



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3676**

**Objector: An individual**

**Admission authority: The Governing Board of Ribston Hall High School**

**Date of decision: 13 October 2020**

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, we partially uphold one aspect of the objection to the admission arrangements for September 2021 determined by the Governing Board of Ribston Hall High School for Ribston Hall High School, Gloucestershire.

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 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 person, (the objector), about the admission arrangements (the arrangements) for Ribston Hall High School (the school) for admission to Year 7 for September 2021. The school is a selective single sex girls' academy for pupils aged 11 – 18 with a co-educational sixth form. The objection is to the following aspects of the arrangements:

- a) the qualifying standard for admission;

- b) the oversubscription criterion which affords priority to applicants eligible for the Pupil Premium;
- c) the re-use of the same selection tests for late sitters and late applicants; and
- d) the use of age standardisation in the selection tests;

2. In his response to the representations of the admission authority, the objector raised an additional issue which is not part of the objection. This related to the practice of affording more time to complete the selection tests to applicants with learning difficulties and other disabilities. Since this was neither part of the original objection nor submitted to us by the deadline of 15 May 2020 for objections to admission arrangements for 2021, we are not able to consider it.

3. The local authority for the area in which the school is located is Gloucester County Council. The local authority is a party to this objection but has made no representations other than to provide information we have requested. The governing board of the school is a party to the objection, as is the objector.

4. This is one of twelve objections to the admission arrangements for September 2021 for twelve different schools referred to the Office of the Schools Adjudicator by the same objector. Mrs Ann Talboys and I have been appointed as joint adjudicators for these twelve objections as permitted by the Education (References to Adjudicator) Regulations 1999. I have acted as the lead adjudicator for this case and have drafted this determination.

5. There are a number of aspects which are common to all twelve objections. We are aware that the objector has made objections to other schools in previous years about these same aspects. Those objections have been determined by different adjudicators. We have read the relevant previous determinations and taken them into account. Those determinations do not form binding precedents upon us, and we have considered each of these aspects afresh. The approach we have taken is to discuss each of the common aspects in the objections which have been made this year and agree the wording of our determinations in relation to those aspects. Identical wording will appear in each of the twelve determinations in relation to these common aspects.

6. Where an objection also contains aspects which are unique to that objection, the lead adjudicator has made a determination on each of those aspects which has then been read and agreed by the other adjudicator prior to completion of the determination.

## **Jurisdiction**

7. The terms of the funding agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board, which is the admission authority for the school, on that basis. 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.

## Procedure

8. In considering this matter we have had regard to all relevant legislation and the School Admissions Code (the Code).
9. 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 dated 24 April 2020, supporting documents and further representations;
  - d. the response to the objection made on behalf of the school;
  - e. information provided by the local authority;
  - f. a video sent to us by the objector about grammar schools;
  - g. Determination ADA3372 for Pate's Grammar School dated 8 January 2019, determination ADA3531 for the Crypt School dated the 17 January 2020 and determination ADA3533 dated 17 January 2020 for Townley Grammar School referred to us by the school's solicitors; and
  - h. relevant previous determinations, research papers and court judgments referred to in the text which were identified by us and shared with the parties for comment.

## The Objection

10. There are four aspects to this objection. We have identified the relevant paragraphs of the Code, but not set them out here. The relevant paragraphs are set out in full when we come to our detailed consideration.

11. First, the objector considers that the arrangements are unclear as to who sets the qualifying standard; how it is set; and when it is set. He argues that, where the qualifying standard is set after the results of the tests are known, this is merely a method of filling available places, whereas the qualifying standard should be an objective measure of a grammar school standard of ability. This he suggests is unreasonable. Relevant paragraphs of the Code are paragraphs 1.17. and 14.

12. Second, the objector considers that affording priority in the oversubscription to applicants eligible for the Pupil Premium is unreasonable and creates an unfairness to applicants who are not eligible. Relevant paragraphs of the Code are paragraphs 1.39A. and 14.

13. Third, the objector considers that re-using the same selection tests for late sitters and late applicants renders the testing process subject to abuse, as those who sit the tests in the main round may pass on the questions to those sitting the tests at a later date. He suggests that this is an abuse of process which is widespread and renders the tests unfit for purpose. Relevant paragraphs of the Code are 1.31. and 14.

14. Fourth, the objector considers that the use of age standardisation in the selection tests is unnecessary, rendered obsolete by the widespread practice of tutoring and gives an unfair advantage to younger children, particularly those who have been tutored. Relevant paragraphs of the Code are 1.31. and 14.

## Other Matters

15. There were a number of other matters which appeared not to comply with the Code. These were:

- The first oversubscription criterion refers to looked after and previously looked after children, but it does not explain how applications are prioritised in the event that there is more than one application falling under this category.
- The same point applies in relation to oversubscription criterion 2 which gives priority to applicants eligible for the Pupil Premium. The arrangements provide that a higher level of priority is afforded to qualifying applicants who live in Gloucester City, but they do not determine an order of priority for each applicant.
- Applicants who move into the area after the registration date has closed are tested in March after the offers of places have been made.
- In relation to the operation of the waiting list from 1 January of Year 7 onwards, it is unclear as to whether all children are tested when their parents apply for a place, or only when a vacancy arises.

## Background

16. Ribston Hall High School is a single sex girls' grammar school with academy status located in Gloucester. It was founded in 1921. The school converted to academy status in 2011 and was rated by Ofsted as Good in June 2012 with Pupil Achievement and Pupil Behaviour and Safety rated as Outstanding. The school has a Published Admission Number (PAN) of 150 for admissions to Year 7, and a PAN of 50 sixth form places available to external applicants, both male and female.

17. The school is oversubscribed. The local authority has provided the following information about the number of applications and admissions to the school for 2018, 2019 and 2020.

	2020	2019	2018
Number of Gloucestershire 1 <sup>st</sup> preferences for Ribston Hall School	170	164	155
Number of ranked Gloucestershire Pupils who recorded a preference for the school	373	388	356
Number of out of county 1st preferences for Ribston Hall	22	14	10
Number of ranked out of county Pupils who recorded a preference for the school	59	47	35

18. As we have said, the objection relates to the admission arrangements for Year 7. The arrangements provide that all candidates are required to sit an entrance test. Only candidates who meet the qualifying standard in the entrance test will be eligible to be considered for admission to the school. The arrangements say that, in order to safeguard the credibility of the test, where a student (whether or not registered in two or more authorities including Gloucestershire) undertakes the same test on more than one occasion, then the first sitting shall be taken as the test score. Any place offered in accordance with the admission arrangements shall be based on that score. The arrangements also say that, for the avoidance of doubt, where a place is offered because of a fraudulent or misleading application, the school may withdraw that offer. Late registrations will only be considered in exceptional circumstances at the discretion of the school and after consideration by the School's Admissions Review Group.

19. The arrangements say that information about an applicant's performance in the entrance test will be provided to parents as soon as possible after the test but that this is not an offer of a place at the school. Parents/carers must ensure that if they wish to apply for a place, they must complete the Common Application Form and register with the Local Authority. Where applications for admission exceed the number of places available, the

following oversubscription criteria will be applied, in the order set out below, to decide which applicants to admit:

“1. Looked after Children/Previously Looked after Children who have met the qualifying standard.

2. 30 places will be allocated to students who qualify for Pupil Premium who have met the qualifying standard. Place allocation for Pupil Premium students who live in Gloucester City will be prioritised over Pupil Premium students from other areas of the country.

3. Students who are not eligible for the Pupil Premium but ranked highest in the qualifying standard. If the student has achieved the qualifying standard, then admission is simply by rank order of scores”.

20. The arrangements contain the following section on late testing:

**“Children unable to sit the Test on the appointed day**

Due to illness, accident, or sudden bereavement: where exceptional circumstances mean a child cannot take the test on the appointed day, the school may organise a similar replacement test (a “Late Test”) but normally no later than the end of September. In such cases, parents/carers must contact the School’s Admissions Officer to discuss the situation prior to the appointed day when the normal test takes place. The school will require proof of illness or other evidence and may decline to permit a child to take a Late Test in the absence of such evidence.

Due to moving into the area after registration: in cases where families move into the area after the date for registration for the test but wish their daughter to be considered for entry into Ribston Hall High School, a Late Test will be organised during the month of March. If entry is sought for Year 7, an application for the child, naming Ribston Hall High School as one of the school preferences, must also have been made to the Local Authority.”

21. We could find no definition of the term “qualifying standard” in the arrangements. Neither could we find any reference in the arrangements as to whether the entrance tests are standardised by age. On the school’s website next to the admission arrangements, there is a link to a document entitled “Admissions Information”. There is no definition of the term “qualifying standard” in this document either. The document says that the Gloucester 11+ entrance test is targeted at the expected age range for Year 6 children. Sometimes there is a need for schools to assess candidates who are outside the expected age range. It also says that, in the event that candidates are legitimately ‘too old’ or ‘too young’ for Year 6, their ages are capped when calculating age standardised scores. The term “standardised test” is defined in the Glossary of Terms as follows: “Test Results are standardised according to the age of the pupil at the time of the Entrance Test by year, month and day”, but the term did not appear to be used in the arrangements or the admissions information document.

## Consideration of Case

### The Objection

22. We have divided our consideration of the case into four headings, each of which comprises one aspect of the objection. As we have said, the objector has made objections on the same points for twelve schools. He has helpfully provided us with generic representations on the subjects of the setting of the qualifying score; priority for applicants eligible for the Pupil Premium; re-use of the same tests for late sitters and late applicants; and age standardisation. Because the representations are generic, our consideration of the points is also generic to some extent, and so some of the text will be largely the same in all twelve determinations. It may not be identical as all of the schools have different arrangements. In reaching our conclusions, we have identified and read various research papers and Department for Education publications which are relevant to the objection. We have shared this information with the parties and invited comments.

### **The methodology for setting the qualifying standard is unclear and does not operate to establish a reasonable qualifying standard**

23. The objector considers that the methodology for setting the qualifying standard (pass mark) for the tests is unclear. He also considers that, where the pass mark is set after the selection tests have been taken, this is simply a method of ensuring that available places are filled and does not establish a grammar school standard of ability. Accordingly, his view is that this is not a reasonable method of selection. The relevant requirements in the Code are in paragraphs 14 and 1.17. We have set these paragraphs out below. For the avoidance of doubt, we have not considered paragraph 1.31 in this section because our view, as we will explain in more detail later, is that paragraph 1.31 relates to whether the **type** of testing in operation, (in this case Verbal and Non Verbal Reasoning, Maths and Comprehension tests designed by the Centre for Evaluation and Monitoring (CEM)) provides an accurate reflection of a child's ability.

24. Paragraph 14 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

Paragraph 1.17 states that: "All selective schools **must** publish the entry requirements for a selective place and the process for such selection."

25. The first question for us to consider is how much information the school's admission arrangements must contain in order to be sufficiently clear. Parents need to know which steps they must take and by when, and what their child needs to do in order to be eligible for a place at the school. This information needs to be set out so that parents can look at the arrangements and understand easily how places will be allocated. Our view is that the information can either be in the arrangements themselves or signposted clearly in the arrangements with further detail accessible via a one-click link.

26. Our view is that in order for the arrangements to be sufficiently clear, where there is a pre-established pass mark, the arrangements must state what that pass mark is. Where the pass mark is not a pre-established one, the arrangements must say this. They must also say when the pass mark will be set, and when parents will be told whether their child has reached the pass mark. There is no requirement that the pass mark must be set using a particular methodology or that it be set by a specified body. However, the arrangements must be reasonable and operate fairly; therefore, we consider that the pass mark must be set by a competent person or body. There is no requirement that admission arrangements must set out how the pass mark is set, but if they do this the methodology must be described clearly.

27. There is nothing in the arrangements or the admissions information document which defines the term “qualifying standard”. The arrangements do not say whether the qualifying standard is determined before or after the tests are taken. The solicitors who responded to the objection on behalf of the school have provided the following helpful explanation:

“RHHS’s admissions policy sets out that “Only students who achieve the qualifying standard as a result of the testing process will be eligible for entry.” It further states in the oversubscription criteria at criteria 3 that “If the student has achieved the qualifying standard then admission is simply by rank order of scores.” By way of additional information, the academic ability of pupils is assessed using a test that is common to all seven grammar schools in Gloucestershire. This consists of two papers provided by the Centre for Evaluation and Monitoring (CEM) at the University of Durham. Children take the test only once but following the outcome can apply for a place at more than one of the schools.

The qualifying standard is determined annually by the RHHS’s Admissions Review Group who determine where the pass mark should be set. This group consists of governors and members of the Senior Leadership Team. The Group has knowledge about the level of ability needed for a pupil to benefit from the academic environment at RHHS and how this should be determined. The qualifying standard is not a pre-defined pass mark but is instead set after the selection tests have been taken by pupils so that the ability of the cohort is known. The Group will consider a number of factors including: the size and performance of the cohort that year and the number of available places for girls at RHHS and across schools in Gloucestershire. All children must reach at least the minimum score determined in that year in order to be considered for entry to the school. When parents are informed of the outcome of their child’s test, they are informed whether or not their child has met the qualifying standard for the school”.

28. The solicitors have referred us to determinations for other Gloucester grammar schools, namely Pate’s Grammar School dated 8 January 2019 (ADA3372) and the Crypt School dated the 17 January 2020 (ADA3531). Each of these determinations takes a slightly different approach where the term ‘qualifying score’ is not defined. The adjudicator in ADA3372 took the view that, “although the arrangements were sufficiently clear for parents to understand **the process by which admissions are determined**, and therefore



were not in breach of the requirement in paragraph 14 of the Code that they must be clear, the school might helpfully provide this kind of detail in its arrangements in the future”, whereas the adjudicators in ADA3531 took the view that parents would be able to read the arrangements and understand that references to the qualifying standard and other similar terms would be understood to be references to the minimum score to be achieved in the entrance test in order to be eligible for admission, subject to the oversubscription criteria. The adjudicators did not consider that the Code requires the process for setting this score to be set out in the admission arrangements.

29. Previous determinations do not form binding precedents upon us and, as we have said, we are not adopting a first case procedure. The school’s arrangements must be clear about **how places for the school will be allocated**. They state that places will be allocated to applicants who have achieved the qualifying standard in accordance with the oversubscription criteria. They do not define the term ‘qualifying standard’. Nevertheless, our view is that it is clear from the wording of the arrangements that the words “qualifying standard” refer to a minimum score which must be attained in order to be considered for entry to the school. Our view therefore is that parents should be able to understand how places for the school are allocated.

30. We are less certain that the arrangements set out **the process for selection** with sufficient clarity. Our view is that, as a minimum, the arrangements must tell parents that:

- the process for selection is by reference to a qualifying standard;
- the qualifying standard is not a pre-defined pass mark but is set after the tests have been taken and the results are known;
- parents will be told the qualifying score and whether or not their child has met that score; and
- the date by which parents will receive this information.

31. The arrangements do not provide all of these details, and therefore we partially uphold this aspect of the objection. From what the solicitors have told us, it seems that parents are in practice being provided with the necessary information; however, since the arrangements do not make clear that this is the case they will need to be revised in order to provide the further detail we consider to be necessary to ensure that the arrangements are sufficiently clear to comply with paragraph 1.17 of the Code.

32. The objector introduced evidence at a late stage of the process in the form of a video which criticised the type of selection tests used by grammar schools. The video suggests, amongst other things, that the test results are insufficiently inaccurate. The objector also cited an employment tribunal case in which CEM dismissed an employee for allegedly manipulating the test scores for the Buckinghamshire grammar schools. The employment tribunal found that there had been no manipulation, and that CEM had been wrong to dismiss this employee. The objector argues that this evidence demonstrates that both CEM and the grammar schools routinely manipulate the test scores in order to admit

more local children and Pupil Premium applicants. He suggests that, in order to prevent such manipulation, the admission arrangements for grammar schools must set out: the qualifying score (if applicable) and why this is set to that level; the mean used in the distribution; what standard deviation is used and why; the full standardisation process; and a statement that no questions will be removed from a test after being sat on the basis that “they did not function as expected”.

33. With respect to the objector, the video contains a number of statements which are critical of the types of tests used by grammar schools (including statements that they disadvantage Pupil Premium applicants and are hijacked by middle class parents who can afford to have their children tutored), but it cites no evidential or research basis for the statements. The CEM employee tribunal case indicated that there had been no manipulation of the test scores. Therefore, if anything, CEM was overzealous in its attempts to prevent manipulation which in turn suggests strongly that this is **not** a practice which would ever be countenanced by CEM. It is difficult to understand, therefore, on the basis of this evidence why it would be necessary for a school to publish the information in its arrangements which the objector says must be published. We were unable to find anything in the Code which could be interpreted to impose such a requirement.

34. In terms of whether the school’s qualifying standard is a reasonable one, the school has explained to us the process used to determine the standard. The objector’s view is that setting the pass mark after the tests have been taken does not establish grammar school ability. It is merely a method of ensuring that the school fills to PAN. If the academic standard of a particular cohort of applicants is low, those admitted will simply be highest of the low, so to speak. It is entirely possible, he argues, that the applicants in the previous year were all of particularly high ability, and so those admitted were the highest of the high. There would be an inconsistency of academic standard as between the two year groups. We acknowledge that this is a possibility, albeit unlikely given that the same types of ability are tested each year.

35. The objector considers that an appropriate grammar school standard should be set, and those applicants who do not meet the standard should not be admitted. No special arrangements should be made for particular applicants, such as those who are younger or eligible for the Pupil Premium. All should be judged exclusively on the score they achieve on the day. He considers that the purpose of grammar schools is to serve the most academically able applicants. If they do not fulfil this purpose, there is no point in having them. If a grammar school cannot attract applicants of high calibre it should move to an area where such applicants exist (he suggests Coventry). He points out that paragraph 1.18 of the Code allows designated grammar schools to select their entire intake on the basis of high academic ability. They do not have to fill all of their places if applicants have not reached the required standard.

36. However, many grammar schools choose not to have admission arrangements which are based solely on achieving the highest scores in a selection test, and this is provided for in the primary legislation governing admissions and explicitly permissible under the Code. Indeed, grammar schools which are academies are required to provide education

for pupils who are drawn wholly or mainly from the area in which the school is situated. For this and other reasons these schools frequently employ oversubscription criteria based upon catchment areas and proximity to the school.

37. Where a grammar school does not admit wholly on the basis of ability, it must, again by virtue of the Code, give priority to applicants who are looked after or previously looked after who reach the required academic standard. Grammar schools are being also actively encouraged by the Government to offer priority in their arrangements to disadvantaged pupils. The effect of this is that applicants who are not looked after or disadvantaged, or who do not live reasonably close to the school, may not be offered places even though their scores are higher than those who are offered places. It is not for us to tell grammar school admission authorities that they should admit wholly on the basis of rank order performance in selection tests; whether or not they should have other oversubscription criteria; whether they must set the pass mark before or after the tests; who must set it; or what must be taken into account in setting it. It is for us to reach a conclusion about whether the arrangements which are in place operate fairly and reasonably.

38. A pre-set pass mark may not have the effect of establishing year-on-year consistency of ability where it operates alongside oversubscription criteria because the offer of a place will not be wholly dependent upon the test score. A pass mark which is set annually after the results of the tests are known will inevitably be set only with reference to the candidates who have taken the tests. In our view both are reasonable, and neither result in an unfair outcome. The objective of the arrangements for this school is NOT, as the objector suggests it should be, to admit applicants of the highest level of ability, it is to admit looked after children, previously looked after children, applicants eligible for the Pupil Premium and other children who meet, or exceed, a minimum required standard of academic ability. This is a permissible and lawful objective.

39. For some schools, the pass mark is set by the governing board on recommendation of the head teacher. For other schools, the pass mark is set by a committee comprised of persons with knowledge of the operation of the school in question and its academic standards. Our view is that both practices are reasonable. Many of the schools which are the subjects of these twelve objections have proven track records of academic excellence and have been rated as Outstanding by Ofsted in terms of Pupil Achievement. The schools themselves and persons with knowledge of the schools are best qualified to determine who should set their pass marks and how they should be set.

40. The purpose of setting the qualifying standard is to establish a minimum standard, which is the appropriate standard for this school. Each year the number of applicants sitting the tests and the ability of those applicants will be slightly different, not least as the number of children in the relevant age group in any part of the country will be different from year to year. It is also possible that, notwithstanding the extensive work undertaken to benchmark the tests against those used previously, the level of difficulty of the tests will be slightly different. All these factors will affect the level at which the qualifying standard is set, but none of them renders the test less fair.

41. For schools where the main selective mechanism is rank order above the qualifying standard, the qualifying standard will be mainly relevant to looked after, previously looked after and Pupil Premium applicants, as all other applicants are admitted in rank order until the PAN is reached and this often occurs at a score well above the qualifying standard. In setting the qualifying standard for the school, the Admissions Review Group will be balancing the objective of allowing more disadvantaged applicants to be admitted whilst ensuring that these applicants will be able to cope in the particular academic environment at the school. The aim is not to set these applicants up to fail, it is to ensure they will thrive. It will also be necessary to ensure that the academic standards at the schools are maintained and so there is a minimum score which must be achieved by those admitted in rank order.

42. In our view, the persons best placed to make this judgment are those with detailed knowledge of the school. Therefore, the Admissions Review Group, which is comprised of governors and members of the school's senior leadership team, is well placed to judge the appropriate qualifying standard. This appears to us to be a fair and objective method. For these reasons, we do not uphold this aspect of the objection.

### **Unfairness to applicants not eligible for the Pupil Premium**

43. The school's solicitors have referred us to a determination for Townley Grammar School published on 17 January 2020 (ADA3533) which concluded that it is not unlawful to give priority to Pupil Premium applicants. As we have said previously, we are not adopting a first case procedure, and previous determinations do not form binding precedents upon us. We have however reached the same conclusion as that reached by the adjudicators in ADA3533 adopting our own reasons.

44. The objector considers any priority provided for pupils eligible for the Pupil Premium to be unfair to those children who are not eligible for the Pupil Premium. He says that all children should be ranked upon score. He argues that all the children will have been educated for six years in schools and if, after this six years, they have not reached the same standard as others, there is either a major failing in their school education or the child is not ready to enter a grammar school due to current ability. He believes that any claim of disadvantage should have been rectified by the test date.

45. The objector goes on to accept that the Code provides the right for admission authorities to give priority within their oversubscription criteria to Pupil Premium children but considers that this was not designed to have a two-tier pass mark because this would be unfair to non-Pupil Premium children. He argues that the priority was introduced only to provide a 'tie breaker' for those pupils whose marks are equal in the tests. He suggests that this should be the only opportunity for Pupil Premium to be prioritised over other pupils.

46. He suggests that pass marks be set at a level above which pupils are of 'grammar school ability' and therefore any pupil below that level, either Pupil premium or non-Pupil Premium, would not be deemed suitable to attend the school. He concludes that any priority provided for Pupil Premium pupils discriminates against, and is unfair to, a child who is not

eligible for the Pupil Premium. The school's arrangements do not provide priority for Pupil Premium pupils on a lower pass mark. All applicants must achieve the same qualifying score in order to be eligible for a place.

47. The Pupil Premium is additional funding given to state funded schools in England to raise the attainment of disadvantaged pupils and close the gap between them and their peers. Pupil Premium funding is available to both mainstream and non-mainstream schools, such as special schools and pupil referral units. It is paid to schools according to the number of pupils who have:

- been registered for free school meals (FSM) at any point in the last 6 years;
- been looked after by the local authority (in care or accommodated) for one day or more; or
- ceased to be looked after through adoption, or via a Special Guardianship, Residence or Child Arrangements Order.

48. "Many children and young people living in our most deprived communities do significantly worse at all levels of the education system than those from our least deprived communities. This is often referred to as the 'attainment gap'." This is a quotation from a Department for Education (DfE) paper which led to the introduction of the concept of Pupil Premium funding. The funding was introduced in 2014. The DfE's paper introducing Pupil Premium funding states that evidence shows that children from disadvantaged backgrounds generally face extra challenges in reaching their potential at school, and often do not perform as well as their peers. The Pupil Premium grant is designed to allow schools to help disadvantaged pupils by improving their progress and the exam results they achieve.

49. When Pupil Premium funding was introduced, schools were given the opportunity to give priority in their admission arrangements to children who are eligible. Schools are able to:

- choose from which group or groups (Early Years Pupil Premium (EYPP), Pupil Premium or Service Premium (SP) recipients) to give priority;
- specify a number or percentage of their published admission number of Pupil Premium pupils who will be given priority. For example, this can be representative of the number of disadvantaged children resident in the school's local area; or they can prioritise a certain percentage of local eligible children;
- limit priority to specific eligible sub-groups. For example, restrict the admissions priority to children currently in receipt of Free School Meals or children eligible for Pupil Premium in the school's catchment area;
- decide the ranking given to the priority (after looked after and previously looked after children); or

- choose to give higher priority to EYPP/PP/SP eligible children of the relevant faith than those not of that faith, if they have a faith designation.

50. In May 2018 the DfE published a Memorandum of Understanding (MoU) between the DfE and the Grammar School Heads Association. (GSHA) This was updated in March 2020. In this MoU both parties have a shared ambition to see more pupils from lower income backgrounds applying to, passing the test for, and being admitted to selective schools. It was agreed specifically that admission authorities can consider lowering the selection test pass mark for children eligible for the Pupil Premium. The MoU stated that “this is a decision for the individual school’s admission authority. A number of grammar schools already set a lower pass mark for disadvantaged children. Any authorities who take this approach should ensure this still provides sufficient rigour to ensure those children can thrive within the highly academic environment of a grammar school.”

51. The DfE and GSHA agreed to report on progress in admitting more disadvantaged children to grammar schools against the following success measures:

- increased number of selective schools effectively prioritising disadvantaged children in their admissions arrangements, with a view to all GSHA member schools doing so by the scheduled end of the Parliament;
- an upwards trend of numbers of disadvantaged children applying to selective schools;
- an upwards trend of numbers of disadvantaged children being admitted to selective schools.

52. In May 2018 the DfE launched the Selective Schools Expansion Fund (SSEF). The stated purposes of this scheme are to support the expansion of selective schools where there is a need for additional places, both in terms of a shortfall of secondary places in the local area and a demand from parents for more selective places; and for selective schools to have ambitious but deliverable plans for increasing access for disadvantaged pupils (namely pupils eligible for the Pupil Premium). In this scheme selective schools are encouraged to take steps which lead to an increase in the proportion of disadvantaged children being admitted to the school. Successful schools in this scheme have used the oversubscription criteria within their admission arrangements to support this aim. Some schools have set new, greater proportions or numbers of Pupil Premium children to be admitted and many have lowered the standard mark or pass mark for Pupil Premium pupils so that more may be offered places.

53. There is a significant body of research which demonstrates the existence and extent of the attainment gap between disadvantaged pupils and others up to and including the age of sixteen. A great deal of work on the factors which affect the gap and how it can be reduced has been undertaken, much of this research is from the Education Policy Institute.

54. It is clear that Government policy is to encourage improved access to grammar schools for disadvantaged pupils, and that schools are encouraged to give priority to disadvantaged pupils in their admission arrangements’ oversubscription criteria. Any

priority given to Pupil Premium pupils in oversubscription criteria means that others, lower down the criteria, have a lower priority. The purpose of introducing oversubscription criteria is to ensure that some groups of children are given higher priority than others where a school has more applications than there are places available. The Code makes clear in paragraph 1.8 that schools are able to adopt reasonable oversubscription criteria, and that this of itself is not unreasonable. Neither does it constitute unfairness.

55. In the case of Pupil Premium pupils' inclusion in the oversubscription criteria we are of the view that prioritising Pupil Premium pupils who achieve the pass mark over those who are not Pupil Premium pupils is reasonable. Indeed, it is a practice which is encouraged by Government policy and Guidance and is compliant with the Code. Paragraph 1.39A of the Code expressly permits schools to give priority to pupil premium pupils. It states "Admission authorities may give priority in their oversubscription criteria to children eligible for the.... pupil premium.....".

56. The arrangements fall fairly and squarely within the permissions given in paragraph 1.39A. We do not therefore uphold this aspect of the objection.

### **Re-use of the same tests for late sitters and late applicants**

57. The school uses the same tests for late sitters and late applicants. In all twelve of the objections he has made this year, the objector has claimed that late sitters are advantaged unfairly and has suggested that the adjudicator determining these objections is obliged to answer a set of questions. The joint adjudicators have considered these questions carefully; we have considered the additional submissions made and information provided by the objector in relation to the objections he has made this year; we have read previous determinations on this issue; and we have looked at relevant court papers provided.

58. All twelve of the schools objected to this year use verbal and non-verbal reasoning 11+ tests (VR and NVR tests) designed by CEM. Some use exactly the same set of tests for the first round of testing as they do for all subsequent testing rounds for entry to Year 7, and some use a different set of tests of the same type for the purposes of late testing. By this we mean a different set of 11+ VR and NVR tests designed by CEM. Schools using the former practice, as this school does, argue that it is unfair to use a different test, albeit a test of the same type because it is necessary to compare like with like in order to ensure parity of results and therefore fairness. CEM does not publish its test papers, and those administering the tests are required to hold them confidentially and only to disclose the papers to candidates at the time the tests are taken.

59. The objector's view is that re-use of the same tests for applicants seeking admission to selective schools is not compliant with the Code because children recall the content of the tests and may pass it on to late sitters. He has tested this proposition using his nephew whom he says was able to describe questions to him after sitting CEM 11+ tests. The nephew took tests for entry to selective schools in Shropshire, Walsall and Wolverhampton, which he sat as 'mock exams' before being offered a place at a school in Berkhamsted. The

objector then published the information provided by his nephew on a public website and was forced by a court injunction to take it down. The objector suggests that other children sit tests for a number of grammar schools as practice.

60. The judge considering the injunction proceedings made the following findings, which were upheld by the Court of Appeal, and which we accept:

- “It is doubtless the case that some children who have sat a selection test will tell their parents, and possibly some others, something about it, but there is no good reason to think that any, let alone, much information has become generally known or available...;
- Any reasonable person knows that unauthorised disclosure of the content of an examination or test yet to be taken in a way that may come to the attention of candidates about to sit that examination risks undermining the purpose and integrity of the examination or test, and that such information is therefore confidential...;
- There is a difference between a child telling a parent and a parent telling another parent about test content, and the posting of such material on a public website;
- If all, or part of test content is disclosed, there is at least a risk that the integrity of the tests and public confidence in them would be compromised...;
- Candidates sitting the tests and their parents are under a duty of confidentiality, so that if the parent of a child who had recently taken the selection tests was to publish the questions on a website knowing that other children are about to take the same test, the parent could be enjoined to take down the content of the website...”

61. CEM said, in the course of these court proceedings, that if a comprehension title, words from the synonyms questions, the subject matter of Maths questions, or the type of NVR questions were disclosed to a candidate about to take the same selection tests, this would be unlikely to make a difference to the marks achieved, however CEM also said that a difference of one raw score mark can equate to up to six standardised marks, which could alter a candidate’s ranking significantly. The courts accepted that it was reasonable for schools to use the same tests for late applicants in order to ensure consistency of standards and to avoid the additional cost of commissioning separate tests for each occasion. Candidates are tested late because there is a genuine reason why they are unable to sit the tests on the original test date or because they move into the area after the deadline for registering to take the tests has passed.

62. Admission authorities generally require substantiating evidence before they will agree to a particular candidate being late tested. Indeed, the arrangements impose this requirement (see above). Where there is a gap of many months between the original test and the late test (as may be the case where a child has moved into the area), the use of age standardisation ensures that age provides no advantage. CEM has said: “The choice of how candidates are tested is the schools, which is guided by their admissions policy. CEM would only be able to compare candidate’s performance to provide an ordered age standardised score if the same test is taken”. We return later to the wider question of age standardisation.



63. The objector also alleges that there is a practice of candidates being paid £1000 to take the 11+ tests and feed-back the content. He says: “E.g. some parents have decided on a private school and would like £1000 to help with fees. They engage in a deal with tutors - c£1000 for providing feedback. Any intelligent child can recall a lot. They select the brightest. Some children wear badges with a pin-camera recording every page of questions on a micro-SD card automatically. More advanced ones have a sim card and mobile data is used to transmit pages in real time outside the hall. But these 4G badges cost a substantial amount. The child is simply told to wear the badge and sometimes does not know what it does! It is not so difficult to gain the content for late sitters...”.

64. The allegation that children (or their parents) are paid to pass on test questions or to take the tests wearing hidden cameras is a serious one. Whilst no system of testing can be made cheat-proof, we are sure that admission authorities and those administering the tests will be vigilant to this practice and that there are steps available to them to combat it, whether that involves more rigorous searching of candidates to detect any hidden cameras, disqualification of individuals found to have cheated (as provided for in the School’s admissions policy in cases of fraud). We do not consider however that the entire system must be designed on the basis that the kind of cheating envisaged by the objector will be a widespread issue.

65. We have agreed to adopt a rather simpler approach to this particular alleged breach of the Code than has been adopted in previous cases. Relevant paragraphs of the Code are 1.31 and 14. Turning first to paragraph 1.31, this says that: “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.”

66. Our view is that what paragraph 1.31 requires is that **the test itself** must be clear, objective and give an accurate reflection of the child’s ability (in the case of selective schools). So, in order to comply with paragraph 1.31, the particular test used by the school must fulfil these requirements. There is no reference here to **the procedures for taking the tests**, (requirements in relation to procedures fall under paragraph 14, as we will explain later). Paragraph 1.31 is a requirement that the selection test must be fit for purpose. The objector suggests several reasons why CEM 11+ tests are not fit for purpose. This is because in his view the test scores should not be standardised for age, and because he considers that the tests do not establish whether candidates are of grammar school ability. We have dealt with these points elsewhere.

67. Looking at the second sentence of paragraph 1.31., references to ‘the test’ strongly suggest, in our view, that what is envisaged is one set of tests to be used for all applicants in a particular year group. Although this wording is not conclusive, it is more difficult to argue that the form of selection used produces an objective reflection of ability where different tests are taken by different applicants. CEM’s response supports this.

68. As set out above, what the objector is referring to is what we would call cheating. In any examination or test where a child passes on a test question, and another child uses

that knowledge to his/her advantage, that would be cheating. This is very different to preparation or coaching. Coaching, in the context of VR and NVR tests, is providing help with the skills and techniques needed to do well in those particular types of tests. Giving people the questions before they take the test in the context of these particular tests is neither preparation nor coaching.

69. The objector argues that the results of the tests taken by late sitters are not an accurate reflection of their ability because late sitters can cheat, and therefore the test is not fit for purpose. There is the possibility of cheating in any examination – GCSEs, A Levels etc (pupils smuggling in notes etc). The possibility of cheating does not apply exclusively to late testing of 11+ candidates. Forms of cheating other than candidates passing on questions to other candidates who take the test at a later date are possible. For example, a rogue employee at CEM or an A Level examining board could give away the questions before the test or examination is taken. The person at the school/local authority who is responsible for keeping the CEM 11+ tests confidential could give the questions to candidates in the first round of testing before they sit the tests. The fact that candidates may cheat does not render the test itself unclear, not objective, or not a true reflection of ability. Cheating is always a possibility.

70. We emphasise that what we are considering here is whether the selection test being used for **this school** in 2021 gives an accurate reflection of a candidate's ability. In order that we can ensure that we have explained our role with absolute clarity, we considered the hypothetical possibility that we had evidence which we considered to be proof that there is a systemic practice of cheating in place which is subverting the test scores for late applications to this school. Our view is that, even if we had such proof, which we do not, this would not mean that **the test itself** does not conform to paragraph 1.31.

71. What the objector is referring to is that the **practice** of using exactly the same set of tests more than once may lend itself to an abuse. Put simply, if the school used a different test of the same type for late sitters, people could not abuse the process in the way he suggests is a possibility. Certainly, if a different 11+ test was used for late sitters, what we have described as cheating would not be possible in the way the objector describes. However, we need to make clear here that it is not our function to suggest that one method or process might be 'better' than another, and we cannot require an admission authority to adopt a particular form of test or procedure for conducting a test. Our role is confined to determining whether the admission arrangements comply with the Code.

72. As the objector has rightly said, paragraph 14 of the Code is relevant. What this says is that admission authorities must ensure that the practices used to decide the allocation of school places are fair and objective. Our view is that there is a strong argument that in order for the testing **practice** to be considered objective, all applicants must take the same set of tests where this is possible. It is not for us to say whether a practice that is different to the one used by the school would be more or less objective. We are not able to comment upon whether or not it can be guaranteed that an applicant who scores 121 in one set of CEM VR and NVR 11+ tests is of exactly the same ability as an applicant who scores 121 in a different set of CEM VR and NVR 11+ tests. Our view is that a practice of having all

applicants take the same test, albeit a few months apart, is an objective practice for deciding the allocation of places.

73. Finally, we come to the crux of the objection, which is the assertion that the practice of using the same set of tests more than once creates an unfairness. The unfairness is said to arise because this practice allows for the possibility of cheating. As we have said, cheating is always a possibility in any set of tests or examinations. The objector has produced no evidence that there is a practice of cheating in place in relation to the selection tests for this school.

74. Our view is that the risk of cheating in the way the objector has described producing an advantage to the late sitter is lower in VR and NVR tests than in other examinations. An applicant taking A Level History will be asked four questions and is likely to remember all of them. A late sitter with advance notice of the questions could be helped considerably by knowing the questions before taking the examination.

75. Applicants taking CEM VR and NVR tests answer some 250 questions in total. The ability of a 10-year-old child to remember test questions in a set of tests comprising some 250 questions might be improved if the child took several selection tests for different schools or areas, as in the case of the objector's nephew. There is also reference in the correspondence to 'dodgy tutors who get tutees together who have sat the tests and pump them for information to aid late sitters'. We have not been provided with any evidence that such a practice is operating in relation to this school.

76. If a person passed on one correct question and answer, this could mean that a late sitter might achieve the pass mark when he/she would not otherwise have achieved it, or that the late sitter might achieve a standardised mark which is up to six marks higher than the mark which he/she would have achieved. But even if this were the case, (and the chances are remote), this would still not guarantee the offer of a place because the oversubscription criteria would then need to be applied. In order to pass on any advantage to the late sitter, a child of 10 would need to remember questions exactly and know which one of four multiple choice options is the correct answer. The child would also need to be willing to do something which he/she would surely know is wrong; and to pass on an advantage to another child possibly to his/her own detriment since the tests are a competition and the tests for late sitters are taken before any child knows whether he or she has obtained a place at the school. The person receiving the answer would need to use that information knowing this to be cheating.

77. The objector has provided evidence in the form of a Twitter feed about the CEM 11+ tests for the King Edward Consortium Schools. This appears to be an exchange of information between members of the 11+ Exams Forum. The Forum is an organisation which provides advice to parents whose children are intending to take the CEM 11+ tests. The information in the Twitter feed relates to tests taken from 2011 – 2016. There is no evidence that this exchange of information is continuing. The information in question appears to have been passed on by candidates who had taken the tests. However, it also appears that the King Edward Consortium of Schools were in discussion with the Forum

about these postings, and were not concerned that they would prejudice the integrity of the selection tests because comments about a particular set of tests were not being posted whilst those tests were still being used for late applicants. The postings took place after the relevant tests had ceased to be used; and the latest post was in 2016. We have not seen any evidence that the Forum is continuing to pass on information obtained from candidates who have sat the Birmingham Consortium Schools tests, or evidence that any similar exchanges of information are in operation for this school. We have not been provided with any evidence that candidates sit the tests for this school wearing hidden cameras or are likely to do so for the school's 2021 admissions tests.

78. We do not consider that general allegations of cheating and evidence of exchanges of information about the content of tests after they have ceased to be used provide any basis upon which we can conclude that the practice of re-using the same tests for applicants and late sitters for admission to this school in September 2021 is compromised. In the absence of any such evidence, our conclusion is that re-use of the same tests for late sitters does not operate to confer an unfair advantage upon them.

79. In the light of that conclusion, we have not sought to establish the precise cost to the school, or other schools, of commissioning a separate test for late sitters. We accept that there would be some cost attached, and that it would be extremely difficult to ensure fairness as between candidates sitting different tests. Given that we have concluded that the practice of reusing the same test is reasonable, objective and fair, there is no reason for the school to expend money or time exploring whether a second test could be provided for late sitters. We therefore do not uphold this aspect of the objection.

### **Age standardisation**

80. The objector says in the form of objection: "It appears age standardisation is used, yet this is not clear in the admissions policy. Age standardisation is flawed. No age standardisation occurs for A levels, GCSEs or year **6 SATs** (tests where an expected standard of **100** is expected), the later which is sat just 8 months after the main 11+ date. It was not even used in the old year 2 SATs tests. It is not used for phonics tests or multiplication tests. Age standardisation is never used in any public examination". He asks whether all of these other forms of testing are wrong not to use age standardisation, and why age standardisation is required for the school's selective tests but not required for SATs.

81. The objector's view is that age standardisation is used in 11+ tests based upon the claim that different age groups score different marks as they are younger. However, he considers that the research which has led to this claim is flawed and rarely challenged. What does make a difference to an applicant's score (he says) is preparation. Preparation and tutoring for the tests effectively mean that the applicant's age becomes irrelevant, and most applicants prepare or are tutored. Therefore, age standardisation provides an unfair advantage to younger applicants. The objector suggests that there is no evidence that age standardisation will lead to fair outcomes in a situation where the majority of applicants have prepared or are tutored.

82. In the objector's words: "It is obvious that age standardisation is not required when tests are prepared for. A 16-year-old is no better at recalling multiplication tables than a 10-year old who has been practising. A 10-year old who has been practising NVR questions can beat a number of MBA graduates taking the same test (this I have demonstrated further, with my own sons). Age is irrelevant to the score if one prepares. Preparation is king". The objector later produced more detailed information in support of his arguments. He suggests that, although some children taking the school's selection tests are inevitably younger than others, they will have had the same number of years of schooling. By Year 6, after nearly seven years of being taught the same things, any disadvantage caused by being younger will (he says) have narrowed considerably. The objector claims that the only content of the 11+ tests which is not taught in schools is Non-verbal Reasoning.

83. The objector's argument is that all children begin at the same level and have to prepare themselves and are capable of reaching their "theoretical maximum". Some children will take longer to reach their theoretical maximum than others after which extra practice has negligible benefit. "This is not simply age dependent, it is skill dependent. Age has no great advantage. 10-year olds fare no worse in NVR than MBA graduates if they prepare; in the same way 10-year olds fare no worse than an MBA graduate in a multiplication tables test. I would anticipate that the 10-year-old would be faster than the MBA graduate."

84. The objector's statements appear to be opinion possibly based upon his own experience. We do not need to decide whether his opinions are correct because the question we are considering here is whether standardising 11+ test scores by age creates an unfairness. A 10-year-old may do better in a multiplication test than an MBA graduate because he/she has learned the multiplication tables more recently or has a better memory. Repeating tables is a test of memory, not a test of reasoning. The difference between Verbal and Non-verbal reasoning tests and many other types of tests is that success cannot be achieved simply by repeating specific learned information. For example, to do well in the comprehension questions, it will be necessary to have a wide vocabulary and the ability correctly to deduce answers from what is said in a piece of text. Candidates are required to have absorbed information from many sources and to apply it correctly. Whilst the ability to memorise may not be improved by maturity, the ability to reason is something entirely different.

85. If maturity is developed over time, it would seem to us that children may not all be able approach these tests from the same level, as the objector suggests. Nobody would suggest that a three-year-old would be capable of approaching these tests in the same way as a ten-year-old, for example. There is an age gap of nearly a year between the oldest child taking the 11+ test and the youngest. The questions for us are whether age makes a difference; if so, what that difference is; whether standardising the tests by age compensates for the difference; and whether it compensates effectively. The tests are a competition, and in order for any competition to operate fairly, the objective must be that all competitors come to the starting gate at the same time and that there is a level playing field insofar as the tests themselves are capable of achieving this. Familiarisation with the types

of questions asked and practice may improve scores, but admission authorities and test providers have no control over whether children prepare or are coached.

86. The school's solicitors responded to this aspect of the objection as follows:

"CEM utilises age standardisation to make the process as fair as possible to all pupils. The individual scores provided by CEM are standardised according to age by year, month and day. The child's total standardised score is broken down by performance in Verbal Reasoning, Numeracy, and Non-Verbal Reasoning. Equal weightings are applied by the Registration Bureau for the three sections. All children are ranked in the order of their score. As this test measures levels of ability for comparison, it is important that standardisation is applied. Age standardisation is not utilised in other public examinations such as GCSE and A levels, as these measure knowledge and understanding of a subject, they do not measure relative ability as the entrance exam does.

All GL Assessment selection tests use age standardisation as well as CEM tests. Cognitive Abilities Tests published by GL Assessment are also age standardised and these are regarded as one of the leading assessment tests with over 1 million conducted every year.

Information from CEM sets out why age standardisation is used in the selection tests. "... in assessments of ability you would expect to see the older learners achieving higher scores than the younger learners. In a typical classroom, some learners will be up to 12 months older than their youngest peers. When we are interpreting assessment results, we are often interested in comparing learner's ability against the ability of a wider group and it is important that any differences we see are down to ability and not purely down to the age of the learners. Age standardised scores correct for the effect age has on assessment scores. Age standardised scores allow meaningful comparisons to be made between learners in a class, school or larger group. The age standardised scores are calculated from the raw scores to allow candidates to be compared when their age profiles are quite different. The age standardisation is based on the age of learners on the day they take the assessment.

Reference is made to age-standardisation in the determination for The Odyssey Trust for Education for Townley Grammar School, Bexley published on the 17<sup>th</sup> January 2020 (ADA3533). It does not specifically rule on the question of whether the use of age standardisation is unreasonable, however, we note that the adjudicator has not raised age-standardisation as an area of concern. We consider that the above explanation from CEM and the fact that age standardisation is widely used should demonstrate that this approach is reasonable and in line with admissions law".

87. In dealing with the twelve objections which have been referred to us, we were conscious that admission authorities were in a difficult position in being asked to respond to

questions about the selection tests they use, and that CEM was the appropriate body to answer detailed questions about the 11 plus tests which they sell to grammar schools. We asked CEM a series of questions. The ones specifically relevant to this aspect of the objection were:

- Could CEM provide us with the methodology it uses for age standardisation of test results? What is the evidence base which underpins the need for this age standardisation?
- Could CEM advise us on the process it uses to ensure that the selection assessments are a true test of ability?

88. CEM's response to us, which echoes what CEM has said to the school, was as follows:

"The reason that CEM uses age standardisation, is that in assessments of ability it is expected that the older learners achieve higher scores than the younger learners. In a typical classroom, some learners will be up to 12 months older than their youngest peers. When CEM interpret assessment results our interest is in comparing learner's ability against the ability of a wider group and it is important that any differences seen are down to ability and not purely down to the age of the learners. Age standardised scores correct for the effect age has on assessment scores. Age standardised scores allow meaningful comparisons to be made between learners in a class, school or larger group.

The age standardised scores are calculated from the raw scores to allow candidates to be compared when their age profiles are quite different. The age standardisation is based on the age of learners on the day they take the assessment.

CEM cannot provide full details of how the calculations are done. Under Section 43(2) of the Freedom of Information Act, information that would prejudice a commercial interest can be withheld. CEM believe that disclosing this information would be likely to prejudice our commercial interest as it would enable competitors to understand our standardisation process. This could enable our competitors to understand our general approach to the test.

In terms of assessment development – all questions are selected from a bank of items that have been specifically written and designed to be appropriate for assessing pupils at the beginning of the Autumn term in Year 6 of the English school system.

Our tests correlate highly with KS2 SATs results: separate studies have shown correlations of around 0.75 on samples of 4000-5000 pupils".

89. The objector makes two substantive claims, first that the arrangements do not indicate whether age standardisation is used in the selection tests, therefore they are unclear. Second that the tests do not give an accurate reflection of an applicant's ability because they give an unfair advantage to younger applicants. Additionally, if the school's

tests operate unfairly, this may mean that the practices used to decide the allocation of places are not objective or reasonable.

90. Dealing first with the issue of clarity, the arrangements make no reference to the fact that the entrance tests are standardised by age. However, in the Admissions Information document which is published alongside the arrangements uses the term ‘standardised test’ which is explained in the Glossary of Terms as follows: “*Test Results are standardised according to the age of the pupil at the time of the Entrance Test by year, month and day*”. The Admissions Information document is essential reading for any parent whose daughter is intended to sit the Entrance Tests.

91. Paragraph 14 of the Code requires that the practices and the criteria used to decide the allocation of school places are clear, and that parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated. The objector is correct that the admission arrangements themselves make no reference to standardisation, and so could be said to be unclear.

92. The Code defines 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. Because the Admissions Information document is published alongside the arrangements and contains essential information, we consider it highly unlikely that any parent who intended their child to take the entrance tests would not read this document. Arguably it can be construed as part of the arrangements. We take the view that admission arrangements are sufficiently clear to comply with paragraph 14 where any additional information about the tests which parents need to read is published alongside the main policy document and accessible via a one-click. As this is the case, we do not find the arrangements to be unclear in the manner suggested by the objector. Therefore, we do not uphold this aspect of the objection.

93. As we have said above, the objector also suggests that the process of age standardisation provides an unfair advantage for younger children. He believes that the extensive preparation for the tests which children undertake renders the need for age weighted standardisation of test results “null and void”. The objector cites paragraphs 14 and 1.31 of the Code. We have set these paragraphs out in full above. Paragraph 14 requires that the criteria used to decide the allocation of places are fair and objective, and paragraph 1.31 requires that selection tests must be objective and give an accurate reflection of the child’s ability.

94. The objector asks why other major assessment events such as SATs or GCSEs are not age standardised and suggests that, because these other assessments are not age standardised, the selection tests for grammar schools should not be age standardised. This issue could of course be argued both ways; if age standardisation is deemed appropriate for grammar schools’ tests then why is it not introduced into the SATs and GCSE processes? A look at the online conversations about this topic shows clearly that there are strong views on both sides of this argument, both from parents and assessment providers.



This determination, however, concerns the fairness of the admission arrangements for a specific school and deals only with the selective school tests for that school. We will therefore limit our conclusions in this matter to the school in question, its admission arrangements and the selective assessment tests which are part of them.

95. There is significant and compelling research evidence that children who are ‘summer born’ perform less well in tests of ability than children born at other times of the year. This gap is clear in primary aged children and remains an issue even into the later stages of secondary school. A study by the Institute of Fiscal Studies entitled ‘When You Are Born Matters; The Impact of Date of Birth on Child Cognitive Outcomes in England’ collates many previous pieces of research and looks at the reasons why summer born children perform less well. The paper also puts forward some suggestions about mitigating this effect.

96. It is important to be clear about the purposes and rationale of age standardisation and why it might be (or not be) necessary. Age standardisation assumes that the period of birth does not affect the innate intellectual ability of the pupil at the time of taking the test but that the test performance may be affected by age. A younger child might well not perform as well in the test simply because of age and experience rather than because of lower ability. At the time pupils take the 11+, one child taking the test might be born on the first day of the school year (September 1) while another might be born on the last day (August 31). With what amounts to a whole year’s difference in their ages, the older child is clearly at an advantage; for example, they will have been exposed to more language and, on average, a greater range of vocabulary. As children are exposed to a new vocabulary at the rate of more than 1000 words per year, the difference can be very significant for the 11+ tests. Age standardisation removes this potential unfairness and the marks are adjusted to make them ‘standard’ for all children regardless of their age.

97. We are of the view that age standardisation removes some of the potential unfairness for summer born children in the 11+ tests and therefore its inclusion in the admission arrangements for these schools is fair.

98. The objector argues that age standardisation is made ‘null and void’ by the extensive preparation which children receive before the 11+ tests. He maintains that “Most children who sit tests prepare. Many are tutored. Some are prepared in outreach programmes free of charge.” The objector has not produced any evidence to substantiate this statement, so therefore we do not know how many pupils are tutored and we have no evidence of preparation through outreach programmes. We are aware that test familiarisation materials are made available to pupils who will be sitting the tests and these documents appear on the admission sections of the websites of some of the schools. These materials are familiarisation information to show how the tests are carried out, completed and marked and they provide examples of the type of question which will be asked in the tests. They are designed to prevent undue anxiety for those pupils who are sitting the tests.

99. We are also aware that many pupils receive additional preparation through tutoring for the 11+ tests. A literature review commissioned by the Office of the School Adjudicator

(OSA) which looked at disadvantaged pupil performance in the 11+ test studied this element of the process and confirmed that “Pupils that have been tutored are more likely to access a grammar school, and children in households with larger incomes are more likely to have access to tutoring. Tutoring is found to be effective at supporting pupils to pass the 11-plus.” However, there is nothing in the law or the Code which forbids the use of paid tutoring or additional coaching. Indeed, the law relating to admissions and the Code apply to admission authorities, local authorities, governing boards and adjudicators. But they do not and could not interfere with what parents choose to do in supporting their children’s learning whether through commercial tutoring or other means. We are unaware of the scale of additional tutoring/mentoring/support for pupils in the primary schools in this case. If, as the objector suggests it is widespread for this school then we do not believe that it makes the use of age standardisation ‘null and void’. If all pupils are tutored and improve their scores because of it then the attainment gap between summer born children and others would remain the same- albeit at slightly higher score levels.

100. The objector refers to the fact that the Key Stage 2 Standard Attainment Tests (KS2 SATs) are taken within a few months of the 11+ tests and are not age standardised. Whilst it is true that KS2 SATs are not age-standardised, it is also true that summer born children as a group do less well in these tests than autumn and spring born children. Of course, KS2 SATs serve a different purpose and the fact that there is no need for them to be age-standardised has little bearing on what is appropriate for 11+ tests.

101. In summary we are of the view that there is substantial and compelling research which shows that ‘summer born’ children are at a disadvantage when being tested for ability towards the end of their primary education and that the application of an age standardised weighting to the test scores reduces this disadvantage and makes the tests ‘fairer’. Whilst tutoring/coaching/mentoring appears to improve the test results of many pupils, there is no evidence in the research materials we have looked at and the objector has not produced any evidence to suggest that it diminishes the achievement gap due to age. We therefore do not accept that additional preparation for the 11+ tests negates the need for the age standardisation weighting, and we do not uphold this aspect of the objection.

#### Other matters

102. The first oversubscription criterion refers to looked after and previously looked after children, but it does not explain how applications are prioritised in the event that there is more than one from an applicant falling within this criterion. We asked the school whether this is done by rank order. (We do appreciate that all applicants who are looked after/previously looked after who achieve the qualifying score will be offered places, but it is nevertheless necessary to establish the order of priority within each oversubscription criterion). The school’s solicitors have confirmed that applicants who are looked after or previously looked after are ranked in order of scores with the highest ranking prioritised. The arrangements as they stand do not comply with paragraph 14 or paragraph 1.8 of the Code which requires that oversubscription criteria must be clear, and this oversubscription criterion will need to be revised to make clear that eligible looked after and previously looked after applicants will be offered priority by rank order of score.

103. The same point applies in relation to applicants eligible for the Pupil Premium. We can see that a higher level of priority is afforded to qualifying applicants who live in Gloucester city, but the arrangements are not clear how priority is established as between Pupil Premium applicants who live in Gloucester City and as between Pupil Premium applicants who do not live in the city. The school's solicitors have confirmed that Pupil Premium applicants from Gloucester city will be prioritised by rank order of scores with the highest being admitted first. Eligible Pupil Premium applicants living outside of Gloucester city will then be prioritised by rank order of scores with the highest admitted first. The arrangements as they stand do not explain this and so do not comply with paragraph 14 or paragraph 1.8 of the Code which requires that oversubscription criteria must be clear. This oversubscription criterion will need to be revised to make the priority order clear.

104. The arrangements provide that applicants who move into the area after the registration date has closed will be tested in March after offers of places have been made. We were concerned that this would mean that a parent would need to make an application to the school knowing that a place will not actually be offered at the school in March. The child is tested and, if eligible, placed on the waiting list in accordance with the oversubscription criteria. We wondered how often vacancies arise in Year 7, and why these applicants were not either tested sooner or not tested until a vacancy arises. Residence generally would not appear to affect the level of priority (other than to a limited degree for Pupil Premium applicants) because priority is generally established by test score in rank order.

105. The school's solicitors have told us that, on the school's website and in email communications to parents, the school explains what will happen if they miss the test registration window for an application for a place at the school. This information includes making parents aware that the test in March will only offer a place on the waiting list. There is then a second round of allocations for school places at the end of March. It is at this point that children who sat the test in March may be offered a place. The solicitors say that this happens in circumstances where there are any refusals of a place at the school from the initial allocations made on 1 March. Gloucestershire County Council offers these places in accordance with the oversubscription criteria and is responsible for the waiting list until 31 August of each year. The solicitors say that the timescale for the second round of allocations is dictated by Gloucestershire County Council, and that vacancies in Year 7 arise infrequently. The solicitors have confirmed that children are able to sit the initial test regardless of where they live as the school does not have a catchment area, but that the March test is offered to ensure that parents moving into the area have the opportunity to apply for a place in the next academic year.

106. The arrangements say that the school will retain a Waiting List (according to the oversubscription criteria) until December of the Year of Entry (that is 31 December 2021). Thereafter parents are referred to the school's 'In Year Admissions' Policy. In relation to the operation of the waiting list from 1 January of Year 7 onwards, we asked whether all children are tested when their parents apply for a place, or only when a vacancy arises. The school's solicitors have said that the school keeps an In-Year Admissions File, which contains in year applications. When a place becomes available, the Admissions Officer will

send a letter to all parents on file who have made an application to the school. They are then invited to sit a Cognitive Ability Test. Students are not tested at the point of application, as the Cognitive Ability Test is only valid for that academic year. They say that GL Assessment provides the test and analysis of the scores and those students that pass are ranked in order of standardised score and the place is offered using the school's oversubscription criteria.

107. We did not understand the reference to GL Assessment, as we had thought that CEM supplied to school's 11 plus tests, but perhaps the school uses other test suppliers for its in-year admissions procedures. We were concerned by the statement that the local authority is responsible for the waiting list until 31 August of each year. The local authority may manage the waiting list on the school's behalf but, as an academy, the school is its own admissions authority and as such is the body with legal responsibility for its admission procedures. We also did not understand the relevance of a family moving into the area. If parents are anticipating moving to an area which is reasonably close to the school, there is nothing to stop them registering their child to sit the test before they move. The school does not have a catchment area, and priority for places is determined in rank order of score, as opposed to proximity to the school, once eligible looked after/previously looked after and Pupil Premium applicants have been offered places. We wondered how likely it would be that a family would not intend to move until after 30 June in the year before the admission year, and so would not register on time for the tests but would have completed a move into 'the area' (presumably the area of the county of Gloucestershire) in time to be permitted to take the tests in March. But we accept that this is possible.

108. To a degree, we can understand why the school tests in March those children whose parents have moved into the area before their child is due to start secondary school but have missed the registration deadline. This is similar to how many schools deal with late applicants. They offer all eligible on-time applicants places first, and late applicants will only be offered places if any remain available after the first round of offers have been made. This seems reasonable to us; we now understand that some places are offered each year to late applicants who are tested in March; and that it is explained to parents that their child will be tested but will not be offered a place in the main round of offers. Parents are then able to decide whether they wish their child to take the test whilst knowing that she is much less likely be offered a place than others taking the tests earlier, even if she achieves a high score which is well above the qualifying score.

109. We did not understand what the position would be if a child achieved the qualifying standard in March but was not offered a place. We are told that vacancies arise infrequently in Year 7, but if a vacancy were to arise after 31 December when the waiting list is disbanded, would the child who had already taken the test be offered a place, or would those children whose names remain on the In-Year Admissions File be tested and the oversubscription criteria be applied? This is unclear, and therefore our view is that this provision does not comply with paragraph 14 of the Code.

110. In relation to the operation of the waiting list from 1 January of Year 7 onwards, it is unclear as to whether all children are tested when their parents apply for a place, or only

when a vacancy arises. We now know that children are only tested if a vacancy arises, which is perfectly reasonable but nevertheless unclear from the arrangements. Our view is that this provision fails to comply with paragraph 14 of the Code.

## Summary of Findings

111. For the reasons set out above, we do not find that the methodology for the setting of the eligibility standard is irrational. We do not find that affording applicants priority of the basis of eligibility for the Pupil Premium is unreasonable. Neither do we find that affording priority to these applicants operates unfairly to applicants on higher scores who are not offered places. We do not find that re-use of the same tests for late sitters and late applicants is unreasonable. We do not find that the use of age standardisation in the selection tests is unreasonable or that it operates unfairly to any identifiable group. We do not uphold any of these aspects of the objection.

112. We find that the process for selection is not set out with sufficient clarity because the arrangements do not explain that the pass mark is set after the tests are taken, and they do not inform parents that they will be told the pass mark when they are told their child's score. The arrangements will need to be revised in order to comply with paragraph 1.17 of the Code.

113. In terms of the other matters which we have drawn to the attention of the school, we find that oversubscription criteria 1 and 2 and the operation of the waiting list are not sufficiently clear to comply with Code and will therefore need to be revised.

## Determination

114. In accordance with section 88H(4) of the School Standards and Framework Act 1998, we partially uphold one aspect of the objection to the admission arrangements determined by the governing board of Ribston Hall High School for Ribston Hall High School, Gloucester.

115. 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.

Dated: 13 October 2020

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys