



Determination

Case reference:	ADA3606
Objector:	A member of the public
Admission authority:	The academy trust for Colchester Royal Grammar School, Essex
Date of decision:	4 November 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 for September 2020 determined by the academy trust for Colchester Royal Grammar School, 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.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector), about the admission arrangements (the arrangements) for Colchester Royal Grammar School (the school), a selective academy school for boys aged 11 – 18, for September 2020. The objection is that the test for selection used by the school discriminates unfairly against disadvantaged children.

2. The local authority (LA) for the area in which the school is located is Essex County Council. The LA is a party to this objection. Other parties to the objection are the academy trust for 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 by the academy trust (known as The Governing Body), which is the admission authority for the school, on that basis. The objector submitted her objection to these determined arrangements on 14 May 2019. 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. a copy of the minutes of the meeting of the governing body at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 14 May 2019, which included a link to the record of the proceedings of a meeting of the House of Commons Education Committee that took place on 8 November 2016;
- d. the school's response to the objection;
- e. the information guide for parents about the test for selection;
- f. copies of the test papers taken by pupils seeking admission to the school for September 2019;
- g. details of the method for adjusting pupils' scores in the tests in order to take into account their age; and
- h. a determination of the Schools Adjudicator concerning Colchester County High School for Girls (ADA3281) that was issued in March 2018.

The Objection

6. The objector believes that because the process of selection does not make any adjustments for disadvantaged pupils, the arrangements breach paragraph 14 of the Code, which states that,

“In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”

7. She also refers to paragraph 1.31 of the Code:

“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.”

Other Matters

8. In respect of previously looked after children, reference is made in the arrangements to *“residence orders.”* Residence orders were replaced by child arrangements orders in 2014.

9. There did not appear to me to be an explanation in the arrangements of the process whereby parents can seek a place for their child outside of their normal age group, as required by paragraph 2.17 of the Code.

Background

10. The Published Admission Number (PAN) determined for admission at year 7 (Y7) for September 2020 is 128. The local authority reports that parents of 558 boys made the school a preference, including 250 for whom it was their first preference. The LA’s co-ordinated admission scheme allows parents to express up to six preferences.

11. Places are offered to the 128 boys scoring highest in the selection tests for whom the school is their highest available preference. If it is necessary to resolve a tie in the scores for the last place, which appears to me to be very unlikely given the method used by the school for adjusting scores to take into account the pupils’ ages, that place will be allocated to a looked after or previously looked after child achieving that score or, if there is no such child, to the child who lives closest to the school.

12. Seven grammar schools, of which the school is one, and three partially-selective schools in the local authorities of Essex and Southend use tests for selection that are administered by The Consortium of Selective Schools in Essex (CSSE). Children take two tests, one in English and one in Mathematics. The guide for parents produced by CSSE states that the tests are *“based on Key Stage 2 of the National Curriculum.”*

13. In March 2018, a determination of the schools adjudicator concerning another school that uses the CSSE tests (ADA3281) held that it was unfair that, at that time, the selection process did not take into account the age of the pupils taking the tests. As the tests are taken by children in year 6 (Y6) at primary school, there is potentially a difference of 12 months between the oldest and youngest pupils. The CSSE selection does now adjust scores on the basis of age. The school provided me with details of the method CSSE now

uses to adjust the final score obtained by pupils that takes into account the number of days younger they are than the oldest pupil in Y6, that is, a pupil born on the first day of the academic year, 1 September. The mathematical formula used is adjusted each year based on the results of the test. A pupil born on 1 September who achieves the average mark in both tests will have a final total score of 300. By my calculations, based on the formula used to compute the scores for admission in 2019 (which was the one supplied to me), a pupil born on 31 August, that is, the last day of the academic year, achieving exactly the same average marks, would have a final score of just over 310. Scores are calculated to seven decimal places. For admission in September 2020, the last place at the school was allocated to a pupil with a score of 341.

Consideration of Case

14. The objector argues that the selection method used by the school,

“judges attainment in english and maths. This discriminates against poorer children who are well known to have an attainment gap in english and maths.”

She explains her view that,

“Grammar school tests like this one measure prior learning, and we know that children who practise more and have good teaching and parental help are likely to do better in these tests than those who do not. We also know that disadvantaged pupils are less likely to have parental help, test practise [sic] or tuition, and may experience other complex factors that affect their learning such as home disruption and poor nutrition. This means that on average, as a group, disadvantaged pupils perform less well in tests of attainment.”

15. The objector draws a parallel with the determination of the adjudicator in ADA3281, which held that pupils' ages must be taken into account. In her determination, the adjudicator in that case explained that older children will have been exposed to a greater range of vocabulary than younger children. The objector says,

“I feel that is just the same issue with disadvantaged pupils, and these pupils as a group should be protected, and not discriminated against unfairly. They are indirectly discriminated against by this school test due to its format which is entirely about attainment, when we know that this group are behind in attainment. They will, on average, score lower marks than advantaged pupils.”

She believes that, just as the adjudicator found that test performance is affected by age, it *“may also be affected by poverty.”* A disadvantaged pupil, she says, may perform less well in tests, *“simply because of factors related to poverty rather than lower innate ability.”*

16. The objector says that *“many schools adjust scores for poorer pupils already.”* She draws attention to answers given by the Department of Education's Chief Scientific Adviser, Doctor Tim Leunig, to the House of Commons Education Committee in November 2016. Dr

Leunig commented, *“It is possible to level the playing field. We do it already with age.”* The objector concludes,

“There is a clear and undisputed statistical correlation between age and attainment, and a clear and undisputed statistical correlation between a disadvantaged background and attainment. It seems illogical to correct scores for one and not the other.”

In fact, I am not aware of any school that does *“adjust scores”* for disadvantaged pupils, although, as I explain in paragraph 29 below, it is the case that some admission authorities set a slightly lower threshold for entry for pupils eligible for the pupil premium.

17. In response, the school maintains that the criteria for admission to the school are *“clear, fair and objective.”* All pupils educated in a state-maintained primary school, it says, will have been taught the national curriculum on which the tests are based. Free past papers and familiarisation material are available to all applicants. The school’s view is summarised in the following statement:

“‘disadvantaged’ pupils have access to the same KS2 preparation and familiarisation material as the rest of the cohort taking the selection tests and so there is no element of disadvantage.”

18. The school also points out that primary schools receive pupil premium funding for the purpose of supporting the attainment of disadvantaged children and suggests that *“an academically able ‘disadvantaged’ student would have received appropriate KS2 curriculum based support.”* It concludes,

“Therefore, at the time of sitting the test, a ‘disadvantaged’ student would be able to demonstrate their academic ability to the best of their potential, having received the same KS2 teaching and CSSE preparation guidance as the rest of the cohort.”

The school also mentions that it has an outreach programme to local primary schools, with the intention of encouraging academically able children to make an application to the school. Disadvantaged children, it says, benefit from this programme in the same way as their peers.

19. In summary, the school does not directly dispute the objector’s premise that disadvantaged children perform less well in the selection tests. It asserts that disadvantaged pupils will have received the same teaching in their primary schools and access to the outreach programme as other pupils. It does not address the objector’s suggestion that some children will benefit from extra private tuition, for which their parents pay, to enable them to prepare for the tests, but mentions the additional resource the pupil premium provides for the benefit of disadvantaged pupils.

20. Paragraph 14 of the Code stipulates that both *“the practices and the criteria used to decide the allocation of school places”* **must** be fair. In the context of tests for selection, I understand *“the practices”* to refer to the arrangements for testing, the content of the test

and the way in which the way in which the centre administering the test might enable pupils to prepare for it. The “*criteria used to decide the allocation of school places*” relates to the use made of the results of the test in deciding priority for places at the school. Paragraph 1.31 says that tests for selection **must** “*give an accurate reflection of the child’s ability*” and be “*a true test of ...ability*”. If tests do not meet the requirements of paragraph 1.31, it will be unfair to use the results of them to allocate places at the school. It was for this reason that the adjudicator found in ADA3281 that the CSSE tests, which then did not use age-related adjustment or standardisation, were unfair, as they failed to give an accurate reflection of children’s ability. I will consider the testing “*practices*” and the use made of the test results in turn.

21. The objector believes that disadvantaged children are “*discriminated against unfairly*” by the selection tests. The Code does not define fairness but I note, as the school says, that the tests are based on the KS2 curriculum that all children are taught in primary schools. There is no requirement for pupils to study additional topics outside of school. Familiarisation materials and past papers can be downloaded from the CSSE website free of charge. Hard copies of past papers for the last three years can be obtained for a payment of £15.50 for each year’s papers. One year’s papers can be provided free of charge to pupils receiving free school meals. I regard it as disappointing that this offer does not extend to all three years’ papers.

22. I have no reason to doubt the objector’s assertion that some children will benefit from private tuition to enable them to prepare for the test. Such children may well gain an advantage as a result, but I do not consider that this means that the testing process is of itself unfair. In any competitive test of ability, for example in sporting contests or recruitment for employment, thorough preparation contributes to success. Furthermore, it is almost certainly wrong to assume that all disadvantaged children, defined as those for whom the pupil premium is paid, will not have access to private tuition, whereas all other children have the benefit of a tutor. Dr Leunig commented to the Education Committee in the session in November 2016 that, “*a poor family, if they are really determined, can still find that money.*” Conversely, it is not the case that all well-off parents will prioritise their children’s education when making decisions about financial commitments, although many of course will do so.

23. Therefore, I do not consider that “*the practices*” are of themselves unfair to disadvantaged children. The school has demonstrated that some effort is made to ensure that all children can prepare for the tests, both in the normal course of their studies at primary school and in accessing examples of test papers.

24. I turn now to the use made of the test results. The objector criticises the tests as their format is “*entirely about attainment.*” In using the term “*attainment*”, she implicitly draws a contrast with the wording of the Code, which, in the context of selection for grammar schools, uses the word “*ability*” throughout. My understanding of the difference between the two terms is that “*ability*” relates to the talent or skill needed to achieve something, whereas “*attainment*” requires the actual achievement of a task or goal. The objector’s contention, as I understand it, is that the CSSE tests focus on the attainment of a high level of competence in KS2 English and Maths. She says they do not correctly identify the ability that some

disadvantaged children might have to reach that level of attainment, were it not for the factors she lists in paragraph 14 above that she believes inhibit them.

25. The Code does not use the word “*attainment*.” It does, however, make a distinction between “*ability*” and “*aptitude*”. Some schools are permitted to select pupils on the basis of their aptitude for a particular subject, such as music or modern foreign languages. Tests for aptitude must not require children to have achieved a certain level of competence or to have acquired specific skills, but rather to demonstrate potential to achieve. This suggests strongly to me that, by contrast, the Code does expect that tests of ability will require children to demonstrate academic achievement. I consider it entirely reasonable that tests for selection at this grammar school focus on pupils’ achievement in the context of the content of the curriculum studied in primary school. I recognise that some grammar schools’ selection processes also involve tests of reasoning skills but I find nothing in the Code to indicate that this is a requirement.

26. I therefore consider that the testing of what the objector calls “*attainment*” does not of itself breach the requirements of the Code. However, the objector contends that, as there is a “*strong correlation between disadvantage and test performance*”, the tests do not “*give an accurate reflection of the child’s ability*”, as required by paragraph 1.31. She argues that the results achieved by disadvantaged children should be reviewed by admission authorities “*in exactly the same way they review factors to do with age.*” She goes on to say that,

“Many grammar schools find it easy to make an adjustment for disadvantage by offering a lower pass score for poorer pupils.”

In its response, the school simply states that it considers the “*criteria for admission to the school*” are fair.

27. As the objector admits, the factors that affect the performance of disadvantaged children in tests for selection are “*complex*.” The effects of matters such as “*parental help*”, “*home disruption*” and “*poor nutrition*” on their performance in tests will almost certainly vary markedly and will be difficult, if not impossible, to quantify. In this respect, the correlation between a disadvantaged background and a pupil’s attainment differs significantly from the correlation between age and attainment. A pupil’s age is a single, fixed fact. Scores can be adjusted to take account of age by a relatively simple mathematical formula derived from the analysis of test results. CSSE now uses such a formula.

28. I do not consider that it is the case that scores can be standardised to take account of disadvantage “*in exactly the same way*” as they are to take account of the age of pupils, as the objector suggests. Whilst it may be theoretically possible to devise a formula for standardising a pupil’s score on the basis of parental income, the practical difficulties involved in obtaining robust information appear to be me to be insuperable. Identifying income from a range of sources, such as employment, investments and legacies would be hugely complicated; the contribution made by other relatives, such as grandparents, might also need to be taken into account. Furthermore, as I commented in paragraph 22, there is certainly no direct correlation between parental income and expenditure on preparation for selection tests. I would add, too, that whilst it may be statistically more likely, low income

will not always mean that children face disadvantages such as “*home disruption*” or “*poor nutrition*” that the objector mentions, nor will high income guarantee their absence. Some families of very limited income will have the cultural capital, aspiration and ability to provide a great deal of support for their children’s educational achievement.

29. Within oversubscription criteria (as opposed to the standardisation of selection test results), paragraph 1.9 (f) prohibits admission authorities from taking into account the financial status of parents applying, with the exception that those eligible for the early years pupil premium, the pupil premium or the service premium may be prioritised. It is the case that some grammar schools take into account eligibility for the pupil premium in deciding the allocation of places. They do so in different ways. For schools where the ability test has a pre-set standard and oversubscription criteria are applied to all pupils who achieve this standard, a slightly lower threshold may be set for disadvantaged children. Where, as at this school, places are generally allocated in rank order of scores in the test, some schools will allocate places to disadvantaged children ranked a little lower than the ‘last’ place as determined by the PAN. In contrast to the standardisation of test results by age, these methods do not affect pupils’ scores; rather, they are included within the oversubscription criteria and, in effect, alter the score that has to be achieved in order to secure a place. Whilst these approaches used by some schools represent an attempt to compensate for the disadvantages some children face, I cannot find anything in the Code that requires schools to use them. The fairness of such methods will depend on the specific circumstances of the school.

30. It is clear to me that identifying the effect of disadvantage for individual children is potentially an extremely complex matter. It does not appear to be at all simple to produce a reliable mechanism for using any form of ‘sliding scale’ for standardising test scores, as is the case when taking into account pupils’ ages. Certainly, the objector has not proposed one. Therefore, the methods available for compensating for disadvantage are rather ‘blunt instruments’ as the only factor that can be taken into account within oversubscription criteria is eligibility for pupil premium. The use of one of these methods does not, in my view, guarantee that the effects of disadvantage will be accurately compensated for in every case or that the outcome of the selection tests will necessarily be to a significantly greater extent, “*an accurate reflection of the child’s ability*”, as paragraph 1.31 requires. Therefore, I do not consider that it can be regarded as unfair if a school chooses not to adopt such approaches. I do not uphold the objection that the method of selection used by the school does not comply with the Code.

Other matters

31. The school has undertaken to correct the definition of previously looked after children in the arrangements, in order to take account of the introduction of child arrangements orders.

32. With regard to parents seeking a place at the school for their child outside of their normal age group, the school drew my attention to a sentence in the arrangements that states,

“The school does not normally admit overage applicants.”

It also pointed out that the CSSE Information Guide provides the following guidance for parents:

“The decision to allow a pupil to take the 11+ examination early lies with the admissions committees of the school/s for which a parent expresses a preference.”

33. These statements provide some information for parents, but I do not consider that they *“make clear...the process for requesting admission out of the normal age group”*, as required by paragraph 2.17 of the Code. There is no explanation of when such requests should be made and in what form. In this respect, therefore, the arrangements do not comply with the Code.

Summary of Findings

34. The selection tests used by the school are based on the KS2 curriculum taught in primary schools. All children have access to past papers and familiarisation material. The school allocates places based on the rank order of scores achieved in the tests. The factors affecting the performance of disadvantaged children in tests are complex and difficult to quantify. I do not consider it to be unfair that the school does not take into account disadvantage when allocating places. I do not uphold the objection.

35. There are other ways in which the arrangements do not comply with the Code.

Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2020 determined by the academy trust for Colchester Royal Grammar School, Essex.

37. 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.

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

Dated: 4 November 2019

Signed:

Schools Adjudicator: Peter Goringe