas; the arrangements for administering the 11+ tests; the definition of home address; and specific matters relating to the admission of his son.

Jurisdiction

6. The admission arrangements were determined under section 88C of the Act by the school's governing body which is the admission authority for the school. The objector submitted his objection to the determined arrangements for admissions in September 2015 on 30 April 2014. I am satisfied that the objection with regard to the use of the pupil premium and subsequent other matters concerning the admission arrangements for 2015 have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.
7. In his correspondence the objector asks that consideration "*as a special case*" should be given to the arrangements for 2013. The information provided shows that this relates to the admission of the objector's son. I am satisfied that the admission of his son and all things relating to this are outside my jurisdiction and I will not consider them in my determination. I will limit my considerations to the objections to the determined arrangements for 2015.

Procedure

8. In considering this matter I have had regard to all the relevant legislation and the Code.
9. The documents I have considered in reaching my decision include:
 - a. the objector's email of objection of 30 April 2014; communications from the objector between 1 May 2014 and 5 September 2014; copies of correspondence and communications with the school and others made available by the objector that were prior to 30 April 2014; and other communications and links to websites from the objector;
 - b. information from the school on its consultation on its admission arrangements for 2015 which took place between 16 December 2013 and 10 February 2014;
 - c. the responses to the consultation and information on the considerations of the sub-group of the governing body when it discussed the responses to the consultation on 12 March 2014;
 - d. an extract from the minutes of the meeting of the governing body for the school dated 31 March 2014 at which the admission arrangements for 2015 were determined;
 - e. the determined admission arrangements for September 2015;
 - f. other information provided by the school in response to the objection and questions from me;

- g. comments on the objection from Warwickshire County Council (the local authority); the secondary school admissions information booklet for 2015; information in response to questions from me; information on applications for places in 2014; demographic data; and other information available on the local authority's website;
- h. The Lawrence Sheriff School (Pupil Premium Admissions Priority) Order 2013 made 20th June 2013, laid before Parliament 27th June 2013 and coming into force 18th July 2013 (the Order);
- i. the determination of the adjudicator of an application for variation of the schools admission arrangements made 27 August 2013;
- j. determinations made 2 October 2009 and 29 October 2009 by the adjudicator following objections relating to the designated areas;
- k. research from the Department for Education, '*Deprivation and Education: The evidence on pupils in England, Foundation Stage to Key Stage 4. Schools Analysis and Research Division, Department for Children, Schools and Families March 2009*'; and
- l. statistics provided by the Department for Education on free school meals eligibility.

The Main Objection

- 10. There are several aspects to the objection. The core of the objection is to the use of the pupil premium in the arrangements to give priority for admission to the school.
- 11. The objector also says that the arrangements introduce a two tier system that disadvantages boys who are not eligible for the pupil premium. He states, *"Any action to rectify any unproven perceived disadvantage cannot be undertaken by disadvantaging other groups of children whatever the intentions. A two tier scoring system for different social groups is unfair. This cannot be disputed. The bottom line is that the School does not have the right to ignore clause 1.8 and this is what the school is proposing."*

Other objections raised by the objector

- 12. The objector raised several additional objections in his communications. These were the use of catchment areas; the arrangements for administering the 11+ tests; and the definition of home address.
- 13. The objector states that two catchment areas are, *"not based on any rational or reasonable basis. It is a form of discrimination and Rugby is well known as being a largely Caucasian area and the inner priority area selects predominately Caucasian children. The ethnic minorities are underrepresented in LSS (Lawrence Sheriff School) compared to other grammar schools. Although I argue there should not be any catchment areas, if one exists, there should be only one area for all places and not an inner and outer circle. There can be no rational reason for one in the 21st century when people are mobile."*

14. The objection to the processes for the 11+ test includes several aspects. These are:
- a. The registration form for the 11+ test asks, “*Does your child have English as an additional language?*” The objector believes that this is prohibited in the Code paragraph 2.4 (b) which states that supplementary information forms “***must not ask...for the first language of parents or the child.***”
 - b. The opportunity to take the 11+ test on more than one occasion.
 - c. The statement on the 11+ registration form that content of the test papers should not be passed onto others and the requirement of parents to sign that they will support this.
 - d. The balance of the non-verbal element compared to verbal element which the objector believes has been, “*designed to manipulate results and exclude children for who English is not their first language,*” and that “*this test will NOT be an accurate reflection of true ability,*” as required by paragraph 1.31 of the Code.
15. The objector says that the address requirements for the 2015 arrangements are inappropriate. He states, “*The school has changed the date of address rules to force a move by 31st December 2014. This is a change to a previous policy that allowed a physical move by the first day of term in Year 7 and was not subject to consultation. This change causes major issues for children who intend to move in to the Rugby area. They are forced to move by 31st Dec, which could force a change of primary school in year 6. This is deeply unsettling for a child and can cause hardship.*”

Background

16. Lawrence Sheriff School is a voluntary aided, grammar school for boys aged 11 - 18. It has no religious foundation. It is situated in the town of Rugby and works in co-ordination with Rugby High School (for girls) and Ashlawn School (partially selective). There is a history of considerable debate around the admission arrangements for these schools and in particular their catchment areas and the arrangements for children living in Rugby and its surrounding area including those who live over the county borders. Objections were made to the OSA in relation to the use of catchment areas in the admission arrangements of the school, Rugby High School and Ashlawn School. Adjudicators determined on 9 October 2009 and 29 October 2009 that these objections should not be upheld. The school is situated in the local authority area of Warwickshire which administers the 11+ test on behalf of the school and other selective schools in the local authority's area.
17. The governing body of the school had been concerned about the school being insufficiently socially inclusive and refers to the “*long road of travel*” it has taken to try to address this. Eligibility for free school meals is often used as a measure of deprivation. The Department for Education webpage, Edubase,

records that 0.7 per cent of the boys at the school are eligible for free school meals. In England 16.3 per cent of all pupils of secondary school age are eligible for free school meals. The local authority provided data showing that 10 per cent of all pupils in Warwickshire and in Rugby are eligible for free school meals. This indicates that the intake of the school does not reflect the local population.

18. In recent years a new national measure has been introduced known as the pupil premium. The pupil premium is additional funding given to publicly funded schools in England to raise the attainment of less advantaged pupils and close the existing achievement gap between them and their peers. A pupil premium payment is made to a school when a pupil has been registered as eligible for free school meals at any point in the last six years; has been looked after; adopted; or left care under a Special Guardianship Order or a Residence Order. There is also an element of the pupil premium known as the Service Pupil Premium which is designed to assist schools to provide mainly non-educational support (known as pastoral care) to children of service personnel in the armed forces.
19. Academy schools may be granted permission through their funding agreement to give priority for admission to pupils eligible for the pupil premium. There is currently no equivalent permission for a maintained school. The school is a maintained school and discussed with the Department for Education whether there may be a route that it could take to help it to support less advantaged boys to gain a place at the school so that the school could achieve greater social diversity.
20. The school took the opportunity to seek permission to use the provision in section 2(1) of the Education Act 2002 to take action that would otherwise not be permitted by the Code. The school completed the "*Power to Innovate Application for Order*" form on 31 May 2013. Following this an Order was laid before Parliament on 20 June 2013 which came into force on 18 July 2013. The Order gives permission for the school to give priority in its admission arrangements for boys for whom the pupil premium is payable. The Order states, "*the Governing Body are not required to act in accordance with paragraphs 1.9(f) and 2.4(a) of the Code,*" in relation to asking for information relating to the pupil premium. The school had by that stage already determined its arrangements for 2014 and accordingly applied to the OSA for a variation pursuant to section 88E of the Act. The adjudicator approved the variation on 27 August 2013.
21. The governing body consulted on its arrangements for 2015 within the prescribed timing. A sub-committee of the governing body considered the responses received to the consultation on 12 March 2014. This included objections from the objector and five others along similar lines as well as positive feedback from the local authority, local secondary schools and some primary schools. The minutes show that considerable time was taken discussing the points made by all respondents. The governors determined its arrangements on 31 March 2014 and published them as provided for within the Code.

22. The school's published admission arrangements for 2015 refer to the duty to admit students with a statement of special educational need who meet the required standard for entry (automatic qualifying score), have a published admission number of 120 and then if the school is oversubscribed, "places up to the planned admission number will be allocated in the following order:

I. Children in the care of, or provided with accommodation by, a local authority and children who were looked after, but ceased to be because they were adopted or became subject to a residence order or special guardianship order who achieve the qualifying score.

II. Up to 55 pupils living in the Eastern Area of Warwickshire using the following method of prioritisation:

a. Pupils living in the Eastern Area of Warwickshire who would be eligible for the Pupil Premium/Service Children Premium who achieve the qualifying score or above.

b. Children living in the Eastern Area of Warwickshire who achieve the qualifying score or above.

III. Up to 55 places will be allocated to children living in the priority circle (the centre of which is the Rugby Water Tower) who achieve the qualifying score or above using the following method of prioritisation:

a. Pupils who would be eligible for the Pupil Premium/Service Children Premium, living in the priority circle (the centre of which is the Rugby Water Tower), who achieve the qualifying score or above.

b. Children living in the priority circle (the centre of which is the Rugby Water Tower) who achieve the qualifying score or above.

IV. Up to 10 places will be allocated to pupils who were eligible for the Pupil Premium/Service Children/Children in Care/Children Adopted from Care Premium at the point of the October 2014 census, living in the Eastern area of Warwickshire or the priority circle, whose scores are between one and ten marks below the qualifying score for entry to the school.

V. Children living in the priority circle who have been considered by the Committee of Reference.

VI. Other children meeting the qualifying standard for the school."

The arrangements then say: "Within all criteria first priority is given to those achieving the highest score in the 11+ test."

Consideration of Factors

23. I have read and considered all the communications and information provided to me. A proportion of the material provided by the objector is related to his son and therefore I have not considered that material any further as it

concerns matters outside my jurisdiction. I have limited my consideration to those matters which are within my jurisdiction.

24. The objector asserts that the arrangements contravene paragraph 1.9(f) of the Code which specifies that admission authorities **must not**, “*give priority to children according to the occupational, marital, financial or educational status of parents applying.*” The objector believes it is potentially unlawful to use different qualifying marks for pupils eligible for the pupil premium and those who are not.
25. However, the Order gives permission for the school to give priority in the arrangements to boys for whom the pupil premium is payable. The Order specifies that, “*the Governing Body are not required to act in accordance with paragraphs 1.9(f) and 2.4(a) of the Code.*” The school is therefore not prevented by the Code from giving priority to children according to the financial status of their parents as defined by eligibility for the pupil premium. The use of the pupil premium by the school within its arrangements is therefore permitted and the arrangements do not contravene paragraph 1.9(f) of the Code.
26. The objector also asserts that the arrangements contravene paragraph 1.8 of the Code which states, “*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.*”
27. I will consider therefore the way in which the eligibility for the pupil premium has been used within the school’s arrangements. Research indicates (Deprivation and Education: The evidence on pupils in England, Foundation Stage to Key Stage 4. Schools Analysis and Research Division, Department for Children, Schools and Families March 2009), “*deprivation has a negative impact on educational attainment, leaving young people with fewer qualifications and skills.*” The same research specifically considers grammar schools, as follows, “*The low proportion of free school meal (FSM) pupils in grammar schools is not simply a reflection of selection by ability during admissions (whereby FSM pupils – who, on average, have lower attainment – are less likely to be selected). Coe et al. (2008), in an analysis of the National Pupil Database (NPD), found that grammar schools do not appear to take their ‘fair share’ of FSM pupils, even when controlling for the overall higher academic abilities of grammar school pupils and the tendency of grammar schools to be located in areas with relatively low social disadvantage.*”

28. The purpose of the pupil premium is described by the Department for Education as *“to raise the attainment of disadvantaged pupils and close the gap between them and their peers.”* The school has determined to support this by prioritising boys in the school’s arrangements who are eligible for the pupil premium, live in one of the designated areas and who have achieved the qualifying score.
29. The school has prioritised up to ten places for, *“pupils who were eligible for the Pupil Premium/Service Children/Children in Care/Children Adopted from Care Premium at the point of the October 2014 census, living in the Eastern area of Warwickshire or the priority circle, whose scores are between one and ten marks below the qualifying score for entry to the school.”*
30. The objector expresses his concern with this as, *“Grammar schools aim to select the most able children with reference to performance in a selection test. LSS uses a ranking system for allocation. To provide places to children who score lower than others goes against the fundamental principle of grammar schools. These children, at the point, of testing were not of grammar school ability so should not be admitted. It is insulting to other schools to imply that the Pupil Premium children with lower scores would benefit from a grammar school education as it implies its education is superior to that provided by surrounding schools where a late developing child may flourish. Grammar schools are not necessarily better for such children as the grammar schools simply work at a quicker pace as they have a more narrow and higher ability range. The implication is Grammar Schools are superior to other schools and Pupil Premium children should be given an opportunity to gain a superior education.”*
31. The objector asks, *“How is it fair that two children who go to the same school enter an exam and one can score 10 marks less than another and gain a place?”* The objector phrased his views in his response to the school’s consultation as, *“Assume two boys go the same state primary school. One scores 10 marks less than the other. It is perverse a child who is entitled to a pupil premium gains a place with a lower score at the expense of the child whose parents are hard working and do not, when his score could have been higher. This begging for pupil premiums at the expense of standards goes against the ethos of a grammar school. Admission should be on the basis of ability alone and it should not be advantageous to be part of benefit Britain.”*
32. Historically grammar schools in Warwickshire have looked at individual cases of children achieving marks near, but below the qualifying score and have done this through the Committee of Reference. The Warwickshire Committee of Reference is described in the arrangements as, *“In East Warwickshire, the Committee of Reference sets the automatic qualifying score taking account of*

the applications for the individual schools and the number of places available. The Committee reviews the arrangements made for any pupils with disabilities or special educational needs. The Committee of Reference will also consider the scores of students just below automatic qualifying score and may decide to admit one or more of the students scoring within the waiting list range provided that the PAN for the school is not exceeded." The use by the school of allocating up to ten places to boys with between one and ten marks below the qualifying score, live in the designated area and who are eligible for the pupil premium, is a further level of differentiation to giving priority to less advantaged boys.

33. The local authority's information on applications for secondary school places describes the Committee of Reference as follows, "*The Committee of Reference is divided into two groups - one for the eastern area and one for the southern area. Each group is made up of representatives from the grammar schools and other Warwickshire schools within the respective area. The Committee of Reference will:*
- a. Review the arrangements which have been made for students whose parents applied for special consideration due to certain learning / physical difficulties or medical issues.*
 - b. Discuss any matters arising from the tests.*
 - c. Determine an automatic qualifying score for entry to each grammar school and determine a waiting list score range / reserve list as required by each school's individual admission arrangements."*
34. The existence of the Committee of Reference provides a co-ordinated approach to admissions to grammar schools and a way to consider the circumstances of individual children who do not, for a variety of reasons, quite achieve the qualifying score. There is therefore a history of taking the circumstances of children achieving below the qualifying score into account when deciding admissions.
35. On looking at the allocations for places in September 2014, I note that three boys have gained places at the school who are eligible for the pupil premium. This is 2.5 per cent of the intake. This is potentially an increase compared with the school average of 0.7 per cent in receipt of free school meals but indicates that the use of the pupil premium within the criteria has not had a significant effect upon admissions in the first year of application. The school consulted on extending the use of eligibility for the pupil premium and, at the meeting of the governing body 31 March 2014, determined the arrangements to do so. The minutes record the efforts of the school to encourage applications for places by visiting primary schools and talking to pupils and parents. The minutes conclude, "*it was a very hard task to demystify the perception of grammar schools only being available to certain social classes*

but that it would be a great achievement to get up to ten pupil premium students applying.”

36. The evidence shows that: the actions of the school are in line with the powers provided by the Order; the criteria relating to the pupil premium are clear and understandable; and the approach is fair in that it is recognising that children who come from a less advantaged background are less likely to attain academically and should benefit from more help.
37. Paragraph 1.8 of the Code states that, “*Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a social or racial group.*” It is reasonable for the school to consider the position of boys who are near the qualifying score and who are eligible for the pupil premium and to limit to ten the number of places that can be awarded. I do not accept that any identifiable social group is disadvantaged by the school giving a measure of priority to those eligible for the pupil premium and therefore I do not uphold this aspect of the objection.
38. The objector has raised the possibility of indirect racial discrimination which would be contrary to paragraph 1.8 of the Code and the Equality Act 2010 as part of his objection. He says that there is a lower proportion of boys with an Asian background who are eligible for the pupil premium than the population at large and thus those with an Asian background will be indirectly disadvantaged. He also expressed this view to the school in his feedback to the consultation arrangements for 2015 as, “*Reserving up to 10-places is arguably part of the School and Head Teachers’ clear ethos of racial discrimination and to avoid admission to Asian children. It is widely known that the percentage of Asian children receiving a pupil premium are far below the percentage of Caucasian children and every year a number of Asian children living outside the priority areas gain places that cannot be filled, or from the waiting list. This is a deliberate attempt to deny admission to Asian children.*”
39. I consider the legal context and then the specific circumstances below. The Department for Education issued guidance for schools (May 2014) on the Equality Act 2010. This guidance describes indirect discrimination as occurring “*when a “provision, criterion or practice” is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that characteristic. An example might be holding a parents’ meeting on a Friday evening, which could make it difficult for observant Jewish parents to attend.*” The guidance further explains that, “*It is a defence against a claim of indirect discrimination if it can be shown to be “a proportionate means of achieving a legitimate aim”. This means both that the reason for the rule or practice is legitimate, and that it could not reasonably be achieved in a different way which did not discriminate.*” On matters pertaining directly to racial discrimination the guidance states that the

Equality Act 2010, “does not mean that schools cannot take positive action to deal with particular disadvantages affecting children of one racial or ethnic group, where this can be shown to be a proportionate way of dealing with such issues.”

40. I have considered the purpose of the arrangements. On its webpage the Department for Education describes, “*The pupil premium is additional funding given to publicly funded schools in England to raise the attainment of disadvantaged pupils and close the gap between them and their peers.*” The purpose of using eligibility for the pupil premium as part of oversubscription criteria is that less advantaged children will benefit. It is possible therefore that the effect will be that certain ethnic groups may benefit and others will not. This is not unlawful discrimination as addressing disadvantage is the purpose of the exercise. I have considered the Equality Act 2010 and the guidance from the Department for Education. It is my view that the arrangements made by the school are, “*a proportionate means of achieving a legitimate aim,*” (section 19 Equality Act 2010) and are not unlawful.

41. The school told me on 13 June 2014 that 129 boys with an Asian background attend the school out of a total of 884. This makes boys with an Asian background 15 per cent of the school’s population. Nationally 9.5 per cent of the pupil population of maintained secondary schools has an Asian background. In Warwickshire 6 per cent of the pupil population of maintained secondary schools has an Asian background. At Lawrence Sheriff School, therefore, a higher proportion than the average pupil population has an Asian background compared to both national and local populations.

42. The Department for Education has undertaken analysis of eligibility for free school meals (the primary indicator for pupil premium eligibility) rates in 2013. Table 1 below provides the relevant headlines from this analysis.

Table 1: Eligibility for free school meals in 2013 for England

	End of key stage 2 (age 11)	End of key stage 4 (age 16)
Pupil Population in England who are eligible for free school meals	18.3%	14.9%
Pupils from an Asian background who are eligible for free school meals	20.9%	22.3%

43. The local authority has provided data as follows, “*Of the 4992 pupils recorded with an Asian origin in Warwickshire, 290 (6 per cent) were eligible for Free School Meals. In the Rugby District there were 1056 pupils recorded with an Asian origin of whom 50 (5 per cent) were eligible to Free School Meals.*”

These figures indicate that the assumption that families from an Asian background were less likely to benefit from the use of eligibility for the pupil premium within over-subscription criteria is mistaken on a national basis. The figures also indicate that the situation local to Rugby is different to the national picture with 10 per cent of all children in the area being eligible for free school meals and 5 per cent of children with an Asian background being eligible for free school meals.

44. Table 2 provides information on the intake of boys provided by the school.

Table 2: year 7 intake at the school

<i>Year 7 (September 2013 intake)</i>	<i>123 on roll 28 non-white British (23%) 16 Asian background (13%) 95 white British (77%)</i>
<i>Year 7 (September 2014 intake)</i>	<i>120 on roll 35 non-white British (29%) 23 Asian background (19%) 85 white British (71%)</i>

This information shows a reduction in the white British population of the school and an increase in the proportion and number of boys with an Asian background and non-white British boys. The school also states that there are 13 home languages spoken by the 2014 intake group of 120 in addition to English. I have considered this data and do not find evidence to support the objector's view that there is or will be indirect racial discrimination as a result of the school's arrangements.

45. The main objection made was to the use of eligibility for the pupil premium as part of the over-subscription criteria. The Order provides the school the power to give priority in its arrangements for boys eligible for the pupil premium. There is therefore no contravention of paragraph 1.9(f) of the Code. I have considered a range of information and found no evidence that the arrangements unlawfully discriminate against or disadvantage any social or racial group; or contravene the Equality Act 2010. There is therefore no contravention of these aspects of paragraph 1.8 of the Code. I therefore do not uphold the objection relating to the use of the pupil premium as part of the oversubscription criteria in the arrangements.

Other objections

46. The objector states that the use of the determined catchment areas is not reasonable or rational and could be used as "*a form of discrimination*" against ethnic minorities. The objector also expresses the view that in an age of high mobility that the use of catchment areas is no longer valid. I, however, must

test the arrangements against the Code. Paragraph 1.6 of the Code states that, “*The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied.*” Paragraph 1.9 of the Code states what **must not** be included in admission arrangements and does not include catchment areas in this list of prohibitions. Paragraph 1.14 of the Code 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.*” The use of catchment areas is therefore not prohibited by the Code

47. I will now consider the catchment areas within the school’s arrangements. These have been the subject of considerable previous discussion including being the subject of two determinations in October 2009. The use of catchment areas is generally to provide some level of certainty that children who live near to a school have a higher chance of attending than those who live some distance away. I do not concur with the objector that, “*Local schools for local children are as obscene as local Universities for local children. The school is obsessed with where a child lives and wants to discriminate against a class of children “non local children” in its admissions policy.*” The Code, as shown above, does not prohibit the use of catchment areas.
48. The catchment areas are described clearly in detail in the arrangements and maps are provided on the school’s website. The two areas are summarised as, “*the Eastern Area of Warwickshire*” and “*the priority circle (the centre of which is the Rugby Water Tower).*” These two areas create an inner and outer circle. The objector says that, “*Although I argue there should not be any catchment areas, if one exists, there should be only one area for all places and not an inner and outer circle. There can be no rational reason for one in the 21st century when people are mobile.*” I asked the school to comment on this matter and the school referred to the previous determinations on this matter and also explained, “*The structure was in response to a complaint which expressed concern on the impact of selection on Northamptonshire schools since the previous system involved a single catchment area with a ten mile radius.*” The catchment areas give boys living within Rugby a level of certainty about gaining a place and also give those from further away the opportunity to gain a grammar school place. I am satisfied that the catchment areas meet the requirements of the Code to be reasonable and clearly defined and do not uphold this part of the objection.
49. I also asked the school for its view of the opinion expressed by the objector that the use of the two catchment areas disadvantages boys from ethnic

minorities. The school provided the following information, “*it is absolutely not the case that the two catchment areas disadvantage boys from ethnic minorities. When one consults the data it demonstrates that the reverse is the case. As you are aware, students from ethnic minorities make up 20 per cent of the student population using current census data. Before the two catchment area system was introduced the RAISEonline (an education data tool) report relating to students who attended the school in 2009 demonstrated that 87.8 per cent of students were white British.*” The school argues that the use of two designated areas has ensured a wider ethnic mix and that this is a development welcomed by the school. The school provided data as in table 2 above. In 2009 87.8 per cent of the school population were white British, intakes for 2013 and 2014 were 77 per cent and 71 per cent respectively which shows a significant decrease in the proportion of white British students since 2009.

50. There may be a variety of reasons for the changes in the ethnic make-up of the school, but the data provide no evidence to substantiate the objector’s claim that the use of the two catchment areas disadvantages boys from ethnic minorities. I do not uphold this part of the objection with regard to the use of two catchment areas as a form of indirect racial discrimination.
51. The local authority administers the 11+ tests on behalf of all the grammar schools in its area. The school uses the results of the test to allocate places as per its arrangements. I have considered the objection to aspects of the testing arrangements. The concerns of the objector to the 11+ tests in Warwickshire are:
- a. The registration form for the 11+ test asks, “*Does your child have English as an additional language?*” The objector states that this is prohibited in the Code paragraph 2.4 (b) which states that supplementary information forms “***must not ask...for the first language of parents or the child.***”
 - b. The opportunity to take the 11+ test on more than one occasion which the objector believes leads to abuse of the 11+ testing system.
 - c. The statement on the 11+ test registration form that content of the test papers should not be passed onto others and the requirement of parents to sign that they will support this.
 - d. The balance of the non-verbal element compared to the verbal element which the objector believes has been “*designed to manipulate results and exclude children for who English is not their first language,*” and “*this test will NOT be an accurate reflection of true ability.*”

I consider these points in the order above.

52. There are four questions asked on the registration form for the 11+ test about which I asked the local authority:
- a. *“Does your child have a Statement of Special Education Needs?”*
 - b. *Does your child have English as an additional language?*
 - c. *Is your child eligible for Free School Meals, or have they ever been eligible previously?*
 - d. *Is your child part of a Military family, as defined in page 23 of the booklet?”*
53. The local authority explained, *“The first two questions (a and b) are asked in case there is a need to make special arrangements for the child during the test. The final two questions are asked as they form part of the admission arrangements of certain grammar schools. It's probably worth clarifying that the 11+ form is not a Supplementary Form in the traditional sense - such as forms often used by Faith schools. It is, as the name suggests, a Registration Form for the 11+ test.”*
54. The information booklet on admissions to secondary schools in Warwickshire states, *“If your child has a learning difficulty or disability which could significantly affect their performance or ability to access the tests you must include detailed information with your registration form. This includes students with Statements of Special Educational Needs or those for whom provision is being made in a school at School Action or School Action Plus. It also includes those students where English is a second language. Supporting information supplied must be dated within the last 18 months. The Admissions Service will contact your child's current school for confirmation of the information supplied. The Admissions Service will then consider the information provided and may seek further guidance in deciding whether to make specific adjustments for the candidate. The Admissions Service will provide details of any provision or adjustments that are being made for a child before they sit the tests.”* This explains why this information is requested on the 11+ test registration form and is not part of a supplementary information form. As the question, *“Does your child have English as an additional language?”* is not part of a supplementary form it is not prohibited by the Code. It may be helpful if the local authority explained the reasons for the four requests for information on the 11+ test registration form. I am satisfied the registration form needs to be completed to enable the tests to be administered and the results given to parents as required by paragraph 1.31(c) of the Code before they complete the common application form by 31 October.
55. As part of the arrangements for taking the 11+ test there is an offer of alternative test days if a child is unable to attend the first day. This is described in the guidance provided in the local authority's booklet on applying

for secondary school places for 2015, *“The main test date is Saturday 06 September 2014. There is no guarantee that all children will be tested on this date. Supplementary tests will be held in test centres on Saturday 13 September 2014 and Tuesday 16 September 2014. The dates will be available to students whose parents provide proof that the student was ill on the day of the original tests (Doctor’s note) or who are able to provide, before the date of the original test, independent evidence of special circumstances such as religious grounds or previously booked engagements.”*

56. The objector’s concern is that testing on different days offers opportunities for unfair practice by children learning from other children who have taken the test and thus getting an advantage. Communications provided by the objector quote a response to him from the local authority as, *“The 11+ tests we use contain between 100-125 questions which need to be completed in a very short time. Many students do not answer all of the questions but still perform well in the test. Due to the nature of the test and the questions used, it is unlikely that children would be able to remember the questions used. This is a view shared by the University of Durham who provide the test papers for WCC.”* In my view it would be unreasonable and unfair not to offer additional days for those who cannot, for good reason, take the test on the first day provided.
57. The objector also challenges the attempt to stop children sharing information about the test with others which is included in the 11+ registration form. The form asks parents to sign that they will try to prevent sharing of any information about the content of the tests for reasons of copyright and to avoid compromising the integrity of the tests. The local authority has said that the number of questions to be completed make it highly unlikely that boys will remember anything that could be passed on that would then be useful to later candidates. As theoretically it may be possible that some slight advantage, or even disadvantage through misinformation, may be gained by some children getting some information via those who have taken the test, I conclude it is reasonable to ask children not to pass information on about the tests and for parents to be asked to support this.
58. The objector says that the balance of the 11+ test *“discriminates against ethnic minorities. The 11+ scoring scheme was changed from 1/3 in each subject (verbal reasoning, numeracy, non-verbal reasoning) to 50 per cent verbal reasoning and 25 per cent numeracy and non-verbal reasoning. This was not consulted upon and changed after the test was sat last year and designed to manipulate results and exclude children for who English is not their first language. The school is deliberately manipulating scores after tests are taken. This violates 1.31. What other reason could there be to change the rules after marking? The scoring is not clear or objective. It is clear children,*

whose first language is not English are more likely to struggle in the Verbal Reasoning sections and this test will NOT be an accurate reflection of true ability. What better way to exclude these children than by retrospectively changing the scoring system in LSS's apparent quest for "British white supremacy"?"

59. Paragraph 1.31 of the Code states, *"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."*

60. I asked the local authority to provide an explanation in light of the objector's views. They informed me that, *"Questions in Warwickshire's 11+ test a student's ability under three headings - Numeracy, Verbal Reasoning and Non-Verbal Reasoning. Results are then standardised with a weighting applied to the three sections. For 2014 entry a weighting of 50 per cent was applied to Verbal Reasoning and 25 per cent to Numeracy and Non-Verbal Reasoning respectively. In previous years an equal weighting had been applied to the three sections. The decision to apply the weightings as indicated was taken in conjunction with the providers of the test papers to ensure that the overall score (which was used to decide which students were offered places) most accurately reflected the broad ability of the cohort in question."*

61. The September 2014 intake is the first year for which the different weightings have been applied. The outcome, as shown in table 2 above, is a slight increase to proportion of those from ethnic minority backgrounds. There is no evidence to support the concern expressed by the objector that paragraph 1.31 of the Code has not been met; no evidence has been found that the weighting of the 11+ test for the school discriminates against ethnic minorities.

62. The objector in his response to the school on its consultation on its admission arrangements for 2015 referred to the existing arrangements and wrote, *"It is a poorly written policy. This has consequences. For 2015 admission, the Governors must write a clear policy. Does the school allow change of addresses by February or not to be considered within priority areas? What are the full rules for evidence? These must be explicitly stated in the policy. If someone is living within area and moves out of area, what if any are the rules?"*

63. The school stated that it took the comments made by the objector into account when considering its admission arrangements for 2015 and made some adjustments accordingly. Appendix 1 of the arrangements includes

“Admission Residency rules: home address definition and what happens if applicants move house.” These rules are detailed and specific. The objector now states that the *“The previous rules were clear and sufficient,”* and is critical of the lack of consultation on this aspect. This gives the impression that the school listened to what the objector said and he did not like the result. The school has revised and refined its requirements for information on addresses of applicants. The school has responded to the points made by the objector in consultation and has clarified its arrangements accordingly. This is fair and reasonable and fulfils the Code’s requirement in paragraph 1.13 that admission authorities **must** make it clear, *“how the home address will be determined.”* I do not uphold the objection.

Conclusion

64. The Order granted in June 2013 gives permission for the school to give priority to children eligible for the pupil premium. The admission authority is therefore acting lawfully in using eligibility for the pupil premium in its arrangements and paragraph 1.9(f) of the Code does not apply in this regard.
65. I have examined evidence from a range of sources and find nothing to support the objections that including priority for admission for pupils eligible for the pupil premium cause indirect racial discrimination or disadvantage to a social or racial group as prohibited by 1.8 of the Code and the Equality Act 2010. The arrangements determined by the school do not contravene the Code.
66. I have considered evidence relating to the other matters raised by the objector relating to the use of catchment areas; the arrangements for administering the 11+ tests; and the definition of home address. I have found no evidence to support the objections that the arrangements do not fulfil the requirements of the Code.

Determination

67. 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 2015 determined by the governing body of Lawrence Sheriff School.

Date: 15 September 2014

Signed:

Schools Adjudicator: Deborah Pritchard