



## **DETERMINATION**

**Case reference:** ADA3395

**Objector:** An individual

**Admission Authority:** Lawrence Sheriff School

**Date of decision:** 27 September 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 for September 2019 determined by the governing board of Lawrence Sheriff School, Warwickshire.**

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

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a person, (the objector), about the admission arrangements (the arrangements) for Lawrence Sheriff School (the school), a selective school for boys aged 11 – 18, for September 2019. The objection relates to the methodology used by the Committee of Reference to determine the Automatic Qualifying Score (AQS) for entry to the school.
2. The local authority (LA) for the area in which the school is located is Warwickshire County Council. The LA is a party to this objection.

### **Jurisdiction**

3. 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 on 14 February 2018 by the governing board on behalf of the Lawrence Sheriff Academy Trust (the trust), which is the admission authority for the school, on that basis. The objector submitted an objection to these determined

arrangements on 8 May 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is partly within my jurisdiction to the extent explained below.

4. The objector considers the arrangements to be unclear, which is a matter within my jurisdiction. The objector also considers that the Committee of Reference is setting the AQS using criteria other than those which are set out in the arrangements, and that the AQS for admission to the school in 2018 was set deliberately by the Committee otherwise than in accordance with the description of the procedure in the arrangements at a figure which has allowed an increased number of high scoring out of catchment boys to be admitted. It has already been made clear to the parties in a letter sent to them on 13 June 2018 that these are not matters within my jurisdiction.

5. The letter explained that an adjudicator is only able to consider whether the process for selection published in the arrangements is clear to parents, and that the criteria used to decide the allocation of school places are fair, clear and objective. If the arrangements themselves are unclear or unfair, this is something the adjudicator can make a determination upon. If the Committee of Reference is not following the procedure in the published arrangements, or is somehow manipulating the process to suit the school, this is not something an adjudicator can consider. The adjudicator's jurisdiction is not to police how the Committee makes its decisions – that is a matter for them. The functions of the adjudicator relate to the admission arrangements. But because the Code requires that the arrangements must set out the process for selection in a way that parents can understand, the question is whether that process is described sufficiently clearly in the school's arrangements. This determination, therefore, focuses on whether the arrangements are clear.

6. The objector raised a large number of additional points as further representations following the letter of 13 June. These centre on suggestions that the arrangements are unreasonable, and that they operate unfairly. I have therefore also considered whether the arrangements are reasonable and fair.

## **Procedure**

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

8. The documents I have considered in reaching my decision include:
- a. the objector's form of objection dated 8 May 2018, further representations, and all accompanying documents;
  - b. the admission authority's response to the objection and supporting documents;
  - c. the comments of the LA on the objection;
  - d. confirmation of when consultation on the arrangements last took place;

- e. copies of the minutes of the meeting at which the governing board of the school determined the arrangements;
- f. a copy of the determined arrangements, including maps of the relevant catchment areas;
- g. the terms of reference for the Committee of Reference and minutes of January 2018 meeting; and
- h. Determinations ADA3127, VAR612; ADA2608; ADA1419-21; and ADA1649-51.

### **The Objection**

9. The objector considers that the school's admission arrangements are unclear in respect of procedure for selection. The objector considers that this is because the Committee of Reference, which sets the AQS for entry to the school and the minimum score for the waiting list, sets these scores as it considers appropriate without proper reference to the oversubscription criteria published in the arrangements. The objector also makes two separate points in relation to applicants in respect of whom the school will receive Pupil Premium. On the one hand, he states that, giving priority to Pupil Premium applicants disadvantages other applicants living within the school's catchment areas. On the other hand, the objector also complains that the Committee of Reference, in setting the AQS at a level which is higher than – in his view - it should be, is disadvantaging Pupil Premium applicants as well as in-catchment applicants.

### **Background**

10. The school is a boys' grammar school in Rugby with a co-educational sixth form. It has a Published Admission Number (PAN) of 120 places in Year 7 (Y7) for 2019-2020. Admissions are based on a process of selection based upon children's academic ability. The school opened on its present site in 1878, and became an academy in September 2014. It was rated by Ofsted as Outstanding in 2017. In Rugby there is also a girls' grammar school (Rugby High School) and a mixed school (Ashlawn), which offers selective and non-selective places. There are a number of other non-selective secondary schools. The school is part of a consortium of schools using a common entrance test for entry to Y7 in September 2019. The consortium includes the other grammar schools in Warwickshire and Ashlawn, and the eight grammar schools in Birmingham.

11. The school's oversubscription criteria are summarised below. I have not set out any definitions which are not directly relevant to the objection. The arrangements contain a description and maps of the Eastern Area and the priority area. It may be helpful to the reader to state that the Eastern Area is an irregularly shaped area with falls entirely within the priority area which itself is a circular area with a radius of 10.004 miles centred on the Rugby Water tower.

***“Category 1 - Looked After Children and all previously looked after***

*children who achieve the Automatic Qualifying Score or above for this school, for this particular year of entry or between one and twenty marks below the Automatic Qualifying Score.*

**Category 2** - *Up to 10 places will be allocated to children who were in receipt of the Pupil Premium/Service Children Premium at the point of registering to sit the entrance test living in the Eastern area of Warwickshire or the priority circle, who achieve the Automatic Qualifying Score or above for this school, for this particular year of entry or whose scores are between one and twenty marks below the Automatic Qualifying Score for this school, for this particular year of entry (including any re-offers which are made from the waiting list in this category after Friday 1 March 2019).*

**Category 3** - *Up to 55 children living in the Eastern Area of Warwickshire who achieve the Automatic Qualifying Score or above for this school, for this particular year of entry.*

**Category 4** - *Up to 55 places will be allocated to children living in the priority circle (the centre of which is the Rugby Water Tower and has a radius of 10.004 miles – this also includes the Eastern Area) who achieve the Automatic Qualifying Score or above for this school, for this particular year of entry.*

**Category 5** - *Other children living inside or outside of the priority areas who achieve the Automatic Qualifying Score or above for this school, for this particular year of entry.*

**Category 6** - *Children who score below the automatic qualifying score, but above the minimum score for the waiting list for this school, for this particular year of entry.*

*Within all criteria first priority is given to those achieving the highest score in the entrance test. In the case of a tied score priority will be given to children who were in receipt of the Children in Care/Children Adopted from Care/Pupil Premium/Service Children Premium at the date of registering to sit the entrance test. Where there is a further need to split any category or group of children, places will be offered in accordance with distance between the child's home and school (shortest distance = highest priority). Distance will be calculated by the straight line measurement from the address point coordinate of the applicant's home address (as set by Ordinance Survey) to the centre point ("centroid") of the school (located at the centre of the doorway to the Headmaster's Office). (All distances are subject to changes which may occur with updates of mapping data). This applies equally to those living inside and outside the County's boundary. Where there is a further need to split any category places will be offered by random allocation, i.e. allocated using a computerised random number generator. This process will be carried out by Warwickshire Admissions on behalf of the school, in the presence of a witness from Legal Services who is independent of the school and the admissions process.*

12. Data from all of the children sitting the entrance test will be used to produce standardised scores. Weightings are applied to the scores achieved in Verbal Reasoning, Non-Verbal Reasoning and Numeracy tests. From Monday 15 October 2018 parents will be notified by post of their child's score for each of the three components and a total score. They are also notified of the AQS and waiting list scores for each Warwickshire grammar school and Ashlawn for the previous year where the same weightings have been applied for the three sections. These can be used for comparison purposes but there can be no guarantee that any child, including those scoring above the required score for previous years, will be offered a grammar school place.

13. Parents/Carers who have either registered with the Grammar Schools of Birmingham or have asked that their child's score be shared with the Grammar Schools of Birmingham will receive an additional letter showing their child's test score and the minimum score required for entry to those schools in the previous three years, together with the qualifying score for those schools who have set such a score. Warwickshire's Grammar Schools and the Grammar Schools in Birmingham may choose to use different weightings.

14. Key to the objection is the role of the Committee of Reference and the AQS. The arrangements state as follows:

***“The Role of the Committee of Reference***

*The Eastern Area Committee of Reference sets the Automatic Qualifying Score taking account of the applications for the individual schools and the number of places available. The Committee of Reference is a panel of Headteachers and teachers appointed according to terms of reference which are available from Warwickshire Admissions. The Heads of the selective schools in East Warwickshire or their representatives will be members of the Committee. The Committee also reviews the arrangements for any children with disabilities or Special Educational Needs.*

***Automatic Qualifying Score***

*Performance in the entrance test and the number of applications for the schools will be used by the Committee of Reference in each area to set the Automatic Qualifying Score. Above and at that standard a child will receive an offer from their highest named preference of selective school (subject to a place being available under the oversubscription criteria, and not being a late entry or having an offer from a higher preference of school).*

*The Committee will consider the descending score order and the number of children applying for each school (living within the priority areas and who registered before the closing date) and set the Automatic Qualifying Score as close to the planned admission numbers for the schools as possible.*

*The Committee will also consider the scores of children just below the Automatic Qualifying Score and determine for each school the*

*minimum score for the waiting list for that year.*

*All applications are considered against the oversubscription criteria, no special consideration will be given in the case of siblings”.*

15. The Committee also sets a lower AQS for the waiting list. Only applicants achieving this score, or a higher score, are permitted to be on the waiting list. Grammar schools are unique insofar as paragraph 1.18 of the Code provides that they do not have to fill all of their places if applicants have not reached the required standard.

## **Consideration of Case**

### The objection

16. The objector believes that the description in the arrangements of the role of the Committee of Reference and the setting of the AQS fails to conform to paragraph 14 of the Code, which states: *“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*. He also believes that the arrangements fail to conform to paragraph 1.17 of the Code which states: *“All selective schools **must** publish the entry requirements for a selective place and the process for such selection”*. The objector considers that the oversubscription criterion which gives priority to Pupil Premium applicants does not conform to both paragraph 14 of the Code and paragraph 1.8 of the Code, which states: *“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.”*

17. As stated above, there are three central points to the objection, namely that:

- A. The process for setting the AQS is unclear in the arrangements;
- B. The Committee of Reference is setting the AQS using criteria other than those which are set out in the arrangements; and
- C. The AQS for admission to the school in 2018 was set deliberately by the Committee otherwise than in accordance with the description of the procedure in the arrangements at a figure which has allowed an increased number of high scoring out of catchment boys to be admitted.

In this determination, for the reasons I have explained, I am considering point A. Points B and C are not within my jurisdiction.

18. The objector has produced evidence about the AQS and patterns of admission in recent years. In essence, the objector believes that in previous years the Committee has set the AQS for the school at a level which allows a higher number of applicants who live outside the catchment areas to be admitted; this (he says) is at odds with how the oversubscription criteria are

envisaged to work and results in an increased number of high scoring applicants who live outside the catchment areas being admitted; the objective (he says) is to raise the academic standards at the school; the head teacher of the school, or his representative, is a member of the Committee and is able to influence the level at which the AQS is set; the AQS will be set in this incorrect way again for admissions in 2019 because the same Committee will set the AQS. I have considered this evidence only with regard to the clarity of the arrangements. It has enabled me to compare outcomes against what is stated in the arrangements.

19. The objector's focus is on the arrangements for 2018, when the AQS was set at 208. This allowed 23 out of catchment boys to be admitted but only 39 boys living in the priority circle – whereas the oversubscription criteria provide that up to 55 places can be offered to boys living within the priority circle. The objector says that, had the AQS been set at 207, this would have allowed 16 more boys residing in the priority areas to have been admitted. Effectively, the objector's suggestion is that the Committee manipulates how it sets the AQS in order to allow the admission of applicants with higher scores in the test, and that this is to suit the interests of the school. The objector's central point is that the arrangements say that the AQS is set to match the oversubscription criteria, and so should it should be set at a level which would allow ten places to Pupil Premium applicants, 55 places to be offered to boys living within the Eastern Area, and 55 places to be offered to boys living within the priority circle where there are equal to, or more than, the maximum number of applicants for each category. He accepts that it may be the case that the number of applicants in each category could be less than the maximum number, for example, there may be less than ten qualifying Pupil Premium applicants, in which case the category cannot be filled.

20. Because the statistical information the objector had obtained suggested that the selection procedure does not work in practice as the arrangements suggest it should, he sought clarity as to how the AQS is actually set. The objector has been informed by the LA that the Committee sets the AQS "*as it feels is appropriate for the year of entry*". His view is that this is not what the arrangements say. The objector has also been told by the LA that the process is "*too complicated to explain and that the Committee of Reference had total powers to set the AQS*". Based upon the evidence he has compiled, he believes that, for admission to the school in 2018, the Committee set the AQS using "*arbitrary and not written powers*". His view is that the arrangements do not conform to the Code because they do not accurately publish the process for selection. The same point (he says) applies to the setting of the AQS for the waiting list.

21. The other parties to the objection have argued that evidence of past admission years has no bearing on the setting of the AQS for admission in September 2019, which has not yet been set. Whilst this may be true, I did nevertheless find this evidence helpful in explaining why the objector considers that the arrangements do not explain the process for setting the AQS clearly, and why he considers that the process operates unfairly. What the objector says is that, by raising the AQS by one point, the school 'loses' 3 – 6 applicants from the priority areas. He also considers that there is an inconsistency between the AQS for the school, as compared to the other

grammar schools.

22. The objector suggests that prioritising Pupil Premium applicants reduces the number of available places for boys living within the catchment areas, which is unreasonable. But he also argues that setting the AQS at a level which is higher than it should be disadvantages not only in-catchment applicants but also Pupil Premium applicants. The setting of the AQS in this way “*discriminates*” against these applicants.

#### *Additional information*

23. The objector has submitted a great deal of information in addition to the main objection, all of which I have read very carefully indeed. For example, he has suggested that the admission of more high scoring boys living outside the local authority area is unfair to neighbouring local authorities whose schools are “*losing*” these able pupils. He cites determinations ADA1419 -21 and ADA1649-51 in support of this argument. He considers that there are inconsistencies as to how the AQS is set as between the different Warwickshire selective schools. He has suggested that the Committee of Reference has regard to the order of parental preferences when setting the AQS. He has analysed the admission figures for previous years, and set out how he thinks places should have been allocated. The objector has also provided information which he says he received following a Freedom of Information Act request made to the LA; however, the LA has said that the information referred to is not the information provided to the objector. I have fully considered these representations. I have not summarised all of them in detail here because they are so extensive, and they all relate to the question of whether the arrangements are unclear, unreasonable and unfair.

#### **The school’s response**

24. The school sent a helpful response on 7 June 2018. The response contends that there is a misunderstanding on the part of the objector that the Committee is under an obligation to set the AQS at a level that would allow the full allocation of places under Category 4 of the oversubscription criteria. The school say that the Committee is instructed as follows:

- To take into account the number of applications to the individual schools and the number of places available.
- Performance in the entrance tests and the number of applications for each school will be used by the Committee in each area to set the AQS.
- The Committee will consider the descending score order and the number of children applying to each school living within the priority areas and who registered before the closing date, and set the AQS as close to the admission number as possible.

25. The school has explained that the Committee is not required to set the AQS at a level which enables 55 places to be offered to applicants falling within category 4, but ‘*up to*’ 55 places. There is no obligation upon the



Committee to set the AQS at a level that would allow that all Category 4 must be offered places before offering places to applicants falling within Category 5. *“Whilst the scores by those children living within the priority area are considered by the Committee of Reference, and this is absolutely a factor to be taken into account, the Committee has a discretion beyond this to consider performance in the exams, as otherwise there would be no need for a Committee and the score could be set automatically by the Admission Authority. For 2018 entry the lowest score achieved by a child admitted under Category 5 was 221. As such, for 2018 entry the AQS could have been set considerably higher and the places would still have been filled, illustrating that the Committee of Reference did indeed go out of its way to support the applications of local residents by setting an AQS which benefits children living in the priority area.*

*Setting an even lower AQS would have increased the number of offers made to those in Category 4 and reduced the number of offers made to those in Category 5, but the Committee has a duty to look at all of the exam results, and not just those of children living within the Priority Area, and to consider what is appropriate to ensure that children admitted are able to take part fully in the curriculum...*

*The Committee of Reference acts in an objective manner based on objective data and anyone with a conflict of interest cannot take part in the Committee. The fact that the scores can change from year to year does not make them less objective, simply a reflection of external issues such as the ability of the cohort of pupils. The same argument could apply to home to school distances. The distance which represents the final distance for a place offered will vary from year to year – it does not make that distance any less objective or unfair. It is clear from the admissions policy that the AQS will vary from year to year and that the grounds for setting the AQS are also clear and fair.”*

26. In essence, what is said is that the school is not restricted to accepting in-catchment applicants who do not reach what is considered to be the appropriate academic standard. The response also states that the school has *“exercised its right under paragraph 1.39A of the Code to prioritise pupils in receipt of Pupil Premium/Service Child Premium, and that this is not in breach of paragraph 1.8 of the Code”*. I am wholly in agreement with the school on this point.

27. The objector wrote to the school directly on 13 June 2018. I have seen and read a copy of this letter. In response to the objector’s letter the school wrote further to the OSA on 29 June 2018 as follows: *“It remains the school’s view that it is clearly documented in the Admissions Policy what will be considered by the Committee of Reference in setting the AQS. In 2017 the AQS was set at 209 and in 2018 at the AQS was set at 210. This increase simply reflects the higher numbers applying to the school and the consequent higher ability level within the cohort, clearly demonstrating that the objector’s allegations that we manipulate the qualifying score each year to improve the school’s performance each year is absurd. The Governing Body of Lawrence Sheriff School has the power to amend its catchment area or set an arbitrary high score by following the process in determining its admissions policy each year in the event it wished to favour high achieving pupils regardless of their*

*home address (as many grammar schools do). However it has not chosen to do so, instead it has prioritised pupils from within the catchment area who are able to benefit from a grammar school education”.*

28. This is a clear statement from the school. There have been allegations by the objector that the school manipulates the selection process. The school, in turn, suggests that the objector is seeking to use a complaint to the OSA, ostensibly on the basis of not understanding the policy, in order to force the governing board to take a difference stance with regard to its admissions in September 2018. I have made clear to the parties that I can only make a determination in relation to the arrangements for admission to the school in September 2019. I have focused exclusively on the arrangements for 2019 and their effect in reaching the conclusions I have reached.

29. On 13 July 2018, the school responded to all of the additional points raised by the objector. Again, I will not summarise this response in full, although I have read it carefully. The objector has raised a large number of points, and it was important that the school be able to respond to them. I am clear, however, as to the central points of the objection, and it is these points which are considered in my analysis. In relation to these central points, the school’s response of 13 July 2018 informs me that there has been a significant increase in applications over two years from 360-438. There has also been a variation in the patterns of applications, however the AQS has risen by only a single point. The school says that there have been no other objections to the arrangements based upon the suggestion that they are unclear. The school takes this to mean that thousands of applicants consider that the arrangements are clear.

30. I also note what has been said by the school about previous OSA determinations ADA1419-21 and ADA1649-51. These do not form binding precedents, although I have read the determinations. I am also mindful of the implications of the Greenwich judgement, and I note that Northamptonshire were consulted upon the school’s current arrangements and raised no objection to them. I have also read the advice from the Office of Qualifications and Examinations Regulation (OFQUAL) and the Joint Council for Qualifications (JQC) referred to by the school about not setting grade boundaries in advance (although I note that this refers to rather different examinations taken for rather different purposes). In essence, the school considers that the objector is trying to force the school to change its arrangements to what he wants them to be – which is to admit Rugby pupils only, regardless of whether they are able to cope with a grammar school curriculum.

#### The Response from the LA

31. The LA considers that the school’s admission arrangements meet the requirements of the Code. This is said to be because the arrangements set out:

- 11 + testing registration process and dates;
- the school application process and deadline;
- the requirements for being treated as an on time applicant;

- the results letter including a child's score and previous years; qualifying and waiting lists scores;
- the school's PAN;
- the oversubscription criteria to be used including a tie breaker; and
- a description/ map of the priority area.

32. The LA points out that the role of the Committee of Reference is referred to on page 9 of the arrangements. This states that information on the terms of reference can be made available from the Warwickshire Admissions Service. The arrangements state that "*The Eastern Area Committee of Reference sets the Automatic Qualifying Score*". The LA administers the Committee of Reference meeting and provides the committee with scores and preference data. The LA states that "*The Committee set the AQS and waiting list scores based on the information available at the time. There is no requirement in setting the QS to offer up to PAN, if the committee felt the standard was not appropriate, it could open with places on 1 March*".

33. The LA supplied the terms of reference for the Committee which state as follows:

***"Automatic Qualifying Score and Waiting List Range***

*The Committee of Reference will consider the cohort of children applying for the three Eastern Area grammar schools, the number of places available, the over-subscription criteria for each school, and any other factors they consider to be relevant. They will then set an automatic qualifying score for entry to each school and a waiting list score range for each school, in line with the determined admission arrangements for each school. Students scoring the minimum waiting list score and above are considered to be of grammar school ability, but will not necessarily be offered a grammar school place*".

34. The LA further explained that members of the Committee are presented with data which correlates to applicants' home authority and residence in the priority area. They are not told applicants' addresses. The data is pre-analysed to some degree to enable the members to understand the data. The setting of the AQS is "*entirely for the Committee. The oversubscription criteria are followed stringently when looking at the allocation of places and to some extent in setting the AQS*". The LA confirmed that it does not operate a first preference system (as has been suggested by the objector). I note that to operate such a system would breach the provisions of paragraph 1.9c of the Code.

35. The LA claims that the objector has not analysed the data as the LA or the Committee would have done. It is said that he has placed applicants in category 4 who would have been placed in category 3, and failed to consider places which could be offered under categories 1 and 2. The LA states that it is not mandatory that all available places in each oversubscription category must be filled before places can be allocated under the next category. The Committee considers "*the ability of the cohort and information about previous entry years*".

36. In response to a request from the OSA for further information, the LA replied on 13 July 2018 as follows: *“The Committee of Reference members were provided with the following information in relation to all candidates who registered, and sat, the Warwickshire 11+ Selection test, for the 2018 entry year. Data was also included where candidates sat the 11+ with the Birmingham Foundation of Grammar Schools and who consented for their information to be shared between the two parties, so that consideration could be given to applications submitted for grammar schools in both areas. Warwickshire operates a shared test with the Birmingham Foundation, provided by the Centre for Evaluation and Monitoring (CEM) at the University of Durham.*

*It must be stressed that members were not provided with any identifiable information – including applicant names, dates of birth or addresses – as part of the data that was considered when establishing qualifying scores.*

*Prior to the face to face meeting then held in January 2018, the LA manually analysed all of the above data and, in line with the over-subscription criteria for each grammar school within the county, highlighted how many offers could be made within each of those categories (ie: we work our way down the list, which is in descending score order, and physically ‘colour in’ where a potential grammar school offer can be made, in line with the relevant criteria).*

*For example:*

*Using the over-subscription for Lawrence Sheriff School, we may work our way down the list and note the following:*

*Category 1 – no applicants are eligible to be allocated this criteria (LAC)*

*Category 2 – no applicants are eligible to be allocated this criteria (PP)*

*Category 3 (up to 55 places available) – 55 places could potentially be offered, down to an 11+ test score of 220*

*Category 4 (up to 55 places available) – if 55 places were offered in this category then this would mean that the 110th offer (as no offers to make in first two categories) would be to an applicant achieving an 11+ score of 200.*

*The Committee would be asked to consider this and would be likely to concur that this score would not be in line with the ability levels expected within the school, and in line with the rest of the cohort.*

*Applicants achieving such a score would likely struggle in the grammar school environment and it would not be appropriate to make offers down to such a low score. The Committee, after considering all of the available data, may agree that offers within this category can be made down to an 11+ score of 210. This would give 45 potential offers within category 4, leaving a total of 20 places to fill using from the remaining categories (5 and 6). The AQS would then be set at 210.*

*The above data was presented to Committee members and the potential offers discussed, in line with the expected ability ranges of the schools in question. Where any member challenged the ability level of the provisional AQS for any school, the data was re-considered during the Committee of Reference meeting and alternatives noted.*

*Where possible, we will offer as many places as possible within each over-subscription criteria, however, it has to be noted that the ability of the cohort, and the expected levels of ability which are required by each of the grammar schools individually, also has to be taken into account.*

*It should also be noted that, in order to make the process as fair and transparent as possible, the Committee of Reference members include representatives from non-selective schools within the county, who are able to question and challenge any part of the local review process at any time. This is noted within the minutes of the Committee meeting that was held in January.*

*Additionally, the process as outlined above is administered in the same way for all six of the grammar schools within the county”.*

37. The LA also indicated that it considers that the school's explanation of the operation of the Committee set out in their letter dated 7 June 2018 is a clear description of how the Committee operates. Furthermore, it is the LA's view that the arrangements comply with the Code and are clear, fair and objective. I found the LA's further information very helpful indeed, and I am grateful to the officer for providing this.

38. On 23 August 2018 the LA sent a further response commenting on the additional representations made by the objector. I have read this, but will not summarise it in full here. What the LA does say is that, if the AQS had been set at 207 for admission in 2018, “... *this could have meant up to 16 applicants being offered places at the school who achieved scores of 209, 208 or 207. That is 16 students who could, potentially, require additional academic and pastoral support – for which the school would receive no additional funding -, as they may not be able to thrive in a grammar school environment. The school, as well as Members, did not feel it appropriate to place the school in such a potential situation.*

*In relation to Category 2 of the school's over-subscription criteria, it is correct that a certain percentage of the cohort may be admitted who have achieved scores lower than the established QS. However, the condition placed on those students is that they bring with them additional funding that is associated with the Government's Pupil Premium scheme, thus ensuring that the school can put in place appropriate academic and pastoral support for those students, who may struggle initially, in order to assist them in fulfilling their true potential.*

*[the objector] states that such reasoning is 'nonsense' and 'cannot be backed up by any educational expert'. The local authority would ask the adjudicator to disregard the personal opinion of the objector, unless he is calling such decision making as 'nonsense' because he, in fact, has professional qualifications which would substantiate such a claim. Additionally, the decisions made by the Committee of Reference are, indeed, taken by 'educational experts', as all Members are either Head teachers or Principals (or their representatives) of schools within the county.*

*To conclude on this point, .... the objector's understanding of a fair, clear and objective set of admission arrangements, including over-subscription criteria, are those which do not consider applicants who reside outside of a school's allocated priority/catchment area. If this is the correct interpretation of the objector's statement, then such a conclusion must be deemed as illogical, as such an action would clearly be in breach of par 1.14 of the School Admissions Code".* The LA notes that this is the only complaint that the local authority is aware of where concerns have been raised by an individual in relation to the 2019 entry admission arrangements for Lawrence Sheriff School, their content and their clarity.

### Analysis

39. The objector claims that the arrangements fail to conform to paragraph 14 of the Code because they are unclear. Having considered the information provided by the objector relating to the outcome of the 2018 admissions process alongside the school's arrangements for selection, I start by saying that the school has chosen to include in its arrangements a reasonable amount of information about how and why the required score to be eligible for a place is determined. Other schools offer much less. There is no requirement to set out this detailed information in order to conform with the requirements of the Code which simply require at paragraph 1.17 that the entry requirements for a selective place and the process for such selection are published and not the detailed rationale for and derivation of those requirements. Again, paragraph 1.31 requires that tests themselves "**must be clear, objective and give an accurate reflection of the child's ability and aptitude**" but that is rather different from a detailed explanation of how the AQS is set. However, having chosen to provide more information (which I am sure is helpful to many prospective applicants and their parents) the school must ensure that the information provided is clear.

40. I have to say that personally I did not understand from reading the arrangements why the AQS was set as it had been in previous years. I only properly understood this when I received the school's response to the objection. The LA's worked example was also very helpful. From the information I have received, I am still unclear about the process. On the one hand, it seems that the aim is to set the AQS at score which follows the order of priority in the oversubscription criteria, and allows as many Pupil Premium and in-catchment applicants to be offered places as possible. On the other hand, the AQS is set at a score which is said to be the cut-off score which the Committee considers is the lowest appropriate score for admission to this grammar school. But the Committee also determines a minimum score for the waiting list, which it seems to me must actually be the lowest appropriate score for this purpose and which interpretation is supported by what the terms of reference for the Committee say.

41. As I have explained, the methodology for the setting of the AQS and the procedures followed by the Committee of Reference are not matters within my jurisdiction. It is not for me to comment upon how the Committee of Reference (or any other person) sets the AQS or waiting list score as long as the applicants' parents are told what these scores are before the deadline for making an application for a place at the school.

42. However, the clarity of the admissions arrangements is something which does fall to me to consider. The reason I was unclear about how the AQS is set is that I could not understand the *reasons* for not giving priority to the maximum number of applicants permitted by the oversubscription criteria where there were more applicants residing in the catchment areas than places available. Focusing on Category 4, as the objector does, I could see that the wording refers to “*up to*” 55 places, but the relationship between the words “*up to*” and the setting of the AQS were not obvious to me from the arrangements themselves. I do therefore understand why this is not clear to the objector. I come to this issue having looked at many sets of admission arrangements.

43. Generally, when oversubscription criteria are set out in priority order, the expectation is that they will be followed in priority order so that each category is filled before moving on to the following category. This will be the case where there are more than the maximum number of eligible applicants to fill a particular category (in the case of Pupil Premium applicants, for example, there may be less eligible applicants than the maximum number of places available). Where an oversubscription criterion uses the words “*up to*”, this serves simply to determine the maximum number.

44. Looking at the wording in the arrangements alongside what I now know to be how the AQS is set by the Committee of Reference, I find that there is information missing from the arrangements which renders them somewhat short of being clear. The arrangements state that “*Performance in the entrance test and the number of applications for the schools will be used by the Committee of Reference in each area to set the Automatic Qualifying Score*”. This statement is both correct and clear. The arrangements continue with “*The Committee will consider the descending score order and the number of children applying for each school (living within the priority areas and who registered before the closing date) and set the Automatic Qualifying Score as close to the planned admission numbers for the schools as possible.*”, which is also both clear and correct. They then say that “*All applications are considered against the oversubscription criteria*”, but because this is not the only factor considered, this statement could be misleading even though it is correct as far as it goes. The reason for this is that what the arrangements do not say is that the prevailing factor will be the level of ability appropriate for entry to the individual selective schools.

45. I accept that, if one follows the arrangements to the letter, it might be possible to arrive at an understanding of the fact that there is some form of discretion being exercised by the Committee because Categories 2, 3 and 4 all use the words “*up to*”. But because there is no explanation of how this part of the process actually works, the arrangements are not clear. The words “*up to*” could equally serve the purpose of preventing the admission authority being required to exceed the maximum number of applicants within each category where there is more than one applicant achieving the same test score.

46. The description of the role of the Committee of Reference in the arrangements is of no help because all this says is that “*The Eastern Area Committee of Reference sets the Automatic Qualifying Score taking account of the applications for the individual schools and the number of places*

*available*". The arrangements mention the terms of reference for the Committee but these terms of reference are not published as part of the arrangements and, in any event, they shed no light on the point raised by the objector. Even if these terms of reference were part of the arrangements, they would not make it any clearer that the descending order of test scores and the oversubscription criteria are not the only factors being considered in determining the AQS. There is mention of "*any other factors they [the Committee] consider to be relevant*", but this would not add any clarity to the arrangements even if the terms of reference could be construed as being part of them.

47. On balance, therefore my finding is that the arrangements are unclear as to how the process for setting the AQS actually works. I therefore uphold this part of the objection on the basis that the arrangements do not conform to paragraph 14 of the Code. This is a point which can be remedied by simply explaining the inter-relationship between the function of the Committee and the oversubscription criteria, as the school has done so clearly in its response to the objection. The only revision which would need to be made to the arrangements for 2019 would be for them to make clear that, whilst the Committee considers the test scores and oversubscription criteria, it has an overriding discretion to set the AQS and the minimum score for the waiting list as it considers appropriate to ensure that those offered places, and those on the waiting list, have reached an academic standard which will enable them to benefit from a grammar school environment.

48. The objector claims that the arrangements are unreasonable and unfair, and so in other respects fail to conform to paragraph 14 of the Code. These are two separate points, and I will firstly consider whether the arrangements are reasonable. Admission authorities are able to have any reasonable oversubscription criteria. Indeed, it is possible for designated grammar schools to simply offer places to the highest scoring applicants without having a catchment area at all. It is reasonably common for admission authorities of selective schools to have a committee, or other such body, to carry out functions such as those carried out by the Committee of Reference. The school's arrangements appear to me to offer a balance between offering priority to local boys and some disadvantaged children whilst maintaining a standard of selection deemed appropriate for grammar school entry.

49. The school's response to the objection demonstrates that both of these elements have been considered carefully, and explains the role and purpose of the Committee of Reference. The LA's explanation of how the Committee actually operates in practice also indicates that what the members do is try to admit as many applicants given priority by virtue of the oversubscription criteria as are able to, whilst also ensuring that places are offered to applicants achieving an appropriate grammar school standard. The objector asserts that it is nonsense to suggest, for example, that applicants who score over 210 will be fine, whereas applicants who score 207 will struggle at the school, and suggests that I seek an educational expert to comment on this. However, the school has appointed the Committee of Reference to exercise the function of establishing the AQS. The members of the Committee appear to me to have both educational expertise and knowledge of the local area. There is nothing unreasonable in appointing the Committee of Reference to



set the AQS as the school has done. These are not a set of arrangements which no reasonable admission authority would have drawn up in light of the ethos of the school and all other relevant factors, which is the test I must apply. I do not uphold this part of the objection.

50. I now consider whether the arrangements operate unfairly. I can understand why the objector considers this to be the case. I do not wish to set out details of the objector's personal circumstances in this determination because it will become a public document, and I have been careful not to do so. I understand those circumstances, and I note the objector's evident frustration in attempting to seek answers from the LA about the operation of the Committee of Reference. Equally, though, I sense the frustration of the school and the LA who have taken a considerable amount of time in responding to the large number of points raised in the objection, and seem to feel that no explanation provided will be accepted by the objector.

51. Like the objector, I was unclear about how the selection arrangements operate until this was explained to me. I am now clear about the role of the Committee and how the AQS is set. My view is that this is not an unfair process. In any selection process which does not simply allocate places in rank order of the test scores, there must be a method of setting the qualifying score for admission to the school. However, any applicant who is disappointed by not being offered a place may consider the method of selection to be unfair where the description of the methodology for setting the AQS is described in a way that is unclear. The disappointment will be exacerbated by a feeling that the process is not being conducted properly, or not as they had been expecting.

52. In considering the question of unfairness, it is important to consider to whom the arrangements operate unfairly and why. The argument made by the objector is that the arrangements operate unfairly to local residents in the catchment areas who miss out on the offer of a school place because the AQS is set at a level which does not lead to the admission of the maximum permissible number of local applicants. My view on this point is that the setting of the AQS in the way that the Committee does is not unfair to these applicants provided it is clearly explained in the arrangements that this is how the process of selection operates. The evidence provided by the objector does indicate that the school is offering more places to out of catchment applicants than might have been expected from reading the arrangements. But the bar must be drawn somewhere. Where it is reasonably drawn, any potential unfairness can only arise from a lack of clarity, as opposed to the selection process itself. My conclusion, therefore, is that the arrangements are unclear which makes them appear unfair, as opposed to operating in a way that actually does create a substantive unfairness.

53. The objector also argues that the arrangements fail to conform to paragraph 1.17 of the Code, which requires selective schools to publish the process of selection. The school has published its process for selection in the arrangements, and so this argument cannot be correct in its purest form. However I can see the argument that if a school does not publish its entire process for selection, or to put it another way, its *true* process for selection, it could be said that the arrangements do not conform to paragraph 1.17. On

balance, however, I take the view that the arrangements for selection are published. They have, in fact, been published in quite a lot of detail.

54. Both the school and the LA appear to consider that it should almost be taken as read that the Committee of Reference has a discretion; its *raison d'être* is to determine the appropriate standard of selection; if the selection process merely consisted of looking at the descending order of the scores and matching them to the oversubscription criteria, there would be no need for a committee; and that the arrangements say as much as they need to say about how the AQS is set. I do not agree with the LA and the school that the arrangements say as much as they need to about the setting of the AQS, and so I have found that the arrangements are unclear. But, on balance, I do not accept the argument that because the arrangements are unclear on a particular point this means that the school has not published its arrangements for selection. For this reason, I do not uphold this part of the objection.

55. I do not agree with the objector's argument that allocating places to applicants in respect of whom the school will receive Pupil Premium is unfair because this reduces the number of available places for boys living within the catchment areas. As the school has said, it has exercised its right under paragraph 1.39A of the Code to prioritise these pupils. It is entitled to do so, and this is not in breach of paragraph 1.8 of the Code. Therefore I do not uphold this part of the objection.

56. In relation to the objector's suggestion that the arrangements operate unfairly to applicants for whom the school will receive Pupil Premium and in-catchment applicants, I do not consider this to be the case. The arrangements offer priority to these applicants. It is reasonable to place constraints upon this priority in terms of limiting numbers and imposing requirements in relation to achieving a specific academic standard in the form of an AQS. It is not unfair not to afford priority to applicants who do not achieve the required academic standard. I am satisfied from what the school has said, that the arrangements are neither unfair nor unreasonable. They are simply unclear in one aspect which can be simply remedied. Therefore I do not uphold this part of the objection.

### **Summary of Findings**

57. My findings are that the parts of the objection relating to the allegation that the Committee of Reference is setting the AQS using criteria other than those which are set out in the arrangements; and that the AQS for admission to the school in 2018 has been set by the Committee otherwise than in accordance with the description of the procedure in the arrangements at a figure which has allowed an increased number of out of catchment boys to be admitted are both not within my jurisdiction.

58. I find that the arrangements are unclear because they do not explain how the procedure for setting the AQS and the waiting list operates in relation to the oversubscription criteria. The arrangements lack a key piece of information which is needed in order to make them clear. For this reason, I find that the arrangements do not conform to paragraph 14 of the Code, and I uphold this part of the objection. I do not find the arrangements to be

unreasonable or unfair.

59. I find that the arrangements do not fail to conform to paragraph 1.17 of the Code because the school has, in fact, published its process for selection. There is a need to provide further detail in order to ensure that the selection process is described more clearly, but this does not mean that the process has not been published. Therefore I do not uphold this part of the objection.

60. I find that the arrangements do not fail to conform to paragraph 1.8 of the Code by giving priority to applicants in respect of whom the school will receive Pupil Premium/Service Child Premium. Therefore I do not uphold this part of the objection.

61. I find that the arrangements do not fail to conform to paragraph 14 of the Code on the basis that they are unreasonable in giving priority to applicants in respect of whom the school will receive Pupil Premium/Service Child Premium because this means that fewer applicants from the local catchment areas will be offered places at the school. The school is entitled to give priority to these applicants, and there is nothing unreasonable about an admission authority choosing to prioritise applicants who might be disadvantaged in this way. Therefore I do not uphold this part of the objection.

62. Finally, I wish to record that the objector has submitted a great deal of information, which has meant that this objection has been time-consuming to respond to. I am grateful for the time, cooperation and professionalism of the school and the LA at all times in their dealings with me.

### **Determination**

63. 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 2019 determined by the governing board of Lawrence Sheriff School, Warwickshire.

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

Dated: 27 September 2018

Signed:

Schools Adjudicator: Dr Marisa Vallely