



DETERMINATION

Case reference:	ADA3350
Objector:	An individual
Admission Authority:	The Academy Trust for Chelmsford County High School for Girls
Date of decision:	12 December 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 Chelmsford County High School for Girls, Essex.

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

By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative date is specified by the adjudicator. In this case, I determine that the arrangements must be revised no later than 28 February 2019.

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 an individual (the objector), about the admission arrangements (the arrangements) for Chelmsford County High School for Girls (the school), a selective secondary academy for girls aged 11 to 18 for September 2019.

2. The local authority for the area in which the school is located is Essex County Council (the local authority). The local authority is a party to this objection. Other parties to the objection are the objector and the school.

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 by the governing board on behalf of the academy trust, which is the admission authority for the school, on that basis on 27 January 2018. The objector submitted his objection to these determined arrangements on 22 February 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. the objector's form of objection dated 22 February 2018 and subsequent correspondence;
- b. the admission authority's response to the objection and supporting documents;
- c. the comments of the local authority on the objection and supporting documents;
- d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2018;
- e. a map of the area identifying relevant schools;
- f. Department for Education guidance on applications for school admission from overseas children, as updated 1 November 2017;
- g. confirmation of when consultation on the arrangements last took place;
- h. a copy of the minutes of the meeting at which the governing body of the school determined the arrangements
- i. determination ADA3349 Alcester Grammar School; and
- j. a copy of the determined arrangements.

The Objection

6. The objector raised the following points in his objection:

- a. whether the use of the same test of ability for later additional sittings of the school's selection test is compliant with paragraph 1.31 of the Code;

- b. whether the provisions relating to use of catchment areas are in compliance with the Code. The objector did not specify which provision of the Code he considered engaged but I informed the parties that I considered that paragraph 1.14 may be relevant;
- c. whether the provisions relating to an applicant's permanent residency, to an applicant's right of residence in the UK, to late registration for testing and to the restriction on those wishing to take an entrance test for another school being held on the same day as the school's entrance test are compliant with the Code. The objector did not specify which provision of the Code he considered engaged, but I informed the parties that paragraph 14 may be relevant.

7. I have informed the parties that each of these matters is within my jurisdiction. I also informed them that a number of other matters raised by the objector are not within my jurisdiction, and these are:

- a. whether the requirement of minimum grades for progression of pupils on roll at the school from Year 11 to Year 12 is lawful. This relates to the progression of a registered pupil from one year group to another and not to the admission of a pupil to the school for the first time and hence not to the admission arrangements of the school;
- b. the following matters which do not concern the question of whether or not the determined arrangements conform with the requirements relating to admissions:
 - i. complaints that test material is available on other websites and that no action is taken against those sites while action is taken against 11plus.eu, a website registered to the objector;
 - ii. matters relating to the objector's disputes with a number of other parties.

Other Matters

8. When I reviewed the arrangements, I was concerned that they may not conform with aspects of the Code and statute. I therefore informed the parties that I had decided to use my power under section 88I of the Act to consider the arrangements as a whole. The matters of concern to me were:

- a. that the term "sibling" which is used in the arrangements is not defined there. This may breach provisions which require admission arrangements to be clear;
- b. that the arrangements fail to set out the process by which a parent may request admission of their child to a year group which is not the normal one for their age, as required by

paragraph 2.17 of the Code.

Background

9. The school converted to academy status on 1 January 2011. By virtue of its former designation as a grammar school and section 6(3) of the Academies Act 2010, it is permitted to continue to select all its intake on the basis of high academic ability.

10. Under the school's admission arrangements for September 2019, places at the school are offered to those girls scoring highest on a selection test, in descending order of their score. For most places priority is given to girls living in the school's catchment area and for the remainder to girls with the highest scores with no regard to their home address as I explain below. The school uses the same test as a group of other selective schools which are named in its admission arrangements. Parents are permitted to register with more than one of these schools and their child's score on the test, which is taken only once, will then be shared between them.

11. There are two test papers, each lasting approximately 60 minutes. Each test contains a mix of the following elements:

- Vocabulary, comprehension, verbal reasoning
- Numerical reasoning
- Non-verbal reasoning

The verbal reasoning test contains literacy and comprehension questions. The test papers are provided by the Centre for Evaluation and Monitoring (CEM) at the University of Durham. Parents are encouraged to use familiarisation papers available through CEM to prepare their daughters for the selection test.

12. The school admits 150 girls to Year 7 (Y7) and these places are regularly heavily oversubscribed. The arrangements define a cut-off mark based on the lowest score in the selection test for which a place was offered in the previous year. The cut-off mark is set at two per cent below this figure.

13. The arrangements give first priority to looked after and previously looked after children who score at or above the cut-off mark. In making this priority one which applies to all such children wherever they live the school has responded to a previous determination, ADA3278 published on 21 September 2017, in which the adjudicator found that the previous practice of limiting this priority to those living in a defined geographical area was unlawful. The next 120 places are then allocated to girls who live within 12.5 miles of the school, with up to 10 of these places being prioritised for children who are in receipt of the pupil premium. The remaining places are allocated in descending score order, irrespective of where the child lives.

14. The arrangements begin by making a statement concerning those girls who are "*eligible for entry*". This section of the arrangements contains

the following description of the position of children who might apply for a place outside their normal year group:

“No children who will be younger than eleven years of age on 31 August following the taking of the test will be eligible for admission unless they fulfil the LA’s criteria for early entry – ie they are following the full Year 6 curriculum in the year in which they take the test. No children who will be twelve years of age or over on 1 September following the test will normally be allowed to take the test and gain admission to Year 7 at Chelmsford County High School.”

15. Having described the use of the same selection test on the same day by the group of schools which includes Chelmsford County High School for Girls, and the facility which is offered of one sitting of the test for the purpose of admission to more than one of them, the arrangements go on to say:

“Test results will only be shared with those schools within the group who hold a valid registration for that child, in accordance with the school’s admissions policy. Registration for the CCHS Entrance Test will close at 4pm Wednesday 27 June 2018. Late registration will not be accepted.....Applicants who wish to attend an entrance test for another school being held on the same day as the CCHS Entrance Test will not be permitted to sit the CCHS Entrance Test on an alternative day. This will not be deemed as an exceptional circumstance.”

16. A further section sets out the school’s requirements for an applicant to demonstrate their eligibility to be considered for a place on the basis of their place of permanent residence. This states the following:

“Only one address can be used for the application. In applying these admission arrangements ‘permanent home address’ will be defined as the permanent place of residence of the parent with whom the pupil spends the majority of the school week (Sunday to Thursday nights inclusive) at the time the online registration form is submitted for the CCHS Entrance Test, or the date it is received by the Admissions Office, if applying by post. The exception to this is if the family are returning from abroad to a previous permanent place of residence within the priority area (documentary evidence will be required), are members of the Diplomatic Service or Armed Forces.

Permanent residency is defined as owner occupancy or long-term letting contract (minimum of 6 months) of a residential property; evidence will be required in the form of a UK photocard driving licence (if applicable), council tax bill and two utility bills dated from January 2018 to the date of registering for the entrance test, one of which must be the electricity bill showing actual usage. If in rented accommodation, a copy of a signed valid long term tenancy agreement must be provided covering the period from the time the online registration form is submitted for the CCHS Entrance Test, or the date it is received by the Admissions Office, if applying by post,

to the start of term in September 2019. The Governing Body may refuse to base an allocation on an address which might be considered only a temporary address.

In the case of a recent change of address prior to registering for the CCHS Entrance Test, additional evidence will be required in the form of proof of exchange of contracts or a signed valid long term tenancy agreement, as defined above. This is in addition to the UK photocard driving licence (if applicable), council tax bill and two utility bills dated from January 2018 to the date of registering for the entrance test, one of which must be the electricity bill showing actual usage.”

Elsewhere in the arrangements there is the statement:

“The offer of a place is conditional upon the child being continuously resident within the priority area as her permanent home address at the time the online form is submitted for the CCHS Entrance Test, or the date it is received by the Admissions Office, if applying by post, to the date commencing the start of term in September 2019.”

17. The arrangements also say how eligibility for a place at the school must be demonstrated in relation to a student’s right of residence in the United Kingdom, in the following terms:

“The student must be able to show to the school’s satisfaction that she has a right to reside in the United Kingdom and is entitled to state education. Overseas applicants must hold a full British or EU passport.”

18. The arrangements set out the way places are allocated in the event of oversubscription, which I described earlier. If there is a tie for the last available place because more than one candidate has achieved the same aggregate (standardised) score on the tests, priority will be given firstly to any looked after or previously looked after child, followed any applicant in receipt of the pupil premium and final to “siblings”. Distance is used as a further tie-breaker, followed finally by the drawing of lots.

Consideration of Case

19. I shall consider first those matters which were raised by the objector, in the order in which I set them out above. I come first to the elements of the objection concerning the use of the same test for later additional sittings of the school’s selection test, and concerning the use of a catchment area.

20. In making his objection, the objector quoted the following section of the school’s arrangements:

“Applicants who are ill, or owing to other exceptional circumstances are unable to take the test on the main date, may be permitted to take the test at a later date, subject, in the case of illness, to the provision of sufficient evidence in the form of a

medical certificate from the family doctor, hospital consultant or specialist and in any other circumstances to a written explanation of the reason.”

He says that allowing candidates to take the same test on a later date than the one on which it was taken by most others introduces unfairness into the arrangements, and that this constitutes a breach of paragraph 1.31 of the Code.

21. Paragraph 1.31 of the Code says the following:

*“Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child’s ability or aptitude, irrespective of sex, race, or disability.”*

22. The objector went on to say the following:

“I challenge the concept of a catchment area.....There is no logic for a catchment area for this school.....This is unfair to children who want to attend the school.....Grammar schools are special, they are not available in all areas.....Every child should have the same opportunity to attend a grammar school, based upon ability.”

23. A letter dated 4 May 2018 was sent to the objector and the other parties by the Office of the Schools Adjudicator (OSA) explaining the process which I propose to follow in this case. The letter explained that a particular procedure has been developed by the OSA to handle multiple objections which raise many similar points, and that eleven objections had been made to the arrangements of other selective schools raising a number of similar points to those made in the objection to the arrangements for Chelmsford County High School for Girls. It went on to inform the parties that one of the other schools subject to an objection was Alcester Grammar School in Warwickshire, and that the objection to its arrangements would be the first to be considered. Those relating to the other schools, including Chelmsford County High School for Girls, would be considered once the objection concerning Alcester Grammar School (ADA3349) had been determined. The arguments and points set out in that determination of the same matters could be applied, if appropriate and subject to the submissions of the parties to those cases, to matters raised in other objections.

24. A letter dated 1 August informed all the parties that the determination in ADA3349 had been published on 27 July 2018 and explained how the objections to the admission arrangements of Chelmsford County High School for Girls would be considered. The letter stated that,

- (i) concerning the use of the same test for selection by ability for later additional sittings:

“...the adjudicator notes that the same or substantially the same

issue has been considered and determined in ADA3349, dated 27 July 2018, a copy of which is attached. The whole determination should be considered but paragraphs 18 to 48 specifically address this point. On initial consideration it appears to the adjudicator that the conclusions and the reasons given in ADA3349 apply equally to this issue as raised in the current objection.” and

(ii) concerning the use of a catchment area:

“...the adjudicator notes that the same or substantially the same issue has been considered and determined in ADA3349, dated 27 July 2018. The whole determination should be considered but paragraphs 51 to 52 specifically address this point. On initial consideration it appears to the adjudicator that the conclusions and the reasons given in ADA3349 apply equally to these issues as raised in the current objection.”

For both, the letter invited recipients to make representations as to why in the current objection the issues ought to be considered or determined differently.

25. The local authority declined to comment further, and the school stated that it had noted ADA3349 and that it did not believe that these matters should be determined differently in the current objection.

26. The objector responded to the letter dated 1 August 2018 on 15 August 2018, and provided further material on 21 August 2018. Together, these comprised a document headed “Forensic Analysis”, together with three attachments. This document sets out reasons why the objector disagrees with the consideration and conclusions in the determination of his objection regarding Alcester Grammar School (ADA3349). It is clear that the objector considers that ADA3349 was wrongly decided on the first of the issues above, that concerning the use of the same test for later test sittings: his submissions do not touch on any of the other issues identified.

27. ADA3349 was published on the OSA website on 27 July 2018. Decisions of the adjudicator are binding on the admission authority in question and any other person or body. There is no provision in the statutory framework for an appeal from an adjudicator’s determination. A person who considers that the decision is defective may apply to the High Court for leave to bring proceedings for judicial review and if leave is granted may bring such proceedings. No application to bring proceedings for judicial review had been made at the time of completing this determination. Consequently ADA3349 stands as published.

28. ADA3349 does not constitute a precedent and I am required to consider this objection on its own merits. I have considered all of the points raised by the objector in relation to ADA3349. In particular, I have considered whether any point raised would cause me to consider that the issues identified as being the same or substantially the same issue in the present case should be looked at differently from the way they were looked

at in ADA3349.

29. I find that the points raised by the objector regarding ADA3349 do not lead me to consider that any point in ADA3349 was wrongly decided. A number of the points made in the “Forensic Analysis” are based on the assertion that the injunction proceedings brought against the objector by Warwickshire County Council showed that there was a real risk of the test process being compromised if children could remember information from the tests. In fact, as the adjudicator explained at paragraphs 37 and 38 of ADA3349, that was not the finding of the Court. The objector’s further criticisms of the evidence given to the Court that were referred to in ADA3349 do not persuade me that any of the factual conclusions reached in that case were wrong.

30. I note that the objector does not consider that the work of Gathercole and Alloway referred to in paragraphs 25 and following of ADA3349 supports the conclusion that there is only a minimal risk of recall of specific content. I have no reason to form a different view than that that work confirms that children have a more restricted working memory than adults. There is no evidence that the types of question that are commonly asked in the 11+ now are more likely to be recalled than those that were in use at the time of publication of that work, and for those reasons together with the other evidence referred to at paragraphs 28 and 29 of ADA3349 I am satisfied that in normal circumstances the risk of specific recall would be minimal.

31. The objector has made some new factual points. He says that he did not, as the adjudicator in ADA3349 had understood, ask his nephew questions soon after the test had finished but after he had returned home. He believes that “much later in the day” is the optimum time to ask questions. In his arguments, the objector says he disagrees that “straight” after the test is the optimum time and I note that the adjudicator in ADA3349 referred to “soon” after the test which is somewhat different. I have no reason to form a different view than that recall is likely to be best soon after the test, or that in normal circumstances children are not questioned at this point, so this does not lead me to form a different view from that reached by the adjudicator on this point in ADA3349.

32. I further note the objector’s assertion that some families are not aware that the same test is reused. Assuming that to be correct, it does not detract from the fact pointed to by the adjudicator in ADA3349 that competition will be an inhibiting factor in cases where they are aware. Nor does it have any impact on the amount of content that a child can remember. The objector says that the adjudicator cannot know what is going on “under the radar”. That is correct, but if – as he says is the case – he is not able to tell me, then I am not able to take it into account.

33. The objector states that “*major publishers sell authentic CEM 11+ mocks*”. The word “authentic” is his choice of word. There are no “mock” papers produced or authorised by CEM; there are only the familiarisation papers referred to above. Otherwise the point the objector makes relates to his understanding of the injunction proceedings, and is dealt with in

paragraph 29 above.

34. The objector also disagrees with a number of the conclusions which were reached in ADA3349 about the likelihood of information being passed on, the likely impact of a child knowing in advance what one or more of the questions would be, the difficulties of ranking where different tests are used and the level of accuracy that is achievable in tests of ability. I have considered the points made by the objector, but I disagree with him for the reasons that were set out in ADA3349.

35. The objector has not given any reason or reasons why the facts in the present case mean that it should be considered differently to ADA3349 and has not addressed the further issues raised in the present case at all. Insofar as the issues decided in ADA3349 are the same or substantially the same as those arising in the present case I will, as set out below, adopt them in my consideration of this matter. A copy of ADA3349 is attached as Appendix 1 to this determination and is available on the OSA website via this [link](#). I will refer to the relevant paragraphs in respect of each issue considered below.

36. The objector's complaint that the use of the same test for selection by ability for later additional sittings is not compliant with paragraph 1.31 of the Code is made in identical terms to those of ADA3349. In deciding this issue, I adopt the reasons and conclusions set out in paragraphs 18 to 48 of ADA3349. It is not necessary to repeat those paragraphs here. I do not uphold this part of the objection.

37. In ADA3349, the adjudicator considered the objection that the catchment area for Alcester Grammar School did not meet the requirements of paragraph 1.14 of the Code, which is the paragraph within the Code setting out the requirements concerning catchment areas. It says:

*“Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.”*

38. I have set out above the wording in which the present objection to the use of a catchment area by Chelmsford County High School for Girls was expressed. Although the objector did not refer to paragraph 1.14 of the Code in his objection concerning Chelmsford County High School for Girls, it is the relevant provision of the Code concerning the use by a school of a catchment area. The issue raised by the objector is the same as that considered in ADA3349. Both schools employ a catchment area, referred to in the arrangements as a priority area, which is defined in terms of a distance from a specified point, although these are inevitably not identical as the schools are located in different places.

39. In deciding this issue I adopt the reasons and conclusions set out in paragraphs 51 and 52 of ADA3349. It is not necessary to repeat those paragraphs here. I do not uphold this part of the objection.

40. Paragraph 14 of the Code says:

*“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

The objector has raised a number of points for which I believe this provision of the Code to be relevant and I have informed all of the parties that this was my view. The objections raised concern the following aspects of the arrangements, the wording of which I set out above:

- (i) the definition of permanent residence;
- (ii) the requirement that applicants are able to demonstrate a right of residence in the United Kingdom and that overseas applicants should hold a British or EU passport;
- (iii) that late registration for testing is not permitted; and
- (iv) that applicants who wish to attend an entrance test for another school on the same day as that for the school will not be permitted to sit the school’s test on an alternate day.

41. The school has responded to each of what it calls these “*administrative issues*” that were raised by the objector, by saying that it believes that its admission arrangements are compliant with paragraph 14 of the Code. It has told me that these provisions have been present in its admission arrangements for a number of years, and that they have not resulted in “*adverse comment*” during previous determinations. It has not sought to explain or justify the matters which are the subject of the objection.

42. There have been two previous determinations of objections concerning the school’s arrangements. These were in 2012 when a different version of the Code was in force, and most recently in 2017. In this latter, none of these matters was the subject of the objection, and the adjudicator did not use her power under section 88I of the Act to consider the arrangements as a whole. The absence of a finding on the part of an adjudicator that aspects of a school’s admission arrangements fail to comply with the Code does not mean that they do so comply. The determination issued by the adjudicator in 2017 dealt only with those matters which were the subject of the objection made at that time, and nothing more. An objection has now been made concerning these points within the school’s arrangements, and I am required to consider each of them against what the Code stipulates.

Permanent residence

43. An applicant’s place of permanent residence is relevant to the outcome of their application for a place at the school, if that application is based on them living within the defined catchment area or, for those

admitted under the final oversubscription criterion, if it is relevant to the resolution of a tie between applicants for the last available place. For the remainder of this latter group it is of no relevance, and this is made clear in the arrangements since they say that the child's address is not taken into account. I have therefore read the following statement which appears in the arrangements immediately after the list of oversubscription criteria:

“The offer of a place is conditional upon the child being continuously resident within the priority area as her permanent home address at the time the online form is submitted for the CCHS Entrance Test.....to the date commencing the start of term in September 2019.”

to refer only to the former group, and not to all applicants, although this could perhaps have been made clearer. So I understand the objection which has been made concerning the definition of permanent residence also to relate only to that part of the arrangements which gives priority to those living within the catchment area.

44. Applications for places are made by the national closing date of 31 October 2018 but the school requires applicants to have registered for its selection test by 27 June 2018. It requires applicants either to be able to evidence owner occupancy of their place of permanent residence in the form of a council tax bill and utility bills for a period of six months prior to the June deadline, or in the case of those living in rented accommodation (in the catchment area) to be able to provide a long term tenancy agreement covering the period from registration to the start of term in September 2019.

45. The objector is of the view that these requirements are unreasonable, and unlawful because they violate the European Convention on Human Rights (the ECHR). However, he does not specify in what way this latter violation may occur and I am unable to know against which provision in the ECHR to judge the arrangements. I have decided to consider the arrangements against the requirements of paragraph 14 of the Code, as set out above, and have informed the objector and the other parties of this.

46. The objector says that *“to ask for evidence of an address from January 2018 to October 2018 is ...unfair”*. However, as I have explained above, the school does not do this. It requires evidence of owner occupancy from January 2018 to June 2018, and also that the child shall remain continuously resident until September 2019. Similarly, the objector refers to the school requiring those in rented accommodation to evidence a tenancy agreement running from October 2018 to September 2019, whereas the requirement in the arrangements is that a tenancy agreement running from June 2018 to September 2019 is provided.

47. Like many others that are heavily oversubscribed, the school is evidently concerned about parents who attempt to “game the system” by acquiring addresses which convey an advantage to their child in obtaining a place there. It is entirely understandable that it should seek to ensure

that children do in fact live where their parents say they do when they apply for a place, if that address is relevant to the outcome of the application. A false address, or a temporary address which is not a child's true permanent place of residence, if used in this way would directly interfere with the interests of those with a legitimate residential qualification. What the school needs to do therefore is to act in a way that is relevant to ensuring that addresses are not false, and that they are not "second homes" or "temporary homes", and it is required to act reasonably in so doing.

48. The arrangements, however, set out requirements which clearly do more than this. The school has not sought to justify its requirement that owner occupancy should begin at least six months prior to registration for the school's selection test, which is 20 months prior to the prospective date of admission of the child to the school. Moreover, this requirement appears to be contradicted by a statement elsewhere in the arrangement that the school is content to accept evidence of a "*recent change of address prior to registering for the CCHS Entrance Test*" in the form of proof of exchange of contracts, and it seems to me that this reasonable approach points up the extent to which a general requirement of a six month period of residence is unnecessary. The six month requirement must mean that those who already own a house in the relevant area but who have done so for only a period of time shorter than six months at the point when the arrangements require them to register for the school's selection test will have their application rejected, unless all such applications are treated as "recent movers". This is not, however, what the arrangements say elsewhere. I take the view that this causes the arrangements to be unclear and thus unfair.

49. For those living in rented accommodation, the requirement is that there should be a tenancy agreement lasting, as a minimum, from the point of registration for the selection test to the point of admission, which is a period of 15 months. This means that in practice an even longer tenancy agreement will have been necessary for anyone living in rented accommodation who did not begin their tenancy in June 2018. The objector has commented that such lengthy tenancy agreements are rarely granted, and I understand that it is common practice currently to agree initial tenancies of six months with additional periods of one month, as the objector states. There is in fact no legal minimum period which a landlord is obliged to provide for an Assured Short Term Tenancy. I can see that the requirements concerning tenancy agreements which are part of the school's arrangements may indeed be designed to inhibit parents from attempting to rent a property inside the catchment area while at the same time retaining their home elsewhere, by requiring evidence of a lengthy commitment. However, they equally mean that parents genuinely living in rented accommodation within the catchment area will be unlikely to be able to satisfy the school, since lengthy tenancy agreements are in practice hard to come by. As a result, there is a real possibility that many parents living in rented accommodation will feel there is no point in applying for a place at the school for their daughter, because they will know they will be unable to meet the school's test of permanent residence. My view is that this causes unfairness to such families.

50. I shall say more below about the restrictions which the arrangements place on those seeking a place at the school concerning the timing of registration for testing. However, I comment here that the school must of course be able to communicate with those registering for testing and so must have an address for them. However, there seems to me to be no reason why a parent should be required at this point to provide evidence concerning their permanent address or that the address at that point should be the only address capable of being used when it comes to giving priority to some candidates who meet the qualifying standard. The arrangements do not distinguish between a parent's address when registering for testing and that used to give priority under the oversubscription criteria. This is unhelpful, particularly since for some children their permanent address has no relevance to the outcome of their application, as I have pointed out above.

51. For the reasons set out above, I uphold the objection that the provisions within the arrangements concerning permanent residence are unfair and in breach of paragraph 14 of the Code.

Foreign Nationals

52. The Department for Education provides guidance to local authorities and to schools about the rights of foreign nationals applying to attend state-funded schools. It says the following:

"In most cases, children arriving from overseas have the right to attend state-funded schools in England. Dependent children accompanying parents entering the UK on a work visa have the right to enter the country to attend a state-funded school. In addition, any UK citizen or citizen of the European Economic Area and Switzerland is permitted to enter the country to attend a state-funded school. When an admission authority for a school deals with an application for a child, whether or not they are a UK national, it must comply with the school admissions code and the Equality Act 2010. It cannot refuse a school place simply because of doubts about the child's immigration status."

53. The restriction placed on applicants for a place at the school that they should have a right to reside in the UK falls outside what the guidance says, as does the requirement that overseas applicant must "*hold a full British or EU passport*". I do not comment on the fact that a British passport is an EU passport. The school has provided me with no argument that it is reasonable or appropriate for it to seek to impose restrictions beyond those in the guidance I have quoted from.

54. The arrangements fail to confer on certain foreign nationals the rights afforded to them and so are unfair and in breach of paragraph 14 of the Code. I uphold this part of the objection.

Late Registration for testing

55. For admissions in September 2019, the school required parents to

have registered for its Entrance Test by 4pm on Wednesday 27 June 2018. The date of testing was Saturday 15 September 2018. The arrangements say that *"late registration ...will not be permitted"*.

56. The school has not given me any reason for the last date for registration being more than 11 weeks prior to the date of testing, and I find it difficult to imagine what reason there might be for such an early date. It is of course necessary for a selective school to apply a cut-off date to enable it to make arrangements for testing, and for testing to take place at a time which enables the school to meet the requirement of paragraph 1.32c) of the Code that all reasonable steps are taken to inform parents of the outcome of testing prior to the closing date for applications, which is 31 October. The school does this. However, because the arrangements say that late registration is not permitted, with no exception, a family moving into the area after 27 June 2018 will have been unable to register their child to take the test on 15 September 2018. I have already said that I consider the residency requirements make the arrangements unfair because of the length of time home owners will have had to be living at their address prior to the last date for registration. It also seems to me that the date of registration itself, adhered to rigidly in the way set out in the arrangements, cannot be fair to families who move into the area, whether into owned or rented accommodation, on a later date. It seems to me that it is incumbent on the school, as it is on any school, to design its arrangements such that they place only necessary obstacles in the path of those who legitimately seek a place there. I do not think that the school has achieved this. It does make arrangements for children who are unable to attend the test centre because of illness to sit the test on a later date, and so it must also be possible for it to enable other children also to be tested on a date later than the bulk of applicants. It could therefore reasonably offer some flexibility to those for whom registration by the normal cut-off date for registration is not practicable for legitimate reasons. It seems to me that it could also have a later cut-off date for registration, in order to reduce the need for such arrangements. I uphold this aspect of the objection.

Same day testing

57. The arrangements explain that the same test is used by a number of schools, and that this is purposely taken on the same day. They also explain the process for the results of the test to be considered by any of these schools should the parent wish it. It is within the context of this specific arrangement between the schools that the arrangements go on to say that a candidate who has taken the test at another school will not be permitted to take the school's test on a subsequent occasion. This seems to me to be perfectly reasonable, since otherwise an individual candidate would be taking the same test again and would have an unfair advantage when sitting the test for the school. Test-retest performance (the fact that second performance on the same test will normally show an improvement) is a well-established and researched phenomenon. This is, of course, a different matter from whether children who have taken a test remember its content such that they can pass it on to others.

58. It is of course possible that the selection test for other schools which are not part of the group of schools which uses the same test as Chelmsford High School for Girls will take place on the same day. The objector has provided me with a list of schools for which he says that is the case without stating whether or not the same test is used by them.

59. Even if different selective schools use different selection tests, it does not seem to me to be necessary for a clash of testing dates to be treated as an exceptional circumstance allowing candidates to take tests on a separate occasion, in order for admission arrangements not to be unfair. It will be for the parents in such circumstances to make a decision as to which school their child should sit the test for, and which not. I do not accept that being unable to sit the selection tests for as many selective schools as a parent chooses creates any unfairness. I do not uphold this part of the objection.

Other matters

60. Finally I come to the matters which I have raised with the school. It has pointed out to me that siblings are only given priority in its admission arrangements as a tie-breaker if this is required for the allocation of a final place between candidates with identical scores in its selection test. I agree with the school that this does not break the prohibition in paragraph 1.9j of the Code which prevents siblings in general from being given priority in grammar schools which allocate places in rank order of their score. However, the school uses the term sibling in its admission arrangements without definition, which breaches paragraph 1.11 of the Code which says:

*“Admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’”.*

61. I have quoted above the part of the arrangements which refers to the potential admission of children outside their normal age group to the school. Paragraph 2.17 of the Code requires that:

*“Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”*

The arrangements provide parents with no information about this process. Although the school has indicated its willingness to review the wording of its arrangements, as determined they fail to comply with what the Code requires.

Summary of Findings

62. I have explained in the foregoing paragraphs why I have not upheld those parts of the objection concerning:

- a. the use of the same test for later sittings of the school’s selection test;
- b. the use of a catchment area to give priority to some candidates,

and

- c. the refusal to allow girls who take the test for another selective school on the same day as the school's test to take the school's test at a later sitting.

63. I have also set out my reasons for upholding those parts of the objection concerning:

- a. the conditions placed by the school on the proof of a child's permanent place of residence;
- b. the conditions placed by the school on foreign nationals, and
- c. the refusal to allow late registration for the school's selection test.

64. I have given my reasons for coming to the view that the arrangements cause further breaches of the requirements of the Code by:

- a. failing to define the term "sibling", and
- b. not stating the process by which a parent may seek admission to the school out of their daughter's normal age group.

65. I have given some thought to what it would be appropriate for me to require of the school in terms of the revision of its arrangements that these findings mean is now necessary. The Code specifies that this shall take place within two months of this decision, and no later than 28 February 2019, unless I decide that there should be a different timescale. The deadline of 31 October 2018 for applications for places at the school in September 2019 is now passed but places will not be allocated until March 2019, and the arrangements will continue in force thereafter. It would be possible for the school to amend its arrangements immediately in order to comply with this determination and in doing so it would not be required to consult those listed in paragraph 1.44 of the Code, as it would otherwise be if considering making such changes. However, it seems to me that the school will need to give careful consideration to how it will revise the requirements it makes concerning the permanent place of residence of parents in particular, and that in doing so it would be wise to seek the views of those likely to be affected and of other interested parties. It will need time to do both these things. I am also mindful that the school will need to determine its admission arrangements for September 2020 no later than 28 February 2019. I am of the view that this is the appropriate date by which it must also revise its admission arrangement for September 2019.

Determination

66. 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 Chelmsford County

High School for Girls, Essex.

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

68. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2019.

Dated: 12 December 2018

Signed:

Schools Adjudicator: Dr Bryan Slater



Office of
the Schools
Adjudicator

Appendix to ADA3350

Determination

Case reference:	ADA3349
Objector:	An individual
Admission Authority:	The academy trust for Alcester Grammar School
Date of decision:	27 July 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 academy trust for Alcester Grammar School situated within the county of Warwickshire.

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

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

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual, the objector, about the admission arrangements (the arrangements) for September 2019 for Alcester Grammar School (the school), a co-educational selective secondary school for pupils aged 11 to 18.

2. The local authority for the area in which the school is located is Warwickshire County Council (the local authority). The local authority is a party to this objection. Other parties to the objection are the objector and

the school.

3. The arrangements were determined by the academy trust for Alcester Grammar School by electronic means and recorded at the Full Governing Board meeting on 27 March 2018.

Jurisdiction

4. 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 Alcester Grammar School, academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 22 February 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. the objector's form of objection dated 22 February 2018;
- b. the admission authority's response to the objection and supporting documents;
- c. the comments of the LA on the objection and supporting documents;
- d. The objector's further comments and submissions;
- e. extracts from the minutes of the meeting at which the Alcester Grammar School determined the arrangements; and
- f. a copy of the determined arrangements.

7. In correspondence and in his submissions the objector raised some procedural points which I will deal with here. He invited me to request documentation from the courts which dealt with injunction proceedings, which I refer to below. As will be clear, I have seen and considered the published judgements. The issues before the High Court are not the same as those I am considering here although some of the facts are relevant. I am satisfied that I have all necessary information. I do not consider that documentation such as statements of case would assist me in reaching a decision. The objector has also asked me to seek copies of earlier tests from the test provider. I do not consider that a comparison of earlier tests or a cross reference of the content of earlier tests to information published

on websites would assist me in my consideration of this matter.

8. The objector suggested that I hold a meeting of the parties. Where an adjudicator seeks a meeting it is in order to clarify issues raised where these are unclear, or to gather further information where information is lacking. In this case neither arises. I do not consider that a meeting would assist me in reaching my decision.

The Objection

9. In his objection the objector raised a number of issues. Some of these were held not to be within my jurisdiction. The objector was notified, as were the other parties, of the matters considered to be within and not within my jurisdiction in letters from the Office of the Schools Adjudicator dated 11 May 2018. The matters within my jurisdiction are as follows:

- a. Whether use of the same test for selection by ability for later additional sittings is compliant with paragraph 1.31 of the Code.
 - b. Whether the provisions relating to use of catchment areas, residency and those for proof of address are clear, reasonable and fair in compliance with the provisions at paragraphs 14 and 1.8 of the Code and compliant with paragraph 1.14 (Catchment Areas) of the Code.
 - c. Whether the use of the words “expectation” and “beyond” in reference to a child’s address at the start of Year 7 (paragraph 2.2.7 in the arrangements) are unclear in contravention of paragraph 14 of the Code.
 - d. Whether the test dates are unclear in contravention of the provisions of paragraph 14 of the Code.
10. Some matters raised in the objection were not considered to be within my jurisdiction. This is set out in the letter dated 11 May 2018, as follows:

*“The following matters are **not** within the adjudicator’s jurisdiction:*

- c. *Whether the requirement of minimum grades for progression of pupils on roll at the school from Year 11 to Year 12 is lawful.*
 - a. *This relates to the progression of a registered pupil from one year group to another and not to the admission of a pupil to the school for the first time and hence not to the admission arrangements of the school. Provision for removing a pupil from the school’s roll in these circumstances is specifically made in paragraph 8 (k) of the Education (Pupil Registration) (England) Regulations 2006 (SI 2006/1751) as amended.*
- d. *The following matters are all outside the adjudicator’s jurisdiction as they do not concern the question of whether or not the determined arrangements conform with the requirements relating to admissions.*

- a. *Complaints that test material is available on other websites and that no action is taken against those sites while action is taken against 11plus.eu, a website registered to you;*
- b. *Complaints about institutional racism or racially motivated actions, or some personal vendetta against you by third party organisations (that is organisations which are not the admission authority for the school);*
- c. *Complaints about institutional racism or racially motivated actions, or some personal vendetta against you by the admission authority;*
- d. *Complaints about the process of administering the co-ordinated admissions scheme in Warwickshire; and*
- e. *Matters connected to contracts between Durham CEM and Warwickshire County Council.”*

Other Matters

11. When I reviewed the arrangements, I noticed that the definition given there of a previously looked after child in footnote 4 to paragraph 2.2.6.1 refers to “*residence orders*”. Residence orders have been replaced by child arrangements orders.

Background

12. The school is designated as a grammar school by order made by the Secretary of State under Section 104 of the Act. The published admission number for entry in September 2019 for Year 7 is 150.

13. Entrance to the school is determined by a child’s performance in an entrance test operated by the local authority’s Admissions Service (the Entrance Test). The school is part of a consortium of schools, along with five other grammar schools in Warwickshire and eight grammar schools in Birmingham, which use a common entrance test.

14. The Entrance Test consists of two papers, of 50 minutes each, which test verbal ability, numerical ability and nonverbal ability. Each child taking the Entrance Test will be awarded a standardised score relevant to an application to the school. For admission to the Warwickshire schools a body known as the Committee of Reference will set both an “automatic qualifying score” and a minimum score for the waiting list for the school. These scores are used in the application of the oversubscription criteria as set out below.

15. The local authority administers the tests on behalf of the schools and commissions the Centre for Evaluation and Monitoring (CEM) at Durham University to provide the test papers.

16. The school has a priority area (referred to in this determination as the Catchment Area as that is the term used in the Code), a circle with a radius of 16.885 miles centered on the fountain in Rother Street, Stratford upon Avon.

17. The oversubscription criteria are set out below. Those with the highest scores in each category are given highest priority for a place.

“Category 1: Looked-After or Previously Looked-After Children who achieve the automatic qualifying score or above for this school for this particular year of entry.

Category 2: Children who live in the priority area who attract the Pupil Premium via eligibility for Free School Meals who achieve the automatic qualifying score or above for this school for this particular year of entry. Warwickshire Admissions will require, on behalf of the school, evidence of Pupil Premium eligibility and the school reserves the right to withdraw the offer of a place if the offer has been made on the basis of an incorrect, fraudulent or misleading application.

Category 3: Children who live in the priority area who achieve the automatic qualifying score or above for this school, for this particular year of entry.

Category 4: Children living outside of the priority area who achieve the automatic qualifying score or above for this school, for this particular year of entry.

Category 5: 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. Looked-After or Previously Looked-After Children in this category will be given first priority in ranking within this category, with the rest ranked according to score.

[footnote] 4 A Previously Looked-After Child is a child who immediately after being looked-after became subject to an adoption, residence or special guardianship order. This includes children who were adopted under the Adoptions Act 1976 (Section 12) and those adopted under the Adoption and Children Act 2002 (Section 46). Child arrangements orders are defined in Section 8 of the Children Act 1989, as amended by Section 12 of the Children and Families Act 2014. Special guardianship orders are defined in Section 14A of the Children Act 1989.”

Consideration of Case

Whether use of the same test for selection by ability for later additional sittings is compliant with paragraph 1.31 of the Code.

18. I note that while I am considering in this determination only the arrangements of this school, the issue raised here is relevant to the admission arrangements of other grammar schools, to those schools which

select a proportion of their pupils by reference to ability and to those schools which use banding to secure a comprehensive intake. Paragraph 1.31 of the Code reads:

*“Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.”*

19. The school's arrangements provide for the same test to be used for different groups of children on different days. The objector contends that at least some content will be remembered by some of the children sitting the test. This information may be passed to others who are sitting the test on a later date. This may bestow an advantage on some late sitters. If a late sitter has such knowledge it may affect his or her score in the test. Consequently, the objector argues, the test will not be *“an accurate reflection of the child's ability”*. If a late sitter scores higher, as a result of such information, than he or she would have done otherwise, that may result in a higher position in the ranking of test scores. This may result in that child gaining a place and another child, who would otherwise have gained a place, not gaining a place. That is potentially not fair and so in contravention of paragraph 14 of the Code; *“admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective”*.

20. The objector has drawn my attention to proceedings for an injunction restraining him from publishing or disclosing the contents of 11-plus tests used by Warwickshire County Council and taken by candidates in the years 2013 to 2015 (*Warwickshire County Council v Matalia* [2015] EWHC 751). The objector appealed to the Court of Appeal which held that the judge was fully entitled to grant the injunction (*Matalia v Warwickshire County* [2017] EWCA Civ 991).

21. I should firstly note that these proceedings are of limited relevance to the matters I am required to determine. The proceedings were brought primarily under the law relating to breach of confidence and the findings of the High Court (approved by the Court of Appeal) relate to the elements necessary to establish such breach. The courts were not considering whether or not this aspect of the admission arrangements complies with the provisions of statute relating to school admission and with the Code.

22. However, there was evidence before the High Court (and accepted by the Court of Appeal) which is relevant to the issues before me. I will therefore refer to that evidence in my consideration of the issues below. The issues arising in this determination have been considered in previous years by adjudicators, following objections by the objector in a similar vein. Although those determinations relate to the admissions arrangements for different schools the relevant issues are, to all intents and purposes, the same or largely the same.

23. In the letter to the objector dated 11 May 2018 referred to above,

the objector's attention was drawn to one such determination ADA2877 dated 15 September 2015. The letters to the other parties also drew attention to this previous determination and invited comments. The relevant paragraphs are 22 to 25. The adjudicator in that matter concludes *"In my view it is unlikely that a child would remember any content that would be helpful to another child who might take the test at a later date"*.

24. The letter to the objector dated 11 May 2018 stated *"The adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently"*. The objector cited a number of reasons why he considered that the current objection ought to be considered or determined differently. The objector states that the adjudicator may not use a previous determination as a precedent. For the avoidance of doubt I will state that I am not doing so and that there is no question of any finding or conclusion in a previous determination being binding on me. Each objection, if within the adjudicator's jurisdiction as this one is, will be determined on its own facts. However, there is no prohibition in the statutory scheme within which this determination is considered on my having regard to determinations in earlier cases.

Do children remember content from the tests?

25. The conclusion of the adjudicator in ADA2877 is based, in part, on evidence provided by Rugby High School (the admission authority in that matter) which is quoted in the determination as follows:

"The work of Professor Susan Gathercole and Tracy Packinam Alloway Understanding Working Memory concurs with earlier studies by Cowan which suggest that children have a more restricted working memory than adults. Working memory capacity is really stretched by the kinds of tasks set in the eleven plus e.g. multiplication and division without the aid of a calculator. When you add on top of this the need to complete the paper within the required time (which places a severe restriction on time available for memorisation strategies like covert rehearsal) and the child's lack of access to other memorisation techniques like repeated writing of the article to be memorised, it is very unlikely that a child could be in a position to remember very much at all."

26. For completeness I should say that there is no book by Gathercole and Alloway called Understanding Working Memory. There is one by Alloway and Alloway of that name which is about children with learning difficulties. As it happens, the objector complains about reliance on Understanding Working Memory in relation to children's ability on the grounds that it is about children with learning difficulties. However, there is also a book Working Memory and Learning : A practical Guide for Teachers which is by Gathercole and Alloway. This is a more general discussion of working memory and covers children generally across a range of ages from 4 to 15 years old. I have read parts of this book and I am satisfied that it confirms that children have a more restricted working memory than adults.

27. The objector also objects to the statement regarding the work of Gathercole and Alloway quoted above. First, he suggests there is an issue of bias, presumably because there is a connection to Durham University where CEM, the body which sets the tests, is based. I do not accept this. A mere connection to the same university is insufficient to found an allegation of bias. Secondly the objector states that the study “*was nothing to do with the 11+*”. I do not accept this either and again suspect that this derives from confusion between the two books. The paragraph quoted above expressly refers to the “*kinds of tasks set in the eleven plus*”. I note, however, that the conclusion “*it is very unlikely that a child could be in a position to remember very much at all*” does not rule out a child being able to remember something of the content of the test.

28. Evidence relevant to this issue was given to the High Court in the case referred to above and subsequently referred to by the Court Of Appeal in its judgement. The information published on the objector’s website was obtained from his nephew who had sat the entrance test for another school in September 2013. That information included reference to a comprehension test involving a passage concerning lemurs in Madagascar and questions on synonyms including the words “*thrifty*” and “*frugal*”. The Court of Appeal judgement summarises the position as follows:

“The relevant test included a comprehension question on a passage concerning lemurs in Madagascar with a total of 23 questions. The “Matching Words” section required candidates to give “thrifty” as a synonym for “frugal”. The judge found that the section on the website headed “Longer maths” also “contained truth”.”

29. The objector attended the venue when his nephew took the test and was therefore able to question him about the content face to face soon after the test ended. I find that these circumstances are not typical and that those sitting the test would not in normal circumstances be questioned on the content soon after the tests ended by an adult with a view to communicating that information to a child sitting a later test. I draw a distinction between questioning soon after a test has been finished, aimed at eliciting content on the one hand and the sort of questions a parent may ask about how their child feels the test went or the sort of conversations children may have with each other after a test, on the other hand. I go on to consider the latter in later paragraphs. Miss Taylor (who was then the local authority’s 11 plus admissions officer and is now its Lead officer - Coordinated Admissions) in evidence to the High Court said that “*it is her personal experience that children do not in normal circumstances remember much specific content*” and “*In our experience, it would be very very difficult for a child to remember any of the questions in enough detail to pass on to children who are yet to take the test in order for that child to be at any significant advantage. We also aim to monitor all internet based forum activity where discussion of the test papers and questions could be made public, although we do strive to keep the test papers in secure units with limited access so that they are not distributed within the public domain.*”

30. Consequently, I find that in some circumstances a child may remember some test content. I recognise that questioning soon after the test aiming at eliciting test material is likely to result in the child's being able to recall the most information he or she possibly could. I also consider that this is not a normal circumstance and that in normal circumstances the specific content recalled would be minimal.

Will that information be communicated to other children sitting the test on a later date?

31. The High Court heard from Mr Pratt (then the local authority's lead officer for pupil and student services) that "*extreme care*" is taken to ensure that the content of the papers is not disclosed before students take them. As set out in paragraph 29 above, the local authority monitor internet based forum activity and take steps, including successfully seeking injunctive relief against the objector, to prevent dissemination of test material.

32. This still leaves the possibility that a child, having sat an earlier test, may pass on some recalled content either directly or via a third party such as a parent, to another child still to sit a later test. Mr Pratt gave evidence to the High Court that he thought that "*the fierce competition for grammar school places would reduce the chances of children or parents passing on information to anyone yet to sit the test*".

33. The judgement of the High Court states "*It is doubtless the case that some of the children who sat the test on 7 September will have told their parents, and perhaps others, something about it, but there is no good reason to think that any, let alone much, information about the contents has become generally known or available. The materials that [the objector] has produced certainly do not demonstrate that information about the contents of the test is widely known or available, and Miss Taylor said in evidence that she has not seen test content published on other websites or forums to such a degree or with such accuracy*".

34. I note that the objector takes a different view as to the likelihood of children passing information to each other from that set out by Mr Pratt. The objector considers that a highly able child – confident he or she will exceed the required score – will have no incentive not to pass on content. In my view, few children are that confident about their performance in tests which, as is the case with the eleven plus, matter to them. I do not consider that there is much force in the objector's argument and no evidence has been presented to make me doubt that Mr Pratt's view is reasonable.

35. I find that it is conceivable that some content of the test may be recalled by a child and that it is conceivable that such content may be passed on to another child sitting the test at a later date. The injunction in place is one of the limiting factors on this of course. The likelihood of any significant amount of content being passed on to future sitters is minimal.

Might such content, if passed on, affect the outcome?

36. One of the objector's grounds for his appeal to the Court of Appeal was that the information published was in fact insufficient to compromise the tests. This is a reference to information published on the objector's website (which has been prevented by the injunction obtained by the local authority) rather than information recalled by individual sitters and passed on to later sitters. The Court of Appeal judgement summarises the High Court judgement on this point as follows:

"As to the triviality of the information published by [the objector], the judge...referred...to the email dated 10 September 2013 from the University which stated "I have gone through the papers and most of what has been reported on CEM11plus [the objector's website] isn't an issue and won't confer any real advantage to children who may have seen it (although there is still a perceived advantage)". The judge also quoted the following from the same email: "I can identify one verbal question (1 mark) that is definitely compromised". The judge went on to refer to the oral evidence of Mr Pratt, the Council's lead officer for pupil and student services, that "a single "raw" mark can, when standardised, account for as many as six marks and increase a child's ranking significantly". It is worth adding that it was in the same email that the University said that as a result of the disclosure about the maths questions "day 2 candidates may be at an advantage", even though the exact questions were not revealed".

In the internal email dated 10 September 2013 quoted in subparagraph 2.3 of Ground 2, which was before the judge, Mr Pratt wrote:

"I have now discussed the situation with the supplier of the test papers and their view is that the testing process as a whole would not seem to have been compromised. There will, however, be a perception that certain candidates will be at an advantage, and there are certain questions where the feeling is that the information published will have an impact. However, there are around 250 questions in the test, and analysis of the results data will allow us to identify whether or not late sitters have any particular advantage in the questions where we have concerns. If there are issues we have the option of excluding these questions from the results."

Having regard to this evidence, there was more than sufficient material on which the judge could conclude that the information disclosed by [the objector] was far from trivial and had the necessary quality of confidentiality about it. It plainly does not follow from the view that the testing process "as a whole" had not been compromised that there was no breach of confidence in the disclosures made by [the objector]".

37. I would reiterate here that the courts were looking at a different question than that which is before me. However, the evidence is that the material published on the objector's website "won't confer any real

advantage to children who may have seen it” and that “the testing process as a whole would not seem to have been compromised”. From the evidence before the court I find that the content published on the objector’s website could have had an impact on the score achieved by some later sitters, but that that impact would have been minimal. Here I am concerned not with what may have been published on a website but with what may be passed on by one sitter, perhaps through parents, via playground conversations or social media such as snapchat or WhatsApp to another, later, sitter. I find this even less likely to have a significant impact on the outcome.

38. For it to have an effect of the sort the objector contends is possible all of the following would be required. Child A, having taken the test would need to remember a question, know the right answer and pass this on to child B. For this to make a difference to child B’s results all the following would be necessary. Child B would need not to have already known or have been able to work out the answer. The mark from this question would need to make the difference between child B’s reaching and not reaching the threshold mark for admission. Child B would need to remember the answer given by child A and choose to give that on the test paper. This only needs to be stated for it to be seen that it is a long chain of causation. It is very different from, for example, knowing in advance that a history question will require a candidate to set out the causes of a particular war which can then be researched.

39. The objector states that the mean scores achieved by late sitters are higher than the mean scores of those taking the test at the first sitting. The inference is that late sitters enjoy an advantage, presumably, in his view, due to having received in advance information about the content of the tests. The local authority have provided me with data for 2017 which it provided to the objector in response to a Freedom of Information Act request, and on which it appears he bases his statements regarding mean scores. I have looked at that data and at the figures supplied for earlier years by the objector. It is not possible to draw any firm conclusions. There are a number of possible variables which may affect such figures, not only knowledge of content which is the objector’s argument. For example the relatively small number of late sitters compared to the number sitting the original test. There may also be differences between different groups of late sitters. Those who take the test only a little while after the main test may perhaps comprise largely those who were sick on the day of initial testing, and later late sitters, may perhaps largely comprise those who have moved into the area. The groups may have different characteristics. I cannot conclude from this data that any advantage has been gained by late sitters from information about test content supplied by earlier sitters.

40. Overall, I find that children may remember some content of the Entrance Test but little specific detail. What is remembered is unlikely to be passed on to other children but may be in some circumstances. If such content is passed on it is unlikely significantly to affect the score achieved by a child sitting the Entrance Test at a later date. It is, however, conceivable that content will be remembered and passed on and that this might affect another child’s score, notwithstanding that for the reasons I

give above I find that this will be rare, and that score would need to fall at the threshold for admission. Consequently, I will consider the reasons for using the same test for later sittings and the possible alternatives.

Reasons for using the same test for later sittings

41. As is set out in the arrangements provision is made for children to sit the test on a later day for a variety of reasons. This includes those who are unable to sit the test on a Saturday or a Sunday for religious reasons, those children who were ill on the main test day and children who were unable to attend the earlier test due to prior engagement. In each case the arrangements state that evidence is required. I agree with the determination of another adjudicator, when in 2014 determining an objection relating to Warwickshire grammar schools, that *“it would be unreasonable and unfair not to offer additional days for those who cannot, for good reason, take the test on the first day provided”* (ADA2608).

42. In the proceedings referred to above the High Court sets out briefly the position adopted by other grammar schools, as follows:

“The trial bundles include materials casting light on approaches that have been adopted to similar problems elsewhere. It seems that there is only one sitting for the Harvey Grammar School in Folkestone; no late tests are offered. In other areas, however, 11 Plus exams are sat on more than one day. Buckinghamshire County Council has said that its “tests schedule has been designed to offer as little time and opportunity for second sitting session pupils to be informed about the content of the test from the first sitting pupils as possible” and “[l]ate testing dates are only agreed where there is evidence of moving or where there is evidence of illness on the main test date”. The Slough consortium of grammar schools has assessment sessions in the morning and afternoon of the same day”.

43. I find there are good reasons for offering later test sessions and that this practice is not unusual. If later test dates are to be offered then the question arises as to whether there are alternatives to having those later sitters sit the same test.

44. The reasons for using the same test given by Mr Pratt to the High Court are twofold. Firstly, that it helps to ensure that children are tested consistently against the same standard. Secondly, that it would be costly and time-consuming to commission a new test every time one was needed. I find that these are good reasons. If children tested on different days sat different tests the difficulties of placing them accurately in the same set of ranked scores are obvious. It may be possible to devise a process to gain a correlation between scores in different tests but this cannot be as simple as using scores obtained from the same test. The eleven plus tests used by the school are weighted according to age, and this means that there would be further complexities and costs in ensuring absolute comparability between two different sets of tests for the same cohort of children for admission to the same schools. The objector, in

support of his argument that different tests can be compared, cites the practice of GCSE and A level exam boards standardising tests across different years in order to obtain a uniform mark scale. In my view this is a different process undertaken for different reasons. GCSE and A levels are not age-weighted and as I go on to consider in detail below are not tests of ability but of knowledge and understanding of particular disciplines. I do not accept that what is done in GCSE and A levels shows that there is some similar process that would straightforwardly allow the ranking of children who had taken different entrance tests. It is also worthwhile to avoid a process that will lead to significant cost to the public purse and a significant adverse impact on the time and resources of public bodies.

45. The objector also points out that for GCSE and A level exam candidates who cannot sit a paper at the same time as other candidates are supervised at all times prior to sitting the paper at a later time. I do not consider that this is comparing like with like. The purpose of these exams is different and what is being tested is primarily acquired knowledge and understanding. It is obvious that a GCSE or A level candidate forewarned of the content of a question could research that issue and expect to gain a significantly higher mark. Conversely, in an eleven plus test of ability some prior knowledge is less likely to have a significant impact as the test is not of the child's knowledge of, for example, lemurs in Madagascar but of the ability (in this example) to read and understand a piece of text and answer questions on it.

46. Overall I have balanced the risk that outcomes could be distorted by late sittings of the same test against the practical reasons for adopting the process set out in the schools arrangements for September 2019 entry. There is a risk that content may be recalled, passed on and will assist a late sitter to obtain a higher mark which, to have a significant effect, must lift that child above a point threshold, so giving that child a place in the school and denying a place to another. However, for the reasons set out above I find that this risk is minimal and that the local authority, the school and CEM take all reasonable steps to ensure that content is not passed on. On the other hand, the reasons for using the same test for late sitting are good reasons. Consequently I find on balance that the process is fair.

47. I have also considered in light of the findings above whether the Entrance Test gives "*an accurate reflection of the child's ability*". I have found that there is a minimal risk that information passed to a late sitter may affect that sitters score. However, no testing regime can be perfectly fair or guarantee an absolutely perfect assessment of a child's ability. A sitter may feel unwell, for example develop a headache or high temperature during the test, or may have suffered a recent emotional shock such as a bereavement. These factors may affect that child's performance. Another child may have, by luck, revised synonyms which in fact are included in the test. The Code's requirement is that it be an "*an accurate reflection of the child's ability*". Accuracy is not, in any case, a concept capable always of a simple binary divide into accurate or not accurate. It is, for example, common to speak of numbers being accurate to a certain number of decimal places or measurements in engineering requiring accuracy to given tolerances. A possible factor which may affect

an individual child's performance will not, provided the risk is reasonably low, detract from the test being capable of yielding "an accurate reflection of the child's ability". Consequently I find that the Entrance Test is "an accurate reflection of the child's ability".

48. The objector also questions the integrity of CEM. CEM is an organisation affiliated to a highly respected university. CEM is used for ability testing by many admissions authorities for selective school admissions. I find there is no valid reason to doubt the quality of the tests they provide.

Whether the provisions relating to use of catchment areas, residency and those for proof of address are clear, reasonable and fair in compliance with the provisions at paragraphs 14 and 1.8 of the Code and compliant with paragraph 1.14 (Catchment Areas) of the Code.

49. The relevant provisions of the school's admission arrangements are set out as follows:

"2.2.1.Priority Area: The priority area for Alcester Grammar School is based on a circle with a radius of 16.885 miles drawn from the Fountain in Rother Street, Stratford-upon-Avon to the County boundary south of Long Compton. In drawing a priority area in this manner, the school is able to comply with its duty following the Greenwich Judgement (1989). Evidence will be requested to prove that the child is resident within the priority area by the deadline of Monday 31 December 2018. Applications from children outside this area may not be considered in the first round of offers.

Warwickshire Admissions will require, on behalf of the school, evidence of the applicant's home address. Parents/carers will be notified each time this is required. The Admissions Service may also carry out a home visit to the family to further verify an applicant's address. The school reserves the right to withdraw the offer of a place if it is satisfied that the offer has been made on the basis of an incorrect, fraudulent or misleading application.

2.2.7.Residency requirement: The child's home address is the address where they are living on the date of the application. There is an expectation that the address used to apply for a school place will be the same as the one where the child is living at the start of Year 7 and beyond. Where parental responsibilities are equally shared, the home address will be considered to be the place where the child sleeps, and spends most of their time, from Monday to Friday. This is the address that will be used to apply the school's oversubscription criteria, such as distance from the school. Where the home address changes after the start of the autumn term of Year 7, consideration will be given as to the reason why. Where it is considered that the reason for the change of address constitutes the application being fraudulent or intentionally misleading, the place may be withdrawn.

2.2.8.Evidence of Residency required: Warwickshire Admissions (Local Authority) will request on behalf of the school evidence in support of the application. The Admissions Service will write at the beginning of December 2018 to all parents/carers who have listed the school as a preference, requesting copies of two documents to confirm the home address. Parents/carers will have fifteen working days to provide proof of the home address. The application will be considered as late if appropriate proof is not provided within fifteen working days. The evidence required is as follows:

• Council Tax letter or statement for the current financial year - this must be supplied if you are the council taxpayer; or

• Current Housing Benefit letter; or

• Utility bill, bank statement, or car insurance documents dated within the last six months.

Plus one of the following:

• Child Benefit letter for the current financial year;

• Child's National Health registration card;

• Child Tax Credit Award Notice for the current financial year.

Please note that these documents will be retained and not returned. The Local Authority will match each address with the one they have on their database. The Local Authority reserves the right to carry out random checks at any time and this may include an unannounced home visit"

50. In the letter to the objector dated 11 May 2018 referred to above, the objector's attention was drawn to determination ADA2877 dated 15 September 2015, which made findings on this issue. The letters to the other parties also drew attention to this previous determination and invited comments. The relevant paragraphs are 42 to 49.

51. **Catchment Area.** The Code states:

"1.14 Catchment areas must be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school".

52. I find that the catchment area is clearly defined. The Code permits schools to use a catchment area. I find that the use of a catchment area in the school's admission arrangements is not in contravention of the Code or any statutory provision.

53. **Residency requirement and proof of address.** The admission arrangements set out clearly that *"The child's home address is the address where they are living on the date of the application"*. This is a sensible

provision as that is the date on which the parents/carers sign and submit the application form. In the normal admissions round application will be made on the common application form (CAF) to the local authority for the area in which the parents/carers live. The deadline for submitting the CAF in relation to secondary schools is 31 October 2018.

54. In addition, there is provision for a change of address after the date of application up to 31 December 2018. This reason for choosing this date is not explained but presumably is chosen in order to allow sufficient time for the schools and the local authority to process all applications by the National Offer Day 1 March 2019. For that reason changes of address after 31 December 2018 are processed as late applications. It is inevitable that there will be a cut-off date after which changes of address will have to be processed separately.

55. I find that these provisions are clear, fair and reasonable and are in compliance with the relevant provisions of the Code. The remainder of the provisions set out above relate to proof of residence at the stated address at the relevant time. Proof of the address at which the child is living at the time of application is required by 31 December 2018. Separately, where there is a change of address prior to 31 December 2018, proof of address is also required “as detailed above” so also by 31 December 2018.

56. The address is to be verified by evidence produced by the parents/carers. Paragraph 2.5 of the Code states “*Admission authorities may need to ask for proof of address where it is unclear whether a child meets the published oversubscription criteria*”. In the arrangements this takes the form of copies of official documents. I note that copies are required, not originals, and therefore that the objector’s concern that these are not returned is misplaced. The objector raises a number of issues with the documents required, some based on rather far-fetched scenarios such as the possibility that a family will not have utility bills. I find that the documents required (in each case from a list of possible documents) are typical of those required as proof of address by admission authorities across the country and by various institutions for many purposes. The vast majority of families would be able to provide this evidence. I find that the requirements documentary evidence of address are clear, reasonable and fair.

57. The arrangements also make it clear that in some circumstances further investigation may be carried out. This is stated a number of times, including “*The Local Authority [acting on behalf of the school] reserves the right to carry out random checks at any time and this may include an unannounced home visit*”. It is also clear that if the address at which the child is living at or after the start of Year 7 changes, further checks may be carried out. This is clearly designed to prevent the use of fraudulent or intentionally misleading addresses. Unfortunately admission authorities across the country have problems with false addresses being given by parents/carers in order to increase a child’s chances of gaining a place at a particular school. This is probably the most common instance of “*a fraudulent or intentionally misleading application*” as addressed in paragraphs 2.12 and 2.13 of the Code.

58. The arrangements (relating to both address at the time of application and changes of address by 31 December 2018) also flag up that subsequent changes of address may lead to further investigation and to a requirement for further proof of address. The issue is that some parents/carers will move temporarily to a different address, without an intention permanently to reside there, in order to apply to a school from that temporary address. I find that it is fair and reasonable for the admission authority, or, as here, a local authority on behalf of the admission authority, to take these steps in order to investigate what may be “*a fraudulent or intentionally misleading application*”. There is no difficulty with a move undertaken for genuine reasons.

59. Subject to my finding in paragraph 59 I find the provisions relating to proof of address to be clear, reasonable and fair as required by the Code.

Whether the use of the words “expectation” and “beyond” in reference to a child’s address at the start of Year 7 (paragraph 2.2.7 in the arrangements) are unclear in contravention of paragraph 14 of the Code.

60. The context of the statement “*There is an expectation that the address used to apply for a school place will be the same as the one where the child is living at the start of Year 7 and beyond*” is that of the prevention of fraudulent or intentionally misleading applications. This sentence is followed (after two intervening sentences dealing with the position where a child lives at more than one address for different parts of the time) by “*Where the home address changes after the start of the autumn term of Year 7, consideration will be given as to the reason why*”. When read together I find that the intended meaning is that changes of address may give rise to queries as to the veracity of the address originally given. That is that if at the start of Year 7 or a later date the child lives at a different address to the address given at the time of application this will give rise to doubts as to the truthfulness of the address given at the time of application, which may be investigated further.

61. However, I find that the use of the word “expectation” and the intervening sentences dealing with another aspect of addresses, may imply some wider expectation, beyond the truthfulness of the address given at the time of application. It could appear, although I accept that this was never the intention, that the school sets some value on continuity of address for its own sake, and frowns on families that move. This makes the meaning unclear, particularly as paragraph 14 of the Code states that “*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated*”. To that limited extent I uphold the objection on this point.

Whether the test dates are unclear in contravention of the provisions of paragraph 14 of the Code.

62. Paragraph 2.3.1 of the arrangements refers to a test on Saturday 8 September 2018. Paragraph 2.3.4 says the main test sessions will be on Saturday 8 September and Sunday 9 September. Although not entirely

consistent I find that this is sufficiently clear to comply with paragraph 14 of the Code.

63. I find the issues raised by the objector in relation to test dates to be unfounded. Whether or not some children were not allowed to sit the test on the main date is not a matter within my jurisdiction. I consider the arrangements as determined by the admissions authority rather than the administration of those arrangements by or on behalf of the admission authority.

64. I find no reliable evidence of any policy giving preferential treatment to some groups by allowing them late testing. The school's main test date is a Saturday. The objector argues that it is unfair to allow late testing to those who cannot be tested on Saturdays for religious reasons and that they should be tested earlier or all the tests held on school days as is the case for some other schools and areas. The objector suggests as an alternative that the tests should all be held on school days and schools closed to their pupils on those days to allow this. This may be appropriate in some places and in others tests may be administered in primary schools. However, the arrangements for the tests are for each admission authority to determine in the light of their own circumstances and there is nothing axiomatically unfair about a Saturday main test date and a later test date which is not a Saturday. He also suggests that those who cannot take a test on a Saturday should take the test earlier and makes the point that this will mean a smaller number of people see the test at its first outing and so reduces scope for passing on content. This is a reasonable point; however, it ignores the fact that late testing is also for those who are ill on the main test date. This, of course, cannot be predicted and must happen after the main test date.

65. The objector refers to "*spurious religious claims (which are not authenticated to any degree)*" and suggests that the school or local authority is "*in cahoots with these religious groups to give them an unfair advantage*". These are very serious accusations and I must deal with them. The objector does not identify any particular faith. However, Saturday has been the Jewish Sabbath for millennia and is also the Sabbath for some Christian denominations. Observant Jews and some practising Christians abstain from work on that day. This is well documented and respected by people and institutions across the country. It is certainly not spurious. As to the suggestion that the school and/or local authority is in cahoots with particular groups, I find that the evidence falls far short of supporting the inference drawn by the objector. I find that allowing those who are prevented for religious reasons from taking tests on a Saturday an alternative date is good practice. I find no reliable evidence for the implementation of any discriminatory policy on the basis of race or any other protected characteristic.

Other matters

66. In reviewing the arrangements I noted that the definition of a previously looked after child in footnote 4 to paragraph 2.2.6.1 refers to "*residence orders*" which have been replaced by child arrangements

orders. This appears to be a drafting oversight as further on in the same footnote “child arrangement orders” are defined. However I find that the reference to “residence...order” is unclear contrary to the provisions of paragraphs 14 and 1.8 of the Code.

Summary of Findings

67. For the reasons set out above I do not uphold the objections in relation to the use of the same test for selection by ability for later additional sittings.

68. For the reasons set out above I do not uphold the objections in relation to use of catchment areas, residency and those for proof of address, save as set out in the following paragraph.

69. I find that the sentence “*There is an expectation that the address used to apply for a school place will be the same as the one where the child is living at the start of Year 7 and beyond*” is not clear as required by the Code and I partially uphold the objection on this point.

70. 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 academy trust for Alcester Grammar School situated within the county of Warwickshire.

71. I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

72. 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: 27 July 2018

Signed:

Schools Adjudicator: Tom Brooke