Office of the Schools Adjudicator

Determination

Case reference:	**ADA3533**
Objector:	**A member of the public**
Admission authority:	**The Odyssey Trust for Education for Townley Grammar School, Bexley**
Date of decision:	**17 January 2020**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mr Brooke and I partially uphold the objection to the admission arrangements for September 2020 determined by the Governing Board for Townley Grammar School, Bexley.

We 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 adjudicators' 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 or by 28 February following the determination whichever is sooner, unless an alternative timescale is specified by the adjudicator. In this case we determine that the arrangements must be revised by 28 February 2020.

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 Townley Grammar School (the school), a selective academy school for girls between the ages of 11 and 18 with a mixed

sixth form for September 2020. The objection is to the use of the same test for selection by ability for later additional sittings, and to a number of other matters, as set out below.

2. The local authority (LA) for the area in which the school is located is the London Borough of Bexley. The LA is a party to this objection. Other parties to the objection are the objector and the school's governing board.

Jurisdiction

3. The terms of the Academy agreement between the multi-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. The objector submitted his objections to these determined arrangements on 10 April 2019. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and it is within my jurisdiction. We have also used our power under section 88I of the Act to consider the arrangements as a whole.

4. Although we are appointed as joint adjudicators in this case, I have acted as the lead adjudicator and have drafted this determination, which is agreed by Tom Brooke. In this determination references to myself should therefore be read to include both joint adjudicators. Specific provision is made in the Education (References to Adjudicator) Regulations 1999 for the chief adjudicator to allocate a case to more than one adjudicator and to appoint one of them to be the lead adjudicator.

Procedure

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

6. The documents we have considered in reaching our decision include:

a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;

b. a copy of the determined arrangements;

c. the objector's form of objection dated10 April 2019 and supporting documents;

d. subsequent correspondence from the objector

e. the school's and the LA responses to the objection, and

f. information published by the LA on its website concerning the selection test which it operates for the four selective schools in the borough.

The Objection

7. The objection contained the complaints that the following matters are not compliant with the requirements concerning admission arrangements set out in the Code and in the relevant legislation:

7.1. that the same test for selection by ability is used for later additional sittings and that the results of this later testing fails to provide an accurate reflection of candidates' abilities;

7.2. that the arrangements are unclear because the phrase "deemed selective" is not explained;

7.3. that an absence of clarity concerning the minimum qualifying score could allow children who are entitled to the pupil premium to be admitted with a lower score that other children and whether this makes the arrangements unfair;

7.4. whether the word "misleading" needs further definition;

7.5. that the provision which gives priority to children of members of staff does not comply with the requirements of the Code, and

7.6. that the definition of a child's home address is unreasonable because it excludes those whose parents have high incomes.

Other Matters

8. Having considered the arrangements as a whole, it seemed to us that the following matter also did not, or may not, conform to the requirements:

that the arrangements do not state that a child whose statement of special educational needs or Education, Health and Care plan names the school will be admitted.

Background

9. The objector has referred a large number of objections to the Schools Adjudicator under Section 88H of the School Standards and Framework Act 1998 (the Act) over the past several years.

10. Each of the objector's objections has related to a school which is a designated grammar school or a bilateral school with selective places. Each school objected to requires applicants to have sat a test of ability. In every case that test is set by the Centre for Evaluation and Monitoring (CEM). Many, although not all, of the objections relate to grammar schools situated in Warwickshire. The same issues have been raised in numerous of the objections. In essence the objector says that some content of tests will be recalled by

children sitting the test, which will be passed on to those sitting later so giving them an advantage thereby making later testing using the same test unfair. He asserts that this is in breach of paragraph 14 of the Code, and also paragraph 1.31, which requires that selection tests must give an accurate reflection of the child's ability or aptitude, because he says that content can be compromised once initial sittings have taken place.

11. In 2018, for the first time, the Schools Adjudicator adopted a "first case" procedure, whereby an issue or issues raised in multiple objections could be considered in a first case, with adjudicators considering the same issue then able to adopt that reasoning, subject of course to consideration of any reasons advanced as to why it should not be followed. In those (and previous) cases, adjudicators have found (in very short summary – reference should be made to the determinations in question for the full reasoning on each issue) that the re-use of the same test does not breach paragraphs 14 or 1.31 of the Code, because:

(i) some late testing is necessary, to allow for matters such as the unavoidable indisposition of candidates (see ADA3349, paras 41- 43);

(ii) although children will recall some of what they have encountered when taking tests (see ADA3349, paras 30,35);

(iii) this recall is likely to be limited (see ADA2877, para 25; ADA3349, paras 30,40,46 and ADA3351, para 25);

(iv) and the likelihood of such knowledge being passed on in the normal course of course of events is limited (see ADA3349, paras 35,40,46; ADA3351, para 29);

(v) by contrast, if mechanisms for passing on content are provided, tests could be compromised (see ADA3349, paras 30,35);

(vi) Using different tests for later sittings is not necessarily non-compliant with the Code (see ADA3127, para 19). However, re-use of the same test has the advantage that all children are tested against the same standard and in normal circumstances the chances that test content will be compromised is minimal (ADA3349, paras 44,46).

12. The objector has referred 14 objections to the Schools Adjudicator in 2019, which follow the pattern described above and raise issues that were the subject of the "first case" procedure in 2018. In order to minimise the use of public money and resources which this gives rise to, and to deal as efficiently as possible with these multiple objections, the joint adjudicators have decided to adopt a broadly common format for considering the issues that the objector has raised.

13. Table 1 sets out each of the objections referred in 2019 to the admission arrangements for 2020. In most cases the current objections raise the same or similar arguments and submit the same evidence as has been raised in objections in preceding years. In some cases the objector has submitted new evidence and in some cases new issues have been raised in objections. Table 2 sets out the determinations of adjudicators in previous years which are referred to in this determination.

14. We emphasise that we are not treating past determinations as precedents. Adjudicator determinations do not create precedents and we have considered the arguments made in each case this year on their merits and against the relevant provisions of the legislation and Code. In particular, we have considered whether any point raised by the objector would lead us to conclude that the issues under consideration in relation to objections made this year should result in a different conclusion from those reached in relation to the same or substantially the same issues in other schools in previous years.

Table 1 List of objections made by the objector in 2019

Name of school	Reference number	Name of school	Reference number
King Edward VI Camp Hill School for Boys	ADA3511	Lawrence Sheriff School	ADA3524
King Edward VI Camp Hill School for Girls	ADA3512	The Henrietta Barnett School	ADA3525
King Edward VI Aston School	ADA3513	Ilford County High School	ADA3526
King Edward VI Five Ways School	ADA3514	St Bernard's Catholic Grammar School, Slough	ADA3527
King Edward VI Grammar School for Boys	ADA3515	The Crypt School	ADA3531
King Edward VI Grammar School for Girls	ADA3516	Wolverhampton Girls' School	ADA3532
Stroud High School	ADA3523	Townley Grammar School, Bexley	ADA3533

Table 2 Relevant past determinations

Name of School	**Reference Number**	**Date of Decision**
Lawrence Sheriff School	ADA2608	15 September 2014
Rugby High School	ADA2877	15 September 2015

Lawrence Sheriff School	ADA3127	25 August 2016
Alcester Grammar School	ADA3349	27 July 2018
Rugby High School	ADA3351	27 July 2018

15. The school is one of four grammar schools in Bexley. Each of these uses "The Bexley Selection Test" and children need sit it only once before applying for a place at one or more of the schools. Each child's age-standardised score in three domains – verbal, numerical and non-verbal reasoning – is weighted before being summed to provide an overall weighted age-standardised score. It is this score that is used for selecting candidates for admission to the schools on the basis of their ability. All children are ranked in the order of their score, and the children who score above a certain point are those who are "deemed selective". The number who will be "deemed selective" each year is greater than the total number of available places across the four schools, and the oversubscription criteria of each school are then used to allocate places to eligible children who have applied for them. Each of the schools gives a high priority to children who were in the highest scoring 180 children in Bexley although there are more than 180 places available in the schools combined, and those who are "deemed selective" include the highest scoring 180 and others

16. The document published by the LA which sets out the above procedure also states that late testing will *"normally"* be available for candidates who, having registered by 7 July 2019 to take the test, were unable to do so because of *"illness or serious personal circumstances"*.

The admission arrangements

17. The school's admission arrangements state that the admission number for Year 7 is 224, and that only girls "deemed selective" are considered in the initial allocation of places, and that this includes *"girls with a statement of special educational needs".* The oversubscription criteria are:

a. Looked after and previously looked after children (as defined)

b. Children attracting the Pupil Premium

c. Those who were in the highest-scoring 180 candidates who took the Bexley test.

d. Girls with a sibling (as defined) in attendance at the school

e. Those with a parent or guardian employed at the school on a permanent basis

f. Others, with priority determined by the distance of their home from the school. Test score and finally random allocation are used as tie-breakers within this group if necessary.

Consideration of Case

18. I have set out our conclusions and the reasons for those conclusions either below, or in a table attached to this determination as an Appendix. I will refer where appropriate to the relevant paragraphs of text in the Appendix.

Whether the use of the same test for late testing is compliant with the Code and law on admissions and whether the use of the same test provides an accurate reflection of candidates' ability

19. Our conclusions on this issue and the reasons for those conclusions are set out in part 1 of the Appendix to this determination. We do not uphold this aspect of the objection.

Whether the arrangements are unclear because the phrase "deemed selective" is not explained

20. The school began its response to the different elements in the objection by pointing out that it takes part in the collective arrangements described above. It stated its view that, as a consequence, because the selection tests are provided by CEM and administered and co-ordinated by the LA *"there are aspects of this objection that rest with other parties"*. We disagree. The Code defines a school's admission arrangements as:

> *"….the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered."*

For the avoidance of doubt on the school's part, we are bound to make clear that its admission arrangements, which are the only matters that fall within our jurisdiction, are entirely the responsibility of its admission authority. Paragraph 5 of the Code makes this explicit:

> *"It is the responsibility of admission authorities to ensure that admission arrangements are compliant with this Code. Where a school is the admission authority, this responsibility falls to the governing body or Academy Trust."*

21. Both the school and the LA considered that the term "deemed selective" is clear, and the objector wrote again re-stating his view that it is not, asking questions such as *"Is there a qualifying score ?"* and *"How is it set, given different cohorts cannot be compared with different tests, as the test supplier has confirmed ?"* Our view is that the parties appear to approach this matter from entirely different standpoints. The document published by the LA, which we have summarised above, provides an explanation of the process used each year to identify a number of children, those scoring above a certain level in the selection test, whose application is given further consideration, and to whom the term "deemed selective" is attached. There is no link in this process to any particular standard of academic

performance, either within the cohort applying for places in September 2020, or to any previous cohort, as the objector appears to consider necessary. Neither does there need to be. Seen as a purely pragmatic means for reducing the number of applicants who are considered further to manageable proportions and identifying those the admission authorities collectively consider suitable for a grammar school education, we consider that the words "deemed selective" carry their normal everyday meaning when read in conjunction with the explanation given in the LA document, and need no further definition.

22. The Code at paragraph 14 says that:

*"….admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are…clear… Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*

We note that a document giving "key dates and information" which is available on the school's website says:

"To be considered for a place at Townley Grammar school, your child must achieve the selective standard in the selection test held at the beginning of Year 6."

23. However, there is no explanation of "deemed selective" in the school's published admission arrangements, simply a reference to the arrangements published by the LA with no link or statement saying where these can be found. As a result, the admission arrangements themselves fail to meet the test provided in paragraph 14 in our view, since it is not acceptable to expect parents to have to search elsewhere for a key description which is needed to provide an understanding of the process used to allocate places. What is needed is a simple statement in the school's admission arrangements which explains to parents that it will be clear from the letter they receive when they are informed of their child's test results whether or not their child has been "deemed selective".

24. We uphold this part of the objection, but not on the grounds set out by the objector.

Whether an absence of clarity concerning the minimum qualifying score could allow children who are entitled to the pupil premium to be admitted with a lower score than other children and whether this makes the arrangements unfair

25. We have set out above the reasons why we consider that although the arrangements themselves do not provide the necessary clarity for parents reading them, the practical effect of the process used in determining those children "deemed selective" is not in doubt. The remaining element of this aspect of the objection is therefore whether the admission of children who are entitled to the pupil premium with a lower score than other children conforms to the requirements of the Code. Our conclusions on this issue and the reasons for those conclusions are set out in part 2 of the Appendix to this determination.

Whether the word "misleading" needs further clarification

26. Our conclusions on this issue and the reasons for those conclusions are set out in part 3 of the Appendix to this determination.

Whether the provision which gives priority to children of members of staff conforms to the requirements of the Code

27. Paragraph 1.39 of the Code says the following:

"Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:

a) *where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*

b) *the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage."*

The words used in the oversubscription criterion in the arrangements are:

"Staff children – those students with a parent or registered guardian employed at Townley"

No further description or definition of this group of children is provided.

28. The objector says that paragraph 1.39 is violated by the arrangements and questions whether children of all staff are given priority under the arrangements, and whether this includes "a cleaner" or someone employed for less than two years. The school has pointed out that giving priority to children of members of staff does comply with the Code.

29. The term "staff" is not defined in the Code, and a school is therefore not restricted to giving priority, for example, to children of teaching staff. There is no reason why the child of a cleaner should not enjoy the same priority as the child of any other member of staff provided the tests in paragraph 1.39 are met. The absence of any further definition in the arrangements therefore does not breach the Code and the school is at liberty to give priority to the children of any member of its staff, as it does.

30. What it is not at liberty to do is to give such priority unless one or both of the conditions set out in paragraph 1.39 has been satisfied. The priority given by the oversubscription criterion in the arrangements therefore does not comply with what the Code provides. We uphold this aspect of the objection.

Whether the definition of a child's home address is unreasonable because it excludes the addresses of parents who have high incomes

31. The wording of the definition of a child's home address in the arrangements is as follows:

" Home will be taken as the child's home address at the time of allocation, (National Offers (sic) Day) that is the address at which the child lives with the parent or legal guardian who is also the main carer, defined as the parent eligible to receive child benefit and/or child tax credit."

32. The objector has said that this is not fair or reasonable, because many parents do not receive child benefit and/or child tax credit and are therefore excluded. The school has

said that the objection *"does not make sense"*, to which the objector has offered no further comment.

33. If parents separate, and if their child lives with one parent only all of the time, then this parent is the only one eligible to claim Child Benefit. However, if the child lives with both parents it does not necessarily follow that the parent receiving Child Benefit is the parent with whom the child lives most of the time. In this situation, the parents can agree between them who should claim. It is not the case that a parent who earns more than £50,000 is excluded from claiming Child Benefit, as the objector asserts. However, for tax reasons separated parents may agree that the lower earner will claim Child Benefit even though the child only lives with them for a minority of the time, and they would be entitled to do so. Alternatively, the child might spend an equal amount of time with both parents, but spend most school nights with one parents and weekends and school holidays with the other. It is perfectly possible in this scenario that the parent who claims Child Benefit is the one with whom the child lives at weekends and during school holidays. It can be seen from these examples why the use of Child Benefit eligibility is therefore an entirely unreliable means for determining the address of a child who lives with both separated parents, and means that the arrangements are not fair or reasonable.

34. We uphold this aspect of the objection, but not on the grounds set out by the objector.

We turn now to consider the matter which was raised by ourselves under section 88I of the Act.

The admission of children whose statement of special educational needs or Education, Health and Care Plan names the school

35. Paragraph 1.6 of the Code says the following:

> *"The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school…. All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school must be admitted."*

36. The school has not referred to this matter in its response to the adjudicators. However, the arrangements state the following:

> *"The school will admit pupils who have a statement of special educational needs naming the school provided that the school has agreed that it can meet that child's needs and therefore consented to be named."*

37. The Academy agreement between the school and the Secretary of State does provide for it to appeal to him against the expressed intention of al local authority to name it in a statement of special educational needs or in an Education, Health and Care plan. However, if the Secretary of State decides the local authority may name the school, the school is required to admit it. There are no circumstances which permit a school to place a condition of its own consent on the admission of such a child, and paragraph 1.6 is

unequivocal in requiring admission authorities to make this plain in their admission arrangements.

38. We are of the view that the arrangements are in breach of what the Code requires.

Summary of Findings

39. We have set out our reasons for upholding the objection in respect of:

(i) the clarity of the phrase “deemed selective”, but on grounds other than those given by the objector and

(ii) the priority given to children of members of staff of the school.

40. We have also set out above and in the appendix our reasons for not upholding the other aspects of the objection.

41. We have explained above why we are of the view that the arrangements fail to comply with paragraph 1.6 of the Code.

Determination

42. In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mr Brooke and I partially uphold the objection to the admission arrangements for September 2020 determined by the Governing Board for Townley Grammar School, Bexley.

43. We 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.

44. By virtue of section 88K(2) the adjudicators’ decision is binding on the admission authority.

45. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination or by 28 February following the determination whichever is sooner unless an alternative timescale is specified by the adjudicator. In this case we determine that the arrangements must be revised by 28 February 2020.

Dated: 17 January 2020

Signed:

Adjudicator: Dr Bryan Slater

Appendix

The parts of this Appendix set out below cover points raised by the same objector in a number of objections to the admission arrangements of a number of schools.

Part	
1.	**Whether use of the same test for selection by ability for later additional sittings is compliant with the provisions of the Code and the law relating to admissions** 46. A letter was sent to the objector by the Office of the Schools Adjudicator (OSA) explaining the process to be followed in this case. That letter sets out the matters to be considered. The letter refers to earlier determinations of objections relating to Alcester Grammar School (ADA3349) and Rugby Grammar School (ADA3351). In relation to this issue, in which the same or substantially the same issue has been considered and determined in ADA3349 and ADA3351, the letter states: *46.1. "the lead 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 can be accessed by this link. The whole determination should be considered but paragraphs 18 to 48 specifically address this point. Further matters in relation to this issue have considered in ADA3351 dated 12 December 2018, a copy of which can be accessed by this link. The whole determination should be considered but paragraphs 21 to 30 specifically address those further matters. On initial consideration it appears to the lead adjudicator that the conclusions and the reasons given in ADA3349 and ADA3351 apply equally to this issue as raised in the current objection;* *46.2. the lead adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently."* **Whether the use of the same test provides an accurate assessment of candidates' abilities.** 47. The letter referred to above stated: *"The lead adjudicator considers this to be an extension of the point which is considered in point 1 above. Consequently the lead adjudicator proposes to take the same approach as set out in paragraph 1."* 48. The objector responded to the letter, following any responses from the local authority and the school which were copied to him, with a document headed "*Invited Submission*" together with attachments. This document sets out the reasons why he disagrees with the consideration

and conclusions in the determination of his objection regarding ADA3349 and ADA3351. It is clear that the objector considers that ADA3349 and ADA3351 were wrongly decided on this issue.

49. In his submissions the objector raised some procedural points. He invited me to request documentation from the courts which dealt with injunction proceedings. We have seen and considered the published judgments. 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. We do not consider that documentation such as statements of case would assist us in reaching a decision.

50. The objector has also asked me to seek copies of earlier tests from the test provider. We 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 us in my consideration of this matter.

51. ADA3349 was published on the OSA website on 27 July 2018 and ADA3351 on 12 December 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 and ADA3351 stand as published.

52. ADA3349 and ADA3351 do not constitute precedents and we are required to consider this objection on its own merits. We have considered all of the points raised by the objector in relation to ADA3349 and ADA3351. In particular, we have considered whether any point raised would cause us to consider that this issue, 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 and ADA3351.

53. We find that the points raised by the objector regarding ADA3349 and ADA3351 do not lead us to consider that any point in ADA3349 and ADA3351 was wrongly decided. A number of the points made in the "*Invited Submission*" 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 was explained at paragraphs 37-38 of ADA3349, that was not

	the finding of the Court. 54. The objector refers in the "*Invited Submission*" to what he calls an "*independent research study*" which is published on his website. There are no details of how, where or when this study took place or of any methodology used or any review carried out by any reputable academic body. We find that the study has no evidential value and we have not taken it into account. 55. The objector refers to a "*later High Court case*". We have read the judgement in this case and we find that it adds nothing new to the matters considered in the other judgements referred to above and considered in ADA3349 and ADA3351. 56. The objector refers to a response by Durham University regarding the reuse of tests "*Durham University does not make recommendations for the reuse of tests. The University makes the tests available for reuse by customers in response to customer requirements*". This is a neutral stance and certainly does not endorse the objector's view that the reuse of tests is unfair or improper or that it leads to results that may not be an accurate reflection of candidates' ability. 57. The objector states in the objection that "*there is no reason for children not to pass on content once they have been offered places*". This would not arise until some months after a child has taken the test. This does not change our view on whether and to what extent test content may be recalled and/or passed on. 58. The objector's further criticisms of the evidence given to the Court that are referred to in ADA3349 and ADA3351 do not persuade us that any of the factual conclusions we reached were wrong. 59. The objector also disagrees with a number of the conclusions 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. We have considered the points made by the objector, but disagree with him for the reasons already set out in ADA3349. 60. The objector has not given any reason or reasons which persuade us that the facts in the present case mean that it should be considered differently to ADA3349 and ADA3351. 61. The objector raises this point in the same or substantially the same terms to those he raised in ADA3349 and ADA3351. In deciding this issue we adopt the reasons and conclusions set out in paragraphs 18 to 48 of ADA3349 and summarised above. It is not necessary to set

	out the relevant paragraphs of ADA3349 here. 62. We do not uphold the objection on this point.
2	**Whether there is unfair discrimination against non-pupil premium children by giving lower scoring pupil premium children priority** 63. We note that the same or substantially the same issue was raised by the objector in an objection to the then admission arrangements for Lawrence Sheriff School in 2014. Although in each case the admission arrangements differ in the wording and the provisions of the Code (which was revised in 2014) are not identical, in essence the facts and law are the same. That determination is not a precedent and is not in any way binding on us. However, we agree with the reasons and conclusions of the adjudicator in that determination (ADA2608) which did not uphold the objection. Paragraph 1.39A of the Code now in force expressly permits priority for pupils in receipt of pupil premium. There is no provision in the Code or in the law relating to admissions which prevents the use of lower scores in the qualifying test for this group of pupils. It is correct that this will disadvantage applicants who are not in receipt of pupil premium. All oversubscription criteria advantage some and thus disadvantage others. The question for us is whether any advantage or disadvantage is fair. The purpose in this case is to provide an advantage to a group of pupils who are otherwise disadvantaged. This is a legitimate aim explicitly contemplated in the Code. Consequently, we find that such disadvantage as results for applicants not entitled to the pupil premium is not unfair. 64. We do not uphold the objection on this point.
3	**Whether the word "misleading" requires any further definition.** 65. The word "misleading" appears in paragraph 2.12 of the Code, as follows: *'An admission authority **must not** withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable period of time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application. Where the parent has not responded to the offer, the admission authority **must** give the parent a further opportunity to respond and explain that the offer may be withdrawn if they do not. Where an offer is withdrawn on the basis of misleading information, the application **must** be considered afresh, and a right of appeal offered if an offer is refused."* It carries its ordinary meaning, which is clear in this context. The wording in the admission arrangements follows the wording in the Code. We do not consider that any further definition is required and

	consequently we do not uphold the objection on this point.