Office of the Schools Adjudicator

DETERMINATION

Case reference: **ADA3270**

Objector: **A member of the public**

Admission Authority: **Upton Court Educational Trust for Upton Court Grammar School**

Date of decision: **7 June 2017**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by Upton Court Educational Trust for Upton Court Grammar School, Slough.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of this determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector), about the admission arrangements for September 2018 (the arrangements) for Upton Court Grammar School (the school), a selective academy school for children aged 11 to 18 in Slough. The objection is to the clarity and fairness of arrangements for late testing, the compilation of the waiting list, the priority given to children attending primary schools within the Upton Court Educational Trust (the trust) and the fairness and clarity of residence requirements.

2. The local authority for the area in which the school is located is Slough Borough Council. The local authority is a party to this objection. Other parties to the objection are the trust, the school and the objector.

Jurisdiction

3. The terms of the academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body on behalf of the trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 31 March 2017. The objector has asked to have his identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me.

4. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

   a. the objector's form of objection dated 31 March 2017 and the contents of subsequent emails from the objector;

   b. the admission authority's response to the objection, its responses to my enquiries and supporting documents;

   c. the comments of the local authority;

   d. a map of the area identifying relevant schools;

   e. confirmation of when consultation on the arrangements last took place;

   f. copies of the minutes of the meeting at which the governing body determined the arrangements; and

   g. a copy of the determined arrangements.

The Objection

7. The objector stated that the arrangements did not contain information about late testing or how children who applied for a place between September and December 2018 would be added to the waiting list.

8. The objector also questioned whether it was lawful for priority to be given in the oversubscription criteria to children attending primary schools within the trust. He also questioned whether the statement in the

arrangements about temporary addresses was clear.

9. No specific reference was made to the requirements of the Code by the objector; I have identified the following relevant paragraphs in the Code. Paragraph 14 of the Code requires that arrangements are clear, fair and objective; paragraph 15 requires that parents can apply for a place at any school. The requirements for testing are set out in paragraphs 1.31 and 1.32 of the Code and for waiting lists they are set out in paragraph 2.14 while paragraphs 1.9b and 1.15 refer to feeder schools. Paragraph 1.13 of the Code says that admission authorities must make clear how the home address will be determined.

Other Matters

10. When I considered the arrangements as a whole there were other matters which appeared to me not to meet certain requirements relating to admissions.

11. Paragraph 1.6 of the Code says "*All children whose statement of special educational needs (SEN) or Education Health and Care (EHC) plan names the school **must** be admitted*." This requirement did not appear to be accurately reflected in the arrangements.

12. The oversubscription criterion for looked after and previously looked after children did not appear to meet the requirements of paragraph 1.7 of the Code and its footnotes.

13. The fourth oversubscription criterion gives priority to children of staff. The wording of this criterion published on the school's website was different from that in the arrangements supplied to me. Paragraph 14 of the Code requires that arrangements are clear and provisions which are inconsistent may well not be clear.

14. The sixth oversubscription criterion refers to "*the next 120 places*". The school has a published admission number (PAN) of 165, the arrangements are not clear on what happens if more than 45 children are offered places under the preceding criteria thereby reducing the remaining number of places to below 120. Paragraph 1.8 of the Code requires that oversubscription criteria are clear.

15. Paragraph 2.17 of the Code requires that admission authorities make clear the process for requesting a place outside of the normal age group. I was unable to find such a statement in the arrangements.

Background

16. The school became an academy in January 2011. It is one of four grammar schools in Slough which use the same selection test provided by the Centre for Evaluation and Monitoring based at the University of Durham (CEM). The same test is also used by two selective schools in Reading.

17. The test is taken in September when the child is in Year 6. Results in the form of a standardised score are sent to parents in October in accordance

with the provisions of paragraph 1.32c of the Code and in time for them to complete the common application form (CAF). A child who has a score of 111 or above is deemed to be suited for a grammar school education.

18. If more than 165 applicants have a score of over 111, the school uses oversubscription criteria to determine which will be offered places. The oversubscription criteria can be summarised as follows:

i. Looked after and previously looked after children.

ii. Pupils with an EHC plan which names the school.

iii. Up to 15 places for children eligible for free school meals.

iv. Children of staff.

v. Children attending primary schools within the trust.

vi. 120 pupils in rank order of the test score.

vii. Children living closest to the school.

19. Proximity to the school is also used as a tie-breaker but if two or more children cannot be separated by this measure, the school will admit above the PAN.

Consideration of Case

Late applications, late testing and the waiting list

20. The objector said that the arrangements were not clear and contained no information on late testing. In response the school referred me to paragraph three of the arrangements which said "*The procedure for application and testing will be published by the School each year.*" and provided a link to the school's website. This webpage could have been easily found by a parent looking for the 2018 admission arrangements; it gave information common to all four grammar schools in Slough as well as the school's own policies.

21. One of the documents on this webpage is titled "*FAQ – Year 7 Admissions 2018*". This document can also be found on the websites of the other grammar schools in Slough. It includes the following statement in response to a question about children who are ill on the day of the test, "*Alternative arrangements will be made for your child to sit the examination at a later date at one of the centres*." It also includes a statement about children who have another exam on the same day, "*Children who are sitting a test at any other school or in an area which is not using the same CEM test will not be offered an alternative test date until after 1 March 2018*." This statement was referred to in the objection; the objector suggested it was "*unreasonable and unlawful*" continuing "*It is none of the school's business if a child sits a different test in another area. Parents can move to a school in an area which their child obtains a qualifying score. The above statement is bizare* [sic] *and not written in the published admissions policy but appears to be policy. Such*

statements should be written in the admisions [sic] *policy so can be challenged. This is underhanded behaviour. Hence all refusals to test must be in the policy*."

22. On this point the school said: "*It* [the testing procedure] *is designed to stop abuse of the testing system, which would otherwise force schools to set up testing dates for children on demand, which is unreasonable. That said, the school recognises that genuine sickness of children can arise, and additional testing opportunities are made available provided a sick note proves incapacitation.*" It continued "*www.gov.uk/schools-admissions/admissions-criteria states that all schools must have an admissions criterion to decide which students get places. The admissions policy is a document that gives detailed information about this. Within this document, schools are not required to indicate practical details on how the admissions procedure should be carried out*."

23. The objector made a number of observations on the school's response on these matters some of which reflected his personal views. While I have noted these, it is the Code which the arrangements must comply with and in paragraph 14 the Code 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*." In my view, a parent who looked at the school's website for information about admission to the school in 2018 would, but only if they looked at the FAQ document, understand that children who were ill on the appointed test date would have the opportunity to take the test on a later date. However, they would not know what that later date was. I will consider whether this is sufficient to make the arrangements clear on this issue.

24. The objector has argued that all test dates should be published in the arrangements. The school is of the view that "*schools are not required to indicate practical details of how the admissions process should be carried out*" in their "*admissions policy*". The Code does not use the term "*admissions policy*", it refers to admission arrangements which are defined as "*the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered*." Admission arrangements are therefore more than the PAN and the oversubscription criteria which are set out in the school's "*admissions policy*". Matters raised in the FAQs and other documents are part of the admission arrangements.

25. The opportunity for children who are unwell on the day of the test to take the test at a later date is an important part of the practice of offering school places. The only reference to this practice is in the FAQ document and it is at the bottom of the third page after items such as "*What should my child bring with them to the tests?"* and "*What if my child wants to go to the toilet during the test?*" A set of frequently asked questions should have the role of expanding on practice and procedure and not introduce details of practice for the first time. A parent should not be required to read the FAQ document to know that if their child is seriously ill on the day of the test another opportunity

will be available for them to take it. In my view this does not make the practice sufficiently clear to meet the requirements of the Code.

26. The test is set to take place on 16 September 2017. This leaves about six weeks for the test to be marked, standardised and results returned to parents in time for them to complete the common application form by the end of October. There are therefore a limited number of dates for testing any children who are too ill to take it on 16 September. It would seem strange to me that the school would not have a reserve date prepared. Such a date would be part of the arrangements and should be published so it is clear to parents. Alternatively, if the school sets a reserve date as and when needed, that should also be explained in the arrangements too.

27. The statement that "*Children who are sitting a test* [on the same day as the school's test] *at any other school or in an area which is not using the same CEM test will not be offered an alternative test date until after 1 March 2018*." is also only made in the FAQ document, although earlier in that document than the statement about an alternative test date for children who are ill. I do not consider that only identifying this practice in the FAQ document makes it sufficiently clear, furthermore I need to consider whether this practice complies with the Code.

28. The school said this practice was "*consistent with other selective authorities around England*" and "*designed to stop abuse of the testing system, which would otherwise force schools to set up testing dates for children on demand which is unreasonable*." The objector said he was not aware of any other grammar school which used this practice and it is not a practice I have found in the admission arrangements of other grammar schools. Paragraph 15d of the Code says "*Parents are able to express a preference for at least three schools. The application can include schools outside the local authority where the child lives: a parent can apply for a place for their child at any state-funded school in any area*."

29. I have used the Department for Education database, Edubase, to identify all grammar schools within 15 miles of Slough. I have chosen 15 miles as that is the maximum search radius available on Edubase. I also consider it a distance which would take about half an hour to travel by car, longer by public transport, and therefore would require at least one hour of commuting each day which, in my view, most parents would consider the limit for an 11 year-old child (other than perhaps in rural areas where schools are further afield, which is not the case here). All of the schools I identified are in Buckinghamshire and their tests are set for 12 and 14 September 2017. I conclude that it is unlikely that any local children would have a test for admission to a grammar school on the same date. That said, it remains a possibility that a parent living farther away may wish to apply for a place at the school and the date clashes with their local eleven-plus test, or that a parent in Slough may be prepared to send their child farther to school in an area where the test is on the same date. The school's practice could prevent such parents from applying for either it or the other school and therefore does not comply with paragraph 15d of the Code.

30. I do not think that allowing children to take the test on a different day

because of a clash of exam dates would "*force schools to set up testing dates for children on demand*". The school already offers an alternative, although unspecified, date for children who were ill, the same date could be used for children with an exam clash. As noted above, the window for testing is limited, and there would be other demands on potential test venues. These factors impose a practical limit on the number of testing opportunities that could be offered. If an alternative date were offered and the child could not attend either date because of the number of tests the child was taking, then it would be for the parent to decide their priorities. The school needs to provide an alternative date, but it does not need to provide an array of such dates.

31. The arrangements are silent on how children who are prevented from attending the test on 16 September 2017 by other unforeseen and genuine reason apart from illness, such as religious practice, parental illness or transport failure on the day, may demonstrate that they are suitable for a grammar school education. Without an opportunity to take the test on another day these children will not be able to apply for the school. In response to my enquiries on this question the school said it had allowed tests to be taken on other days to accommodate religious observance or transport problems and would allow an alternative test if parental illness prevented attendance on the set day providing there was supporting evidence. This is fair and reasonable practice, but is not clearly explained in the arrangements.

32. The objector argues that if children are tested on more than one date, then the same test should not be used because he believes that children can remember the content of the test and those who took the test on the first occasion would be able to pass information on to other children taking the test later, giving them an advantage. The school uses the same test and is of the view that "*It is highly unlikely that a 10-11 year old child would be able to remember sufficient information about the test content and then be able to pass it on to another child who is then able to benefit from this information and as such display a significant improvement in their test score, as compared with if they had not received this information. Passing on information of this type cannot make a difference (in terms of qualifying or not) for the vast majority of candidates, due to the relatively small proportion of candidates at the qualification 'borderline'.*"

33. The objector clearly has strong views on this issue and quoted a high court case involving the publication on a website of eleven-plus test content in a previous year. That case led to an injunction preventing the publication of the material. It seems to me that there is considerable difference between the systematic collection of children's recollections of tests and publishing those with the aim of enhancing other children's performance, and a child who had been ill being able to obtain sufficient information in conversation with friends to affect their test score significantly.

34. The objector argues that for children at the borderline of being deemed to be suited for a grammar school education, just one mark could make the difference between being offered a place and not being offered a place. In order to consider this argument, I asked the school to provide me with the scores of the children who were offered places for September 2017 and of those on the waiting list.

35. In that year, the children offered places on the basis of their score relative to other children scoring more than 111, that is under what is now the sixth criterion, had scores ranging from 116 upwards. Children offered places with scores between 111 and 115 were offered them on the basis of how close they lived to the school. Children on the waiting list all had scores of between 111 and 115. There are thus two borderlines, at 111 and at 116.

36. The Code requires at paragraph 1.31 "*Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability*". I note here the word used is a "*reflection*" of ability and I have looked on the school website at the sample questions provided by CEM. There are two papers covering cover verbal and non-verbal ability and numerical ability, each paper takes about one hour to complete.

37. I would not expect a child always to score the same mark on the same test if taken on a different day. Many factors could be involved. The child may have had different amounts of sleep the previous night, they may on one day be worrying about a family matter and not on the other, they may have been upset by a comment from a classmate in the playground, or not be as healthy. On one day in response to a question they do not know the answer to, they may guess correctly and on the next guess incorrectly. A child may simply not have made a correct answer clear on the answer sheet on one occasion.

38. A child at the borderline for the sixth criterion, scoring 115 may, on another day have been feeling better, or guessed differently and scored 116. One scoring 111 may, on another day, fall below the threshold because of variables outside of their control. Any helpful information that a child might glean from another needs to be seen in this context and it is of course possible that information gleaned from another child could be wrong and prove to be a handicap in the test.

39. As with all levels of examination, GCSE, A Level, degree or professional, there must be a borderline between passing and failing and between grades. Which side of the borderline a borderline candidate falls on any day could be affected by uncontrollable variables. I am satisfied that if the same test is used more then once any advantage a child may gain may gain from information passed to them by other children will not affect the reflection of their ability seen in the test any more than other uncontrollable factors.

40. The objector may argue that by using a different test it would remove one of these uncontrollable factors. However, I consider it could introduce others. For example, the same skill might be tested in different contexts in two tests, a child familiar and confident in the context could perform better than they would have done in an unfamiliar context, or one they could not relate to.

41. The next part of the objection that I will consider concerns waiting lists. The objector said "*no information on how a waiting list in* [sic] *compiled*". The school referred me to paragraph eight of its policy which states "*A waiting list will be held for all those applicants who score 111 and above but who may not be offered a place initially due to over-subscription. The waiting list will operate until the end of December 2018*." Paragraph 14 of the Code says "Each *admission authority **must** maintain a clear, fair and objective waiting list*

*until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria*." The statement in the school's policy does not say what the Code requires it to say.

42. The third and sixth oversubscription criteria rank children on the basis of their eleven-plus score. The objector raised the question of how children who had not taken the eleven-plus test could be added to the waiting list in the correct position without an eleven-plus score. The arrangements are silent on this. It would seem to me that a family could move into the area served by the school between October 2017 December 2018 and want to put their child on the waiting list. Among these children there will be some children who are aged 11 and some who may be aged 12 if for example their birthday is in September 2018 and they apply in October 2018.

43. In his objection, the objector specifically asked how the 12 year-old child would be assessed. A 12 year-old would be outside of the age range which this eleven-plus test was designed for and their score could not be standardised. The school responded that they use the school's own tests to compare the ability of applicant aged 12 to those of other students in the year group. However, the school did not explain in its arrangements, or correspondence, how it translates comparison with children in the school to an estimate of the score the child would probably have received in the eleven-plus to enable it put the child on the waiting list in the correct position.

44. I do not accept the objector's argument that such a comparison cannot be used to put a child in the correct place on the waiting list. Grammar schools must, and do, find a way of meeting the requirements of paragraph 2.14. The objector appears to be arguing that all children on the waiting list should be tested again every time there is a new application. If this practice was adopted each child would perform differently on each test in relation to each other, so the order of all children on the waiting list would change each time there was a new application. While it would be acceptable for the child who was top of the waiting list to be demoted one place because the new applicant was of a higher ability, or lived nearer the school, I do not think it acceptable for the child who was top to find themselves, say, fifth because on the new test they did not perform as well as four other children whom they had previously out performed in the main eleven-plus test. Furthermore, this would result in additional cost and a significant time commitment from parents as well as the school.

45. I find that the school has not set out in its arrangements details about late testing; the arrangements are consequently not clear and do not meet the requirements of paragraph 14 of the Code. I also find that the arrangements do not meet the requirement of paragraphs 15d regarding parents' rights to apply for a school and paragraph 2.14 of the Code regarding waiting lists. I uphold these parts of the objection on these grounds.

<u>Priority for children attending primary schools within the trust</u>

46. The fifth oversubscription is "*Children that are currently attending for 1 year or more prior to the submission of the Common Application Form (CAF)*

at a primary phase school within Upton Court Educational Trust (currently includes Foxborough Primary School and Trevelyan Middle School)." The objector said "*It cannot be fair for a state school to provide preferential access on the basis of attending other schools*." The school replied "*As an Academy, UCGS is able to set its own admissions criteria, and is therefore able to give priority to named schools considered as feeder schools, which are currently those with a primary phase within Upton Court Educational Trust*. *That said, all children must achieve the minimum eligibility score in the 11+ test before being considered.*"

47. The Code says in paragraph 1.9 "*admission authorities **must not** … b) take into account any previous schools attended, unless it is a named feeder school*". It also says in paragraph 1.15 "*Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds*." This means that all admission authorities, not just those for academies, are permitted to give priority to children attending feeder schools providing they comply with these two paragraphs of the Code. The use of feeder schools must also meet the overarching requirement for arrangements to be fair as set out in paragraph 14 of the Code and paragraph 1.8 of the Code that "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair*".

48. While I am satisfied that the school is permitted to give priority to children from the two named schools if they meet the qualifying standard, I am concerned that the wording of the criterion may not be as clear as it could be. The reference to "a *primary phase school within Upton Court Educational Trust*", could suggest that there are other schools in the trust other then Foxborough and Trevelyan, attendance at which gives priority for admission. Priority at any un-named schools would not be permitted by the Code. Additionally, the phase of education shown on the Edubase listing of Trevelyan is "*middle deemed secondary*" therefore Trevelyan is not a primary phase school.

49. The requirement for attendance at one of the named schools to be for one year prior to the submission of the common application form could be considered unfair to families who have recently moved into the area and also unclear as the common application form could be submitted on any date up to 31 October. In response to my enquiries on these matters the school said they had specified "*the requirement for students to be members of the Trust's primary phase school for a minimum of one year to prevent parents admitting their child for the sole purpose of gaining priority for admission under the oversubscription criteria. However, during the course of appeal, parents may demonstrate suitability for admissions and be awarded a place by the independent appeals panel.*"

50. An independent appeal panel is only able to award a place if it finds that the admission arrangements had not been correctly applied and if they had then the child would have been offered a place, if admitting more children would not prejudice provision of efficient education or efficient use of resources or if on balance the appellant's case outweighs the prejudice to the

school. Assuming the school's arguments about prejudice are sound and the oversubscription criterion correctly applied with dates correctly recorded and referred to, I do not see the scope an appeal panel has to offer a place. In any case, the ability of a parent to appeal for a place is no answer to a school's having arrangements which do not conform with the Code.

51. While there may be some parents who might move their child during Year 5 into one of the feeder schools in order to gain priority under this oversubscription criterion, there would be other families with children in Year 5 who would move into the area served by one of the feeder school and place their child at one of these schools. Other parents living in the area may have wanted a place for their child at one of these schools for some time but could not be offered a place from the waiting list until a point during Year 5. I do not think the residence requirement in this oversubscription criterion is fair to these families. This unfairness is, I think, greater than any possible unfairness created by families moving their children solely to take advantage of this criterion.

52. I do not uphold the part of the objection relating to feeder schools, as the requirements of paragraphs 1.9b and 1.15 of the Code are met, however, I find the criterion is not clear and is unfair to families who may take up a place at one of the feeder schools during Year 5 and so it does not comply with paragraphs 1.8 and 14 of the Code.

Temporary addresses

53. The objector quoted the following section of the arrangements "*If the main address has changed temporarily, for example where a family is renting a property on a Short Term Tenancy Agreement (12 months or under), then the parental address remains that at which the parent was resident before the period of temporary residence began unless it can be shown that all ties to the previous address have been relinquished, or that the move is not easily reversible. The Governors may refuse to base an allocation on an address which might be considered only a temporary address*." The objector said that this was not clear because it used terms such as "*might*" and "*may*" and did not define how long "*temporarily*" was. He asked how the policy applied in various circumstances and how the irreversibility of a move might be demonstrated. The objector also made reference to the use of catchment areas. I consider his comments about catchment areas irrelevant as the school does not use a catchment area in the sense the term is used in the Code.

54. In response the school said "*This is to stop abuse of the over-subscription criteria where families may move near the school for the specific purpose of raising eligibility for entry to the school. Governors may investigate residency of applicants, with cooperation from the Local Authority, to determine whether a child is a permanent resident at an address or not, and subsequent to an investigation an offer of a place may be withdrawn if they deem the address to be temporary*."

55. The Code says in paragraph 1.13 "*Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear*

how the 'home' address will be determined". In my view it would be unfair to the vast majority of applicants if admission authorities did not take steps to identify cases where a temporary address was being used to obtain greater priority for a school place. It would, however, be impossible for the school to describe all possible circumstances that could occur, or be imagined by the objector. In my view the use of words such as "*might*" and "*may*" allows the school to consider whether a new address is genuine or a ruse to gain priority for a school place. Any parent denied a place because the school did not accept that their address was genuine could appeal the decision to an independent panel if they believed the school was mistaken. Unlike the considerations I have made about the role of an appeal panel above, if the school has decided that an address is temporary and the parent can convince the panel that it is not, then the oversubscription criterion would not have been correctly applied and the place could be offered.

56. I do not uphold the part of the objection relating to temporary addresses.

Children with an EHC plan which names the school

57. The arrangements refer to children with EHC plans in two places. The first says "*The legislative framework for the Special Educational Needs system and the detailed guidance in this Code of Practice underpinned by the principles set out in Clause 19 of the Children and Families Bill* [sic] *2014, requires the school to accept a child with an Education, Health and Care Plan if the parent or young person names UCGS on the Common Application Form (CAF), provided s/he has met the 11+ eligibility criteria. In addition, the Governing Body must deem the child's attendance to be compatible with the efficient use of resources and education of other students.*

The Local Authority must consult the Governing Body and the Principal of the school and consider their comments very carefully before deciding whether to name eligible children on the young person's Education, Health and Care Plan, sending them a copy of the draft Plan."

58. This appears to me to be an attempt to describe the process of naming a school on an EHC plan. Section 43(2) of the Children and Families Act 2014 (CFA) says that if a school is named in the EHC plan it must admit the child. Section 39(2) of the CFA says that the local authority must consult the school before naming a school on the EHC plan and section 39(4) gives the only reasons why a school should not be named. These are "*a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or b) the attendance of the child or young person at the requested school or other institution would be incompatible with – (i) the provision of efficient education for others, or (ii) the efficient use of resources."*

59. The description in the arrangements is consequently inaccurate and is not necessary in admission arrangements. It succeeds in obscuring the requirement found in section 43(2) of the CFA, repeated in paragraph 1.6 of the Code that "*All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school* ***must*** *be*

admitted." The process of naming the school in the plan is not relevant; the school could not be named if it was not suitable for the ability of the child and the views of governors regarding efficient education and use of resources had not been taken into account.

60. The second reference to EHC plans is in the second oversubscription criterion "*Pupils with an Education Health and Care Plan under the Children and Families Bill* [sic] *2014, where this pupil has reached the required standard on the test and where the school has been named by the local authority on the EHC plan as agreed with the Governors and the Principal*." Children with an EHC plan are not subject to oversubscription criteria, they **must** be admitted whether the school is oversubscribed or not.

61. In response to my enquiries on this matter the school referred me back to the same paragraphs in the arrangements stating that they adhered to the Code. I find that the arrangements are not clear concerning the admission of children with EHC plans which name the school; paragraph 14 of the Code requires that arrangements are clear.

Looked after and previously looked after children

62. The first oversubscription criterion reads "*Looked after Children who are being accommodated, or who have been taken into care by a local authority under section 20, 31 or 38 of the Children Act 1989. The first priority will go to children who are legally defined as looked after by the local authority at the time an application to the school is made. Following on, young people previously looked after, who are children defined as those who were looked after, but ceased to be so because they were adopted (in accordance with Section 46 of the Adoption and Children Act 2002), or subject to a residence order (in accordance with Section 8 of the Children Act 1989) or a special guardianship order (in accordance with Section 14A of the Children Act 1989).*" I find two aspects of this which do not meet requirements.

63. The first is that it suggests in the words "*Following on*" that previously looked after children have lower priority than looked after children. Paragraph 1.7 of the Code says "*the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children*." The Code gives both looked after and previously looked after children equal priority.

64. Secondly, section 12 of the CFA introduced child arrangements orders which replace residence orders. The arrangements do not reflect this change and could therefore be unclear to those with parental responsibilities for looked after children.

65. In response to my enquiries on this matter the school referred me back to the same paragraphs in the arrangements stating that they adhered to the Code and said "*Your feedback will be shared with the Admissions Authority so that they can consider clarifying this matter*." I find that the arrangements do not meet requirements relating to looked after and previously looked after children set out in paragraph 1.7 of the Code and are not clear as required by paragraph 14.

Children of members of Staff

66. In the arrangements provided to me by the school the fourth oversubscription criterion reads "*Children of members of staff who have been employed at Upton Court Grammar School for 2 years or more prior to submission of the Common Application Form (CAF) on 0.5 of full time or above or filling a vacant post where there is a skills shortage. The term "staff" refers to any employee who is permanently employed by Upton Court Grammar School, and excludes those contracted through external agencies*." This meets the requirement of the Code set out in paragraph 1.39 of the Code regarding priority for children of members of staff.

67. However, the arrangements which I saw on the school's website on 3 and 24 April 2017 were worded differently. The first sentence read "*Children of members of staff who have been employed at Upton Court Educational Trust for 2 years or more prior to submission of the Common Application Form (CAF) on 0.5 of full time or above or filling a vacant post where there is a skills shortage*." The Code only permits priority being given to employees at the school, not the trust.

68. I asked the school to clarify this discrepancy. The school confirmed that the wording should be "*at the school (not Trust)*". It said this change had been made "*following recent feedback*". Paragraph 3.6 of the Code allows admission authorities to revise their arrangements to "*give effect to a mandatory requirement of this Code*." I have noted that on 11 May 2017 the wording on the website had been changed to agree with the arrangements that I had been sent. No further action is required on this matter.

Clarity of the sixth oversubscription criterion

69. The sixth oversubscription criterion is "*The next 120 Pupils in rank order of performance in the 11+ tests*". The school has a published admission number (PAN) of 165. The arrangements do not say, and are therefore are not clear, on what happens if more than 45 places have been offered to children meeting the first five criteria. Paragraph 1.8 of the Code says "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair*".

70. Fifteen places could be offered to children eligible for free school meals under the third criterion. The two feeder schools named in the fifth criterion have PANs of 30 and 150 respectively so if, say 20 per cent of those children met the required standard, that could be another 36 children. Together with children with an EHC plan, looked after or previously looked after children and children of members of staff it is possible for there not to be 120 places available for children meeting the sixth criterion.

71. In response to my enquiries on this matter the school said "*If the number of places available by criterion vi is less than 120 due to places being filled by higher criteria, then fewer places will be awarded in this category*." If that is the school's practice, then it should be set out in the arrangements. I find the sixth criterion is not clear as required by paragraph 1.8 of the Code.

Out of Year Group Applications

72. Paragraph 2.17 of the Code says "*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group*." I could not find any reference to this process in the arrangements and the school acknowledged that it did not comply with the Code in this respect.

Summary of Findings

73. I uphold the parts of the objection concerning late testing because paragraph 14 of the Code requires that admission arrangements are clear and fair. The school only refers to the opportunity for children who are ill on the day of the test to be tested on another date in a set of FAQs and does not publish a date for any late test. The school also offers an alternative test date to other children with exceptional and compelling reasons for being unable to attend on the main test date, however this is not explained in the arrangements making them unclear.

74. Furthermore, I uphold this part of the objection because the school's practice of refusing to test a child who has another eleven-plus test on the same day as the school's test prevents a parent from "*apply*[ing] *for a place for their child at any state-funded school in any area*" as set out in paragraph 15d of the Code.

75. I uphold the part of the objection concerning waiting lists because the school has not met the requirement of paragraph 2.14 of the Code to state "*in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria*." I also uphold this part of the objection because the arrangements are not clear on how the school would assess an application to join the waiting list for a child outside of the age range which the eleven-plus test was designed for and therefore do not comply with paragraph 14 of the Code.

76. In upholding these parts of the objection I make it clear that I do so on the grounds of the arrangements not complying with paragraphs 14, 15 and 2.14 of the Code alone. I am not persuaded by the objector's arguments regarding testing.

77. I do not uphold the part of the objection relating to feeder schools, as the requirements of paragraphs 1.9b and 1.15 of the Code are met. However, I find the criterion is not clear and is unfair to some children and so it does not comply with paragraphs 1.8 and 14 of the Code.

78. I do not uphold the part of the objection relating to temporary addresses.

79. I find that the arrangements are not clear concerning the admission of children with EHC plans which name the school; paragraph 14 of the Code requires that arrangements are clear.

80. I find that the arrangements do not meet requirements relating to

looked after and previously looked after children set out in paragraph 1.7 of the Code and are not clear as required by paragraph 14.

81. I find the sixth oversubscription criterion is not clear as required by paragraph 1.8 of the Code.

82. I find that the arrangements did not comply with paragraph 2.17 of the Code because they do not make clear the process for applying for a place outside of the normal age group.

Determination

83. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by Upton Court Educational Trust for Upton Court Grammar School, Slough.

84. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

85. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of this determination.

Dated: 7 June 2017

Signed:

Schools Adjudicator: Phil Whiffing