



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3372

Objector: An individual

Admission Authority: The academy trust for Pate's Grammar School, Gloucestershire

Date of decision: 8 January 2019

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Pate's Grammar School, Gloucestershire.

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 Pate's Grammar School (the school), a mixed selective secondary school for children aged 11 to 18 for September 2019.
2. The local authority for the area in which the school is located is Gloucestershire County Council. The local authority is a party to this objection. Other parties to the objection are the school and the objector.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined on 6 December 2017 by the governing board on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 2 April 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 2 April 2018 and a supporting paper, together with subsequent correspondence;
 - b. the admission authority's response to the objection;
 - 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. an extract of the minutes of the meeting at which the governing board of the school determined the arrangements;
 - f. a document posted on the school's website setting out the testing arrangements operated by the seven Gloucestershire grammar schools;
 - g. a copy of the determined arrangements, and
 - h. the determination in the case of ADA3349, Alcester Grammar School.

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, and
 - b. whether references to an Admission Review Group, to a "medical test" and to a "post allocation test" render the arrangements unclear. The objector did not specify which provision of the Code he considered engaged, but I informed the parties that paragraph 14 may be relevant in each case.
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, as they 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. complaints about racially motivated actions, or some personal vendetta against the objector by third party organisations (that is, organisations which are not the admission authority for the school); and
- iii. 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 matter of concern to me was whether references to "the qualifying standard" were unclear and whether this caused the arrangements to fail to comply with paragraph 14 of the Code.

Background

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

10. Under the school's admission arrangements for September 2019, there are 150 places available for admissions to Year 7 (Y7). The academic ability of pupils is assessed using a test which is common to all seven grammar schools in Gloucestershire. This consists of two papers provided by the Centre for Evaluation and Monitoring (CEM) at the University of Durham. Children take the "main test" only once, at a centre which is allocated on the basis of their home address, but following the outcome can apply for a place at more than one of the schools.

11. The school's arrangements state that:

"To be considered for entry.....a child must achieve a qualifying score in an Admissions Test, which definition shall include the Main Test, Medical Test, Post Allocation Test, and Appeals Test....."

and that:

"....candidates must achieve the Qualifying Standard, to include minimum standards in each part of the test. This is not a pre-defined pass mark, but reflects a child's position in the rank order of standardised scores in the Admission Test."

12. Oversubscription criteria provide that in the event of the available places being exceeded by the number of applications received, places will be given first to looked after and previously looked after children (as defined),

followed by children attracting the Pupil Premium and then by the remainder in rank order of their test score.

13. The arrangements say in relation to children who are outside the normal age range for admission:

“2.1.2 Overage children: it will not be possible for an overage child to be admitted unless there are exceptional circumstances”

and that:

“Any application from a child outside the normal age range will be considered by the Admission Review Group (ARG) whose decision as to whether to permit a child to sit the test will be final”.

14. Concerning the Medical Test, the wording of the arrangements is: *“3.2 If a child who had registered to take the Main Test “suffers illness, accident, or sudden bereavement, or if there are other exceptional circumstances....the School may be able to organise a Medical Test, often a few days later”.*

15. The local authority allows parents who are not happy with their allocated school to ask it to reconsider their application for a place at their preferred school by the second week in March. The arrangements also say that:

“ 3.3 A Post Allocation Test will be available (in March 2019) to those who failed to register for the Main Test” and that “An Appeals Test (for anyone wishing to qualify for a place on the Y7 waiting list) will be available (in April 2019), for those who are without a test score or those who are applying after the LA’s reconsideration deadline. The Appeals Test will be held after the appeals deadline and before the appeals are heard.”

Consideration of Case

16. The objector expressed his objection in the following terms:

“CLAUSES OF POLICY PATE’S GRAMMAR SCHOOL ADMISSIONS 2019-2020

The admission policy is not clear.

2.1.2 This effectively does not allow summer born children who decide to go down a year to sit the test (this is the way I read it). This is unfair.

The policy is made unclear by the reference to the ARG to decide whether a child can sit the test or not.

Challenge on the basis the school uses tests from Centre for Evaluation and Monitoring

3.2 What is a medical test ? I see no definition, Is it the same test as the main test or a different test, or is it a test from a doctor ?

3.3 What is a post allocation test? Is it the same test as the main test?

The school uses selective tests from Centre for Evaluation and Monitoring (CEM) based at Durham University.

If the tests are the same papers.....a High Court injunction has not been obtained against all parties unknown....to stopchildren passing on content to other children who sit the same test.....CEM is misleading the school in claiming the test is suitable for reuse.”

18. There are a number of elements contained within these paragraphs, and I shall proceed by separating them in order to be able to give each my consideration. I need first to explain the connection between this objection and others which have been made to the arrangements for September 2019 of different selective schools concerning the matter of the use of the same test for late sittings of the school’s selection test.

19. 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 proposed 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 Pate’s Grammar School. 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 Pate’s Grammar School, 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.

20. A letter dated 3 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 Pate’s Grammar School would be considered. The letter stated that, 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.”

The letter invited recipients to make representations as to why in the current objection this issue ought to be considered or determined differently.

21. The local authority said that it had no further comment to make. The

school replied on 16 August 2018 saying that in its view, the conclusions and the reasons given for them in ADA3349 apply equally to the issue of the use of the same test for selection by ability for later additional sittings as raised in the current objection. That is to say, the school accepted that the objection concerning the use of the same test on more than one date was relevant in this case.

22. The objector responded to the letter dated 3 August 2018 on 17 August 2018, and provided further material on 21 August 2018. Together, these comprised a covering letter, document headed "Forensic Analysis", plus 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 issue of late testing: his submissions do not touch on any of the other issues identified. However, the covering letter of 17 August did refer to the issue of the qualifying standard, and I shall return to this below.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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”, referring again to the claim made in the objection that test content is being published on various websites or passed on in other ways. Neither the adjudicator in ADA3349, nor I in considering this case, can take this into account if – as the objector says is the case – he is not able to tell me.

29. 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; however CEM does produce familiarisation papers for use by prospective candidates. Otherwise the point the objector makes relates to his understanding of the injunction proceedings, and is dealt with in paragraph 25 above.

30. 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.

31. 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. Insofar as the issue decided in ADA3349 is the same or substantially the same as that arising in the present case I will, as set out below, adopt it 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 below.

32. The objector's complaint that the use of the same test for selection by ability for later additional sittings is not compliant with 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.

33. A further element of the objection was that the arrangements are unclear because decisions are taken by the school's ARG about whether a child who is overage may sit the selection test. The arrangements explain that the ARG is a sub-committee of the governing board of the school, and set out its delegated authority from that body concerning admissions. So there is no lack of clarity concerning the ARG itself, or its role.

34. The arrangements state that:

"2.1.2 Overage children: it will not be possible for an overage child to be admitted unless there are exceptional circumstances"

and that:

"The school will consider each application in the light of the circumstances and in the best interests of the child.....Any application from a child outside the normal age range will be considered by the ARG."

35. Paragraph 2.17 of the Code says that:

*"Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal year group."*

It seems to me to be self-evident, firstly, that the arrangements do not prevent an overage child such as a summer-born child whose parents wish them to join the following year-group from doing so, as the objector alleges. The arrangements state that the school requires there to be exceptional circumstances before permitting this but there is nothing in the Code which prevents the school from making this stipulation, and this does not amount to a prohibition. It also seems to me that the arrangements make it clear that the process for requesting admission of an overage child is for their parent to make an application to sit the test. They also explain how this application will be considered. While the arrangements could be more explicit about the supporting information which might be supplied by an overage applicant in such circumstances, I do not consider that paragraph 2.17 has been breached, or that the fact that decisions are made on an individual basis by the school's ARG means that the arrangements are unclear. I do not uphold this aspect of the objection.

36. The objector also complained that it is not clear what the Medical Test and the Post Allocation Test are. In its letter of 16 August 2018, referred to above, the school said that as far as it is concerned, the arrangement state what the Medical and Post Allocation Tests are. This wording of the

arrangements is set out above, and it seems to me that it provides a clear description of what the purpose is of each test, and the circumstances to which each applies. I would expect the vast majority of parents reading the arrangements to be able to understand from this that each was a selection test, like the Main Test, that provides for particular groups of children to sit the selection test for the school. In this respect, I think the arrangements are clear concerning these tests.

37. By contrast, however, the objector was concerned that it was not clear what the Medical and Post Allocation Tests consisted of, in terms of the content of the tests themselves. While I agree that it is not possible to know this from the arrangements, I do not think that it is necessary for this to be the case for the arrangements to comply with the Code concerning their clarity. Arrangements need only provide clarity such that parents can *“look at a set of arrangements and understand easily how places for that school will be allocated”*, as stated in paragraph 14 of the Code. Furthermore, the objection as originally framed made the supposition that these tests were the same as the test used for the Main Test, in order to object to them on these grounds. When this was subsequently confirmed by the school, the objector pursued this aspect of his objection to the arrangements. I have dealt with this above, and note that it cannot be the case both that the content of these tests is known (that it is the same test as the Main Test) and that it is not clear what this is. For this reason, and because the arrangements do describe these tests clearly in terms of their function, I do not uphold this aspect of the objection.

38. Finally, I turn to the question of the “qualifying standard”. When parents are informed of the outcome of the selection test, they are informed whether or not their child has met the qualifying standard for the school. The school’s arrangements describe the qualifying standard in the following way:

“In order to be eligible for admission to the school, candidates must achieve the Qualifying Standard, to include minimum standards in each part of the test. This is not a pre-defined pass mark, but reflects a child’s position in the rank order of standardised scores in the Admissions Test.”

I had expressed my concern that this may not provide the clarity required by the Code when I wrote to the school on 3 August 2018. The school replied saying that all the other six grammar schools within the Gloucestershire consortium use similar phrases to describe their process of annually adjusting the minimum standard required, which they need to do because of differences in the cohort size and the ability of candidates. The objector, who had not included any reference to this matter in his original objection, made a number of comments about it in his covering letter of 17 August 2018. He expressed the view that: *“the lack of a pre-defined pass mark could allow manipulation of the intake”*. Referring to the school’s explanation he said that since the school used different tests provided each year by CEM, and since these are different tests *“there is no means for the school to compare the ability of the cohort with previous years”* and that the school *“must therefore define a pass mark”*.

39. As far as the objector's comments are concerned, I can only remark that it is evident that the school does not attempt to compare the results of the test taken one year by a cohort of children with those of another test taken in the following year by a different cohort of children. I observe that there would be no reason whatsoever to do so for the purpose of admission to the school. What the school – in common with other grammar schools in the area – actually does is to use the device of a qualifying score to regulate admissions because cohorts differ annually, as it has said, and this also means that should there be a year in which those applying were of a particularly poor academic standard, the school would not have to fill all its places. As a grammar school it is permitted to keep places empty by virtue of section 86(3)(c) of the Act. Defining a qualifying standard also means that a grammar school must give priority in its arrangements to all looked after and previously looked after children who meet that standard, as the school does. This is all clearly set out in the Code, in paragraphs 1.18 and 1.20 of the Code, which say:

“1.18 Only designated Grammar schools are permitted to select their entire intake on the basis of high academic ability. They do not have to fill all their places if applicants have not reached the required standard.”

and

“1.20 Where admission arrangements are not based solely on highest scores in a selection test, the admission authority must give priority in its oversubscription criteria to all looked after children and previously looked after children who meet the pre-set standards of the ability test.”

40. So the school is acting entirely in line with these provisions. What it does is to adjust its qualifying standard annually, as it is permitted to do, and I do not recognise the objector's misgivings about “manipulation”.

41. However, as I remained concerned that the arrangements offered little which allowed parents to understand the nature of the qualifying standard beyond how it operates, that is to say, whether for example it remained the same from year to year and the means used by the school for determining what it is, I did ask the school whether it was able to provide any further clarity concerning its genesis. The school told me that the standard is set annually by the ARG, and that it is the sum of the minimum standards defined for each part of the test, to which a weighting is applied to ensure that qualified students have the balance of abilities which the school considers appropriate for students at the school. This explanation does not fully articulate the entire process which must be involved, in particular how the minimum standards in the different parts of the test are set in relation to the cohort applying for a place. However, it does allow a better understanding of the wording in the determined arrangements. While I am content that the arrangements are sufficiently clear for parents to understand the process by which admissions are determined, and so do not cause a breach of the requirement of paragraph 14 of the Code that they be clear, I do consider that the school might helpfully provide this kind of detail in its arrangements in future.

Summary of Findings

42. I have set out 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 clarity of the arrangements with respect to references to the schools Admissions Review Group, to a Medical Test and to a Post Allocation Test.

43. I have also explained why I do not consider that the arrangements are insufficiently clear concerning the qualifying standard used by the school.

Determination

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Pate's Grammar School, Gloucestershire.

Dated: 8 January 2019

Signed:

Schools Adjudicator: Dr Bryan Slater