Office of the Schools Adjudicator

DETERMINATION

Case reference: **ADA3483**

Objector: **A parent**

Admission Authority: **The Academy Trust for Dr Challoner's Grammar School**

Date of decision: **31 August 2018**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Dr Challoner's Grammar School in Buckinghamshire for admissions in September 2019.

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 parent whose identity is known to me, (the objector), about the admission arrangements (the arrangements) for Dr Challoner's Grammar School (the school), a selective academy school for boys aged 11 to 18 in Amersham, Buckinghamshire for September 2019. The objection is to the school's definition of "normal home address", which is said to be objectively unreasonable and to operate unfairly.

Jurisdiction

2. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objectors submitted their objection to these determined arrangements on 10 May 2018. The objectors have asked to have their

identity kept from the other parties and have 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 their name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

Procedure

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

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

   a. the form of objection dated 10 May 2018 and all further representations from the objectors, including an email in support of the objection summarising the effect of the definition of "*normal home address"* on a different family who moved into the school's catchment area more than nine years ago;

   b. the school's response to the objection and supporting documents;

   c. the response from Buckinghamshire County Council, the local authority (LA) for the area setting out its comments on the objection;

   d. maps of the area identifying relevant schools and showing catchment areas for the mixed and boys' selective schools in Buckinghamshire;

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

   f. a copy of the determined arrangements and the FAQs;

   g. a copy of the school's funding agreement and the variation to the agreement; and

   h. previous determinations ADA001766; ADA3116; ADA2747, ADA3296 (all of which are about the school) and ADA3355 (Dame Alice Owen's School in Hertfordshire).

The Objection

5. The objection is to the fact that, where an applicant owns a property which has formerly been the family home and which is located within 20 miles of the school, that property will be regarded as the applicant's home address for the purposes of an application to the school.

Background

6. The school is a single sex boys' grammar school in Buckinghamshire, a county in which a selective system of secondary education operates. It has a

Published Admission Number (PAN) of 180. For admission to the school in September 2018, figures provided by the LA indicate that there were 554 applications from eligible boys, and 244 of these applicants were resident in the school's catchment area. The school's admission arrangements are published on its website, and explain clearly how the LA wide testing arrangements for the Buckinghamshire grammar schools work. In summary, boys are eligible to be considered for admission to the school in Year 7 if they meet the required qualifying score in the admission tests or have been deemed qualified by a Selection Review Panel.

7. The arrangements set out the school's oversubscription criteria to be used when more qualified applicants apply than the school has places for and which are:

> "Boys who are 'looked after' children
> Boys living in the catchment area of the school who qualify for free school meals.
> Brothers of boys in Years 7 to 12 living in the catchment area of the school.
> Boys living in the catchment area of the school.
> Brothers of boys in Years 7 to 12 living outside the catchment area of the school.
> Once the rules have been applied, then any further places will be offered in distance order using straight line distance between the family's normal home address and the main entrance to the school on Chesham Road."

8. The arrangements set out the definition of "normal home address" as follows:

> "5 *Normal Home Address*
>
> a) *In order to qualify for admission under rules referring to the school's catchment area, the applicant must have been resident at their home address continuously since April 1st of the year preceding proposed admission (for admission in September 2019 this is April 1st 2018).*
> b) *If a parent of the applicant student still owns a property within 20 miles of the school which has been the main family home, a property closer to the school will not be accepted as the basis for a legitimate residence qualification even if the former property is leased to a third party. For the purposes of this policy a parent of an applicant is defined as a parent with whom the applicant student resides for at least two nights of the school week (Sunday to Thursday inclusive).*

c) *The school may require additional evidence of 'residence qualification' if there are reasons for casting doubt on the accuracy or completeness of an application.*
d) *Where Service families or other Crown Servants who often move within the UK and from abroad, are posted to the area, we will allocate a place in advance of the family move if an official government letter is provided declaring a relocation date and an intended address. Evidence must be provided by 30 January 2019 in order to be included in the first allocation round.*

9. All the Buckinghamshire grammar schools have catchment areas as do the great majority of the LA's non-selective upper schools. I am told by the LA that applicants living in the catchment area for Dr Challoner's also live in the catchment area of at least one other grammar school catering for boys as well as having access to non-selective schools.

Consideration of Case

10. The objectors believe that the school's admissions policy, particularly with regard to its residence qualification in paragraph 5(b) contravenes the requirements of the Code in that it is neither fair nor objective. The objectors say they have lived in the catchment area of the school for four years. However, the school's definition of "normal home address" means that a former address, which is ten miles away and out of school's catchment, is regarded as their normal home address for the purposes of an application to the school. The objectors previously owned, and lived in, a home which is outside the school's catchment area and which they now rent out. The effect of this is that neither of their children will have a realistic chance of being offered a place at the school.

11. The objectors moved in August 2014 to their current home which is three miles from the school and "*well within its catchment area*". This move is said to have been for purposes of work and family. However, because the objectors kept their previous home and leased it out, the school deems their children to live at their former home address.

12. The objectors say: "*We understand that the purpose of residency qualification 5(b) is to prevent temporary educational migration by denying access to those who wish to make a temporary move into the catchment area. We submit that because the policy fails to provide a reasonable definition or time frame for recognising a permanent move into the catchment area, it is fundamentally flawed and unfair. It is also not objective because it discriminates without good reason against parents who have property investments as opposed to shares or pensions investments".*

13. The objectors cite a number of paragraphs in the Code which they say are not complied with. The most relevant paragraph, in my view, is paragraph 14, which requires that *"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".* They have

cited paragraph 1.8 of the Code, which provides that *"Oversubscription criteria must be reasonable, clear, objective and procedurally fair, and comply with all relevant legislation……".* My view is that paragraph 1.8 is not relevant here, as the definition of "*normal home address*" is a definition, as opposed to an oversubscription criterion. However, the points made in the objection fall to be considered under paragraph 14, which imposes requirements which are broadly similar to those in paragraph 1.8.

14. The objectors also cite paragraph 1.9a of the Code which provides admission arrangements must not *"place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements".* The objectors argue that paragraph 2.4 of the Code includes a list of additional information that must not be asked for in supplementary forms. Subparagraph (a) provides *"any personal details about parents…such as…financial status…."* must not be requested. Paragraph 2.5 provides that in circumstances where admission authorities are seeking proof of address, they must not request details about parents' financial status. My view is that the objective of seeking details of an applicant's former address is to determine whether or not paragraph 5(b) applies. For the reasons I will explain, I do not consider that the school is discriminating against applicants on the basis of financial status, or whether they choose to invest in shares as opposed to property. The school is in fact endeavouring to prevent a particular mischief. The issue in this case is whether the definition of "*normal home address*" goes further than is necessary or permissible in order to do so.

15. There are four points to the objection. I have set these out rather fully because the objectors have raised a large number of points, all of which I have considered carefully. The school has responded in detail to each of the points, therefore I have also set out the school's response in detail. As a result, this is a long and detailed determination.

<u>The Objection</u>

16. ***"POINT 1: Permanent Residency Not Previous Residency Should be the Determining Factor".*** The objectors contend that paragraph 5(b) of the arrangements is "*draconian or in other words is unreasonable and unfair and is therefore in breach of the Code, as the criterion makes no allowance for the length of time that may have passed since the family lived in the former home before their current property is considered as their permanent residence. In some cases this may have been many years. In our own case we have not lived in the property since 2014*". They acknowledge that the admissions criteria are intended to target applicants whose parents do not have a genuine or lasting tie to the catchment area and whose residence in the area is purely temporary. However, their view is that the admissions policy "*does not give fair scope to the possibility of a permanent move coterminous with the holding of investment property".*

17. The objectors refer to a previous determination - ADA3296 – which states under "*Other matters"* at paragraph 48: "*When I considered the arrangements as a whole I noted some matters which did not, or may not, meet the requirements of the Code*." This included the concept of a

'temporary' address, and the principle that people who move in to a catchment area for "*genuine reasons"* should not be disadvantaged when it comes to their applications. The determination states: '*It is right that admission authorities take steps to prevent those with the means to do so from buying property solely to gain* ***temporary*** *advantage of an address within the catchment area and thereby gain a place at a school ahead of other families who live in the catchment area. However, those steps should not disadvantage families who move into a school's catchment area for other genuine reasons...*'

18. The objectors observe that the determination consistently cites the term *"temporary"* when it comes to living in a property. The objectors note that the determination says that the local authority expressed its concern about the need to prevent wealthy families from using **temporary** addresses in the catchment area to obtain unfair advantage over local children. The determination also says*: "The school regards the current measures as "proportionate and successful" in preventing families with the financial ability to do so from obtaining* ***temporary*** *addresses within the catchment area."*

19. The objectors argue that, whilst the point made in determination ADA3296 about families who actually do move permanently is made in the context of not disadvantaging children who moved into the catchment relatively recently, it applies in their circumstances as well. The objectors argue that: "*to be fair, the policy must not disadvantage people who have moved into the catchment area for genuine reasons. In this case, instead of disadvantaging people who moved in to the catchment too recently, the steps taken by the school are disadvantaging people who moved here for genuine reasons but did not sell their old house"…. "In the cause of preventing those seeking to use 'temporary' addresses for unfair purposes, [the definition] makes no allowance for those who are genuinely and provably there permanently but who own another property within 20 miles. The principle of fairness must equally apply to families who have been there for several years rather than just recently moved there.… The policy places no distinction, for example, between the former family home being let on a short tenancy or a series of short tenancies or a 99 year lease"*.

20. ***"POINT 2: The Policy is Applied in Contradictory Fashion to Different Groups and is Unclear in its Order of Application".*** The objectors point out that the fourth oversubscription criterion is based on distance and state that applicants living in the catchment area will be allocated places in order of distance from the school. This is then "*modified"* by footnote 4 "*In the case of shared residence this will be defined as the address where the child currently spends the majority of the school week."* In other words, (the objectors say) the child of a separated couple will be deemed to be living wherever they spend most time. This seems to be a reasonable principle for defining residence and again is based on physical location.

21. Paragraph 5(a) then states *"In order to qualify for admission under rules referring to the school's catchment area, the applicant must have been resident at their home address continuously since April 1st of the year preceding proposed admission".* This, the objectors say, introduces the

principle of residence as being "*earned*" over a set period of time (seven months in one place), and is again based on the physical location of the child. The objectors states that, whilst these provisions are reasonable, paragraph 5(b) is inherently contradictory with these other location-based criteria. "*It throws out the principle of residence being earned over a period of time, or being related to the physical location of the child, and sets an inflexible criterion which is related instead to the parents' historic circumstances".* The objectors state that their children do not spend any of the school week physically located at the old address and so it does not seem reasonable that they should be considered as living there. The objectors believe that they have "*earned*" residence by living in the school's catchment area for a period of time that is significantly longer than seven months.

22. Furthermore, the objectors argue that there is a distinct lack of clarity over which rule applies first to the children of a separated couple: where the child spends most of the school week (footnote 4), or the location of their previous, pre-separation family home (paragraph 5(b)? In addition, the children of a couple living together appear to be treated differently from those of a couple living apart in a situation where both couples own two houses which include a former family home. The objectors argue that this is not fair or objective, and could be considered as giving priority to children based on the marital status of the parents, which is contrary to paragraph 1.9(f) of the Code. There is no cross reference from the over-subscription criteria in paragraph 2.1 to anything later in the arrangements with regards to additional criteria concerning the "*normal home address*". The objectors submit therefore that the imposition of additional conditions to the published oversubscription criteria is in breach of paragraph 1.9(a) of the Code.

23. ***"POINT 3: No Supporting Evidence of Residency Qualification is Accepted".*** The objectors state that parents are not given the opportunity to explain fully their situation and confirm that they have no intention of returning to the former family home in the school's supplementary form. Instead, it appears that the decision of the admission authority is made on the assumption that all those who retain ownership of their former home for investment purposes intend to make a fraudulent application. This (they argue) is an "*unfair and patently unreasonable assumption"*. The objectors consider it is not objective in that it fails to take account of facts which could easily be described in the supplementary information form (SIF) if such opportunity were given, which it is not. They argue that "*A child's residence should be determined by where they actually live, not where they used to live before they were even old enough to go to school".*

24. ***"POINT 4: The Impact of the Policy is Disproportionate to its Aim".*** The objectors argue that paragraph 5(b) of the arrangements is "*disproportionate to the aim it is attempting to achieve. There are straightforward enough ways to determine whether a particular applicant's family is seeking to circumvent the intention behind the rule; equally, there are straightforward enough ways to recognise when, as here, the rule captures families whom it was never intended to catch".* The objectors give an estimate of how many children they think are affected, which I have not summarised. I accept that there are other families in a position similar to that of the objectors,

and that the arrangements, if they operate unfairly, will operate unfairly to these families as well. I take the point that, if the school is not aware of how many families are in the objectors' situation, it cannot know whether the arrangements operate successfully or proportionately. But the school's position, as will become apparent later, is that it does not consider that the arrangements operate unfairly. If the school is correct, there would be no need to know the numbers of families in a similar position to the objector. According to the school, these families are intentionally excluded from being considered to live in the catchment area for what the school considers are good reasons.

25. The objector also questions whether it is fair to apply a 20 mile zone in relation to previous family homes, when the catchment area map cuts off particularly close to the school at the Buckinghamshire-Hertfordshire border, making anyone further than five miles from the school in a westerly direction by definition out of catchment. In most previous years, no children living outside the catchment area have been offered a place at the school. The objectors make clear that they are not playing games or trying to cheat the system. They "*resent the fact that the school's admission policy automatically treats us as de facto cheaters"*.

26. ***"POINT 5: The Policy In Effect Requests Information on and Discriminates based on Parental Financial Status".*** The objectors observe that paragraph 1.9(f) provides that admissions authorities "*must not give priority to children according to the occupational, marital, financial or educational status of parents applying*". They believe that the school's policy, which disadvantages children whose parents still own former family homes, is a form of financial discrimination against a group of parents. They argue that "*Where appropriate residency criteria are legitimately met, then a parent's financial investments should be their own and not any concern of the school's. A child's residence should be determined by where they live permanently…. We do not believe it is objective, or fair, for the school to discriminate against our children because of how we chose to make our investment decisions in the past. Permanent moves should be recognised by the school as such, where supporting documentation can be supplied".*

27. The objectors further argue that: "*It is inappropriate to simply exclude second home owners without also applying a time limit (such as three years) after which residence in the catchment can be considered to be demonstrably permanent, regardless of other property holdings. The admissions policy is also unfair as in effect it requires a family to dispose of an already long held financial asset to have their residency in catchment considered eligible. This goes direct to judging us as parents on our financial status".*

28. ***"POINT 6: Oversubscription Criteria in Breach of the Schools Admissions Code".*** The objectors argue that having no time frame or mechanism to recognise permanent residence in a catchment is not reasonable or objective, and is in breach of paragraph 1.8 of the Code**.** The objectors have set out in detail their specific family circumstances. I have read these carefully and taken them into account. I have not set these details out in the determination, as it is a published document, and there is a risk that the objectors or their children could be identified from information which describes

the detailed personal circumstances relating to their family even though no names would be referred to. I accept that the objectors have lived for four years with their children at their current address, which is within the school's catchment area. I also accept that the move was intended to be a permanent one, and that the previous home is tenanted and retained for financial and investment purposes. The objectors have submitted information from another family who have lived in the school's catchment for more than nine years but who have retained their former home for the purposes of rental income. This family is also settled in their current address with no intention of moving. Details of this family's circumstances have been circulated to the parties in an anonymised form. I have taken this information into account, and I accept that there is more than one family who will be affected by paragraph 5(b) of the arrangements in the same way as the objectors.

29. The objectors say that their predicament is that, if the former home is sold, there is a risk that their children may not achieve the necessary standard in the attainment tests, in which case they may stand to make a financial loss "*for nothing*". If they wait until one of their children achieves the required pass mark, then the school's timetable gives them just a few weeks to sell the house before completing the school's SIF and declaring their home ownership. The objectors would get the test results on 12 October 2018 and have until 31 October 2018 to submit their secondary school application, giving them just two and a half weeks to sell the house. They argue that "*no one can sell a house in two and a half weeks, so the admissions policy is <u>not</u> reasonable in that it does not allow sufficient time to dispose of the problematic asset. The admissions policy is also unfair as in effect it expects us to sell a financial asset for uncertain benefit and guaranteed financial loss".*

30. The objectors recognise that the school requires policies that prevent temporary educational migration and false claims of residence. However, they consider that, if their children reach the required standard in the tests, they deserve to be considered for entry based on their home address locally along with everyone else genuinely resident in the catchment.

31. The objectors added the following points, having consulted other local families who will be similarly affected by paragraph 5(b):

- *"Paragraph 5(b) of the admissions policy is biased in that it penalises only homeowners, not renters. It is possible to rent a house within 20 miles of the school, sublet it and rent another house closer to the school without incurring any penalty under the residence qualifications. This treats homeowners differently from renters, without this distinction necessarily having any bearing on the child's actual place of residence.*
- *The 20 mile radius from the school encompasses many towns such as Harrow, Watford, St Albans, Hemel Hempstead, Luton, Aylesbury, High Wycombe, Maidenhead, Windsor and Slough, not to mention parts of Greater London. People might move within this large area for many reasons.*

- *In combination, the two points above cause the admissions policy to be punitive and biased against second home owners within a largish chunk of the South East, penalising their children without good reason. A policy should be proportionate to the situation at hand, which this is not. While the school might propose reducing the radius of the "second home" rule, this would not by itself be a solution to the problem since the real issue is the treatment of second home owners as automatically fraudulent, under a set of rules that are contradictory and incoherent.*
- *We would like to draw attention to the wording in the school's Frequently Asked Questions 2019. While not forming part of the admissions policy itself, the FAQs are intended as a guide to understanding the policy. In the FAQs paragraph 10 the school states that "Your normal home address is where you and your child live and where he spends most of the school week". We agree that this is a reasonable definition of normal home address and should be sufficient to define residence within the catchment. It seems like overkill to then go on and disadvantage children genuinely resident in catchment, just because their parents have investment properties they previously lived in at an earlier point in time.*
- *There are some inherently contradictory comments in paragraph 11 of the FAQs about changes of address: "Parents who have been resident in the catchment area since April 1st 2018 and who move permanently from one address within the catchment area to another up to 31st October 2018 will have their application processed using the address at which they are resident on 31st October 2018 (i.e. the new address). Parents who move from one address in the catchment area to another after 31st October 2018 will have their applications considered on the basis of their original catchment area address (i.e. the address at which they were resident on 1st April 2018)". This is incompatible with paragraph 5(b) – it is unfair to accept a more recent address for homeowners that sell their original homes but not for homeowners that keep their original homes. Someone could move within the catchment, not sell their original home, and then not be able to have their new address considered even though the guidance states that it should be considered (and a reasonable person would consider it fair to do so).*
- *While it is not for us to propose new wording for the policy, we feel that a fair policy would remove paragraph 5(b) altogether. It could be replaced by a statement clarifying paragraph 5a, perhaps further defining the phrase "resident at their home address continuously". Then the Supplementary Information Form (SIF) could be modified to, for example,*

a. *have the parents give the address of any other property or properties they own or rent within 20 miles*
b. *state if the child spends any nights of the week at this property or properties, and if so,*

c. *ask them to provide further comments showing where the child spends the majority of the school week.*

- *We believe such modification of paragraph 5 and the SIF would give the school and the local authority enough information to identify any potentially fraudulent applications while removing the unfair blanket ban on second home owners. It would provide a more reasonable basis for judging distance from the school based on where the child actually lives".*

The School's Response

32. The school responded on 27 June 2018 to each of the points raised in the objection. I have largely quoted the school's response in full:

> ***"Point 1. Permanent residency not previous residency should be the determining factor".*** The school does not consider paragraph 5 of the arrangements to be draconian, unreasonable or unfair*. "These are subjective terms which are open to interpretation. It is understandable that the objector feels this, given the circumstances they are in. However, since the introduction of the rule in 2011 many families in different situations have commented that they believe it to be a fair and reasonable rule, showing that the position of a family is a clear factor in determining opinion about the rule. Indeed, the only response received to the consultation for the 2017 admissions policy requested the rule be thoroughly enforced. The purpose of our policy is to ensure fairness to genuine local residents. Owning more than one property provides an opportunity for parents to easily relocate should it prove to be desirable for them to do so, for whatever reason, even if they had no intention of doing so at the time of application to the school. The possession of a previous property shows a connection with that other location. The rules in paragraph 5 provide clarity for all, and insurance for the school against behaviour which has been witnessed in the past. The objector argues that permanency of residence should be measured in some way. The possession of a second property within a geographically determined area is a measurable and objective factor. Such possession provides potential opportunity for future relocation and so introduces the possibility of residence close to the school being temporary. The policy uses ownership of a second property within 20 miles as a means of defining permanence.*
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> **Point 2. The policy is applied in contradictory fashion to different groups and is unclear in its order of application.** *The school sits within a local scheme for secondary school admissions which is based on catchment areas. By definition, there must therefore be an element of location based decision making in the process of allocation.*
>
> *The objector suggests that paragraphs 5a and 5b of the policy are contradictory. The school does not accept this interpretation. It is clear from paragraph 5b that, should the circumstances described in that paragraph exist, the student will not be considered under the*

oversubscription criteria relating to catchment area. The only part of the policy where order of content is significant is in the listing of oversubscription criteria, and this is prefaced to that effect. The policy states that parents who own another property within 20 miles that has previously been a family home cannot use a nearer address to be considered under the school's residency rules. Once that fact is established the location or amount of time a child has been resident in a nearer address is immaterial. In this regard the policy is clear and unambiguous. Section 2 of the admissions policy notes "Applicants who wish to be considered under Rules 2, 3 and 4 which involve residence in the school's catchment area will be asked to complete a Supplementary Information Form (which can be found at the end of these arrangements) in order to enable the school to determine the eligibility of their address." shortly before the oversubscription criteria are listed, alerting the reader to the requirement to provide address information. Rule 5 is also discussed in our Frequently Asked Questions documentation which is readily available on the website and at open events.

Similarly (in response to point 3.24) paragraph 5b of the policy is clear. If the situation described in paragraph 5b exists then the child will not be considered under the oversubscription rules referring to the school's catchment area.

The objector claims (para 3.26) that the policy is in breach of para 1.9a of the code. The school does not accept this claim. Paragraph 5 of the policy exists to clearly define the residential requirements relating to the oversubscription criteria concerning catchment, and does not add to them. The same paragraph of the objection suggests there should be a cross reference to paragraph 5. This is addressed above.

Point 3. No supporting evidence of residency qualification is accepted. *The objector is correct that no opportunity is provided for parents to explain their individual situation at the time of application. To do so would be to introduce ambiguity and a lack of clarity to the allocation procedure, which would not comply with the requirements of the code. Doing so would involve an element of subjective judgement by the school as to the permanence of any move. It would also create more loopholes for unscrupulous parents to exploit in an attempt to gain a place at the school. Additionally, the admissions process includes a stage - the independent appeal panel - where the opportunity to present individual circumstances for consideration is available to any parent who wishes to exercise it.*

Point 4. The impact of the policy is disproportionate to its aim. *The school contends that the policy has proved successful in its aims of preventing the admission of students who then move back to previously owned properties. The school knows this to be the case because parents make the school aware of house moves that may take place during a child's time at the school. The objector provides assumed data*

regarding the possible number of children affected by this rule. The school does not accept that this data has any validity.
If investment in property via buy to let mortgages is an individual's desired approach to investment it is perfectly possible to do this and remain compliant with the school's admissions policy by disposing of any previous family homes within 20 miles.

The school accepts the objector's point that it cannot know the number of children affected by the rule. However, the rule exists to reduce prejudice against genuine local residents. We know from the cases heard by the independent appeal panel over the years that, on average, less than 4 families (19 appeals in the last 5 years) appeal for a place at the school each year on the basis of the rules encapsulated in paragraph 5. This is the only concrete data available to quantify the impact of the rule. In 2018 630 students listed the school as a preference for admission in 2018, and 4 appeals were lodged on these grounds. None were successful at appeal. On this basis 1.3% of applicants were affected (0.65% negatively (4 applicants who did not secure a place at the school), and 0.65% positively (4 applicants who did but would not have done had the applicants who owned a second property been accepted)). The school contends that this is not a disproportionate impact when considered in the context of the overall picture of oversubscription. Far more appeals are heard for other reasons.

For September 2019 entry all students in the school's catchment area are also in the catchment area of at least one other grammar school. These other grammar schools do not have a similar rule in their admissions policy and so no qualified student is unable to access a grammar school place as a result of the residence provision. The concept of parental preference is that parents can express a preference for a school, not that they have the choice of a particular school. The catchment area planning for the locality is such that students have access to more than one grammar school to, as far as is possible, ensure that all grammar qualified students can secure a place at a grammar school.

The objector refers to the choice of 20 miles as a distance for application of the residency rule. In determining a distance for this rule the school was mindful of local geography and previous observed practice. The school lies some 150 yards from Amersham railway station, which connects, via the Metropolitan Line and Chiltern Railways, to Rickmansworth, Harrow, Wembley, Finchley Road and Baker Street/Marylebone in a South Easterly direction, and Aylesbury to the North West. This means it is a relatively quick journey to Amersham from as far afield as Central London. To ensure clarity and simplicity a single distance radius is easily understandable.

One of the reasons for catchment areas is to ensure schools serve their local community. A strong motivating factor for the school, as outlined above, is to preserve the community ethos of the school.

Whilst it is not possible to enforce, we would hope that students whose families move away from the area would attend their local school rather than commute. The nature of the local transport links described above means that it is very easy to relocate a considerable distance and commute to school in Amersham. Therefore a distance of 20 miles reduces the likelihood of families behaving in this way. That distance is also a reasonable one when considered in the context of the distances people regularly travel for work in this area as well.

The objector claims that the short distance between the school and the Bucks-Herts border (incorrectly identified in the objection as being to the west of the school) means that the distance of 20 miles is unreasonable. The school does not find this to be a valid argument against the distance of 20 miles being quoted in rule 5. As explained above the local geography means that 20 miles is a reasonable distance to travel by public transport in under one hour. The distance between the school and the edge of the catchment area has no bearing on this.

In the Adjudicator's analysis of the Dame Alice Owen's School Admissions policy referred to above (ADA3355) no issue is found with a distance of 50 miles in the same context.

The school maintains, for these reasons, that there is a rational and reasonable basis for the 20 mile distance element of rule 5.

Point 5. The policy in effect requests information on and discriminates based on parental financial status. *In order to correctly determine the appropriate students to admit under the school's oversubscription criteria it is necessary to know which address to use for each student. To establish that in line with the requirements of paragraph 5 requires the school to collect information about any previous family homes that are still owned by the family. The school uses a Supplementary Information Form (SIF) to do this. This is a reasonable process which was found to be acceptable in ADA3296. Without this process it is not possible to accurately implement the oversubscription criteria.*

The school's catchment area includes some of the most expensive places in the country to own property outside central London. According to Zoopla the average house price in HP6 (the school's post code area) is £741,897. A number of families whose children attend the school own second homes or properties that are rented out in the UK and overseas. Thus the policy demonstrably does not discriminate against people who have the financial means and choose to invest in property, either as second homes or as rental property, because there are many ways in which that can be done and remain compliant with the school's admissions policy.

In point 4.9 of the objection the objector says that 'many people unblessed with exceptional wealth may have a foot on the housing

ladder' in the context of second home ownership. The school suggests that by this assertion the objector indicates that second home ownership is a reasonably normal activity and therefore contradicts their earlier assertion that they are discriminated against on grounds of wealth".

33. The school's final remarks were that all individuals and families have to make decisions about residence and schooling for their children and there are many factors that will influence a family's decisions. "*In this case the objector wishes the adjudicator to change the rules the school has established to suit their circumstances. The school argues that all citizens need to make decisions according to their priorities within the established rules that pertain to the areas of life with which they are concerned.*

- *A second rented house is not owned and can therefore be disposed of immediately, meaning it does not serve as a permanent residence, as discussed above. It is also a cost rather than an asset, and so this circumstance seems highly improbable.*
- *As explained above the 20 mile radius includes many residential areas. If families choose to return to property they own within this area they can easily access the school. If the school was not so accessible to so many residential areas the issue of parents returning to property elsewhere would not arise and the residency rules would not need to be included in the admissions policy.*
- *The school deny that second home owners are treated as 'automatically fraudulent'. As explained above it is possible to own multiple properties and comply with the school's admissions rules.*
- *The objector has quoted selectively from the Frequently Asked Questions document. The adjudicator will see that paragraph 10 goes on to explain that, should the situation outlined in paragraph 5(b) of the admissions policy exist, then the nearer address will not be used for allocation purposes.*
- *The section quoted by the objector would not be relevant if the applicant retained their previous property because, under paragraph 5(b), the nearer address would not be used for allocation purposes. Paragraph 11 explains what would happen should an applicant move in what the school regards as the normal definition of move, namely disposing of one property when acquiring another, or moving from one rented premises to another.*
- *The proposed modification would reach the objector's desired outcome it would not serve the same purpose as the current clause, and would introduce further ambiguity and loopholes for unscrupulous parents.*

In this case the objector considers that the arrangements are unfair because they do not wish to sell their former home in order to be considered a permanent resident. That is a specific situation that is within the control of the objector and not a situation that justifies a change in admission rules because they do not suit the objector's circumstances. The objector's point 4.8 is related to this. The objector could choose to dispose of the existing property in [Town] in timely fashion ahead of the secondary transfer test (note that there

is no such thing as an 11+ examination) in order to obtain the possibility of a place at the school should their son attain a qualifying score. They are similarly entitled to choose to retain the property on the understanding that, should their son attain a qualifying score, that address will be used as the allocation address by the school. Thus, the objector could, if they so choose, meet the definitions laid out in paragraph 5 of the school's admissions policy".

Comments from the LA

34. The LA explained that all parts of Buckinghamshire fall within the catchment of at last one of the 13 grammar schools and that these catchment areas also extend beyond the county boundary where appropriate. Many areas are served by more than one grammar school as the catchment areas overlap. The grammar schools in Buckinghamshire work together to set one method of qualification for admission to all schools and by setting a common threshold entry requirement which is a test score of 121 or qualification as a result of a successful Selection Review. Each school then makes allocations on the basis of catchment/sibling/distance factors. All grammar schools adopt very similar rules but on occasion, and in response to local circumstances, schools may apply more stringent rules as is the case with regard to Dr Challoner's Grammar School and their residence requirement.

35. Dr Challoner's is regularly oversubscribed with first preference applicants living in its catchment area. In order to tackle this, regular adjustments have been made to the catchment areas of other grammar schools to try to ensure that all residents meeting the qualification mark have access to a grammar school education if they wish. Increasingly other grammar schools' catchments have widened to "*overlay"* the Dr Challoner's Grammar School catchment area to offer alternative catchment grammar schools. The net result of these changes is that 2011 was the last time that any out of area allocations were made to the school and since 2012, the in-catchment area distance cut offs have fluctuated between 7.211 miles in 2017 and 5.548 miles in 2018.

36. The school is located within 100 meters of Amersham railway station with links to London. This means that a large numbers of boys would have a relatively quick journey to school on the Metropolitan Line, and could therefore attend if capacity permitted. This was one of the areas of significant abuse of the admission system, and led to the adoption of tough and strictly applied residence rules. In relation to paragraph 5(b), the LA consider that it is "*an objective measure of the permanence of the local residence at the point of admission and also the likelihood of a summary departure to a previously owned address once the place has been secured*". The LA recognises that the school needs to "*limit*" residence, and considers 20 miles to be a reasonable parameter. The LA considers that the rule in paragraph 5(b) exists to protect families whose only residence is in the catchment area, and to minimise strategic temporary moves by families with the resources to do so which result in local families not being offered the school of their preference.

37. The LA considers that it is difficult to distinguish between a temporary or a permanent move, as this requires the admission authority to attribute

motives which may be fluid over time. The intention may be for a permanent move but of course this may change over time. Conversely what might have been temporary may become permanent of necessity or due to a change in circumstances. "*The school can only look at actions and set some parameters to be met. If the school were to set a threshold of 3 years then this will just result in families who want to secure a place at the school for their child whilst retaining their previous home address as an investment property moving in to the catchment prior to that deadline".*

38. The LA further considers that the school's arrangements have been scrutinised by previous adjudicators on a number of occasions, and found to meet the requirements of the Code. They have also been consulted upon, and there have been no objections to paragraph 5(b) from consultees. The LA considers that this is evidence that the majority of people think the rules as set out are broadly fair. The LA considers that "*Just because this particular point has not been made by an objector before or that one aspect of it has been referred to by the adjudicator but they have been silent on this particular matter, does not mean that there has not been full consideration on any of the earlier occasions".*

39. The LA states that school operates and publicises the parents' right to an independent appeal panel hearing, so "*true anomalies to the published arrangements do have a route to challenge any admission decision*". The LA does not see that there is a way of proving that applicants who move into the school's catchment area but retain their former home are genuinely and provably there permanently other than an affidavit to this effect. The LA "*can think of no evidence that can be provided within the constraints that the schools must adhere to within the Admissions Code to prove the temporary nature or otherwise of the residence in the catchment area*".

40. The LA considers that the objector has a choice and can make arrangements to ensure they comply with the rule. "*Admission rules are set out well in advance ready for being used each year. The principle is the same regarding the disposal of a previous address or the decision to move to an area or express the school as a preference – the parent can choose what they want to do and certain decisions will give them a priority or otherwise within the admission rules*". The LA does not think the objector has really made a case for why this principle should not apply with regard to disposal of properties elsewhere.

Further representations by the objector

41. On 3 July 2018 the objector submitted a point-by-point response to the representations by the school and LA. I have read this very carefully, and taken it into account. In essence, it repeats much of what has been said previously. I do not propose, therefore, to set it out in this determination. The essential point made is that the arguments put forward by the LA and the school fail to engage substantively with the principal issue of the unfairness of the rule for people who have lived in catchment for many years.

42. There were additional points made in the objectors' response of 3 July 2018 which had not been referred to previously, which are that if they do sell their former home, then their sons will lose the rental income that would help to fund university studies. The objectors also say that it is also important to them that their children should be able to attend a local school and not be forced to travel a long distance to get to school in the morning. They place value on the importance of having local friends and growing up in a community that is close by. Denying their sons access to the local grammar school, they say, would result in the children being sent on a potentially long journey to get to another school of similar quality, and will rob them of the benefits of their own local community. I note, though, that there is the option of another local grammar school, namely Chesham, and I will say more about this later.

Analysis

43. I will deal firstly with my jurisdiction to determine this case, and the relevance of previous determinations to my conclusions upon the issues raised in the objection before me. The school has referred me to paragraph 31 of ADA1766, paragraph 23 of ADA2747 and ADA3296 stating that, in each of these determinations, the definition of "*normal home address*" in the arrangements was the same as that currently in paragraph 5(b) of the arrangements, and was found to be compliant with the Code. Previous determinations do not form binding precedents. Adjudicators endeavour to act consistently, but it is sometimes the case that objections dealing with the same set of admission arrangements will make subtly different points or provide different evidence, which may lead adjudicators to reach different conclusions. This is particularly the case where an objection is based upon unfairness, which is a Protean concept, and judgments about fairness will be particularly sensitive to changes in circumstances or to the evidence presented.

44. It is also the case that an example of specific circumstances brought to the attention of an adjudicator may not have been in the mind of an adjudicator who has previously considered the same set of arrangements. The focus of any determination will inevitably be the specific facts of the objection. An adjudicator considering a point under section 88I of the Act (Other Matters) will not have the benefit of a real life example against which to test how any particular aspect of the arrangements operate in practice.

45. The school raised the issue of jurisdiction before submitting its response to the objection. Paragraph 3.3(e) of the Code provides that objections to the admission arrangements for a school cannot be brought where they raise the same, or substantially the same, matters as the adjudicator has decided on for that school within the last two years. Determination ADA3296 dated 29 August 2017 does indeed consider the definition of "*normal home address*" set out in the school's admission arrangements in some detail at paragraphs 54 to 70. The objection currently before me relates exclusively to part b) of the definition. ADA3296 states that it considers parts a) and b) of the definition, but really only deals with b) in passing. It reaches no reasoned conclusion on part b) because the focus of

the argument relates to part a). The objection itself related to the selection arrangements, so this is principally what the determination relates to. Paragraph 55 of ADA3296 considers that the requirements in the SIF are too onerous; paragraph 57 states that the adjudicator has considered both parts a) and b) of the definition; but paragraph 67 sets out a conclusion only in relation to part a).

46. Although ADA3296 gives some consideration to part b), I do not consider that b) was decided upon in terms of determining whether it complies with the requirements in the Code. There is no determination of whether it is fair and reasonable to regard an address which was formerly the family home as the relevant home address, albeit that the family have actually been living for many years at an address closer to the school; whether there is a rational basis for the 20 mile cut-off; whether it is fair and reasonable to disregard the address where that family are actually living even where they have leased their former home to a third party.

47. The school has also referred me to paragraph 31 of ADA1766, which is more than two years old, but which deals specifically with the disallowing of leased property closer to the school as a family's place of residence if the family still owns a property within 20 miles of the school. The adjudicator said: "*I have considered whether this unfairly disadvantages families who are struggling to sell their houses, and might feel obliged to do so regardless of financial implications. I have further considered whether, as suggested by the correspondent, the provision within paragraph 5 for 'a higher standard of evidence of residential qualification' [than that required by the local authority] would constitute an invasion of privacy. A response on behalf of the School has indicated that the first provision has been made out of experience of families temporarily renting accommodation near to the School to gain admission, and then moving back to the permanent accommodation, and that the provision in fact avoids preferential treatment for families more able financially to invest in two properties. The response has indicated that the second provision has been made to enhance the local authority's requirement for one from a list of alternatives piece of documentary evidence, in order to combat fraud. I accept the School's justifications of both elements in the arrangements".*

48. Again, this is simply not on point. The adjudicator has accepted the school's justification based on the fact that the intention is not to treat families who are temporarily renting a property in the school's catchment area as living there permanently. But this has no relevance to the circumstances for the objectors in this case who are renting out a former home and have been ordinarily resident in the catchment area of the school for the last four years. The justification advanced in ADA1766 appears to confirm that the intention is to 'rule out' applicants who are temporarily living within the catchment area in order to cheat the system and not to advantage families who are effectively able to 'buy' a place at the school by investing in two properties and living temporarily in the catchment area. But, as the objector's circumstances indicate, the effect of the arrangements is to ascribe an address as the

"*normal home address*" which is not the address where the applicant permanently and actually lives and has lived for several years.

49. In relation to ADA2747, which again in more than two years old, paragraph 24 of the determination states: "*I have already indicated that I accept the school's use of a catchment area. It is reasonable and sensible for the school to seek to ensure that those who secure places in Y7 actually live permanently in the catchment area. If they did not, then the principle of giving priority to those who live in the catchment area would be undermined. It is, of course, the case that some families move to an area in part or wholly because of the schools. If they do so permanently and by the date specified in the arrangements, then they will be treated in the same way as others who have lived there longer".* What this paragraph is saying is that, if a family move permanently to an address, they should be treated as living at that address. The objectors have made a permanent move by the date specified in the arrangements, however they are not treated in the same way as other applicants who have lived in the catchment area for the same length of time.

50. Both the objector and the school have referred me to case number ADA3355, an objection to the arrangements for Dame Alice Owen's School. In this determination, the arrangements for the school in question were revised in 2018 (for admission in September 2019) to provide a requirement that applicants must have lived at their current address for a period of 36 months in order for that address to be considered their home address for the purposes of an application. This period was increased from 24 months, and the change was considered to be unreasonable and unfair by the objector. The adjudicator considered the objection under paragraph 14 of the Code, and concluded that the revised arrangements did not contravene that paragraph because they were not unfair.

51. The objectors in this case agree with the overall conclusions of the adjudicator in ADA3355. Indeed the objectors have suggested that Dr Challoner's School could adopt the arrangements in place for Dame Alice Owen's School as a way of obviating the school's concerns about parents moving into the catchment area on a temporary basis. In the case of the arrangements in place for Dame Alice Owen School, an applicant will be considered as living within the school's catchment area if they have lived there for 36 months even though they have retained a former home for investment purposes.

52. The school has focused upon the reasons for the adjudicator's conclusions which were as follows: "…*the school has been clear what it is seeking to achieve – places available for local children who will not move away from the area once a place has been gained thus preventing another local child from gaining the place…. I am satisfied that the arrangements are fair for local children who can seek a place on the basis of distance. They are also fair for people moving to the area on a permanent basis as they will be considered to be local and places allocated on the basis of distance. The objector considers that the arrangements are unfair because he does not wish to sell his former home in order to be considered a permanent resident. … I do not think that this definition in itself makes the arrangements unfair, the*

decision rests with the objector and whether or not he wishes to be considered against the school's definition of "home" or not ".

53. The arrangements in place for Dame Alice Owen's School are different to those in place for Dr Challoner's School in that the former make a distinction between applicants who retain former homes for investment purposes who move into the school's catchment on a temporary basis, and those who retain former homes who move into the school's catchment on a permanent basis. This is judged by determining a length of time which is considered as a permanent move. As I will explain below, I do not consider that it is reasonable for a set of admission arrangements to ascribe a home address to an applicant which is not the address at which the applicant is ordinarily resident. This would be an address adopted voluntarily for a settled purpose, and could only ever be a temporary address in circumstances where an applicant could only have a temporary address. (Examples of this are where children are refugees, or placed in foster care. In these circumstances, there would be no issue about investment property).

54. The adjudicator in ADA3355 did not consider the arrangements for Dame Alice Owen's School to be unfair because it was open to the objector to sell his second property in order to be considered as living within the school's catchment. As I will explain below, my view is that it is unreasonable for a set of arrangements to require an applicant to sell a former residence where the applicant clearly has a settled and permanent residence within the school's catchment area, as is the case with the objection before me. The adjudicator in ADA3355 was considering an objection from an applicant who was judged to be temporarily resident in the school's catchment area because the family had not lived at their current address for 36 months. This is an entirely different prospect to arrangements which provide that a family can never be considered to have moved permanently where a former home is retained, whatever the reasons are for retaining the property, and however long the family have lived in the catchment area. The key difference between the arrangements for Dame Alice Owen's School and those in place for Dr Challoner's School is that the former make a reasonable attempt to distinguish between those applicants who have moved temporarily in order to gain an advantage, whereas the latter fail to properly determine which applicants are genuinely ordinarily resident within the school's catchment area.

55. In relation to the 6 points in the objection, both the objectors and the school have made lengthy objections. I will deal with these in turn.

Point 1: Permanent residence and not previous residence should be the determining factor. **I partially uphold the objection on the grounds set out by objectors set out under this heading**. **I consider that the definition in paragraph 5(b) of the arrangements operates to ascribe a home address to applicants in the circumstances of the objector which is clearly not their home address. I therefore find that this aspect of the arrangements is unreasonable, and I uphold this part of the objection**. I understand the motivation of the school in seeking to prevent wealthy parents from manipulating the system and effectively 'buying' a place at such a prestigious school by purchasing a home in its catchment area without intending to live

there permanently. I also appreciate that the school is attempting to ensure that applicants actually live where they say they do. It is absolutely right that schools do this since it is in the interests of all applicants that the process operates as it should. There are many different ways of defining an applicant's home address. The school has chosen a particular test. This is said to be in the interests of clarity. However, as the objectors' circumstances show, paragraph 5(b) operates to achieve the result that families who are genuinely ordinarily resident in the school's catchment area and have been for some time are treated as living in a property where they do not live, and which is outside the school's catchment. On balance, therefore, I consider this aspect of the arrangements to be unreasonable.

56. A family who had lived in the school's catchment area for 10 years would still be regarded as living elsewhere if they retained their former home. A family who had lived in the catchment area for 12 months would be considered to live within it if they had not retained their former home. Paragraph 5(b) disadvantages applicants who have moved into the catchment area permanently and for genuine reasons. I agree with the objector that *"In the cause of preventing those seeking to use 'temporary' addresses for unfair purposes, [the definition] makes no allowance for those who are genuinely and provably there permanently."*

57. The school makes the point that the objectors have the choice of selling their former home, in which case they would be treated as living where they actually live – within the school's catchment area. I do not consider it reasonable for admission arrangements to necessitate this course of action where families are genuinely living within the catchment area of the school.

58. Initially, I also considered that the arrangements operated to cause an unfairness. In determining whether any aspect of admission arrangements is unfair, it is important to consider to whom it is unfair and why. The objectors argue that the arrangements are unfair to applicants who have achieved the required standard for selection but who will not be allocated a place at the school because they are not considered to be living within the school's catchment area. However there other secondary school options available to the applicants who are in this position, and indeed other grammar school options. In reaching my conclusion on fairness, I considered very carefully the school's arguments that the other grammar schools in the area do not have a similar definition of "*normal home address*", so it is possible for the objectors' sons to obtain a place at a local grammar school if they achieve the required standard. Parental preference entitles parents to state a preference, but it does not guarantee that they will have priority for the school of their choice. The objectors live in the catchment area for Amersham School, and Chesham Grammar School looks to be a 23 minute journey on the Metropolitan Line, or a 26 minute cycle ride.

59. On balance, I agree with the school's arguments on these points. Therefore **I do not consider that the overall effect of the arrangements is unfair to applicants who are in the position highlighted by the objectors, and I do not uphold this part of the objection.** However, because I have

concluded that the definition of "*normal home address*" in the arrangements is unreasonable in its effect, the arrangements will need to be revised.

60. Point 2: The policy is applied in a contradictory fashion to different groups and is unclear in its order of application. **I partially uphold this part of the objection on the grounds set out by objectors under this heading**. I consider that it is not reasonable to treat all other applicants differently to the children of separated parents. Whatever definition of "*normal home address*" applies should, in all cases, arrive at the address where the child actually lives. I agree with the objectors that the definition of home address which applies to the children of separated parents is a reasonable one, as it refers to the child as living at the address where he/she spends most of the school week. This is wholly different to the effect of the definition of "*normal home address*" in the objectors' case, which treats their child as living at an address where they last lived more than four years ago. In my view it is paragraph 5(b), which creates this inequality of treatment and inconsistency, and this provides another reason in support of the finding I have already made, namely that paragraph 5(b) of the arrangements is unreasonable. **I therefore uphold this part of the objection on grounds of unreasonableness.**

61. I do not agree with the objectors' argument that there is a lack of clarity as to which provision applies in the case of children whose parents are separated. **Therefore I do not uphold this part of the objection. The arrangements are clear in my view.** My understanding of the relevant provisions is that, in a case where parents are separated and where one parent retains, and lives in, the former family home, this will be disregarded where the child lives for most of the school week with the other parent in the catchment area of the school. This is reasonable in my view because the child will be treated as living at the address where he or she actually lives.

62. The objectors then further argue unequal treatment based upon marital status and the imposition of additional conditions in breach of paragraph 1.9(a). I do not find merit in any of these arguments. Children of separated parents very often actually live in more than one place for easily understandable and sensible reasons. The arrangements treat them differently because they are in a different position to that of children who live with both parents at one home address. As stated above, the arrangements are unreasonable in their treatment of applicants who are ordinarily resident in the school's catchment but who have not sold a former family home because they are not treated as living where they actually live. This is not about discriminating against applicants based upon their status or investment choices.

63. Point 3. No supporting evidence of residence is accepted. **I do not uphold this part of the objection on the grounds set out by the objectors under this heading.** The objectors consider that it is unfair not to enable parents to explain their residence situation. The school considers that this is unnecessary because the arrangements are clear and unambiguous. If the family has retained a former home within 20 miles of the school, they are considered to be living in that former home. I am inclined to agree with the school on this point. Paragraph 5(b) is clear, therefore the reasons for, and

duration of, the move are irrelevant. However, as I have said above, I consider the effect of paragraph 5(b) to be unreasonable, so all I am really saying here is that the arrangements apply an unreasonable provision clearly.

64. Point 4. The impact of the policy is disproportionate to its aim. **I do not uphold this part of the objection on the grounds set out by objectors under this heading**. The school has explained that its aim is to prevent the admission of applicants who then move back to previously owned properties. I accept the school's statement that paragraph 5(b) has prevented this from happening. I also accept the evidential basis for this statement. The school is made aware when its pupils change address, and is therefore able to state that this has not happened. I do not accept the contentions of the objector about the numbers affected, which are based upon assumptions. My view is that the school's argument that paragraph 5(b) operates to reduce prejudice against "*genuine local residents*" is flawed. The objectors' own circumstances, and those of the other family who have written in support of the objection, demonstrate that paragraph 5(b) does prejudice genuine local residents. However, I have already dealt with this in relation to point 1 of the objection.

65. The school argues that the fact that only four appeals were lodged in 2018 on the basis of the rules encapsulated in paragraph 5, and that none were successful, indicates that paragraph 5(b) is not having a disproportionate effect when considered in the context of a school which had 630 applicants who had listed the school as a preference. I do not accept that an unreasonable policy is rendered reasonable on the basis that it only operates unreasonably for a small number of applicants, or because very few unsuccessful applicants appeal. However this part of the objection is about something different.
It is about:

- whether paragraph 5(b) achieves its aim – which it does since it prevents the admission of applicants who then move back to their previous address;
- whether it does more than achieve its aim – which it does; and
- whether any adverse 'side effect' (for want of a better term) is disproportionate – which it is not because the adverse side effect applies to a tiny proportion of applicants (0.65%).

66. The school makes additional points in this context about parental preference and availability of places at other local schools, including grammar schools. In my view, these points are not relevant to this part of the objection, however they are relevant to the question of fairness and I have considered them in this context. In my view, the basis for the 20 mile radius is a reasonable one which has been fully considered based upon public transport links to Amersham. I also consider it is entirely reasonable to have a catchment area, and that the catchment area conforms to the requirements of paragraph 1.8 of the Code.

67. Point 5. The policy in effect requests information on and discriminates based on parental financial status. **I do not uphold the objection on the grounds set out by objectors under this heading**. The school has explained that its catchment area includes some of the most expensive homes

in the country, and that "*a number of families whose children attend the school own second homes or properties that are rented out in the UK and overseas".* Whilst this may raise a further question about whether it is reasonable to treat some applicants with second homes and investment properties differently to others, it does indicate that the school's arrangements operate to admit applicants who are in the same position as the objector in terms of property ownership.

I find no merit in the objectors' arguments on this point. Since the other arguments made by the objector and the school under this heading do not relate to discrimination on parental financial status, I have not addressed them. These other arguments relate to the ease within which a family who returned to a previous home could access the school; whether it is reasonable for arrangements to dictate that a family must sell their previous home in order to be considered resident in the school's catchment area; the fact that the objector is able to choose whether to be considered to be resident in the school's catchment area; and that the objectors think the arrangements should be revised simply to fit their own personal circumstances. All of these arguments relate to whether paragraph 5(b) of the arrangements is reasonable. Since I have already concluded that it is not for the reasons set out above, I do not need to express a view on these further points.

Point 6: Oversubscription criteria in breach of the Schools Admissions Code and additional points

Point 6 is essentially a summary section. The objectors recognise that the school requires policies that prevent temporary educational migration and false claims of residence, however, they consider that, if their children reach the required standard in the tests, they deserve to be considered for entry based on their home address locally along with everyone else genuinely resident in the catchment. As stated above, I agree with this. I also agree with some of the further points raised, namely that paragraph 5(b) penalises only homeowners, not renters, without this distinction necessarily having any bearing on the child's actual place of residence. There are indeed some contradictory statements in the FAQs, but these are not part of the admission arrangements and therefore this is not something I can determine.

68. There are suggestions as to how the arrangements should be revised. Again, this is not something I can comment upon. My jurisdiction is to uphold, partially uphold or not uphold the objection. My determination is binding and the Code requires the admission authority to revise its arrangements. It is not for me to dictate any particular wording, or manner in which the policy of an admission authority must be delivered.

69. In relation to the LA's representations, many of these overlap with the points which have been made by the school, and so I will not repeat what I have already said on these points. What I will say, though, is that where there is an objection to admission arrangements, it is not the function of an Independent Appeals Panel (IAP) to deal with "*anomalies*". Where there is an objection to admission arrangements, the appropriate statutory body assigned by Parliament to deal with this is the Adjudicator. It is wholly misconceived to

suggest that IAPs can remedy the effects of an unreasonable aspect of a school's admission arrangements.

70. The point made by the LA that it does not see that there is a way of proving that applicants who move into the school's catchment area but retain their former home are genuinely and provably there permanently other than an affidavit to this effect genuinely concerned me. Firstly, I am sure the objectors and other families would not have a problem about signing an affidavit stating their intention that they intend to continue to live where they have lived for many years. But there seems to be no suggestion that all other applicants living within the school's catchment would be required to prove this intention. As the LA states, intentions can change for all sorts of reasons. Any parent who has managed to get their children into a secondary school, such as Dr Challoner's is very unlikely to upset this arrangement unless there are pressing work or family reasons necessitating a move.

71. The journey from the objector's former address to the school is a two hour long train journey with two or three changes at different London termini. Other routes involve a combination of train, bus and underground journeys. They are certainly not the simple Metropolitan Line journey cited by the school in relation to other potential applicants. Few parents are likely to want to move back to a former home where this would necessitate their children having to undertake such a journey, and where they already live in the school's catchment area.

72. Finally, I should say that there have been a number of objections to the determined admission arrangements for this school, and I am aware that parents will want very much for their children to be offered a place at the school. This is a tribute to the school, and I would reiterate that I do not doubt that the admission authority's motives in adopting paragraph 5(b) of the arrangements were absolutely well intentioned. It is entirely right and sensible and lawful for the school to establish that those who say they live in its catchment area do so. However the effect of this provision in its current arrangements goes further than is necessary to achieve that and further than is required to prevent the mischief it was intended to prevent.

Conclusion

73. I have concluded that paragraph 5(b) of the school's arrangements is unreasonable, and so does not conform to paragraph 14 of the Code. I therefore uphold this part of the objection. In the case of an applicant who has retained a former home within 20 miles of the school who has purchased a property in the catchment area of the school and has become ordinarily resident there, paragraph 5(b) operates to ascribe a home address which is not the address where the applicant actually lives. I do not uphold any other part of the objection for the reasons given.

Determination

74. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Dr Challoner's Grammar

School in Buckinghamshire for admissions in September 2019.

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: 31 August 2018

Signed:

Schools Adjudicator: Dr Marisa Vallely