Office of the Schools Adjudicator

Determination

Case reference: ADA3677

Objector: An individual

Admission authority: The Governing Board of Langley Grammar School

Date of decision: 13 October 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I partially uphold the objection to the admission arrangements for September 2021 determined by the Governing Board of Langley Grammar School for Langley Grammar School, Slough.

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.

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 Langley Grammar School (the school), a selective co-educational academy school for pupils aged 11 – 18 for September 2021. The objection is to:

a) An alleged lack of clarity in the arrangements about how the qualifying standard is set;

b) The methodology for the setting of the qualifying standard, which is said to be unreasonable;

c) The fact that there are three priority areas, which is said to be irrational.

d) The school having a catchment area at all. This is said to be irrational and to operate unfairly to applicants on higher scores who do not live in the catchment area;

e) Receipt of Child Benefit being used to determine the home address for children whose parents are separated, which is said to be discriminatory;

f) Affording applicants priority on the basis of eligibility for the Pupil Premium, which is said to be unfair;

g) The residence requirements, which are said to be both irrational and unfair;

h) The fact that the arrangements do not specify which schools the 11 plus tests are shared with and therefore may result in a child taking the same tests twice accidentally, which is said to be unreasonable;

i) The fact that children who have previously sat the Slough 11 plus tests in the main Year 7 admissions round and have not met the qualifying standard are effectively precluded from ever being admitted to the school in years 7 – 11, which is said to be unfair;

j) The fact that 31 October is used as the relevant date for determining priority based upon receipt of free school meals, which is said to be irrational;

k) Re-use of the same tests for late sitters;

l) 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 Slough Borough Council. The local authority is a party to this objection. Other parties to the objection are the objector and the school. The local authority has supplied information requested but has not otherwise commented on the objection.

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. Some 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. The objector submitted his objection to these determined arrangements on 24 April 2020. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and is within our jurisdiction.

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 school's response to the objection;

e. the Slough Consortium of Grammar Schools Guide to the 11 plus tests.

f. information provided by the LA;

g. a video sent to us by the objector about grammar schools;

h. maps of the school's Priority Areas and details of all of the postcodes falling within those areas; and

i. 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 twelve aspects to this objection. We have identified the relevant paragraphs of the Code here, but not set them out. 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. Relevant paragraphs of the Code are paragraphs 1.17. and 14.

12. Second, the objector argues that setting the qualifying standard before the results of the tests are known is irrational because there is no basis upon which to judge whether those meeting the standard are of grammar school ability. Places should be allocated in rank order of score. The relevant paragraph of the Code is 14.

13. Third, the objector considers that there is no rational reason for the school to have three catchment areas. Relevant paragraphs of the Code are 1.8, 1.14 and 14.

14. Fourth, the objector says that the catchment areas serve no purpose as any family can move with their child to an area which is outside the catchment area and where they were formerly resident once a place has been accepted. The school place cannot be withdrawn after the end of the first term. This aspect of the arrangements operates unfairly in particular to applicants who achieve a higher score in the tests but are not offered a place because they live further away from the school or outside the catchment areas. Relevant paragraphs of the Code are 1.8, 1.14, 2.13 and 14.

15. Fifth, the objector considers that determining a child's home address on the basis of which parent is in receipt of Child Benefit is an unfair and unreasonable requirement, given that Child Benefit is usually paid to the mother. The relevant paragraph of the Code is 14.

16. Sixth, the objector says it is unreasonable that applicants who attract the Pupil Premium are offered higher priority than applicants who do not attract the Premium and who achieve higher scores in the tests. This aspect of the arrangements operates unfairly to applicants who would have been offered a place had they not been 'displaced' by a lower scoring Pupil Premium applicant. Relevant paragraphs of the Code are 1.8 and 14.

17. Seventh, the objector thinks that the residence requirements are unreasonable and operate unfairly to some applicants. A parent cannot be expected to know the residence requirements before the opening dates for the admissions round (and therefore cannot take steps to ensure compliance with the requirements). It is unreasonable for the admission arrangements to specify a 12-month rental agreement, and it is unlawful to require a former family home to be sold (we note that the arrangements do not actually require this). The relevant paragraph of the Code is 14.

18. Eighth, the arrangements do not specify the schools with which the test is shared. The objector says than an applicant could be tested twice by accident. The relevant paragraph of the Code is 14.

19. Ninth, the objector believes that preventing children who have previously sat the Slough 11 plus tests from applying to Year 7 again outside the normal admissions round and from applying to Years 8 – 11 is unfair to these children. The relevant paragraph of the Code is 14.

20. Tenth, the fact that 31 October is used as the relevant date for determining priority based upon receipt of free school meals, is according to the objector unreasonable as the appropriate date should be 1 May. The relevant paragraph of the Code is 14.

21. Eleventh, the objector says that the re-use of the same tests for late sitters is unreasonable and unfair. Relevant paragraphs of the Code are 1.31 and 14.

22. Twelfth, the objector maintains that age standardisation is unreasonable and operates to cause unfairness. Relevant paragraphs of the Code are 1.31 and 14.

Background

23. Langley Grammar School is a selective co-educational academy school located in Langley, Sough. The school was founded in 1956 by Buckinghamshire County Council, Slough and Langley at that time being in Buckinghamshire. The school is designated as a National Teaching School and is committed to having a significant positive impact on the educational provision in its local community of schools. It was last inspected by Ofsted in March 2007 and was found to be Outstanding in all categories. The inspectors particularly praised the school's promotion of equality and concern for the individual student. The school became an academy on 1 April 2011. The school's Published Admission Number (PAN) for Year 7 is 180.

24. Data supplied by the local authority indicates that the school is oversubscribed on first preferences alone. In 2018, there were 289 first preferences; in 2019 there were 283 first preferences; and in 2020, the figure was 249. Most of these applicants are likely to have achieved the qualifying standard, as the arrangements and other guidance made available to parents indicate that only applicants who have met the standard are eligible for a place at the school. It is likely that there are many other parents whose children did not reach the qualifying standard who would have wanted their child to attend the school. As we note below, each year some applications do come from those who have not reached the required standard.

25. The school's arrangements say that applicants will be admitted to the school at the age of 11 on the basis of their ability as determined by their performance in the 11 plus entrance examination set and administered by the Slough Consortium of Grammar Schools. The procedures for testing are said to be outlined in the 'Slough Consortium of Grammar Schools - a Guide to the 11+ Test' document which is published annually by the Consortium (the Consortium Guide). A standardised score of 111 or above in the entrance examination means that an applicant is eligible for consideration for admission to the School.

26. In the event of oversubscription, looked after children, or children who have been previously looked after will take priority over all other applicants provided they are eligible

for consideration. If this happens during the normal admission round, the number of places available to other applicants is said to be reduced accordingly. The arrangements say that to resolve issues of oversubscription, the school operates a series of Priority Admission Areas. Where the number of eligible applicants exceeds the number of places available, places will be allocated according to the oversubscription criteria below. In all cases, applicants must have taken the Consortium 11 plus tests and achieved equal to or higher than the eligibility score of 111.

> "a) Eligible applicants with a permanent home address [See notes (d) & (e)] within the school's Priority Area 1, up to a maximum of 100 places. If there are fewer places available than eligible applicants, places will be allocated **firstly** to those applicants who attract Pupil Premium funding at the closing date for submission of the Common Application Form [See note (g)], **and then** in rank order of performance in the entrance examination.
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> b) Eligible applicants with a permanent home address [See notes (d) & (e)] within the school's Priority Area 2 **and** who attract Pupil Premium funding at the closing date for submission of the Common Application Form [See note (g)]
>
> c) Eligible applicants who are children of permanent members of the school staff who have been continuously employed by the school for a period of not less than 2 years prior to the closing date for applications or who have been recruited to fill a vacant post for which there is a demonstrable skill shortage.
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> d) Eligible applicants with a permanent home address [See notes (d) & (e)] within the school's Priority Area 2, in rank order of performance in the admission examination.
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> e) Eligible applicants who live within the school's Priority Area 3, in rank order of performance in the admission examination.
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> f) Eligible applicants who live outside the Priority Admission Areas, in rank order of performance in the admission examination.
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> In the event of two or more eligible applicants being tied for the final place or places, places will be allocated to the applicants whose permanent home address is nearest to the School. [See notes (d), (e) & (f)]. If applicants still remained tied, the Governors will exercise their discretion to admit above the Planned Admission Number".

25. The School's Priority Admissions Areas are defined using postcodes as follows:

> **Priority Area 1 (Inner)** SL3 7, SL3 8, SL3 9, SL3 0
>
> **Priority Area 2 (Outer)** SL0, SL1, SL2, SL3 (outside Area 1), SL4
> TW18, TW19, TW20
> UB3, UB4, UB7, UB8, UB10
>
> **Priority Area 3 (General)** SL5, SL6, SL7, SL8, SL9
> TW3, TW4, TW5, TW7, TW13, TW14, TW15
> UB1, UB2, UB5, UB6, UB9

HA1, HA2, HA3, HA4, HA5, HA6
W5, W7, W13
RG12, RG42.

Note (d) says that “an applicant’s **permanent home address** is their normal place of residence, excluding any business address or a relative or childminder’s address, and must be the permanent place of residence of the parent/carer with whom the applicant spends the majority of his/her time. Where there is a formal residence order or child arrangements order which states that care of the child is equally shared between parents/carers, then it is up to them to agree which address to use for the purpose of making a school place application. If care of the applicant is not equally shared, the address of the parent with whom the applicant spends the majority of his/her time must be used. If there is no formal agreement in place the address at which any Child Benefit is claimed must be used.
Applicants must be resident at that address on the closing date for the Common Application Form on 31st October 2020 and have been **continuously resident at the same address since 1st May 2020**, ie six months prior to the closing date for the Common Application Form. The school may check the authenticity of the address stated; proof of residence or further information may be requested and must be provided”.

Note (e) states that, “if the main address has changed temporarily, for example where a family is renting a property on a Short Term Tenancy Agreement (12 months or under), then the parental address remains that at which the parent was resident before the period of temporary residence began unless it can be shown that all ties to the previous address have been relinquished, or that the move is not easily reversible. The Governors may refuse to base an allocation on an address which might be considered only a temporary address or an address of convenience. An address of convenience is considered to be an address used for the purposes of gaining a school place which is not a child’s normal, permanent residence.

“If the permanent home address of an applicant is incorrectly stated or a parent/carer submits false or misleading information or deliberately withholds any relevant information, the application will be invalid and will result in the withdrawal of an offer of a place or a place already accepted at the School”.

Note (g) says that “parents/carers whose children attract the Pupil Premium funding must be able to demonstrate that they are in receipt of, or eligible for free school meals at the closing date for the Common Application Form, or have been eligible to receive income-related free school meals since September 2014”.

The section on In-year admission to Years 7-11 reads as follows: “Children will only be admitted to the School other than at the start of Year 7 if there are available places and they are: a) transferring from another grammar school within the Slough Consortium; or are b) successful in the School’s entrance assessment procedures relevant to their year of entry. Applicants who have previously sat the Slough Consortium 11+ admission examination but did not attain a score of at least 111 will not be eligible for consideration for entry to Years 7-11”.

27. Under the Admissions heading on the Menu page of the school's website are the determined admission arrangements for September 2021, the Consortium Guide to the tests, key dates, frequently asked questions, a familiarisation booklet and familiarisation test papers for the different aspects of the tests. We were impressed by the ease of accessibility to all relevant information and the clarity of the information provided for parents. We read the Consortium Guide from which it is immediately obvious that the Slough Consortium Schools are Herschel Grammar School, St Bernard's Catholic Grammar School, Upton Court Grammar School and Langley Grammar School. Parents must register their child to take the 11 plus tests on the Consortium website, and they are required to confirm that they have read the test familiarisation booklet and the Guide to the 11 plus Test before they can proceed with the registration process. The Guide is extremely clear throughout. It explains that a child can only be registered once even if the parents intend to express a preference for more than one of the Consortium Schools.

28. The Guide explains that the tests for the Consortium Schools and for Reading and Kendrick Grammar Schools are identical and take place on exactly the same day, although there are morning and afternoon sessions. When registering for the tests parents are required to upload a photo of their child and are given a unique ID number and password. Details are held on a central Consortium database. A test centre is allocated on the basis of the child's primary school and postcode. There is a single additional testing date for applicants who cannot sit the tests on the main test date for religious or medical reasons. The Guide says that no other alternative dates will be offered until after school places are allocated on 1 March 2021. It does not state whether the same tests are used on the additional test date.

29. In terms of age standardisation, the Consortium Guide says: "Papers are marked by CEM [the Centre for Evaluation and Monitoring] who then carry out a standardisation process. Standardisation is a statistical procedure whereby raw scores (number of questions answered correctly) are converted to standardised scores to make it fair for candidates of all ages. The standardisation takes into account how a child has performed compared with the average performance of all the children taking each test in the Consortium and how the child has performed in each test compared with children of the same age. The procedure results in a fair score for all children whether born at the beginning, in the middle or at the end of the academic year. Children do not have marks added because they are born in August or taken away if they have a September birthday - it isn't as simple as that! Standardisation also means that it is possible for children to score high marks whilst getting some questions wrong or failing to complete all questions".

Consideration of Case

Lack of clarity about how the eligibility score is set

30. Taking each aspect of the objection in turn, we first consider whether the arrangements are sufficiently clear in terms of what they say (or do not say) about the setting of the eligibility score.

Relevant paragraphs of the Code are 14 and 1.17. Paragraph 14 says:

"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 says:

"All selective schools **must** publish the entry requirements for a selective place and the process for such selection".

31. The arrangements say that there is a pre-set eligibility score which is 111. Any parent considering making an application for a place at the school would understand easily that their child would need to score 111 or above in order to be eligible for a place. There is no requirement in the Code that admission arrangements must explain who sets the qualifying score or when it is set. The arrangements are sufficiently clear to comply with paragraphs 14 and 1.17. We do not uphold this aspect of the objection.

The methodology for setting the eligibility score is irrational and does not operate to select applicants of 'grammar school ability'

32. The objector argues that setting the eligibility score before the ability of the cohort taking the tests is known is irrational. "All it does is top slice the cohort and claim they are grammar school ability". Paragraph 14 of the Code requires that the practices and criteria used to decide the allocation of places are objective and fair. The school has explained that applicants achieving the eligibility score or above lie in approximately the top third of the cohort sitting the test; the exact percentage is specified in the contract with the test provider. This is said to be consistent with the operation of eligibility score systems in other areas of the country and is a legacy of the school's previous history as part of the Buckinghamshire system. The school says that the suitability of the eligibility score system in Slough is regularly reviewed by the Consortium schools, who to date have seen no justifiable advantage in changing it and remain philosophically opposed to a system based solely on rank order.

33. The objector considers that it makes no sense at all for the eligibility score to be set as it is. The school has no way to determine grammar school ability from a score in the test as CEM claim they cannot compare different tests. He claims that the selection process is a farce and all the school does is select enough candidates to fill the PAN. The eligibility score, he claims, is a score irrespective of actual ability.

34. 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".

35. 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 highjacked 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 specific requirements.

36. In one of his generic papers, the objector argues 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.

37. 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. 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.

38. 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.

39. A pre-set pass mark provides clarity for parents and, provided the tests are broadly consistent each year, will ensure that applicants of similar ability will be eligible for the selection pool. However a pre-set pass mark may not have the effect of establishing year-on-year consistency in terms of the ability level of those who are offered a place where it operates alongside oversubscription criteria because the offer place is not wholly dependent upon the test score. In our view this reasonable, and we do not see that it results in an unfair outcome.

40. 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. Setting an eligibility score in advance of the tests which is designed to ensure that applicants achieving the eligibility score or above lie in approximately the top third of the cohort sitting the test is both objective and fair. Our view is that this aspect of the objection in not in breach of paragraph 14 of the Code, therefore we do not uphold this aspect of the objection.

Having three Priority Areas is irrational

41. The objector considers that having three catchment areas is not compatible with the Code. The school should have one catchment area or none at all. Catchment areas are, he says, unfair to applicants who do not live within them. It is unfair that a child on a higher score will lose out on a place because an applicant on a lower score living within the catchment area has been offered one, particularly if this is because the child is able to live in the catchment area because their parents can afford to.

42. The school has said that it had agreed with the local authority to adopt Priority Area 1 at the time the school was expanded by one form of entry and in order to ensure that the majority of the additional places were targeted at Slough children. The aim was to ensure that all children resident in Langley were able to access their local grammar school if they achieved the eligibility score of 111 in the test. All the local grammar schools have increased their PANs in recent years, but this is the only school to have done so as part of the local authority's place planning strategy. The local authority has contributed £3.5million to the school's capital rebuilding programme (the school is part of the Department for Education's Priority Schools Building Programme) to accommodate the expansion.

43. Priority Area 2 reflects the school's historic 'catchment area' beyond Langley, covering the rest of Slough borough and west London. This is the wider area from which a significant proportion of the school's students have normally come.

44. Priority Area 3 reflects the more distant postcodes from where a number of students have travelled in recent years. The school has said that prior to the introduction of the priority areas, applicants from these postcodes often gained places ahead of those living just outside Langley but with slightly lower 11 plus scores. This trend of admitting applicants from further away was increasing and led to the decision to prioritise those closer to the school. The school has emphasised that, since the Priority Area system was introduced, **all** Priority Area 1 applicants who named the school as first preference have been allocated a place. In addition, a number of second preference applicants whose first choice could be regarded as a 'long shot' have also been offered places.

45. The cap of 100 places for Priority Area 1 is said to be set deliberately above the estimated number of eligible applicants from the local area, but is there to ensure what the school regards as an appropriate balance between the proportion of students from Priority Areas 1 and 2. We were told that applications to the school each year always includes a number from ineligible candidates who did not achieve the 11 plus eligibility score. In most cases this is because those families wish to make an appeal on the basis that their child underperformed in the 11 plus test. Data provided by the school shows that the majority of allocations are from Priority Areas 1 and 2.

46. The relevant paragraphs of the Code are:

- paragraph 14 (set out above), which requires that the practices and criteria used to decide the allocation of places are objective and fair.

- paragraph 1.8 which requires that: "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation"; and

- paragraph 1.14 which says: "Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school".

47. The objector says that the school has not justified why it is reasonable to have these three priority areas and is under a moral duty to ensure all children are treated equally. We are not going to deliberate about whether the school has one catchment area with differentiated priority areas within it, or whether it has three catchment areas. The Priority Areas are clearly defined, therefore the questions for us are whether this aspect of the arrangements is reasonable, objective and operates fairly. The Code expressly permits schools to have catchment areas. We have found nothing in the Code to suggest that giving different levels of priority to applicants in different parts of an overall defined catchment area unreasonable.

48. Where there has been an established pattern of admissions by applicants residing in particular areas, it is reasonable to create a catchment area comprising these areas because doing so will preserve the established links and provide transparency and clarity to parents in deciding which schools to apply for. Parents will be better able to assess the

prospects of an application being successful depending upon whether they live in any of the priority areas and, if so, the priority area in which they live. The effect of this would also be to create a school community and to ensure that pupils have a reasonable journey from home to school so that they are able to participate in extracurricular activities at the school.

49. The objector makes the argument generally that oversubscription criteria operate unfairly in the context of selective schools because the effect of having oversubscription criteria is that eligible applicants on lower scores are offered places because they are given priority. So an applicant who scores 111 and lives in Priority Area One may be offered a place, whereas an applicant who scores 190 but lives outside the Priority Areas almost certainly will not (unless he/she falls under one of the other oversubscription criteria). As we have said above, it is the school's choice to adopt oversubscription criteria and selective schools are expressly permitted to do this by the Code. Grammar schools are not required to be "super-selective" (that is to admit solely on the basis of rank score order), although the objector considers that they should be.

50. We cannot find any evidence suggesting that giving priority to applicants living in the Priority Areas operates unfairly or that it advantages wealthy parents. The area immediately surrounding the school (SL3 7) does not appear to be a particularly affluent area (however this observation is based upon Bing Maps. We have not visited the school). The postcodes within Priority Area One appear to cover a mixture of both affluent and deprived areas. Slough, for example, which is in Priority Area 2, ranks as the 5th most deprived local authority within the South East above all five other authorities in Berkshire (based on the 2015 Indices of Multiple Deprivation average score). Therefore, we are unable to find any basis for the objector's assertion that applicants are penalised because they are unable to afford to live in Priority Area One. We do not find that the priority areas are unreasonable, operate unfairly or are otherwise in breach of the requirements in paragraphs 14, 1.8 or 1.14 of the Code, therefore we do not uphold this aspect of the objection.

The Priority Areas serve no purpose

51. The objector considers that the Priority Areas serve no purpose as any family can move with their child back to an area where they were formerly resident, and which is outside the catchment area, once a place has been accepted. The school place cannot be withdrawn after the end of the first term. Relevant paragraphs of the Code are 1.8, 1.14 and 14 (set out above).

52. The objector suggests that a parent could move to an address in Priority Area One for a temporary period and move back to the family's permanent home once a place at the school has been accepted. Paragraph 2.13 of the Code says:

"A school **must not** withdraw a place once a child has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child has been at the school **must** be taken into account. For example, it might be considered appropriate to withdraw the place if the child has been at the school for less than one term".

53. What the Code actually says is that a place can be withdrawn after a child has started school if the place was obtained fraudulently. Where a parent has moved to an address temporarily for the sole purpose of gaining a better prospect of their child being offered a place at a particular school, this could be treated as a fraudulent application. The Code suggests that it might be appropriate to withdraw the place if the child had been at the school for less than a term, but this wording does allow schools a discretion to withdraw the place at a later date.

54. The school has made various attempts in the arrangements to deter parents moving into the catchment area for a temporary period for the purpose of gaining an advantage in the admissions process. The arrangements impose residence requirements (which the objector has objected to). The school may check the authenticity of the address stated; proof of residence or further information may be requested and must be provided. The arrangements say, in terms, that if the permanent home address of an applicant is incorrectly stated or a parent/carer submits false or misleading information or deliberately withholds any relevant information, the application will be invalid and will result in the withdrawal of an offer of a place or a place already accepted at the School.

55. Note (e) (set out above) provides that, if the main address has changed temporarily, for example where a family is renting a property on a Short Term Tenancy Agreement (12 months or under), then the parental address remains that at which the parent was resident before the period of temporary residence began unless it can be shown that all ties to the previous address have been relinquished, or that the move is not easily reversible. The Governors may refuse to base an allocation on an address which might be considered only a temporary address or an address of convenience. An address of convenience is considered to be an address used for the purposes of gaining a school place which is not a child's normal, permanent residence.

56. The school has adopted Priority Areas which it is entitled to do under the Code. The fact that there is a possibility that a parent may attempt to 'cheat the system' by moving to a temporary address does not render the adoption of a catchment area unfair, particularly where the school has signalled clearly in the arrangements that 'cheating the system' in this way will not be tolerated and has taken active steps to attempt to prevent it. The effect of having a catchment area operates to achieve a reasonable and lawful purpose. The fact that a parent may act dishonestly does not render the catchment purposeless. Most, if not all, applicants in any given year will be afforded priority because they genuinely do live in the school's catchment. We do not find this aspect of the arrangements to be in breach of paragraphs 1.8, 1.14 or 14 of the Code, therefore we do not uphold this aspect of the objection.

Using receipt of Child Benefit as a factor for determining home address is unreasonable and discriminatory

57. The objector objects to the fact that, where care of an applicant child is not equally shared between both parents and there is no agreement in place, the address at which any Child Benefit is claimed must be used. The objector claims that using receipt of Child

Benefit to determine a child's home address is 'misandric' because more women than men are in receipt of Child Benefit. This may or may not be true, but he has not produced any evidence to support this claim, and we have not been able to find any on a search of the internet. The relevant paragraph of the Code is 14.

58. Using receipt of Child Benefit to determine home address may not give an accurate indication of where the child actually lives for the majority of the school week. It is possible that the child might spend the majority of his or her time at one address and the Child Benefit be received by a parent who resides at another address. There is no requirement for Child Benefit to be paid to the parent with whom the child lives during the school week or for most of his or her time. The eligibility requirements for the receipt of Child Benefit require rather that the child lives with the parent concerned for some of the time as part of a "a settled course of daily living" or that the parent concerned contributes towards the cost of supporting the child (at least the amount of the child benefit claimed) and regardless of whether the child ever lives with that parent. It is possible that both parents may be eligible but only one may claim. Moreover, in some families neither parent may be eligible for the benefit and no claim will be made.

59. Because the definition of home address may yield an address which does not reflect where a child actually lives, this risks causing an unfairness to the child. Therefore, we find that this aspect of the arrangements does not comply with paragraph 14 of the Code and we uphold this part of the objection.

Priority for applicants eligible for the Pupil Premium is unfair

60. The school considers it has a moral duty to prioritise children from lower income backgrounds as expressed in the Memorandum of Understanding (MoU) between the Department for Education (DfE) and the Grammar School Heads Association (GSHA). The school shares the DfE's ambition to see more pupils from lower income backgrounds applying to, passing the test for, and being admitted to selective schools. There is a stated commitment by the GSHA to support member schools to design admission arrangements which increase access to their schools for disadvantaged pupils, and a commitment from the DfE to support GSHA member schools in designing their admission arrangements to achieve this desired outcome in line with the Code.

61. The objector says that the school has no legal duties for Pupil Premium children. His view is that the school should realise its moral duties by encouraging primary schools to allow their pupil premium funds to be used for tuition and preparation for the 11 plus. If the tests are claimed to measure innate ability, he asks why would a Pupil Premium child have less innate ability than others and need priority? Wealth he argues has no effect on innate ability. He asks how it can be fair that a child who has scored a higher mark in the test can be displaced because his/her parents earn more than the parents of Pupil Premium applicants?

62. 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.

63. "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 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.

64. 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 PP 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 PP 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.

65. In May 2018 the DfE published an MoU between the DfE and the 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."

66. 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.

67. 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 PP children to be admitted and many have lowered the standard mark or pass mark for PP pupils so that more may be offered places.

68. 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.

69. 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 PP 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.

70. In the case of PP pupils' inclusion in the oversubscription criteria we are of the view that prioritising PP pupils who achieve the pass mark over those who are not PP 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 PP pupils. It states “Admission authorities may give priority in their oversubscription criteria to children eligible for the…. pupil premium…..”. As the school says, if giving priority to Pupil Premium applicants is unfair or unreasonable, then the Code must be unfair and unreasonable. The school observes that the adjudicator cannot prevent a school from doing something which is expressly permitted by the Code and suggests that if the objector considers there is a fault with the Code, he must take this up with Parliament. The arrangements fall fairly and squarely within the permissions given in paragraph 1.39A. We do not therefore uphold this aspect of the objection.

The residence requirements are unreasonable and operate unfairly

71. As mentioned above, the residence requirements are that applicants must have lived at an address from 1 May – 31 October in the application year. Where parents are renting a property on a short-term tenancy of 12 months or less they will be treated as living at their previous address unless all ties to that address have been relinquished or the move is not easily reversible. The objector considers this to be illogical. In his view, an applicant must be required to be living at a particular address from the date of the submission of the application, or on the first day of term, or for the whole of the first term. Paragraph 14 of the Code is relevant

72. The school’s response is that the residence requirements are similar to those used by some other selective schools. The school serves a defined local community and the purpose of the residence requirement is to ensure that families with a commitment to the area are prioritised for access to their local grammar school.

73. Our view is that it is reasonable for the school to take steps to prevent parents from making temporary moves for the sole purpose of securing an unfair advantage in the application process when the intention is that the family will move back to their permanent address once a place is secured. Families move house for all sorts of reasons and these are not always foreseeable. An admission authority would not be able to impose a requirement in the admission arrangements that a family must remain at a particular address from the date of the first term of entry until the child leaves the school. This would not be lawful or reasonable. The requirements imposed here seem sensible to us. We have seen much more onerous requirements in other sets of admission arrangements. The address for registration purposes will have to be the same as the address set out in the Common Application Form (CAF).

74. The objector also makes the point that an applicant would not be aware of the residence requirements before the date of the opening of the admissions round. This may, or may not, be true. But this is the very reason why the requirement has been imposed. Registration to take the tests opened on 1 May. An admission authority is required to publish its arrangement by 15 March. A parent who is considering making an application could look at the arrangements when they are published and see that the family would have to be in a new permanent address by 1 May if a legitimate advantage were to be secured. If they owned their house, they would need to sell it immediately and make a permanent

move closer to the school which would be difficult. If they kept their house and entered into a short-term tenancy agreement immediately, the new address would not be treated as their home address. This seems to us a reasonable attempt to ensure that the school intake is from a genuinely stable local community. We do not consider the residence requirements *per se* to be unreasonable.

75. However, we do have a concern on the point of fairness. There are some children who do not have stable family circumstances. The most obvious examples are Looked After Children and children from refugee families. We feel sure that the school would not intentionally wish to exclude these applicants or any other applicants who have genuine reasons for not being able to meet the residence requirements. Our view is that for this reason the residence requirements operate unfairly for some groups of applicants and therefore do not comply with paragraph 14 of the Code. For these reasons we partially uphold this part of the objection.

The arrangements do not specify the schools with which the 11 plus tests are shared, therefore an applicant could take the same tests twice by accident

76. The objector says that the school 'refuses' to say which schools use the same 11 plus tests. The arrangements themselves do not specify the schools with which the tests are shared, however the Consortium Guide which is published alongside the arrangements makes clear that the four Consortium schools all take the same tests, as do Reading and Kendrick Grammar Schools.

77. The tests for all six schools take place on exactly the same day. The school says, there are robust data checking systems which are operated by the test provider to prevent a child sitting the tests twice. As we noted above, when registering for the tests parents are required to upload a photo of their child, and are given a unique ID number and password. Details are held on a central Consortium database. A test centre is allocated to each individual child on the basis of the child's primary school and postcode.

78. The objector says that, under the GDPR [General Data Protection Regulation], CEM has no right to check if a child is sitting the same test more than once in a different area "as permission is not provided and need not be provided to process the data in this way. Testing in other areas has nothing to do with the school. The school runs its own testing process. CEM is a commercial entity and has no statutory duty to check if a child sits the same test twice and has not entered into an agreement with parents for this to occur. The school has not made this clear either. GDPR is paramount". There are an awful lot of assumptions made here, some of which are manifestly incorrect. The school does not run its own testing process. The process is run by the Consortium, and each child sitting the tests is given a unique ID number which is held by the Consortium, therefore the Consortium will be aware if a child has registered to take the tests more than one, but it would be difficult to do this as the tests are held on the same day.

79. In addition to the Consortium Guide which is published on the school's website, there is also a link in the admissions section of the school's website to a YouTube video which explains the registration, testing and allocation procedures with absolute clarity. The video

explains to parents that they only need register their child once however many Consortium Grammar Schools they may be thinking of applying to. The video explains that Reading and Kendrick Grammar schools use the same tests as the Slough Consortium schools on the same day at the same time. Therefore, a child cannot sit the tests for both, however a parent can ask for the test scores to be shared. If intending to apply for the Slough Consortium schools and the Reading or Kendrick Grammar School, the parent must register the child for both and only sit the test once.

80. Requests for sharing of scores must be made before registration closes. After the tests, the child's raw score is passed to Kendrick or Reading for inclusion in their standardisation process, which compares the scores of the children who have taken the tests and adjusts the score to take into account their age. The cohort of the group sitting the tests in Reading will be different to the cohort of the group sitting the tests in Slough and a child may therefore have two different standardised scores. Parents will then receive two notifications of results. The video explains that some other more distant grammar schools also use the same tests, though not the Buckinghamshire grammar schools.

81. We have no doubt that any parent intending to register their child for the tests would read all necessary information about the test procedure. They would have to do so in order to engage effectively in the process. They would have to read the Consortium Guide and would be likely to watch the YouTube video. We do not see how it would be possible that a parent engaging in the process could not be aware of the names of the Consortium grammar schools and Reading grammar schools using the same tests. We could not see how it would be possible to take the tests for the Slough Consortium grammar schools or the Reading grammar schools more than once, or how the procedures in place would allow for this, given that the registration process is explained so clearly.

82. Any school admissions process must necessarily involve the processing of children's personal data. In the case of this school, the child's name, date of birth and registration number will be made known to the Consortium, CEM, the local authority (and possibly Reading Council), any of the Consortium schools for which the parent has expressed a preference and any Reading grammar school for which the parent has expressed a preference. This is all done with the parents' consent, and so is not unlawful processing under the GDPR. Plus, local authorities and schools which are public bodies processing personal data as necessary in the exercise of a public task do not need parents' consent to process relevant personal data. We see no basis for suggesting that the arrangements allow for a child to take the same test twice by accident, given the fact that the procedures are explained so clearly in the Consortium Guide and the video. We cannot see anything unreasonable or contrary to the GDPR in the test procedures, therefore we do not find a breach of paragraph 14 of the Code and we do not uphold this aspect of the objection.

Preventing children who have taken the 11 plus tests in the main Year 7 admissions round from being re-tested is unfair

83. The arrangements provide that applicants who have taken the 11 plus tests in the main Year 7 admissions round who did not achieve a score of 111 or above will not be eligible for consideration for entry to Years 7-11. As mentioned above, the arrangements

also say that children will only be admitted to the school other than at the start of Year 7 if there are available places. Only applicants who are transferring from another grammar school within the Slough Consortium or who are successful in the school's entrance assessment procedures relevant to their year of entry will be eligible for admission. The objector asserts that this aspect of the arrangements is unreasonable. Again paragraph 14 of the Code is relevant.

84. The school's view is that, if the test is a robust measure of a child's aptitude for a grammar school education, as opposed to a measure of their attainment, then there is no reason to assume that this aptitude will vary significantly in the following years. The objector responded by saying that the 11 plus test is not an aptitude test. If the school claims it is, then it is violating the Admissions Code. The test is supposed to be one of ability. Since the test covers what a Year 5 child would have learned and tuition is not required, it is, he suggests, a measure of attainment at that level. He argues that children mature at different times, and their level of ability changes. We agree with the objector that under paragraph 1.18 of the Code only designated grammar schools are permitted to select their entire intake on the basis of high academic ability and that the CEM 11 plus tests are tests of ability rather than aptitude.

85. We also agree with the objector that this aspect of the arrangements is unreasonable and operates unfairly to an identifiable group of applicants. It effectively bars any subsequent application to the school. It cannot be reasonably assumed that a child who has not achieved the qualifying standard in a Year 7 test would be incapable of achieving the relevant standard a year or two later. What if the child had been only one mark below the qualifying standard in the Year 7 tests? We also question whether it is reasonable to assume that a child transferring from another Slough Consortium Grammar School would automatically be of the qualifying standard. It may be the case that the child has left the other grammar school because he/she is struggling in a grammar school environment. We do not consider this aspect of the arrangements to be reasonable or fair. The provisions do not comply with paragraph 14 of the Code and, for these reasons, we are upholding this part of the objection.

Assessing eligibility for free school meals at the closing date for submission of the CAF is unreasonable

86. The objector's view is that there is no rational reason why eligibility for priority on the basis of Pupil Premium should be determined on the closing date for submission of the CAF (31 October) if the date for establishing residence is 1 May. He says there is no logic in having different dates, and no consistency. The same date should be used for both. The relevant paragraph of the Code is 14.

87. We could find no logical reason for suggesting that the eligibility date for free school meals should be 1 May, or for suggesting that the date for establishing an applicant's home address should be the same as the eligibility date for free school meals. The objective must be to give priority to applicants who are disadvantaged at the time of entering the school but parents can only state the facts as they apply at the time of making the application. Our view is that 31 October is an entirely appropriate date, and indeed probably the most

appropriate date. As the child will not be admitted to the school until almost a year after the parents submit the CAF, they cannot know whether the child will remain eligible for free school meals on the admission date. The parents register the child to sit the tests; the child sits the tests; parents are given the result; they make an application for a place at the school; the oversubscription criteria are then applied. It is only at this point that eligibility for free school meals becomes a relevant factor. It has no relevance to the child's test score. We do not find this provision to be in breach of paragraph 14 of the Code, and therefore we do not uphold this aspect of the objection.

Re-use of the same tests for late sitters is unreasonable

88. The Consortium Guide says that there is a single additional testing date for applicants who cannot sit the tests on the main test date for religious or medical reasons. The Guide says that no other alternative dates will be offered until after school places are allocated on 1 March 2021. It does not state whether the same tests are used on the additional test date. The school has not responded to this aspect of the objection, which we have taken to mean that it does use the same tests for late sitters and have drawn our conclusions on this basis.

89. 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.

90. All twelve of the schools objected to this year use verbal and non-verbal reasoning 11+ tests (VR and NVR tests) designed by CEM. CEM is one of two major providers of the 11+ and also a leading provider of other assessment tools and tests. It is owned by the University of Cambridge. The schools 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 on the basis 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.

91. 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.

92. 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 injuncted to take down the content of the website…"

93. 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.

94. Admission authorities generally require substantiating evidence before they will agree to a particular candidate being late tested. 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 for those tested at the same time.

95. 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…".

96. 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.

97. 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."

98. 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.

99. 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.

100. 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.

101. 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.

102. 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.

103. 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.

104. 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.

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.

110. 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 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.

111. 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.

Use of age standardisation is unreasonable and operates to cause unfairness

112. 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 latter 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.

113. 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 or older as the case may be. 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.

114. 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.

115. 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."

116. 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.

117. 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.

118. The school has said in response to the objection that candidates with widely differing dates of birth may have different levels of maturity and may have had different lengths of

time in the earliest years in school. Age standardisation is required to ensure all candidates are treated equally.

119. 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?

120. CEM's response 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".

121. 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.

122. Dealing first with the issue of clarity, the Consortium Guide, which is published alongside the admission arrangements on the school's website makes clear that CEM carry out an age standardisation process. It also explains what that process is and why it is carried out, which is to ensure a fair score for all applicants regardless of whether they are born at the beginning, in the middle or at the end of the academic year.

123. 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 reference to standardisation without explaining that what is referred to is age standardisation, or what age standardisation is, and so could be said to be unclear. We take the view that the 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 admission arrangements, clearly signalled to parents 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.

124. 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.

125. 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.

126. The objector refers to the fact that the Key Stage 2 Standard Attainment Tests are taken a few months after the 11+ tests and are not age standardised. This is correct, but 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, Key Stage 2 tests 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.

127. 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.

128. 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.

129. 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.

130. The objector makes the point 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.

131. 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.

132. 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.

Summary of Findings

133. This is a very lengthy determination, therefore we have summarised our findings briefly. For the reasons explained above, we find that:

- The arrangements are sufficiently clear about how the qualifying standard is set;
- The methodology for setting the qualifying standard is reasonable;
- Having three priority areas is reasonable;
- It is reasonable for the school to have a catchment area;
- It is reasonable to afford priority based upon eligibility for the Pupil Premium;
- It is reasonable for the arrangements to incorporate residence requirements, and the requirements adopted are not unreasonable. Neither do they operate unfairly;

- The arrangements are sufficiently clear about which schools use the same selection tests. It would be very difficult indeed for an applicant to sit the same test twice, given the rigours of the registration process;

- Using 31 October as the date for determining priority based upon eligibility for free school meals is reasonable;

- It is reasonable to re-use of the same tests for late sitters;

- Standardising the test results by age is reasonable and does not operate unfairly.

We find that:

- It is unreasonable to treat the address of the parent in receipt of Child Benefit as the home address for a child whose parents are separated and that this may operate unfairly where the address of the parent in receipt of Child Benefit is not the address where the child is living for the majority of the school week. This is in breach of paragraph 14 of the Code, therefore this aspect of the arrangements must be revised;

- It is neither reasonable nor fair that applicants who have taken the tests in the main Year 7 admissions round and not met the qualifying standard are precluded from ever being offered a place at the school in Years 8 – 11. This is in breach of paragraph 14 of the Code, therefore this aspect of the arrangements must be revised.

Determination

134. In accordance with section 88H(4) of the School Standards and Framework Act 1998, we partially uphold the objection to the admission arrangements determined by the governing board of Langley Grammar School for Langley Grammar School, Slough.

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

Dated: 13 October 2020

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator Ann Talboys