



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3528

**Objector:** A member of the public

**Admission authority:** The Governing Board of St Bernard's Catholic Grammar School, Slough

**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 Governing Board for St Bernard's Catholic Grammar School, Slough.

We 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 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 28 February following the decision, 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 September 2020 for St Bernard's Catholic Grammar School (the school), a mixed voluntary aided selective school for children aged 11 to 18. 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 Slough Borough Council. The LA is a party to this objection. Other parties to the objection are the Roman Catholic Diocese of Northampton, the school's governing board and the objector.

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's Governing Board on 12 February 2019. The objector submitted his objections to these determined arrangements on 28 March 2019. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and it is within our 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 I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a. a copy of the minutes of the meeting of the school's Governing Board at which the arrangements were determined;
- b. a copy of the determined arrangements,;
- c. the objector's form of objection dated 28 March 2019 and supporting documents;
- d. subsequent correspondence from the objector;
- e. the school's responses to the objection and supporting documents, and

- f. the document “Guide to the 11+ Entrance Examination for entry in September 2020” published by the Slough Consortium of Grammar Schools.

## The Objection

7. The objection contained the complaints that the following issues are not compliant with the provisions of the Code and the law relating to admissions:
  - a. that although the arrangements fail to state this, the school allows late testing of candidates using the same test that is used on the specified testing date and that this is not compliant with these requirements and that the test results do not provide an accurate reflection of candidates’ ability;
  - b. that the priority given to those of the Catholic faith unfairly disadvantages other social and racial groups and amounts to “unfair and direct racial discrimination”;
  - c. that the priority given to children attending “a Slough Catholic school” is unlawful;
  - d. that the provision which gives priority to children of members of staff does not comply with the requirements of the Code;
  - e. that the stipulation that requests for test scores to be shared with other selective schools must be made before registration for testing closes breaches the requirements of the Code;
  - f. that the arrangements breach elements of paragraph 2.9 of the Code by not permitting late testing for candidates who do not register within the published deadline and by not stating what arrangements are made for later testing of candidates who are not able to attend testing sessions for genuine reasons;
  - g. that the arrangements fail to state what provision is made for those who cannot attend testing sessions on a Saturday for reasons of religious observance;
  - h. that the arrangements were not published on the admission authority’s website in accordance with paragraph 1.47 of the Code.

## Other Matters

8. Having considered the arrangements as a whole it appeared to us that the following matter also did not, or may not, conform with the requirements relating to admissions in the following ways:
  - (i) with paragraph 1.6 of the Code because they do not state that children whose statement of special educational needs or Education, Health and Care plan names the school will be

admitted;

- (ii) with paragraph 2.4 of the Code by requiring all applicants to complete the school's supplementary information forms, of which there are two;
- (iii) with paragraph 1.8 of the Code by failing to define what is meant by "other faiths", and
- (iv) with paragraph 1.37 of the Code because the definition of a practicing Catholic is rendered unclear as a result of the failure of the arrangements to state what is meant by the term "regularly".
- (v) with paragraph 1.9 I) of the Code by naming a fee-paying independent school, St Bernard's Preparatory School, as a feeder primary school.

## 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 that reasoning, subject of course to consideration of any reasons advanced for 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, para25);
- (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**

<b>Name of school</b>	<b>Reference Number</b>	<b>Name of school</b>	<b>Reference number</b>
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	ADA3527
King Edward VI Five Ways School	ADA3514	St Bernard's Catholic Grammar School, Slough	ADA3528
King Edward VI Grammar School for Boys	ADA3515	The Crypt School	ADA3531
King Edward VI Grammar School for Girls	ADA3516	Wolverhampton Girls' High School	AD3532
Stroud High School	ADA3523	Townley Grammar School, Bexley	ADA3533

**Table 2 Relevant past determinations**

<b>Name of School</b>	<b>Reference Number</b>	<b>Date of Decision</b>
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
Chelmsford County	ADA3350	12 December 2018

Name of School	Reference Number	Date of Decision
High School for Girls		
Rugby High School	ADA3351	27 July 2018

15. The school is part of the Slough Consortium of Grammar Schools (the Consortium). This is a group of four selective schools in Slough which operate as a consortium for the purposes of selection testing. The schools use a common examination and common procedures which are set out in the document referred to above. Candidates are only permitted to sit the examination once, but their parents can apply for a place at more than one of the schools using the test outcomes.

### The admission arrangements

16. Under the arrangements determined for the school for admissions to Year 7 in September 2020, there is no mention of late testing for those unable to take the selection test on the published date. The school however has told me that “where there are exceptional circumstances” the school permits late testing *“as set out in the Consortium’s 11+ guide.”* The guide contains no reference to late testing, but a Frequently Asked Questions document also published by the Consortium and available through the school’s website says under a section headed “What if my child is unwell?” states that *“Alternative arrangements will be made for your child to sit the exam at a later date.”* It is clear that late testing does take place.

17. The arrangements state that the Governors will only consider for admission *“those children who have gained a mark of 111 or above in the Slough 11+ Consortium tests.”*

18. The school has a published admission number (PAN) for Year 7 of 150. If the school is oversubscribed with children who have achieved the specified score, priority is given in the following order:

- (i) Catholic (as defined) looked after and previously looked after children (as defined)
- (ii) Practicing (as defined) Catholic children
- (iii) Catholic children
- (iv) All other looked after and previously looked after children
- (v) Children from other Christian Churches (as defined)
- (vi) Children from other faiths who attend a named Catholic primary school within the pastoral area of St Peter’s Catholic church and who live in Slough (as defined)
- (vii) Children from other faiths who attend the same named Catholic primary schools

- (viii) Children of staff (as defined)
- (ix) Other children

19. Within these priority groups, if necessary, priority is given to children in receipt of the pupil premium, followed by rank order in the selection test and finally distance of children's homes from the school.

## Consideration of Case

20. 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**

21. 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 priority given to those of the Catholic faith unfairly disadvantages other social and racial groups and amounts to "unfair and direct racial discrimination"**

22. Section 85(1) of the Equality Act 2010 prohibits discrimination on the grounds of religion or belief in the admission of pupils to schools. Section 89(12) applies exemptions to this provision which are set out in Schedule 11 of the Act. Paragraph 5 of Schedule 11 disapplies section 85(1) "*so far as relating to religion or belief*" to schools designated under section 69(3) of the Schools Standards and Framework Act 1998.

23. The school is designated by the Secretary of State as a school with a religious character, which is Roman Catholic. Paragraph 1.36 of the Code says that the admission authorities for such schools "*may use faith-based oversubscription criteria and allocate places by reference to faith when the school is oversubscribed.*"

24. The objector alleges that the arrangements give rise to direct discrimination on the grounds of race, claiming that "*most Catholics will be Caucasian*". I need to pause here to note that whether or not most Catholics are Caucasian, the giving of priority to Catholics or members of other faiths cannot in fact amount to direct discrimination on the basis of race. The Equality Act 2010 provides in relation to direct discrimination that:

"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others"



The arrangements for the school take no account of race, nor could they lawfully do so, and so cannot result in direct discrimination on the grounds of race. What they do take account of is faith and, as noted above, the school is specifically entitled to do this by virtue of the Equality Act.

25. It would be possible for the giving of priority on the grounds of religion (which the school plainly does) to amount to indirect discrimination on the grounds of race. This could be the case if those from some racial groups seeking a place at the school were disproportionately less likely to be Catholic. Again, it is helpful to set out the relevant provisions of the Equality Act.

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

26. The objector asserts as noted above that most Catholics are Caucasian but provides no evidence for this. He also provides no evidence that children of any racial group are being put at a disadvantage by the school's arrangements. In any case, it is, as the wording of the Equality Act 2010 cited above makes clear, a defence against claims of indirect discrimination if the provision, practice or criterion concerned is a proportionate means of achieving a legitimate aim. The school is a Catholic school which is giving explicitly permitted priority on the basis of faith in line with its aim of providing a Catholic education to children of that faith. We do not find that there is unlawful discrimination on the basis of race either direct or indirect.

27. The objector also says that those of the Catholic faith form a social group, but does not elaborate on this other than to claim that “*giving priority to Catholics means disadvantaging other social groups*”. He continues:

*“The adjudicator needs to provide a view on whether clause 1.8 overrides the right to select upon faith in a grammar school...”*

28. Paragraph 1.8 of the Code has the following to say:

*“Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group....”*

The school gives priority to those of the Catholic faith if it is oversubscribed with suitably qualified applicants for places. As we have seen, it is permitted to do so. The school does not “select” on the grounds of faith, as the objector asserts, since the oversubscription criteria provide for children other than Catholic children to be admitted. It gives priority to Catholic children among those who have reached the standard required for admission, which is a different matter. All oversubscription criteria disadvantage those to whom they do not apply, and the Code requires in paragraph 1.7 that *“All schools must have oversubscription criteria for each ‘relevant age group’...”*

Paragraph 1.8 prohibits oversubscription criteria which disadvantage particular groups unfairly, but the giving of priority on the grounds of faith does not give rise to disadvantage which is unfair. For the avoidance of doubt, paragraph 1.8 neither overrides, nor is it subordinate to, those provisions which permit schools with a religious character to give priority on the grounds of faith, or which permit designated Grammar schools to select on the basis of academic ability. All these provisions apply simultaneously in this case. The legislation and the Code allow grammar schools to admit only children of high academic ability. They do not require grammar schools to admit only the children of the highest ability or prohibit the use of other oversubscription criteria not related to ability in deciding which children of high ability to admit.

26. We do not uphold this aspect of the objection.

### **Whether the priority given to children attending a Catholic primary school in Slough is unlawful**

27. Paragraph 1.15 of the Code says that:

*“The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”*

The school provides a list of named feeder schools, and so their selection is clearly transparent. In its response to the objection, the school has said to me that

*“The selection of the schools.....was made on reasonable grounds in that they are schools within the Slough Local Authority, part of the local Deanery of Catholic Schools and geographically close to St Bernard’s.”*

It seems to us that it is also the case that since the school gives the highest priority to qualified Catholic children, those admitted under these subsequent oversubscription criteria will be likely to be qualified non-Catholic children whose parents wish them to continue to receive their secondary education within the Catholic ethos to which they have become accustomed. This seems

to us to be self-evident, since the parents of such children would otherwise not express a preference for their child to go the school. It also seems entirely reasonable for a school with a particular religious ethos to make such provision.

28. We shall consider the matter of the naming of St Bernard's Preparatory School as a feeder primary school below. However, we are otherwise of the view that the school has named feeder schools in accordance with the requirements of the Code, and we do not uphold this aspect of the objection.

**Whether the provision which gives priority to children of members of staff does not comply with the requirements of the Code**

29. 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.”*

30. In a footnote, the admission arrangements say that:

*“Children of staff concern only those members of staff who are employed directly by the school's Governing Body (sic) and have a permanent contract for 50% of a full-time member of staff or filling (sic) a vacant post where there is a skills shortage. In order to qualify, the member of staff must still be in post when their child joins the school.”*

The objector complains that the arrangements do not make plain whether particular categories of staff are those to whom this benefit applies, and that skills shortages are not defined. Our view is that the terms used in paragraph 1.39 of the Code are clear in themselves and that no further definition concerning either of these matters is necessary in the admission arrangements which are determined for a school.

However, the school has accepted that its definition does not comply with the requirement that existing members of staff should have been employed for two or more years, and has offered to rectify this. As determined, however, the arrangements do fail to comply with what the Code requires.

31. We uphold this aspect of the objection, although not for the reasons given by the objector.

**Whether the requests for test scores to be shared with other selective schools must be made before registration for testing closes breaches the requirements**

## of the Code

32. As we have said, the school is part of the Slough Consortium of Grammar Schools which uses a common entrance examination. The document referred to above, which is to be found on the school's website, sets out the arrangements made by the consortium. The objector states that the statement made in that document that scores can only be shared between schools if the parent has registered with the schools in question breaches the requirements of the Code. The objector does not say which provision of the Code he considers is breached, but we take this to be the provision in paragraph 14 of the Code that:

*"...admission authorities **must** ensure that the practices .....used to decide the allocation of places are fair....."*

33. The closing date for registration for all the schools is 14 June in the relevant year and so if a parent who has taken the examination in respect of their application to another school has not registered their wish for the result to be shared with St Bernard's, the child will not be considered for a place there.

34. In response to this objection, the school has said that the deadline for registration is *"in order to enable the effective sharing of information within the consortium"*.

35. The objector has continued to question this part of the arrangements, asking why it is necessary. The Consortium's document explains that the reason it needs to know the school or schools for which a parent wishes their child to be considered is that the results for each school are standardised separately. This means that there will potentially be a different standardised score for a given child's performance on the selection test for the different schools for which they have registered, as the consortium's document states.

36. It is common practice for standardisation to take into account how difficult the group of children taking the test found it, compared with the reference group, as well as taking into account the ages of individual children within that group. In the Slough Consortium, since standardisation takes place separately for the group of children who have registered their interest in applying for a place at each of the schools, the group in question has to be known. To add at a later date, or dates, what could potentially be a significant number of children to the group of children being considered for each school would mean that the existing standardisation would in each case be invalidated. It is therefore reasonable for there to be a deadline beyond which the bulk of candidates would no longer be permitted to add to the schools within the group that they wished their child's test score to be used for in the remaining part of the admissions process. Provided a parent has registered by the specified date, their child's raw score will be used to produce a standardised score used in the admission process for the school, and we consider that there is no unfairness which results directly from this provision within the arrangements. The related issue of reasonableness of the deadline

for registration will be considered below.

37. We do not uphold the objection to this part of the arrangements on these grounds.

**Whether the arrangements breach elements of paragraph 2.9 of the Code by not permitting late testing for candidates who do not register within the published deadline and by not stating what arrangements are made for later testing of candidates who are not able to attend testing sessions for genuine reasons**

38. As we have set out above, adjudicators have previously found that late testing should be allowed for those who, for good reason are unable to take selection tests on the designated date. We have also set out above the statements made in the various documents available to us describing the admission arrangements to the school concerning late testing of applicants. Late testing takes place “*under exceptional circumstances*” according to the school, and the “Frequently Asked Questions” document refers to children who are ill on the day of testing. The objector has made his objection concerning the nature of the late testing arrangements, which we dealt with above, on that basis. This part of the objection concerns what the arrangements say, and do not say, about the circumstances in which late testing happens.

39. Paragraph 2.9 of the Code contains the following:

*“Admission authorities **must not** refuse to admit a child solely because :*

*a) they have applied later than other applicants;*

*.....*

*e) they have missed entrance tests for selective places.”*

40. The school has asserted that there is provision within its arrangements “*for those who are late in their application*” in a section dealing with admission to other school years. We can find nothing there which is material to the matter under consideration, only a reference to in-year applications. The Consortium’s guide, which as the objector has correctly pointed out, does not constitute the school’s admission arrangements, although it is signposted in them, and available through the school’s website, makes no statement concerning testing for those who have registered by the deadline but who are unable to take the test for good reasons. Under the arrangements as determined, such children would not be able to take the selection test and would not be able to be considered for a place at the school.

41. As well as making no statement concerning the provision which is made for late testing in exceptional circumstances, neither the determined admission arrangements nor the Consortium’s document has anything further to say about provision for families who unavoidably miss the deadline for registration for the selection test but wish their child to be tested

The Consortium's document says:

***“The deadline for registration is 12 midnight on Friday 14 June 2019 and no applications for testing will be accepted after this date.”*** The school has argued that it is reasonable for the deadline for registration to be in place *“to ensure that at some point the schools in the Consortium are able to assess the testing performance of applicants and continue to the next step of the admissions process.”*

42. The circumstance in which parents might unavoidably miss a deadline for testing will be where they find out after a deadline for registration that they will be moving into an area served by a school to register late for testing. The lack of provision for late registration in such cases has been found by adjudicators to be unreasonable if the length of time between the end of registration and the date of testing was long (ADA 3350, Chelmsford County High School for Girls). We emphasise here that each case is considered on its merits and what is an acceptable time between the registration deadline and the test date may vary according to the different circumstances of the schools concerned.

43. There is no provision in the arrangements or in the Consortium's document for late testing for those parents who find out that they will move into the area during the period of over 13 weeks between the deadline for registration and the test date. It is of course necessary, as the school has said, for there to be a registration deadline. However, while there is some complexity involved in the Consortium's arrangements which will require sufficient time for the processing of test outcomes, we have been presented with no reason by any of the parties for there to be such a lengthy period during which such parents will be unable to enter their children for the selection testing arrangements for the school.

44. We are of the view that the arrangements fail to comply with paragraph 2.9 e) of the Code both in relation to those who have registered but who are unable to take the test for good reason, and in relation to the length of time between the final date for registration and the date of testing and we therefore uphold this part of the objection.

**Whether the arrangements fail to comply with the Code because they do not state what provision is made for those who cannot attend testing sessions on a Saturday for reasons of religious observance**

45. As noted above, the consortium made arrangements for testing to take place on 14 September 2019, which is a Saturday. The objector has pointed out that neither the arrangements themselves, nor the document which explains the consortium's procedures, refers to any provision which is made for those unable to undertake testing on a Saturday for reasons of religious observance. I have told the parties that my understanding is that the objector believes that this constitutes a breach of what the Code requires.

46. It says, in paragraph 1.1, that:

*“Admission authorities are responsible for admissions and **must** act in accordance with this Code.....other laws relating to admissions, and relevant human rights and equalities legislation.”*

The Appendix to the Code, in summarising some of these requirements, sets out that The Equality Act 2010 provides that:

*“An admission authority **must not** discriminate on the grounds of ...religion or belief....against a person in the arrangements and decisions it makes as to who is offered admission as a pupil.”*

47. The “Frequently Asked Questions” document on the school’s website which says that if a child is unwell and that if supporting evidence such a doctor’s certificate is provided *“alternative arrangements will be made for your child to sit the examination at a later date...”* also states that *“Reasons other than illness or serious personal circumstances will not be accepted...”*.

48. The school’s response to the objection, however, having considered what adjudicator have said previously on this matter (for example, in ADA2608, Lawrence Sheriff School), is that the Consortium’s guide states that alternative dates for children who are unable to attend a Saturday exam *“for good reason”* are offered. Again, I am unable to find any such reference myself in the guide.

49. In ADA2608, the adjudicator found 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.”*

Some children are prevented from undertaking a test on a Saturday for reasons of religious observance. It is plain to us that the parents of such children would understand from what appears in the Frequently Asked Questions document referred to above that this would not be an acceptable reason for being offered an alternative test date. This would mean that they would not be able to take the selection test and as a result would not be able to be considered for a place at the school.

50. Our view is that the above provisions are breached as a result, and we uphold this aspect of the objection.

### **Whether a failure to publish the arrangements on the admission authority’s website constitutes a breach of paragraph 1.47 of the Code**

51. Paragraph 1.46 of the Code requires admission authorities to determine admission arrangements by 28 February in the determination year. So for admission arrangements for September 2020, the relevant date was 28 February 2019. Paragraph 1.47 states;

*“Once admission authorities have determined their arrangements, they **must**....publish a copy of them on their website....”*

52. The objector complains that the arrangements for this school were not

published on the school's website until 28 March 2019. The school has agreed that this was the case, and has acknowledged that this was a failure to comply with what the Code requires.

53. We uphold this aspect of the objection.

We turn now to consider those matters which were 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**

54. 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.”*

55. The school has stated its willingness to include a statement covering the admission of children with special educational needs in its arrangements, but as determined, the arrangements fail to do so and so do not comply with what paragraph 1.6 of the Code requires.

### **The requirement that all applicants complete the school's supplementary application forms**

56. The school produces two supplementary information forms. The first provides the school with background information on the applicant, and the second information which is used in the application of the school's oversubscription criteria. The arrangements say ;

*“...it is very important that all parents are aware that they will need to fill out Supplementary Forms A and B as well as the Common Application Form (CAF) from their local authority.”*

57. Paragraph 2.4 of the Code says that supplementary information forms are permitted only if they provide additional information *“when it has a direct bearing on decisions about oversubscription criteria...”*. The school has acknowledged that it cannot require all parents to complete supplementary application forms, since it is possible to apply for a place there without seeking priority under one of the oversubscription criteria, and therefore without providing any information in addition to that gathered through local authority CAFs. It has agreed to rectify this aspect of the arrangements, but as determined they are in breach of paragraph 2.4 of the Code. The school can, of course, have supplementary information forms and invite parents to complete these if they are seeking priority under particular oversubscription criteria and information is needed for the school to consider whether the child is entitled to such priority.

### **The absence of a definition of “other faiths”**



58. The arrangements give priority to “*children from other faiths*”, who are distinguished from “*other children*”, who are not given this priority. Paragraph 1.8 of the Code requires that :

*“Oversubscription criteria **must be** ....clear....”*

However, the arrangements fail to provide parents with any further information which would enable them to know whether membership a particular body to which they might belong would be considered by the school to constitute membership of a faith. The school has acknowledged that the arrangements fail to comply with what the Code requires, and is willing to make changes to them. However, as determined, the arrangements are in breach of paragraph 1.8 of the Code.

### **The definition of a practising Catholic**

59. Paragraph 1.37 of the Code says:

*“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will reasonably be satisfied.”*

The arrangements give a higher priority to practising Catholic children than to Catholic children and define a practising Catholic in the following way:

*“Practising means a member of a church who attends mass regularly....”*

However, the arrangements do not state what is meant by the term “regularly”, and so it is not possible to know what frequency of attendance at mass would be needed to confer the priority given within the arrangements. The school has accepted that the wording of the arrangements results in them failing to conform with what the Code requires, and has accepted the need for them to be amended. However, as determined, the arrangements breach paragraph 1.37 of the Code.

### **The naming of a fee-paying independent school as a feeder school**

60. Paragraph 1.9 I) of the Code says:

*“...admission authorities .....**must not**.....name fee-paying independent schools as feeder schools”*

One of the feeder schools named in the arrangements is St Bernard’s Preparatory School. Information about this school on the GOV.UK website “Get information about schools” states that this is an independent school. The school’s website sets out a fee structure for pupils.

61. The school has responded by saying that it is willing to remove St Bernard’s Preparatory School from its list of named feeder schools. Nevertheless, it is clear to us that this is a school which falls under the description in paragraph 1.9 I) of schools which must not be named as feeder schools. The arrangements are therefore in breach of this stipulation in the Code.

## Summary of Findings

62. We have set out above our reasons for upholding those parts of the objection concerning:

- (i) the priority afforded to children of members of staff;
- (ii) the failure to provide alternative arrangements for children who are for good reason, including reasons associated with religious observance, unable to attend on the date designated for testing;
- (iii) the length of time between the last date for registration for testing and the date on which testing takes place, and
- (iv) the failure of the school to publish its arrangements in accordance with the requirements of paragraph 1.47 of the Code.

63. We have also set out above and in the appendix the reasons why we have not upheld other aspects of the objection.

64. We have also explained above why we consider the arrangements to fail to comply with paragraphs 1.6, 2.4, 1.8, 1.37 and 1.9 I) of the Code.

## Determination

65. 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 St Bernard's Catholic Grammar School, Slough.

66. We 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.

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

68. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination, or 28 February following the decision, 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.	<p data-bbox="300 421 1420 533"><b>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</b></p> <p data-bbox="347 562 1430 819">1. 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:</p> <p data-bbox="400 853 1430 1290">a. <i>“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 <a href="#">link</a>. 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 <a href="#">link</a>. 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;</i></p> <p data-bbox="400 1323 1374 1435">b. <i>the lead adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently.”</i></p> <p data-bbox="300 1469 1374 1536"><b>Whether the use of the same test provides an accurate assessment of candidates’ abilities.</b></p> <p data-bbox="347 1570 895 1603">2. The letter referred to above stated:</p> <p data-bbox="347 1637 1430 1749"><i>“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.”</i></p> <p data-bbox="347 1783 1430 1998">3. 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 <i>“Invited Submission”</i> 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</p>

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	<p>ADA3349 and ADA3351 were wrongly decided on this issue.</p> <ol style="list-style-type: none"> <li data-bbox="352 331 1422 622">4. 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 we are considering here although some of the facts are relevant. I am satisfied that we have all necessary information. We do not consider that documentation such as statements of case would assist us in reaching a decision.</li> <li data-bbox="352 663 1414 801">5. 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.</li> <li data-bbox="352 842 1422 1196">6. 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.</li> <li data-bbox="352 1236 1430 1527">7. 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.</li> <li data-bbox="352 1568 1398 1886">8. 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 "<i>Invited Submission</i>" 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.</li> <li data-bbox="352 1926 1406 2027">9. The objector refers in the "<i>Invited Submission</i>" to what he calls an "<i>independent research study</i>" which is published on his website. There are no details of how, where or when this study took place or of any</li> </ol>

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	<p>methodology used or any review carried out by any reputable academic body. The study purports to show that children can remember some of the content of a test devised and administered by the objector. The question for us in this case is not in fact whether children can remember some of the content of tests. They may well do so. The question is whether having remembered content, they will do so accurately and pass it on to other children who will then remember it accurately, and whether such sharing of information will compromise the integrity of the testing regime. All this has been addressed in the earlier determinations ADA3349 and ADA3351. In this context and for the reasons relating to the nature of the study, we find that the study has very little relevance or evidential value in our consideration of this case.</p> <p>10. The objector refers to a “<i>later High Court case</i>”. 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.</p> <p>11. The objector refers to a response by Durham University regarding the reuse of tests “<i>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</i>”. 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.</p> <p>12. The objector states in the objection that “<i>there is no reason for children not to pass on content once they have been offered places</i>”. This is likely to be early in the autumn term of say 2019 and thus well before children who took the test on the first day have been offered places which will not be until early March 2020. This does not change our view on whether and to what extent test content may be recalled and/or passed on.</p> <p>13. 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.</p> <p>14. 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.</p> <p>15. 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</p>

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	<p>and ADA3351.</p> <p>16. 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.</p> <p>17. We do not uphold the objection on this point.</p>